

BASIC TRAINING MANUAL

**FOR BOARD
MEMBERS**

BERDING | WEIL

BASIC TRAINING FOR BOARD MEMBERS

A GUIDE FOR NEW VOLUNTEERS

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INTRODUCTION

Common Interest Developments did not exist 60 years ago. They were created in the early Sixties primarily for two reasons: to enable builders to build more homes on a given parcel and, to allow development on parcels that included land that otherwise would be unbuildable. Where a single-family detached housing development might place four to six homes on each acre of ground, attached housing can accommodate much higher densities, as many as ten to fifteen per acre—in low rise developments—and many more in high rise buildings. Land unsuitable for construction within a parcel can be avoided by clustering homes on the buildable portions of the land and ceding the rest to “common area.”

Greater density and clustering of homes brings with it special governance challenges. Where an owner typically maintains a single-family home, attached housing requires community maintenance. High-density living also demands rules for behavior and the use of property that are not necessary in less dense developments. In short, the higher the density, the more that must be done to accommodate the common interest. Housing which has elements of rules and common maintenance are referred to as “*common interest*” developments, although you will also hear such projects referred to by other names: *homeowners associations, condos, town homes, or community associations*. Regardless of which name is used to describe a particular project, this type of housing has become ubiquitous. Since approximately 1960, more than 300,000 common interest developments have been built in the United States, providing homes for over 62 million residents.

Being on the board isn't easy. A newly elected director usually approaches the task with energy, enthusiasm, hope, a commitment to transparency and “getting things done.” This last task requires learning how to govern. Governance entails an understanding of the frame within which directors make decisions and the powers and duties they have under California law.

Governing a community association has many aspects. Some obvious ones include being receptive to membership input, flexibility; and having the courage to look at hard issues and make sound decisions. Good governance includes operating within the parameters of the law and in states which are heavily regulated by statute, that isn't easy. How much “law” does a director (or a manager) need to know? How can they “compete” with the bloggers who quote legal chapter and verse to attack the board; how can directors assess the validity of legal challenges without always engaging counsel? What are the legal boundaries?

In California, most associations in common interest developments are non-profit corporations with a **board of directors** composed of property owners that manages the project. This board derives its authority from the *governing documents* that the builder of the property prepares in accordance with guidelines published by the California Department of Real Estate and California law. These governing documents include corporate *Articles of Incorporation and Bylaws, and Covenants, Conditions, and Restrictions (CC&Rs)* that impose rules and restrictions on the use of property within the development.

The board of directors, acting on behalf of the association, is responsible for the maintenance of the common areas of the property. Boards are also charged with enforcing the governing documents, collecting assessments needed to pay the expenses of the association, and in general, providing for the welfare of the association and its residents.

It is important that a new volunteer board member understand the structure of a common interest development, the association's authority over the property and its owners, and the unique manner in which an association is governed.



WHAT ARE THE TYPES OF COMMON INTEREST DEVELOPMENTS?

All of the land and property within a common interest development, regardless of type, is divided into two essential parts: the part owned by the individual owner, and everything else. The part that is owned by each individual, i.e., that property deeded specifically to that owner, is that owner's "*separate interest*." Everything else is "*common area*." [CC 4095] (The references here and following are to that portion of the California Civil Code known as the "Davis-Stirling Common Interest Development Act").

California law recognizes four types of common interest developments, but we will discuss only the two most common types—*Condominiums* and *Planned Developments*. [4100] The major difference between these types is found in the nature of the owner's separate interest. Since many important rights and duties are determined by who owns what, it is very important to understand the difference between condominiums and planned developments.

CONDOMINIUMS

The "separate interest" deeded to an owner of a condominium is usually the *air space* within the unit itself. The owner's "*unit*" (as the owner's separate interest in a condominium is usually described) normally includes everything on the warm side (inside) of the sheet rock. It includes all of the fixtures protruding into the unit, such as lights, stove, and plumbing fixtures, but not the plumbing (or electrical wiring) within the walls. [4125]

All other portions of a condominium building are "common area." This includes all of the structural elements of the building, the foundation, and all of the waterproofing components such as exterior siding, windows, and roofs. The parking lots and all of the landscaped areas and recreational facilities adjacent to the building itself are also common area. **The owner of a condominium unit receives a deed to the "unit" and to a percentage of *all* of the common area.** If there are 50 units in the project, for example, each owner will own an undivided 1/50th of the entire common area in addition to his or her individual unit.

Portions of the property such as *parking spaces, storage lockers, balconies or patios* may be dedicated to an individual owner's "**exclusive use**" but they are usually not part of the owner's separate interest—they are part of the common area that is restricted to a particular owner's use. The owner's right to these areas is usually stated in the deed to that owner's separate interest and also is described generally in the CCRs. Except for the owner's exclusive rights to use such areas, the property itself, like all common area, is owned in common by all of the owners of the property. [CC 4145]

PLANNED DEVELOPMENTS

The owner's separate interest in a planned development is usually referred to as a "*lot*." This is true for both detached and attached housing types. Both can be planned developments. A lot in a planned development of attached housing is very similar to a lot in a single-family development. It is a parcel of land with specific dimensions, and has a residence on it. **The owner of that lot owns the land and all of the parts of the building on that land.** Even though the buildings on the lots in an attached development have common walls, the boundaries of the owner's separate interest can be determined with reference to the governing documents and to the *subdivision or parcel map* recorded with the county. [CC 4175]



A “lot” in a planned development includes *all* of the building components within that lot, including foundations, structure, wires, pipes, and all of the waterproofing systems, such as siding and roofs. **The other owners in the planned development do not own any portion of an owner’s individual lot.**

In a planned development, the common area is everything outside of the boundaries of the lots. This often includes streets, walkways, landscaped areas, and recreational facilities. Unlike a condominium, the common area parcels in a planned development are usually *deeded to the association* which owns that property like any landowner, but subject to the rights and interests of the members of the association to use that property, as stated in the governing documents. Individual owners in planned developments can, in some cases, have exclusive rights to use portions of the association’s common area, like parking spaces, for example.

ARCHITECTURAL “STYLES”

It is important to know that the architectural “style” of a building does not necessarily determine its legal status. Condominiums could be anything from a high rise to a detached house, but are most commonly multi-story, multi-unit attached structures. If there is one unit on top of another, it is probably a condominium. (That style could also be a co-op, but those are rare in California.) The typical condominium project in California is either a high-rise steel and concrete building, or a low-rise wood frame structure consisting of one or several buildings each containing multiple, stacked apartment-style units. There are, however, many other architectural styles that can also be condominiums—work/live space lofts, or commercial buildings, for example.

Attached homes in a planned development are typically townhouse or row house-style, or duplex dwellings of one or two stories. The word “townhouse” refers only to an architectural style and does not, in and of itself, necessarily mean a planned development. There are also condominiums that are the “townhouse” style. But it doesn’t work the other way around—since planned developments require individually owned “lots,” there are no planned developments that are stacked, apartment-style units.

WHAT IS AN “ASSOCIATION” AND WHAT DOES IT DO?

A “**community association**” is an association of owners created to manage a common interest development. [CC 4080] In most cases, the association is a non-profit, mutual benefit corporation created under the California Corporations Code. Associations have been referred to by various names, including “property owner associations” and “homeowner’s associations”, but the Davis-Stirling Act refers to them simply as, “associations.” Each owner of property in the development is a *member* of the association. A board of directors elected by the members governs the association. Once the developer has left the property, each unit or lot has one vote. The duties of the association are set out in the *Articles of Incorporation* and the *Bylaws*, two of the *governing documents* of the association.

The association is the “**manager**” of the common interest development. Management includes providing for proper **maintenance** of the buildings and the common areas; **collecting assessments** necessary to pay the association’s operating expenses and for contributions to reserves; **enforcing the governing documents**, including the restrictions on the use of the property by owners; conducting **meetings of members** and the board as required by the bylaws; and generally, to protect and preserve the property. These responsibilities can be and often are, delegated to professional managers, but the basic legal responsibility remains with the association and its **Board of Directors**.

THE RESPONSIBILITIES OF THE BOARD OF DIRECTORS

The board of directors is the policy-making body of a community association. It is charged with overseeing the day-to-day operation and management of the association. Generally, all authority vesting in the association is exercised by the board. [California Corporations Code section 7210] Exceptions are for the really big things an association does and these frequently require membership approval: mergers, dissolutions, large regular or special assessments, elections and recalls and governing document amendments. Most of these are subject to statutory election provisions that can be confusing when, as is common, they conflict with the election procedures contained in the association’s own CC&Rs and Bylaws.

The board usually meets monthly or quarterly, and while association members are encouraged to attend these meetings, members are not permitted to vote on matters before the board. The law intends that board decisions shall be made at open, noticed board meetings with proper agendas. Exceptions exist for decisions made in executive session or by unanimous written consent. The board must also provide notice of its meetings. Except in the case of an emergency, California law severely restricts the use of email or teleconferences by board members to conduct meetings or make decisions.

The board elects the officers of the association from among the directors. A president, vice president, secretary, and treasurer are the typical officers. The powers and duties of the board and its officers are spelled out in the bylaws of the association. They have broad and specific powers commensurate with their responsibilities. The association is a business and the board has the same authority and responsibility as the owners of any commercial business.

MAINTENANCE OF THE PROPERTY

One of the most important management duties performed by an association is to provide for the preservation of the property. This is usually done through the use of skilled professionals, either professional property managers or contractors who can recognize the maintenance and repair requirements of the association and arrange for that work to be done.

However, before an association can maintain the property, it must determine what parts of the property the association is responsible for. This determination is critical because association maintenance resources are usually very limited and an association cannot afford to pay for maintenance or repairs that are the responsibility of the individual owners. An association's maintenance and repair responsibility is determined by the type of association, and by the provisions of the Declaration of Covenants, Conditions, and Restrictions.

In a **condominium** project, the individual owner is responsible for maintaining his or her separate interest. Since the separate interest of a condominium is only the interior air space of the condominium unit and occasionally window glazing, the maintenance and repair of all of the remainder of the project is the responsibility of the association.

Remember that the owner's separate interest in **attached planned developments** includes the lot and all of the building components located on that lot. If there were no other responsible parties, the owner of an attached residence in a planned development would be just as responsible for maintaining the property as is the owner of a detached home.

But because the properties are attached and cannot be easily maintained separately, and because the common areas also require maintenance, the CC&Rs of planned developments usually delegate responsibility for maintenance of the common area, and *some* of the maintenance of the buildings to the association. Therefore, when determining the allocation of maintenance and repair responsibilities in a planned development, check the CC&Rs. The declaration will describe, usually in some detail, just exactly which components of the buildings the association will maintain. Whatever is left is the responsibility of the owner.

Typically the CC&Rs of an attached planned development will require that the association maintain, in addition to the common areas, the exterior "waterproof envelope" of the buildings. This usually includes the roof, exterior walls, caulking and painting. The extent of such maintenance, however, varies widely between associations. For example, one association may be required to "paint and maintain" the exterior surfaces. Another may be required to "paint, maintain, repair, and replace" those same surfaces. Those two definitions represent very different repair responsibilities.

Since a major responsibility of an association is contracting for, and managing maintenance and repairs, it is important that the association retain the right professionals to write the specifications for the repair, review the contracts, prepare the bids, and supervise the work. This is true whether the job is routine landscape maintenance or a major roof replacement.

Single-family homes are also built on "lots" which belong to individual owners. They also share the use of common areas that lie outside of those lots and include streets, recreational space, and landscaping. But unlike planned developments with attached "townhouse" style buildings where the outer skin is shared, there is no need for the community association to maintain any portion of the building on the lot. In those developments the association typically maintains only what it owns—usually the common areas outside of the individual lots.



ENFORCEMENT OF THE CC&RS

The association is charged with enforcing the Covenants, Conditions, and Restrictions. This includes the “*architectural*” restrictions on each owner’s right to modify the appearance or structure of his or her property. It also includes “*use*” restrictions that condition the owner’s use of the property. Each owner, as well as the association, has the right to enforce these restrictions. The CC&Rs are recorded with the County Recorder and “run with the land” i.e., they are binding on all present and future owners of the property.

It is this right, vested in the association, to regulate the use of property coupled with its obligation to maintain it that makes a common interest development a unique form of property ownership. It is also the arena that gives rise to criticism of boards of directors as being overzealous or insensitive to the needs of owners. **The board must carefully balance its power of enforcement with a “common sense” tolerance of human nature, if it is to avoid such criticism.**

It is essential that the association’s enforcement efforts are *timely, uniform, and fair.* If the board of directors ignores specific violations, or fails to enforce the CC&Rs generally, two things may happen—the owners may begin to ignore these restrictions; and, if and when the board does resume enforcement efforts, the courts may find that it has waived the right to do so. This may happen notwithstanding “non-waiver” provisions of the documents.

Enforcement *must not be arbitrary.* Ignoring a violation by one owner and enforcing the same restriction against another owner will make it difficult to obtain judicial support for the association’s efforts. **Fairness also requires that the association follow the rules of “*due process,*” i.e., notice and an opportunity to be heard.** These rules are usually found in the governing documents and can also be found in the *California Corporations Code* and in *Civil Code provisions of the Davis-Stirling Act.*

Boards of directors are responsible for enforcement, but are not required to initiate action against every single violation. Case law has given boards the right to exercise their “*business judgment.*” If it appears that the violation is trivial, accidental, or infrequent, the board may justifiably refuse to initiate enforcement action.

Enforcement can be anything from a simple discussion between a member of the board or the manager and the offending owner to letters, fines, or even legal action. However, before the board may resort to the courts, it is required to follow some simple *Alternative Dispute Resolution* procedures as required by the *California Civil Code.*

BUDGETING AND COLLECTING ASSESSMENTS

The board of directors of the association is responsible for budgeting for both the annual operating expenses of the association and the necessary contributions to its reserve account. It is also responsible for collecting the necessary revenue to operate the association by assessing the members. The operations budget includes all of the expenses of the association for the current fiscal year, while the contributions to the reserve account are based on projections for maintenance or repairs to be done in the future. Annual expenses include such items as management, utility payments, administrative expenses, and insurance. Future maintenance reserves are for capital expenditures for major repairs.

OPERATIONS VS. RESERVES

Some maintenance by associations is funded from the operations budget and other from the reserves. Both accounts are included in the association's financial statements. Which one applies depends on when the maintenance is done. Is the maintenance or repair done on an annual basis? If so, funding for that is properly included in the association's annual maintenance budget. Examples include small-scale painting, patching of asphalt, leak repair, and similar expenses.

Long-term maintenance or repair, i.e., projects done infrequently and which require substantial funding, is usually included in the *Reserve Budget*. Examples of projects usually funded from reserves include roof replacement, paving of streets, and large-scale painting or re-construction projects.

RESERVE STUDIES

California law requires that each association conduct a “reserve study” every three years, and review it annually. [CC 5550, 5560, 5565] A reserve study is an investigation by an experienced professional to determine which of the association's components will require replacement in the foreseeable future. All components fitting that description are required to be part of the association's reserve budget. **The purpose of such studies is to insure that the association is properly funded for future maintenance and repairs. The association's reserve budget projections are based on its reserve study.**

UNCOVERING CONSTRUCTION PROBLEMS

An association is charged with the preservation of the owners' property. That duty includes maintenance, both long and short term, and includes insuring that the development is properly inspected so that all potential problems are uncovered. Reserve studies usually investigate only visible and accessible building components. **Since construction issues can develop in places not readily open for inspection, it is important that the association's investigations occasionally include areas that are not generally accessible, e.g. under foundations, inside walls, decks and other enclosed areas.**

If the project is less than ten years old, problems uncovered in annual inspections might remain the responsibility of the developer of the project. Proper inspection is just as important in older projects however, since in projecting the association's funding requirements, the sooner the cost of a major repair is known the sooner it can be included in the budget. **The longer that the association saves for eventual repairs, the lower the annual assessment will be to each of the owners and the less likely it will be that a special assessment or bank loan will be necessary.**

ASSESSMENTS

Once the board determines its annual budget, it calculates the regular assessment to be levied on each owner. This annual levy is normally collected monthly or quarterly. The Civil Code limits the amount the board can raise assessments over the prior year, without the member's approval to 20%. *The board can also levy special assessments, in addition to the regular assessments.* However, special assessments are also limited by the Civil Code. **The members must approve special assessments that exceed that statutory limitation.** [CC 5606]

The association, acting through the board, has the power to collect assessments that are not paid on time. *Delinquent assessments* can be collected by foreclosing the association's assessment *lien* on the owner's property using the courts, or non-judicially using a power of sale. The association can also obtain a judgment by taking the matter of the unpaid assessments to small claims or the Superior Court.



MEETINGS AND ELECTIONS

The Association has meetings of members and meetings of the board of directors. Members meetings are usually held once a year and are intended for the election of directors, voting on matters that require member approval, and receiving reports from the board. Meetings of the board of directors are held more frequently, usually monthly, and are for the purpose of deciding on the day-to-day business affairs of the association. The law intends that board decisions shall be made at open, noticed board meetings with proper agendas.

The “Annual Meeting” of the members of the association is one of the few times the property owners are directly involved in the business decisions of the association since the governing documents of most common interest developments vest the management of the association in a board of directors. **The notice of the annual meeting provides not only the time and place of the meeting, but also an agenda of the business to be conducted at the meeting.**

The election of the board is one of the items of business at the annual meeting of members. Directors are usually elected from the membership, but in some instances can be individuals with some other interest in the common interest development. For example, the developer of the project may nominate one or more of its employees to be members of the board in the initial stages of the project’s development.

Other matters on the agenda of the annual meeting may include receiving the reports of the manager, the president of the board of directors, and the treasurer. The agenda may also include a vote by the members on certain assessments proposed by the board that require member approval. The members may also be asked to approve such things as changes to the governing documents. The actual number of items that must be submitted to the members for approval is limited since most policy decisions on the operation of the association are the province of the board of directors.

RECORDS AND DISCLOSURE

The board or the managing agent of the association maintains the records of the association. These include the *business records* such as contracts, invoices, and records of payment. The records of the association also include the *minutes* of meetings, both the annual meeting of the members and the monthly meetings of the board. Records of elections include ballots and proxies.

The board is required to provide to its members certain information as enumerated in the Civil Code. [CC 5300, 5310] These include the annual financial statements. Having complied with the disclosure requirements enumerated by the Civil Code, the association has no legal duty to provide any other regular data to members or third parties.

There can be, occasionally, special information on the common interest development of which the board becomes aware. For example, a report on a unique problem, such as an issue related to the repair of the buildings for which the association is not currently funded. This situation can cause conflicts when the sale of a member’s unit is pending or the owner is seeking refinancing. In these instances, the board should develop a workable policy of providing information on the financial and physical condition of the property sufficient to assist the member. This can usually best be accomplished with the assistance of the association’s legal counsel.

WHAT LEGAL AUTHORITY GOVERNS COMMON INTEREST DEVELOPMENTS?

Common interest developments are a unique blend of Real Estate and Corporate Law. Real estate law governs the property itself, from the subdivision of the property to the restrictions on its use. Corporate law governs the creation and operation of the non-profit corporation that manages the property.

GOVERNING DOCUMENTS

Non-profit corporations with a board of directors manage almost all common interest developments whether they are condominiums or planned developments. Associations are created under the authority of the California Corporations Code. The filing of *Articles of Incorporation* with the California Secretary of State creates the corporation itself. The rules of the corporation, concerning everything from the number of directors to the dates of meetings are contained in the association's *Bylaws*.

Common interest developments are distinct parcels of land, and land in California is subject to the **law of Real Property**. Anything that causes a change in the ownership status of land must be **recorded with the County Recorder** in the county where the land is located. This is also true of anything that seeks to regulate the use of real property.

A modern common interest development could not exist if every owner had unrestricted use of the property. Because of the density and attached homes, restrictions on the use of property are necessary. These restrictions are contained in the association's *Declaration of Covenants, Conditions, and Restrictions*. The *Declaration*, or "**CC&Rs**," is signed by the developer and recorded with the county recorder before any of the individual lots or units are sold. Recording the CC&Rs extends their authority over all lots or units in the subdivision. [CC 4250]

"**Rules**" or "house rules" are extensions of the CC&Rs that are usually within the authority of the board of directors to enact, modify, or remove, subject to a veto by the membership [CC 4340, 4350, 4360]. They are minor procedural or behavioral regulations, which are derived from the overall authority of the CC&Rs.

The Articles of Incorporation, The Bylaws, The Declaration of Covenants, Conditions, and Restrictions, and any house rules, are the **governing documents** of the association.

STATE LAW

The governing authority of the association, as well as the limitations upon that authority, is contained in the governing documents, and in the laws of the State of California. State law on common interest developments is found in both *statutory and case law*. State statutes that regulate common interest developments are found in many places, but primarily in the *California Corporations Code* and in the *California Civil Code*.

The California Corporations Code governs the operations of the association as a non-profit, mutual benefit corporation. In most cases, the Bylaws of the association will be sufficient to deal with the day-to-day operation of the association as a corporation. The Bylaws deal with such topics as the qualifications of a member of the association and of directors, election and removal of directors, the powers of the board of directors, and the meetings of the board and of the members. Where the Bylaws fail to address a subject, the Corporations Code will supply the law.

The *California Civil Code*, principally Sections 4000 through 6150, contains the provisions of the Davis-Stirling Act, a comprehensive collection of statutes dealing with the management of common interest developments. Unlike the Corporations Code, which in most cases defers to the association's Bylaws, The Davis-Stirling Act contains provisions that supersede the Bylaws or CC&Rs, as well as provisions that do not. Reference must be made to the specific provisions of the act to determine whether the act or the governing documents prevail.

CASE LAW

There are published decisions of cases decided by the appellate courts of California that contain precedent that is applicable to common interest developments. Where a case decided by an appellate court contains decisional law that is in direct conflict with a provision of the association's governing documents, the case law will prevail. Decisions of state appellate courts in the area of common interest development law provide guidance useful in interpreting the provisions of the governing documents.



WHICH CONTROLS?

THE GOVERNING DOCUMENTS OR STATE LAW?

This is among the most common questions asked by board members, especially because our state laws address so many transactions and issues affecting Common Interest Developments. The answer is “it depends” on whether the legislature feels so strongly about an issue that it decides the applicable law will (or won’t) “trump” the governing documents. Here are some examples in the Civil Code. Note the emphasized wording that reveals the legislature’s intent to override, or not:

Assessment increases: “*Notwithstanding* more restrictive limitations placed on the board by the governing documents, the board may not impose a regular assessment that is more than 20 percent greater” than that of the previous year. [Section 5605(b)]

Contents of budget to be distributed to the membership: “*Unless the governing documents impose more stringent limitations*, the association shall prepare and distribute ... (a) proforma budget, which shall include...the estimated revenue and expenses on an accrual basis... (a) summary of the association’s reserves... (a) statement as to...(whether) the board...has determined to defer or not undertake repairs or replacement of any major component with a remaining life of 30 years or less...”. [Section 5300]

Solar energy: “Any covenant...and any provision of a governing document...that effectively prohibits or restricts the installation or use of a solar energy system is *void and unenforceable*.” [section 714]

Maintenance responsibility: “*Unless otherwise provided in the declaration* of a common interest development, the association is responsible for repairing...the common areas, other than the exclusive use common areas and the owner...is responsible for maintaining (their) separate interest...” [Section 4775]

You can see that when it comes to assessment increases and solar energy, California law dictates the rule: the CC&Rs cannot take away the board’s right to raise assessments 20% per year or an owner’s right to install most solar energy systems. On the other hand, the legislature has only set a “minimum bar” for the contents of the annual budget, and, when it comes to maintenance, simply establishes a “default” in the event the CC&Rs fail to specify who - the association or the owner - maintains components located on common area or “separate” interests. Thus, to know whether the law overrides the governing documents requires a review of the applicable law and its language.

THE ARTICLES, BYLAWS, CC&RS OR RULES?

Conflicts among these governing documents are less common than in the past. It used to be said that the CC&Rs prevailed over conflicting provisions in the governing documents because they were harder to amend (usually requiring a higher percentage of membership approval than for the other documents) and “ran with the land.” In recent years it has been argued that “corporate” matters are controlled by the Bylaws while “property” issues are dictated by the CC&Rs. The Rules do not prevail over conflicts in the other documents.

FIDUCIARY DUTY, INDEMNIFICATION AND INSURANCE

The basic idea of “fiduciary duty” is that it sets a standard of behavior for those serving on the board. The standard requires directors to make decisions and to act in good faith and within the scope of their authority under their association’s governing documents. This includes making decisions the director believes to be in the association’s best interest (not the best interests of the director) and requires a director to ask questions (the duty of “reasonable inquiry”) before reaching conclusions what should reflect judgments of an “ordinarily prudent person.”

The topic of fiduciary duty is tied to “indemnification” rights - that is, the right of a director to receive a legal defense and reimbursement for claims, demands and damages arising out of a director’s service to the association. The applicable rules are surprisingly complicated but generally the association must protect those who volunteer (and other agents who act) on its behalf.

The issue of insurance is also related: the way in which the association protects itself from the cost of indemnifying directors or others is by maintaining insurance. Director claims are usually covered by Comprehensive General Liability (so called “CGL” policies) when the issues relate to personal injury or property damage; or Directors and Officers insurance (“D&O”) when the claims are for economic loss, breach of fiduciary duty and the like. The Association will also typically insure the buildings and the common area for fire and other casualties.

CONCLUSION: A PHILOSOPHY OF MANAGEMENT

New board members are often shocked upon the realization that members rarely appreciate their efforts. In many cases, election to the board of directors of their homeowner’s association is their first exposure to politics of any kind. The members at large often view the board of directors as a kind of extension of municipal government and treat them as they would any garden-variety politician. This circumstance can be somewhat disconcerting to new board members who view their volunteer activity as a major sacrifice worthy of praise, not scorn.

Confrontations can create an adversarial relationship between the board and the members at large. If the board develops a “bunker” mentality and views complaining members as threats, they will not be effective. While it is hard to do when challenges from the members arise, board members should attempt to bring dissenting members “into the loop” and listen as carefully as possible to their complaints.

Many decisions can be tough. For example, raising assessments sufficient to fund all of the responsibilities of an association, both short and long-term will undoubtedly bring complaints from some members. However, a board that fails to acknowledge the long-term maintenance and repair requirements of the development and does not provide a means of funding for that eventuality will have failed to adequately represent the members of the association. A difficult political environment should not be used to excuse a lack of vision.

Common Interest Developments are a noble experiment in grass roots management. They allow many people to have a voice in a very intimate matter—the care of their homes. Whether the experiment succeeds or fails will depend almost entirely on the ability of the directors and the members at large to ignore their self-interest and focus instead on the larger and long-term needs of the “community.”



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ATTORNEYS AT LAW

Berding | Weil represents building owners, community associations, corporations, and real estate investors, throughout California and other states.

Our attorneys draw on many years of Community Association and Construction Law experience to provide creative and individualized solutions for our clients.

Above all, we focus on the long-term welfare of our clients, offering expert legal services and competitive fees.

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