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The Official Publication of 
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Your Guide To Architectural Requests, Reviews, & Approvals



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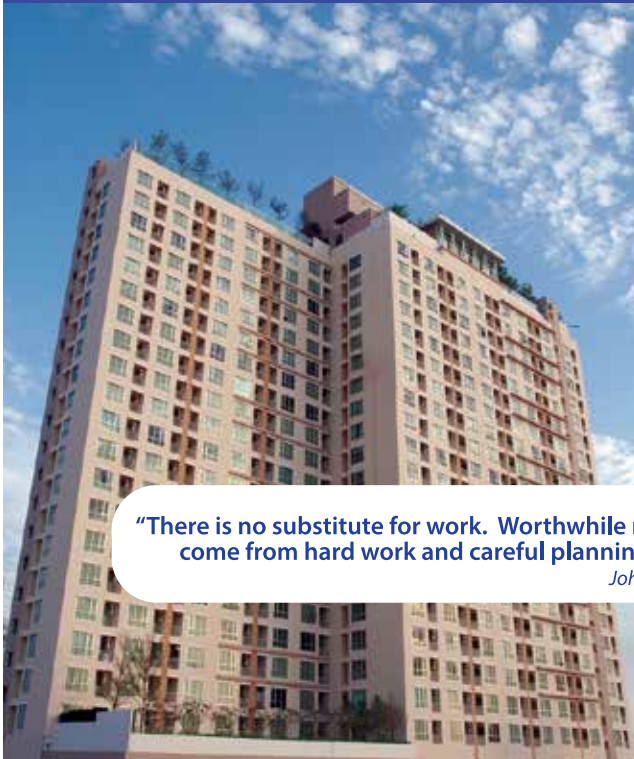
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president's message



Chelsi Rueter, CCAM, CMCA, AMS, PCAM
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Dear Members:

I hope you all enjoyed the beautiful weather we had all summer! I'm excited to report that we are over 900 members again! This is a testament to the value CAI provides and the bond our close-knit community has created. Thank you for your continued support and for sharing CAI member benefits with your board members, clients, and vendors.

Over the summer, we had a wonderful celebration of our 40th anniversary, combined with acknowledging and awarding those who made significant contributions to the chapter in 2020. Our Havana Nights themed event was held on Friday, July 16 at the beautiful Spanish Hills Country Club. Thank you to the Awards Night Committee for putting on such a fun night, and congratulations to all the award recipients!

Our California Legislative Action Committee (CLAC) continues to be very active in navigating pending legislation. It is important that they receive as much financial support as possible, as many of these bills could have significant impact on community associations statewide. Please consider donating to CLAC either directly or through the Buck-A-Door (or more) program if you haven't already. Every little bit goes a long way and we appreciate all of our members who have supported their efforts this year. For more information on CLAC and legislative updates, visit www.caiclac.com.

Be sure to join us for our Annual Legislative Update Program on Tuesday, November 9. This program will be held in person at Spanish Hills Country Club in Camarillo at 11 am and the educational program will be a live-stream at noon in case you prefer to join us virtually. This program will cover homeowners' right to split lots, meetings by Zoom during states of emergencies, modifications to board approval of payments, voting by acclimation, rental restrictions, and more. For more information and to register, visit www.cai-channelislands.org.

Thank you to all our members for your continued support, hard work, dedication, and leadership. We wouldn't be where we are without your valuable input and participation. As we near the holiday season (how did that happen already?), I wish you a happy/merry everything!

Sincerely,

Chelsi Rueter

Chelsi Rueter, CCAM, CMCA, AMS, PCAM
CAI-Channel Islands Chapter President

The Architectural Review Guide

By **Jessica Flicker, CCAM, CMCA, AMS**
Professional Community Management
An Associa Company

A crucial component of maintaining the aesthetics and home values of a community is a well-run architectural review committee (ARC). While most homeowners' associations, or HOAs, have a system in place to review and approve architectural requests from association members, very few are fulfilling their duties in a way that's easy on them and their homeowners. Keep reading to learn more about the architectural review process and how you can improve it.

What's an Architectural Review?

Nearly every HOA has an architectural review process. Enforcement guidelines are generally covered in a community's governing documents. Architectural standards are developed and approved by the board of directors. Adopting or amending architectural standards is considered an operating rule change that requires 28-days' notice to the membership before it can be adopted. When a review occurs, typically, a homeowner submits planned changes for approval, and the review committee accepts or rejects the proposed changes, usually with additional feedback as needed.

What's an Architectural Review Committee?

The Architectural Review Committee, or ARC, are ultimately the people who are responsible for interpreting and enforcing the architectural guidelines of the community. Some association boards may choose to act as the committee, while others assign the responsibilities to separate individuals. Names for this committee can change depending on your association and include:

- Alterations Review Committee
- Architectural Committee
- Architectural Control Committee
- Design Review Committee
- Environmental Control Committee

What Are the Benefits of an Architectural Review

The architectural review is an integral part of every association. Without it, there's no way to enforce the aesthetic standards of homes in your community. Some of the best benefits of a consistent review process include:

- Standardized approvals for homeowners
- Consistent look & feel throughout the neighborhood
- Property values that are better maintained and protected

7 Tips for Updating Your HOA's Architectural Review Process

Homeowners want responses to their requests that are fair, accurate, and prompt. The problem is, many HOAs lack the proper framework to deliver. If you're serving on your HOA board, these complaints can quickly turn into big problems—sometimes causing upset owners and costly court battles. Protect yourself and your board today by updating how your architectural review committee operates.



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We're here to help with some easy-to-follow tips that can streamline your review process, keep owners happy, and reduce community complaints overall.

1 Define Your Purpose:

Homeowners are often unfamiliar with how the architectural review works. The first step to transforming your review committee should be taking the time to define your purpose. Providing homeowners with a clearly-written purpose statement will help put board members and homeowners at ease. Write this purpose statement down and include clearly-defined objectives for both the review committee and homeowner. Share this purpose statement with the architectural review committee and homeowners starting the process. Consider including the statement as part of your architectural guidelines.

2 Provide a Roadmap:

Successful review committees provide homeowners with a roadmap, such as your architectural guidelines, for the application journey. This could include a step-by-step guide, an in-person consultation, or even a digital outline on your community website. No matter how you choose to share it, your roadmap should give clear, easy-to-follow directions from start to finish. Also, use your

roadmap to help homeowners avoid common roadblocks and obstacles along the way.

3 Remove Complicated Language:

If your guidelines contain complicated language that requires a dictionary or lawyer to understand, then you're doing your association a disservice. Cut through the jargon, and instead use everyday language that your homeowners are sure to appreciate and understand easily. When terms can't be simplified, consider including a glossary that provides easy-to-understand definitions. Your association's legal counsel can help re-write your guidelines accordingly.

4 Modernize Your Forms:

No architectural request is complete without a few forms. However, are your forms helping or hurting your process? Try to look at your forms through new eyes. Put yourself in the shoes of a new homeowner and ask yourself if all the forms and instructions are clear. For example, when you ask for a property survey or other outside paperwork, do you also provide instructions on how to obtain it? Going the extra mile now may require additional work, but it'll save your community time and money in the long run. Also, consider ways to digitize your forms by using a community website.

(Continued on page 8)



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(Continued from page 7)

5 Proactively Answer Questions:

It's very common for review committees to get the same questions day in and day out. If you haven't already done so, start writing down the questions your committee receives. Once you have a solid list of six to seven questions, take the time to write down helpful answers. Include your frequently asked questions in a new FAQ section in your architectural review packet. Answering these common questions ahead of time, will save your committee time and will help homeowners move forward with confidence as they better understand the who, what, why, and when of the architectural review process.

6 Share Real-Life Examples:

Along with your FAQ section, consider including several common reasons why some requests get denied. These real-world examples will help homeowners avoid common mistakes and may limit the number of requests you ultimately have to review. Be sensitive to the owner's personal information when sharing examples of what not to do and be sure to remove any personally identifying information.

7 Bring It All Together:

Ultimately, these tips should help to consolidate your review applications into a digital packet that can be updated as needed and shared with homeowners and streamlining the review process for your committee. Taking advantage of a community website or app will also help you and your committees track, organize, and update the documents without the extra costs of printing. 🏠

Jessica Flicker has in-depth experience in community and homeowner association management. Currently, as the Director of Developer Services for Professional Community Management, An Associa® Company, her focus is on new development and helping builders and developers as it relates to the HOA world. Jessica's focus on education and growth is evident. To support her dedication to her career in community management, Jessica obtained her "CCAM" (Certified Community Association Manager) designation in 2011 from California Association of Community Managers (CACM) and her "CMCA" (Certified Manager of Community Associations) as well as her "AMS" (Association Management Specialist) designations in 2015 from Community Associations Institute (CAI).



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Avoiding Noise Complaints

By **Steven J. Tinnelly, Esq.**

Tinnelly Law Group

A common characteristic of condominium developments is the existence of adjacent units with shared walls. Shared walls will inevitably result in an owner being subjected to noise from their neighbors. This is true even in newer developments constructed under updated building codes containing stricter sound attenuation standards than what were in effect decades ago.

While providing a ‘noise free’ environment is not a legal mandate for associations, there are several areas where appropriate regulation by a condominium association is necessary to prevent and resolve noise complaints. Chief among those areas is regulating the installation and modification of hard-surface flooring systems (e.g., tile, wood, laminate, luxury vinyl, etc.)—especially for multilevel developments with vertically stacked units. Associations that fail to implement reasonable regulations in this area are often burdened with costly and disruptive noise disputes that do anything but help with community ‘harmony’. This article provides some recommendations as to the type of regulations that associations should consider adopting based upon what has proven valuable for many of our firm’s condominium association clients.

Newer developments benefit from having modern language within their CC&Rs aimed at preventing nuisance noise transmissions from hard-surface flooring systems. The language typically prohibits—in explicit terms—the installation of hard-surface flooring without association approval. Older developments will have more generalized language in their CC&Rs (e.g., stating that “improvements” require approval without clearly referencing hard-surface flooring systems). However, regardless of when your community was developed, owners often fail to read through the lengthy, archaic language of the CC&Rs when determining their obligations. They look instead to any published rules of the association which are easier to obtain, read and understand. It is therefore prudent to address the issue of hard-surface flooring clearly within an association’s operating rules (e.g., within the architectural standards), and to do so with plain, easy-to-read language.



It is becoming common practice to also incorporate within the rules a set of acoustical standards for hard-surface flooring systems. Acoustical standards will state the level of sound insulating performance that must be achieved for the overall system. The two primary ratings used for sound control are Sound Transmission Class (STC) and Impact Insulation Class (IIC). STC is a rating of how well a building partition attenuates airborne sound (such as voices, music, or television). IIC is a statistical measurement of the transmission of impact sound energy through a floor/ceiling assembly system (such as footsteps, dropped articles, or furniture moving across the floor).

It may be time to set acoustical standards for hard-surface floors in your association

For both STC and IIC, the larger the number, the better sound attenuation performance. Most jurisdictions have minimum IIC and STC values that must be achieved for floor/ceiling assemblies—often 50 STC and 50 IIC. However, these minimum standards are viewed as inadequate by most associations; higher standards of 55 STC and 55 IIC are typically implemented. The rules should specify that the association’s acoustical standards must be achieved for the entire flooring system once installed irrespective of any STC or IIC standards published by the manufacturers of the owner’s flooring and underlayment products.


In connection with a proposed flooring remodel application, the association should take additional measures to obtain the owner's written acknowledgment and acceptance of the following:

- The associations acoustical standards;
- The owner's requirement to disclose the acoustical standards to their contractor who should warrant that the overall system will achieve those standards; and
- That if it becomes necessary to perform an acoustical test of the system after installation (e.g., in response to a noise complaint), the owner is required to (a) cooperate with the association in having a test performed by the association's acoustical engineer, (b) remove, modify, reinstall, etc. the flooring system if necessary to achieve compliance with the acoustical standards, and (c) reimburse the association for all costs it incurs if the system is found to be noncompliant, including costs associated with testing.

Beyond disclosing this information in the rules, the foregoing should be incorporated into the architectural application documents that are signed by the owner and submitted to the association for review. It should also be reiterated in any notice of approval of the application that is provided to the owner by the association. Taking these measures is

invaluable should enforcement action against an owner with a noncompliant flooring system become necessary—especially if the matter escalates to legal action. Your association's attorney will thank you.

There may also be situations where an owner has an unrealistic expectation of living in a noise free environment—demanding that the association take action to resolve their neighbor's noisy flooring even though the flooring system is compliant. This situation is one of many where the association should take simple measures to guard against the unwarranted expenditure of its resources. Before any acoustical test of a flooring system is performed in response to an owner's complaint, the association should have the aggrieved owner certify, in writing, their agreement to reimburse the association for the testing costs if the test reveals that the system is, in fact, compliant. If the owner refuses to consent to this reasonable condition, the association may justifiably decline to take any further action on the matter. This is an effective tool for quickly filtering out which flooring noise complaints warrant the association's involvement, and which do not. Your association's managing agent will thank you.

The above recommendations have proven valuable for many of our clients in both preventing and resolving noise complaints associated with hard-surface flooring systems. However, no two communities are the same; whether the above recommendations are suitable for your association will depend upon several factors such as the construction characteristics of your building(s), your jurisdiction's building codes, the language contained in your CC&Rs, and your membership's expectations. Before implementing any of the above recommendations, your board should consult with your association's retained experts and legal counsel to determine what's appropriate for your community. Your association's residents will (hopefully) thank you. 



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Steven J. Tinnelly, Esq. is the managing partner of Tinnelly Law Group, a law firm that represents over 1,300 common interest developments throughout California. In addition to managing his firm's overall operations, Steve is a frequent speaker at educational seminars and devotes much of his time to authoring content for his firm's various educational resources and websites. Steve is very active within the community association industry and served as president of CAI's Orange County Regional Chapter in 2020.





Yours? Mine? OR Ours? **Trees & Fences**

*By Kelly G. Richardson, Esq., CCAL
Richardson Ober DeNichilo LLP*

Trees and fences are common boundary dispute topics because the neighbors often do not know their rights and responsibilities.

First, determine who owns the land on which the fence or tree is located. Is it owned by a homeowner, is it exclusive use common area, or is it common area? That may take a review of the Condominium Plan or Subdivision Map, and sometimes could even require a survey be performed to establish the precise location of the line.

Who Owns (and is responsible for) Trees?

When tree branches or roots encroach onto neighboring property, the first question is “who pays?” The answer to this normally depends upon property ownership and not any allocation of fault. Under Civil Code Section 833, a tree is owned by the owner of the land on which the tree trunk stands. A tree which trunk lies on a property line is considered co-owned by the neighboring property owners, under Civil Code Section 834: “Trees whose trunks stand partly on the land of two or more coterminous owners, belong to them in common.”

Removing Encroaching Roots and Branches

Under legal authority dating back to at least 1886, roots and branches encroaching into the airspace or ground of

adjacent property may be removed by the adjacent owner, because the tree is in that circumstance considered a legal nuisance. This rule of responsibility for roots and branches dates to the California Supreme Court decision in *Grandona v. Lovdal* (70 Cal. 161, 1886). No negligence need be shown, only that the tree is encroaching one property into another. However, the right to cut part of an encroaching tree is not unlimited. In *Booska v. Patel*, 24 Cal. App. 4th 1786 (1994) the appellate court held that a neighbor who cut encroaching roots might be liable for negligence in killing the tree. The court held that while a neighbor may remove encroaching roots, there is a duty to do so reasonably. So, an arborist consultation may be necessary to avoid unintentionally killing the tree.

Who is Responsible for Damage?

As to damage caused by roots or branches, the law is clear - The tree’s owner is responsible. The owner of the affected property may remove the encroaching roots or branches but must do so without harming the tree. However, what happens if the roots are essential to the tree’s survival, yet are causing great damage to a neighboring property? Presumably at some point a court might order the tree removed, in addition to holding the tree’s owner responsible for the damage. Neighborly cooperation is key, and nothing major should be done without an arborist consultation.

Put Down That Saw

You might not be able to remove a tree completely on your property. What do the HOA CC&Rs say about trees? Also, in many communities trees are considered a community asset, and cities including Pasadena, Manhattan Beach, San Juan Capistrano, and Palo Alto and the County of Ventura have tree protection ordinances prohibiting property owners from cutting trees down on their property without permission.

Such a Waste

You may not cut down a neighbor's (or the association's) tree without consent. Trees are not typically considered personal property but are considered an asset of the real property. Damaging another's land is called the tort of "waste," and includes wrongfully cutting down trees on another's land.

Do Fences Make Good Neighbors?

Many CC&Rs indicate responsibility for fences within the association. However, if the CC&Rs don't answer the question, California has the "Good Neighbor Fence Act of 2013" which added Civil Code Section 841. Under that law, fences dividing adjacent properties are the shared

responsibility of the two neighbors. Whether or not the fence is precisely on the boundary line, if it divides two properties the fence is the responsibility of the neighbors divided by that fence. If a neighbor refuses to share in the reasonable cost of repairing or replacing the fence, they can be taken to court. By the way, if Section 841 is the "Good Neighbor Fence Act," perhaps Section 841.4 is the "Bad Neighbor Act," since it states that dividing walls or fences which are unnecessarily higher than 10 feet are declared a nuisance.

Before invoking any legal concept, the first and best approach is to talk to your neighbor (or the HOA) before acting. ⬆

Kelly G. Richardson, Esq. CCAL is Partner of Richardson Ober DeNichilo LLP and was CAI's President in 2016, he has for 16 years written a weekly column in 15 Southern California publications on common interest development law.



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Electric Vehicle Charging Stations

Steps to Take Now To Avoid Legal Conflicts Down The Road

By **Samantha E. Johnson, Esq.**

Kulik, Gottesman, Siegel & Ware LLP

There is strong public policy in California which encourages the development and use of alternative sources of energy. Clean energy is good for its own sake as we seek to combat the effects of global warming and other negative impacts on our environment. Challenges arise, however, when these greener choices conflict with a common interest development's governing documents. Homeowner Associations must be sensitive to the possible conflicts and work towards creating rules and regulations that meet the architectural goals of the community while still being friendly to the environment.

In 2011, Civil Code Section 4745 (formerly Section 1353.9) was enacted to support the proliferation of electrical vehicles and the policy of California to promote, encourage and remove obstacles to the use of electrical vehicle charging stations. The law has been amended several times with the latest changes effective as of January 1, 2019.

The term 'electric vehicle charging station' is defined as: "a station that is designed in compliance with the California Building Standards Code and delivers electricity from a source outside an electric vehicle into one or more electric vehicles." (Civ. Code §4745(d)).

To begin, the association can require prior written approval of an EV charging station in the same manner as an application for any architectural modification to a unit. If a request is made, it will be deemed approved unless denied in

writing by the association within 60 days, unless the delay was caused by the owner failing to comply with a reasonable request for additional information.

If prior approval is needed, in theory the Association could say "no." Practically, however, it is difficult for an association to deny the request. It should be approved unless there is a very compelling reason to say no. For example, some buildings have limited electrical power to spare or the electricity may not exist at all. In general, homeowners **can**

install electronic vehicle ("EV") charging stations within their own garage or designated parking space.

Section 4745 specifically says that reasonable conditions may be imposed in granting approval. A "reasonable condition" is one "that does not significantly increase the cost of the station or significantly decrease its specified performance." It is commonplace for associations to issue approval but to condition the approval on an

owner's compliance with various conditions permissible by statute. Reasonable conditions include (i) complying with architectural standards for the installation of charging stations, (ii) using a licensed contractor for the installation, (iii) maintaining liability insurance naming the association as an additional insured, and providing a certificate to that effect within 14 days of installation, (proof of insurance must thereafter be given annually), and (iv) the owner must agree



to pay all costs associated with the charging station and for any damage caused by the charging station.

There are two installations to be aware of related to electric vehicles: (1) the EV charging station itself; and (2) the EV-dedicated time of use (“TOU”) meter. The former is the physical station to which an electric vehicle is connected to charge. The latter is a device that tracks the charging specifically for the electric vehicle and includes any wiring or conduit necessary to connect the TOU meter to an electric vehicle charging station, regardless of whether it is supplied or installed by an electric utility.

The most recent amendment to Section 4745, SB 1016, clarified that an association’s prohibition or unreasonable restriction of the installation or use of an EV charging station or of an EV-dedicated TOU meter is void and unenforceable. The governing documents may, however, include provisions that impose reasonable conditions on the approval of an EV charging station of the nature discussed above.

SB 1016 also eliminated the \$1,000,000 minimum homeowner liability coverage policy requirement. No limit is presently specified but the association can require “reasonable insurance” and it is unclear if \$1,000,000 would be a reasonable limit.



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The above requirements for and process regarding approval of an EV station installation apply when dealing with a homeowner’s own garage or designated parking space. However, a homeowner may wish to place a charging station in a common area. Such an installation is permissible **only** if the installation in the owner’s designated parking space is impossible or unreasonably expensive. If the installation is in the common area, the association is required to enter into a license agreement with the owner for the use of the space in the common area. The law provides that the association may create new parking spaces where one did not previously exist to facilitate the installation of an electric vehicle charging station. (See, 4745(g) and (h).)

In such a case, the homeowner is not only required to obtain approval from the association and comply with those requirements listed above (e.g., a certificate of insurance and full financial responsibility), but must also state, in writing, that they will comply with the association’s architectural standards for the installation and will engage a licensed contractor to install the charging station.

Associations must exercise caution when reviewing applications for EV charging station installations. Failure to comply with the requirements set forth under Sections 4745 or 4745.1 could result in civil penalties up to \$1,000, as well as attorneys’ fees. Section 4745(k) was amended to allow recovery of attorney’s fees **only** by a prevailing plaintiff homeowner seeking to enforce compliance with the law. The HOA cannot recover attorney fees even if it is the prevailing party.

It is important that associations encourage and promote clean energy. It is also important for associations to retain reasonable architectural approval while complying with the law surrounding EV charging stations. Balancing the two will result in the harmonious intersection of clean energy and practical association governance. [↑](#)

Samantha E. Johnson, Esq., is an attorney with Kulik, Gottesman, Siegel & Ware LLP. Ms. Johnson works primarily in the firm’s HOA department, representing homeowner associations and other common interest developments. She assists in all areas of relevant corporate transactional work, including the amendment and restatement of governing documents, resolving conflicts between homeowners and associations, and providing general legal guidance to associations.





CAI-CLAC 2021 Accomplishments

The 2021 Legislative Session was again impacted by COVID-19 limiting in-person participation in legislative hearings. It also required CAI-CLAC to host its first virtual Legislative Days at the Capitol, which was a huge success and included more than 200 participants over multiple days of meetings.

2021 also turns out to be one of the most successful Legislative Sessions in recent memory for CAI-CLAC. We monitored nearly 50 bills and actively engaged on more than ten.

Below is a list of our accomplishments for 2021 which could not have been possible without the participation of our Chapter Legislative Support Committees and members throughout the State.

AB 502 (DAVIES) – ELECTION BY ACCLAMATION

AS INTRODUCED: AB 502 sought to delete the 6,000-unit limitation for election by acclamation placed into law by SB 754 (Moorlach, 2019). As amended, AB 502 authorizes any association to elect board members by acclamation when the number of candidates is less than or equal to the number of vacancies. However, the Legislature did extend the time for initial notice of an election and requires an additional individual notice to the membership. An association is also limited to no more than three consecutive elections without a secret ballot election.

POSITION: Support.

RESULT: This bill passed the Legislature with bipartisan support and was signed by the Governor.

AB 1101 (IRWIN) – ASSOCIATION FINANCES

AS INTRODUCED: AB 1101 sought to clarify issues members had with AB 2912 (Irwin, 2018). This bill

clarifies the type of insurance an association needs to protect against embezzlement. The bill also clarifies when a transfer requires board approval.

POSITION: CAI-CLAC Sponsored Legislation.

RESULT: This bill passed the Legislature with bipartisan support and was signed by the Governor.

AB 1584 (COMMITTEE ON HOUSING) – SHORT TERM RENTAL CLEAN-UP

AS INTRODUCED: AB 3182 (Ting) created new rental restrictions on associations, which requires, among other things, governing documents to be amended in compliance with the new changes by January 1, 2022. AB 1584 includes language allowing the governing documents to be amended in compliance with the changes in AB 3182 by a vote of the Board and extends the deadline to July 1, 2022.

POSITION: Support.

RESULT: This bill passed the Legislature with bipartisan support and was signed by the Governor.

CAI-CLAC 2021 Accomplishments (cont'd.)

SB 9 (ATKINS) – SINGLE FAMILY RESIDENTIAL ZONING – LOT SPLITTING

AS INTRODUCED: SB 9 requires ministerial approval of a housing development of no more than two units in a single-family zone (duplex), the subdivision of a parcel zoned for residential use into two parcels (lot split), or both.

POSITION: Opposed unless amended to exclude CIDs.

RESULT: The author submitted a Letter to the Journal clarifying the bill was not intended to impact the governing documents of a common interest development. This bill passed the Legislature with bipartisan support and signed by the Governor.

SB 60 (GLAZER) – SHORT TERM RENTALS – LOCAL ORDINANCE ENFORCEMENT

AS INTRODUCED: SB 60 would raise the maximum fines for violation of an short-term rental ordinance that poses a threat to health or safety, to \$1,500 for a first violation, \$3,000 for a 2nd violation of the same ordinance within one year, and \$5,000 for each additional violation of the same ordinance within one year of the first violation. The bill would make these violations subject to the process for granting a hardship waiver.

POSITION: Support.

RESULT: The bill passed the Legislature with bipartisan support and was signed by the Governor.

SB 391 (MIN) – VIRTUAL MEETINGS

AS INTRODUCED: SB 391 authorizes common interest development (CID) boards to meet by teleconference, without identifying a physical location where CID members may attend, in an area affected by a disaster or emergency which makes it impossible to meet in person.

POSITION: Support.

RESULT: This bill passed the Legislature with bipartisan support and signed by the Governor.

SB 432 (WIECKOWSKI) – ELECTIONS

AS INTRODUCED: SB 432 addresses a number of technical issues created by the passage election legislation from 2019, including: requiring (rather than authorizing) a homeowners association (HOA) to disqualify a nominee for a board director slot under specified circumstances; clarifying a candidate for an HOA board must be in compliance with a payment plan for any overdue assessments (rather than simply being required to enter into a payment plan); specifying any requirements placed on nominees must also be placed on existing directors; amending the corporations code for recall elections to be consistent with the election timelines in the Civil Code; and requiring an HOA to retain election materials for one year after the election.

POSITION: Neutral.

RESULT: This bill passed the Legislature with bipartisan support and signed by the Governor.

CAI-CLAC is always looking for ideas for common sense legislation to sponsor. Please send ideas/feedback to our Legislative Strategy and Research Committee at LSRC@caiclac.com.

WHAT IS CAI-CLAC?

The California Legislative Action Committee (CLAC) is a volunteer committee of the Community Associations Institute (CAI) consisting of homeowners and professionals serving community associations. CAI is the largest advocacy organization in America dedicated to monitoring legislation, educating elected state lawmakers, and protecting the interests of those living in community associations in California.



CAI-CLAC AS A VOLUNTEER ORGANIZATION

- Is a non-profit, non-partisan volunteer committee comprised of two Delegates and one Liaison from each of the eight CAI California chapters.
- Represents 13 million homeowners and property owners in more than 50,000 associations throughout California.
- Is NOT a PAC (Political Action Committee) and makes no financial campaign contributions.
- Depends solely on the donations of community associations, their boards of directors and those who serve association members.

CAI-CLAC'S MISSION

To safeguard and improve the community association lifestyle and property values by advocating a reasonable balance between state statutory requirements and the ability and authority of individual homeowners to govern themselves through their community associations.

JEFFREY A. BEAUMONT, ESQ. | BEAUMONT TASHJIAN CAI-CLAC 2021-2022 CHAIR



Jeffrey A. Beaumont, Esq. is the senior partner of Beaumont Tashjian, a full-service community association law firm providing general counsel, litigation and assessment collections services to its clients with offices throughout Southern California. Mr. Beaumont has been representing community associations for over 20 years. In addition to his practice, he is actively involved in industry organizations through his participation in

Community Associations Institute (CAI) and California Association of Community Managers. Mr. Beaumont proudly served as a two-time past president of the CAI Greater Los Angeles and Channel Islands Chapters and is admitted to the College of Community Association Lawyers, earning his CCAL designation. Mr. Beaumont also served as the Channel Islands Chapter's CLAC delegate for over 10 years before being inducted in 2019 as a lifetime delegate. Significantly, Mr. Beaumont will be serving as the Chair for CAI-CLAC's Executive Committee for 2021 and 2022.

LOUIE A. BROWN, JR. | CAI-CLAC ADVOCATE



Louie A. Brown, Jr., is a partner with Kahn, Soares & Conway, LLP. He manages the firm's Government Relations Group representing clients before the California State Legislature and various state administrative agencies.

Louie specializes in providing clients with expert advice in maneuvering through California's complex legislative and administrative process. He has written numerous laws and played key roles in many of the Legislature's major accomplishments and budget negotiations over the last decade.

Louie earned his Bachelor of Science Degree from California Polytechnic State University in San Luis Obispo, California and his Juris Doctor from the McGeorge School of Law.

Louie and his wife, Kymberlee, reside in Elk Grove with their three children.

Construction Defect v. Regular Maintenance

Know the difference and know your responsibility as a board member

By Charles Fenton, Esq.

Fenton, Grant, Mayfield, Kaneda, & Litt, LLP



As a construction defect lawyer for over 20 years, I recognize that there may be some bias (just a little) in this article, but I will provide you with a fair and reasonable understanding of the differences. Let us start with the definition of each:

Construction Defect

There are often disagreements over the definition of a construction defect. Different viewpoints and interests create a gray area. However, one point that all agree upon is that it is broadly defined as a defect in workmanship, design, materials, or systems used. The result is a failure of the building project or structure that causes damages to people or property. Broadly speaking, California law requires that a building be constructed to function up to certain standards. For example, the windows, walls, and roof should not leak, and the plumbing systems should not leak, and should perform its intended function. If the building components do not comply with a comprehensive list of functionality standards set forth in the Right to Repair Act (Civil Code §§ 895 *et seq.*) and any of those standards are violated, it constitutes a construction defect for which the builder may be liable.

Maintenance

Unless CC&R's provide otherwise, the Association is responsible for repairing, replacing, or maintaining the common area, other than exclusive use common area and separate interest. Generally, maintaining something means preserving it in its original condition so as to prolong its useful life.

The board of directors is responsible for making the difficult determination of when a common area problem (e.g., a leak) is an actionable "construction defect" or merely a "regular maintenance" issue. This determination can have a significant impact on the community and can be difficult to ascertain without the help of other industry professionals. By seeking out and relying upon the advice of such professionals, the board is protected in the exercise of its fiduciary duty by the business judgment rule. The business judgment rule creates a presumption that the directors' decisions are based on sound business judgment, and therefore cannot later be second guessed. This presumption can only be rebutted by a factual showing of fraud, bad faith, or gross overreaching. (*Ritter & Ritter v. The Churchill Condo. Assn.* (2008) 166 Cal.App.4th 103, 123.) By

consulting with professionals, and basing their decisions on an honest good faith reliance on that advice, the business judgment rule insulates directors from liability for those decisions. (*Barnes v. State Farm Mut. Auto. Ins. Co.*, (1993) 16 Cal.App.4th 365, 378)

The definitions set forth above by themselves will not solve the riddle of whether a specific issue is a construction defect or maintenance item, so let's apply a typical construction issue faced by a board of directors. For example, a board is made aware of a leak in the roof of a condominium project that by definition is a common area, therefore, the roof must be maintained by the association. To determine if this is more than a regular maintenance issue, the board should engage a reputable contractor/consultant to inspect the entire roof area to find the root cause of the leak and determine if this is an isolated event or a more significant problem. The board has now followed one step in its fiduciary obligation and relied on the expertise of others to gain an understanding of the common area issue and how to move forward with repairs. Considerations such as the number of times this has occurred, the severity of the leaks, the damage caused by the leaks, and the timing of the leaks in relation to the age of the community will help the board determine which path the association should take.

Another consideration when determining if an issue (e.g., a leak) is an issue of maintenance or a potential defect, the board should also look to its reserve study for guidance. An association must visually inspect the common areas every three years and prepare a reserve study listing all the major components, the remaining useful life of these components, and the cost to repair or replace such components—*Civil Code §5550*. Because reserves are there to maintain a “fixed or reasonable and foreseeable expense”, and not for repair of construction defects, the resulting reserve study can assist in determining what is, and is not, required and scheduled maintenance. If a particular problem area is one that is regular maintenance in a reserve study and thus a “fixed or reasonable and foreseeable expense,” it is likely a regular maintenance item. Therefore, an association's reserve

study is a valuable tool when trying to differentiate between potential construction defects and regular maintenance issues.

When considering a claim against the builder for construction defects under the Right to Repair Act, the board must consider any statute of limitations and/or warranties applicable to the issue in question. For example, while most claims under the act are subject to a 10-year component warranty, some specific defect components are governed by four-year (e.g., plumbing), two-year (e.g., landscaping), and one year (e.g., noise attenuation). Please look to the statute to educate yourself on all component warranties. In addition, any warranty or statute of limitations consideration requires a determination as to when the statute began to run, which is usually dictated by filing the initial notice of completion by the builder. Finally, in some instances, there may be a tolling provision for when the builder holds the majority of seats on the board, i.e., when the developer controls the board of directors. An analysis of when the specific limitations periods set forth in the Right to Repair Act have expired can be difficult to make. A board would be well advised to consult a knowledgeable attorney for help in making that analysis. If the board is faced with a repair that will result in an unanticipated depletion of reserves, the board should exercise its fiduciary duty to the association and its members, and ascertain if the problem requiring repair is a defect for which the builder can be held liable. The board should immediately discuss with management and counsel on what steps to take next and whether there is sufficient cause for instituting a claim under the Right to Repair Act. In closing, the board should be guided by its fiduciary obligations in its ability to determine what may appear to be a simple fix, but could have a lasting impact on the community. Determining maintenance versus a potential deficiency is not always simple, and relying on the expertise of others is always a good, sound and prudent approach. 🏠

Charles R. Fenton graduated from San Diego State University before receiving his law degree from Thomas Jefferson School of Law. He is a member of the California, Arizona, and Nevada State Bars. For more than a decade, Mr. Fenton has limited his practice to the representation of homeowner associations in complex construction defect cases. Mr. Fenton is a regular instructor of California homeowner association law and an active member of the Community Associations Institute and the California Association of Community Managers. He is currently the managing partner of Fenton Grant Law Firm, a construction defect firm that has recoveries of more than 1 billion dollars for their clients.





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Spanish Hills Country Club 999 Crestview Ave., Camarillo

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- ✓ And more

PROGRAM SPEAKERS



JAMES PERERO, ESQ.

Myers, Widders, Gibson, Jones & Feingold, LLP, CLAC Delegate
James Perero is partner at the law firm Myers, Widders, Gibson, Jones & Feingold, LLP where he represents community associations as general and litigation counsel. His work with community associations aims to improve and strengthen the quality of life for community association members through development and enforcement of effective governing documents, and, when necessary, through litigation. Mr. Perero is an active member of CAI-Channel Islands Chapter and currently serves as the chapter's CAI-CLAC delegate.



STEVEN A. ROSEMAN, ESQ.

Roseman Law, APC, CLAC Delegate
Steven Roseman, Esq. is the founder and managing partner in the law firm of Roseman Law, APC. During the past (20) years, Mr. Roseman has represented homeowners associations and their boards handling their Association legal matters. Mr. Roseman is an active member of both CACM and CAI and currently serves as Delegate for CAI-CLAC and currently serves as the chapter's president.



LOUIE BROWN, ESQ.

Louie Brown, Esq., CLAC Advocate
Louie A. Brown Jr. is a partner with Kahn, Soares, & Conway, LLP and manages the firm's Government Relations Team representing clients before the California State Legislature and various state administrative agencies. Louie specializes in providing clients with expert advice in maneuvering through California's complex legislative process. He testifies regularly in the Capitol before many legislative committees on behalf of clients and has written numerous laws and played key roles in many of the Legislature's major accomplishments and budget negotiations over the last decade.

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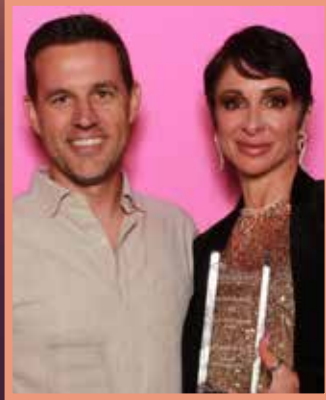
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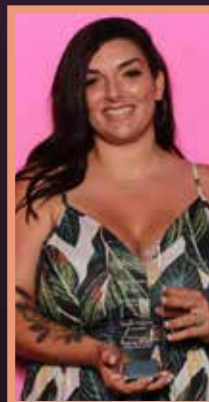
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Chapter Hybrid Program
Spanish Hills Country Club, Camarillo
(in person at 11 am & will live-stream
the educational program
on Zoom at Noon)

THURSDAY, NOVEMBER 18

Holiday Happy Hour, 5-7 pm,
Westlake Village Inn, Westlake Village

TUESDAY, DECEMBER 7

Chapter Hybrid Program
Spanish Hills Country Club, Camarillo
(in person at 11 am & will live-stream
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Community Association Homeowner Leaders

Stanley Davis, Village Green Property Owners Association • Laura Passmore • Rose Real

Community Managers

Russell Benjamin, CMCA, Coro Community Management & Consulting • Liliana Chavez, The Colony at Mandalay Beach • Stephanie Dayton, Oak Shores Community Association
Marianne Freeman, CMCA, Ennisbrook HOA • Sabrina French, CMCA, AMS, PCAM, PMP Management • Noel Gladie, Concord Consulting & Association Services
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