



2022 CA DAY RESOURCE GUIDE

Money Woes, Responsibility Matters and Your Reserve Study



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President & Founder
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Professional Experience

A former community manager of 15 years, Karen has spent the last 7 years helping associations bridge the gap with their reserve study. She works to prepare quality, detailed and easy to understand reserve studies to help associations better identify their current reserve funding status and develop a plan for the coming years. She is a frequent speaker and author in the industry and is highly involved with Community Associations Institute, previously serving as President of the Washington State Chapter, and is active on several committees.

Education

Western Washington University, Bachelors Degree
Community Associations Institute M100, M201 through M206, M360, PCAM Case Study

Personal

Outside of the office Karen resides on a 19 acre hobby farm with her husband, dog sidekick Zeke and a collection of farm animals. In between growing a giant vegetable garden, she and her husband enjoy camping and home improvement projects.



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Jason L. Grosz



Practice Emphasis

- Homeowner Association Law
- Construction Defect Litigation
- Real Estate • Land Use

Professional Experience

Jason joined VF Law in 2003 and currently represents homeowner associations in various types of litigation including construction defect, land use, architectural review, and rules enforcement. Jason also provides counsel relating to HOA governance, document amendment, turnover, and development issues. Jason is our law firm's Community Association Practice Group Chair.

Education

- Lewis and Clark Law School, J.D., 2006
- University of California, San Diego, Magna Cum Laude

Community Involvement

- Oregon Washington Community Association Managers (OWCAM) Education & Certification Committee
- Frequent speaker at educational events for HOA boards of directors, community managers and homeowners
- Member of the Oregon State Bar Real Estate and Land Use Section
- Member of the Oregon State Bar Construction Law Section
- Past President of CAI-Oregon


Bar/Court Admissions:

- Oregon State Bar
- Washington State Bar
- Arizona State Bar
- United States District Court, District of Oregon

Personal

Jason is a very active individual, and enjoys running, outdoor sports, and travel in his downtime. Prior to law school, Jason worked on an archaeological excavation in the Hashemite Kingdom of Jordan.

Money Woes, Responsibility Matters and Your Reserve Study



WESTERN OREGON CHAPTER
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Introduction



Karen McDonald, CMCA, AMS, PCAM, RS
President & Founder
Accurate Reserve Professionals, LLC



Jason L. Grosz
Attorney
Vial Fotheringham, LLP




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Overview

- What are the typical causes of Money Problems in your Community Associations?
- What are your responsibilities as a Director in the context of financial and facilities management?
- What are some protections for Community Association Directors?
- Reserve studies and setting an appropriate assessment level
- Preventing Money Problems
- Q&A




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Money Problems: the Frequent Causes

- Deferred Maintenance
- Defective Construction
- Non-paying Owners (Collections)
- Rising Costs (Inflation)
- Uncovered Insurance Loss
- Legal Bills
- Judgment against the Association
- Failure to Budget Prudently
- Failure to Adequately Fund Reserves




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Board Responsibilities

- Directors and Officers owe a Fiduciary Responsibility... to the Corporation.
 - Not to the angriest owner in the room or any individual owner
 - Not to be confused with your personal interests
- ORS 65.357
 - Act in good faith.
 - Act with the same care that an ordinarily prudent person in a like position would exercise under similar circumstances.
 - Act in what you reasonably believe to be the best interest of the Association.
 - You don't always have to be right, but you have to make the best decision you can, where you are, with the information available at hand.




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Board Responsibilities - 2

- Disclose conflicts of interest (ORS 65.361).
 - Definition: A transaction with the corporation in which the director of the corporation has a direct or indirect interest in the outcome of the transaction or decision.
 - How do I deal with a conflict of interest *legally*?
 - Disclosure and Recusal – 99% of the time.
 - Disclosure and Approval (by vote of Board, approval of Attorney General, or sue for approval and join the Attorney General in the suit) – less than 1% of the time.
 - How do I deal with a conflict of interest *practically*, in 99% of cases?
 - Disclosure and Recusal.
 - Remember the “smell test.”



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Protections: Don't Resign Just Yet

- Business Judgment Rule: presumptive reasonableness of decision made based on the reliance on experts. ORS 65.377
- Indemnification from the Association.
- Qualified Indemnity under ORS 65.357.
- Directors and Officers insurance.
- Court deference to Board and committee decision-making – *Valenti v. Hopkins*.
 - Exception: "Fraud, bad faith, failure to exercise honest judgment." Then the Board will second-guess your decision.
- Doing things right! Following your own rules and maintaining the moral high ground.



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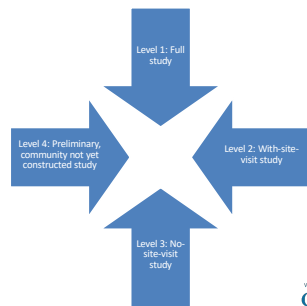
What Does this Mean in the Real World?

- Directors have a responsibility to be prudent stewards of the Association's finances. Yes – sometimes that means raising assessments or doing a special assessment.
- Directors have a responsibility to maintain common areas/common elements with due care.
- Act in the best interest of the Association, not themselves or the angriest owner in the room.
- Sometimes, decide between bad and worse.
- Rely on experts when making a decision that requires special advice (legal, accounting, reserve funding, construction).



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Types of Reserve Studies



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Reserve Funding Models



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The Importance of Percent Funded

0 – 29% funded:
Weak, high risk of special assessment

30 – 69% funded:
Fair, moderate risk of special assessment

70%+ funded:
Strong, lowest risk of special assessment



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Addressing Underfunded Reserves

- Prioritize Projects
- Determine special assessment & loan options
- Evaluate budget and reserve contribution to prevent future underfunding



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1 Priority 1 – Risk of damage or safety concern

Structural repairs	Sealants	Concrete trip hazard repairs
Siding repair/replacement	Paint	Fire system equipment
Roof repair/replacement	Deck coatings	

2 Priority 2 – Risk of accelerated deterioration or equipment failure

Fence repairs/staining	Roof cleaning	Concrete repairs (non-hazard)
Asphalt repairs and/or seal coat	Gutter cleaning	Mechanical equipment

3 Priority 3 - Cosmetic

Carpet	Interior paint
Pressure washing	Furniture/General decor



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Common Reserve Funding Objections

- Reasons not to perform a Reserve Study:
 - It's too expensive
 - We had one a few years ago
 - The last one was wrong
 - The study says we need too much money
- Reasons not to fund in accordance with study recommendations:
 - We can't afford that / owners will never vote to approve the budget
 - We will just do a special assessment
 - We won't be here in 30 years



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Benefits of a Building Envelope Investigation


- Identifies deficiencies & hidden damages early
- Reduces repair costs
- Starting point for scope of repairs
- Narrows down time frame for building envelope projects
- Helps identify defects, if any, at new construction
- Incorporate results within the reserve study



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Covid-19 Effects

- Good news! Associations have reported little effect on reserve funding
- Initial drop in both interest rates on savings accounts and for loans, now starting to increase
- Little effect on ability to secure loans



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Mortenson Construction Cost Index

<https://www.mortenson.com/cost-index/portland>



The Mortenson Cost Index is showing a single quarter increase of 2.9% nationally and 2.5% in Portland. Over the last twelve months, costs increased 21.5% nationally and 21.2% in Portland.



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Mortenson Construction Cost Index

<https://www.mortenson.com/cost-index/portland>



Costs for building materials remain escalated due to manufacturing issues, supply chain delays, and raw material shortages.



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Increased Project Costs: The Effect on the Reserve Study



INCREASE NEAR TERM COSTS,
LEAVE LONG TERM COSTS AT
PRIOR RATES UNTIL MORE IS
KNOWN



MAY STRATEGICALLY
POSTPONE SPECIFIC PROJECTS



USE EXTREME CAUTION IF
POSTPONING ANY EXTERIOR
ENVELOPE WORK



MARKET VOLATILITY
HIGHLIGHTS THE IMPORTANCE
OF FUNDING RESERVES TO 70-
100%



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Q&A

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Curb Appeal:

Where Landscaping and Beautification Meet

Octavio Gonzalez:

Octavio Gonzalez began his career in the Horticulture industry, working for his father's landscape business alongside all his (6) siblings in 1982.

After moving to Oregon with his wife in 1996, he worked in various jobs and industries, trying to find his "chosen" profession.

Then in 2000, he began working for a local bank, then moved up the ranks to a Bank Manager, & then Minority Development for the state. However, he never felt fulfilled, and something kept drawing him back to work outdoors, eventually leaving the Banking career in 2005 to open his own Landscape Company, Earthview Landscape.

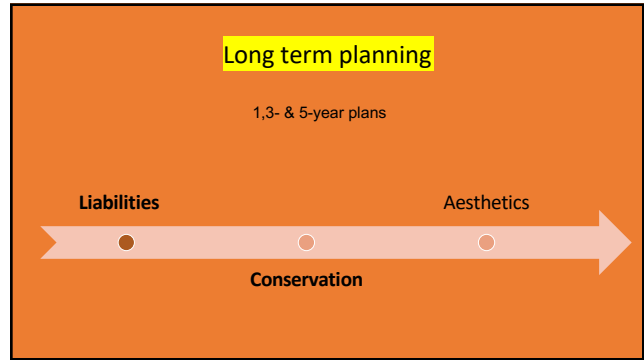
After 9 years of self-employment, he joined Northwest Landscape Service as Account Manager. In 2017 joined Pacific Landscape Management as an HOA Account Manager.




Where Landscaping and Beautification Meet

Presenter: Octavio Gonzales
Pacific Landscape

1



2

Liabilities : A premises liability lawsuit holds a property owner responsible for any damages arising from an injury on that person or entity's property. In all states, owners that occupy a property must make a reasonable effort to maintain a safe environment for visitors to it. premises

3

<p>Trees</p> <ul style="list-style-type: none"> a) Water Meters b) Over-roofs/Building Clearance c) Sidewalk/Driveway Approaches d) Oversized e) Hazard Tree – Pitfalls - Deadwood, compromised f) The wrong type of tree planted for location. 	<p>Standing water</p> <ul style="list-style-type: none"> a) Drains b) Standing water near walkways c) Not level - Grade
<p>Concrete</p> <ul style="list-style-type: none"> a) Sidewalk b) Driveways c) Driveway Approaches d) Curbs 	<ul style="list-style-type: none"> 5. Erosion/Washouts 6. Insect/Disease 7. Damaged or missing valve box lids 8. Irrigation components not flush with grades 9. Poor lighting
<p>Oversized Shrubs</p> <ul style="list-style-type: none"> a) Security b) Visibility – Monument, sign, 	<p>Homeless activity</p> <ul style="list-style-type: none"> a) Needles b) Trash, Human waste c) Uncover hiding areas.

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11. Rodents/Wildlife
12. Visibility concerns
13. Safe Communication Chemical applications
14. Subcontractors
15. Exposed Utilities
16. Bark Fire
17. Smokers' proximity to infrastructure
18. Playground Chip depth 12'-16.'
19. Properly locked fences / Pond, water access.
20. Property signs

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21. Pedestrian foot bridges
 - a) Moss
 - b) Algae
 - c) Rot
 - d) Rotten/decay
 - e) Fasteners (i.e... Bolt, missing screws, cable tensioners.
22. Noxious Weed/ Poison
 - a) Blackberry
 - b) Poison Oak, Ivy
 - c) Sumac – Poison variety
23. Field Mowing
 - a) Potholes
 - b) Obstructions
 - c) Complete by specific date (Fire Season)

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Before

7



After

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Conservation: Noun: prevention of wasteful use of a resource

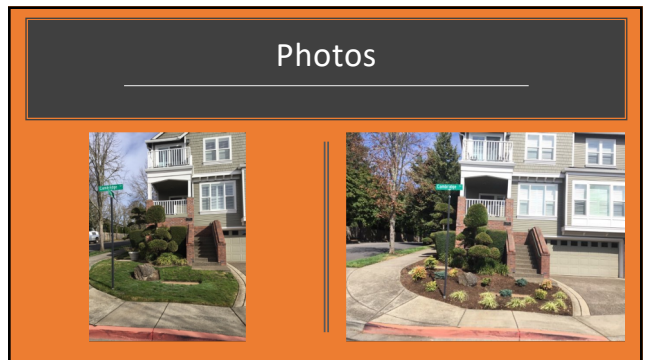
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- Irrigation
- a) Controller
 - b) ET Data
 - c) Hydrozoning
 - d) Spacing
 - e) Head, Nozzle type
 - f) Hydrometer
 - g) Master valve/ Shutdown

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- Right Plants
- a) Install low maintenance plants (Growth behavior, water needs)
 - a) Size appropriate trees
 - b) Insect-resistant shrubs

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Photos



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Detailed plan per front door



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Sustainable

- a) Insect resistant plants
- b) Low care
- c) Slow grower
- d) No Spray plants

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Lake Oswego Community - Before



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Lake Oswego Community - After



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Before



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Definition: Aesthetic is being interested in how something looks and feels.

Aesthetics: Aesthetic design and its importance for the perception of usability. Humans like the pretty and shiny design; they desire it much more than the functional one.

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New Plant styles

- a) Modern plants
- b) High value/artistic

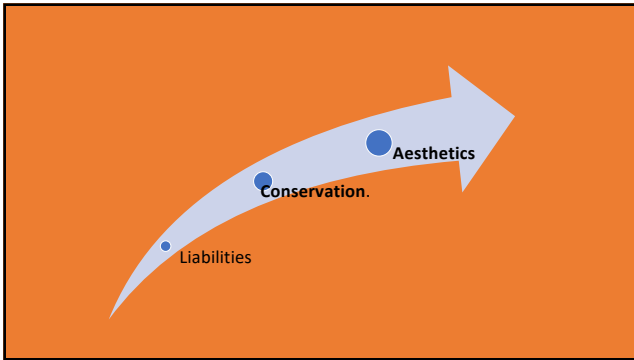
New Design.

- d) Entrance
- e) Monument
- f) Picturesque view, and feel
- g) Water features/sounds
- h) Screen undesired items, Privacy considerations, borders, boundaries.
- i) Covid19 consideration, Outside spaces, foot traffic & distance

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3. More Color
4. Bed Renovation
5. Update common area
6. Lawn elimination under trees and in islands
7. Lighting
8. Planter pots
9. Pathways – decomposed granite, cedar chip, gravel, stone, brick, pavers
10. Woodwork – pergolas, benches, gazebos, fencing, shade structures
11. Hardscapes
12. Water features, dry creek beds, boulders
13. Retaining walls
14. Outdoor furniture, birdbaths, wind chimes, sculptures
15. Bark, mulch, rock
16. Structure Pruning for Health and Design
17. Planting for Shade and sitting area.

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- Plan – Year 1
- Step by step on the property.
 - a. Property map/boundaries
 - b. Irrigation Legend
 - c. Clocks, backflows, gate valves, battery timers
 - d. Irrigation schedule
 - e. High touch areas
 - f. Sight Audit - 3-to-5-year projects
 - i. Liabilities
 - ii. Conservation
 - iii. Aesthetic
 - iv. Marry Budget with the above source documents.

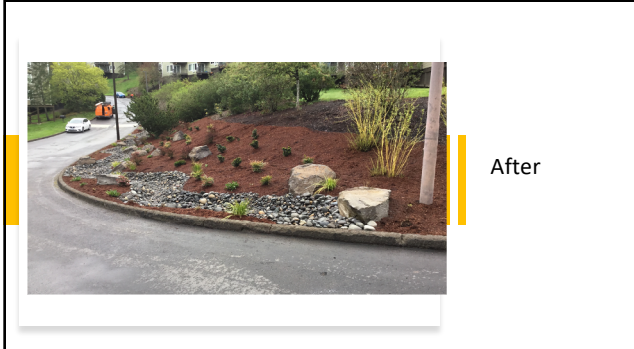
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- 2.0 -Year 1
- After all, data has been collected and organized; it's time to present the Plan findings. Then we will collaborate with clients to allow work to flow into the 1-3-5-year Plan based on their feedback, priorities, and Budget
- g. Maps
 - h. Site Audit review with all Principles.
 - i. Capital Costs
 - j. HOA Participation

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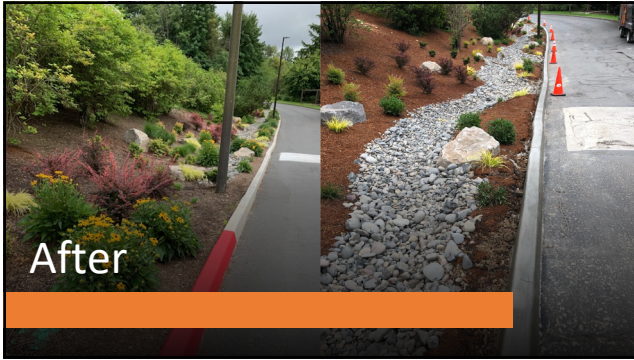
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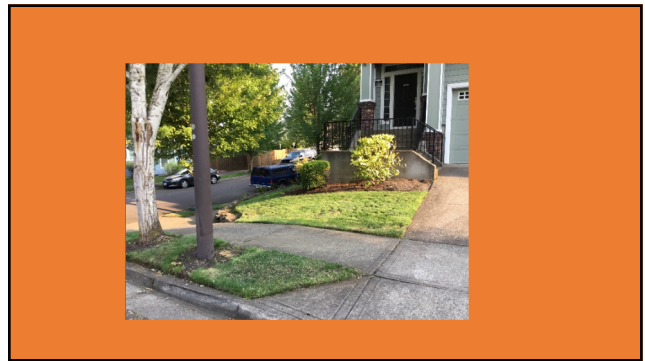


Turf Strip tree

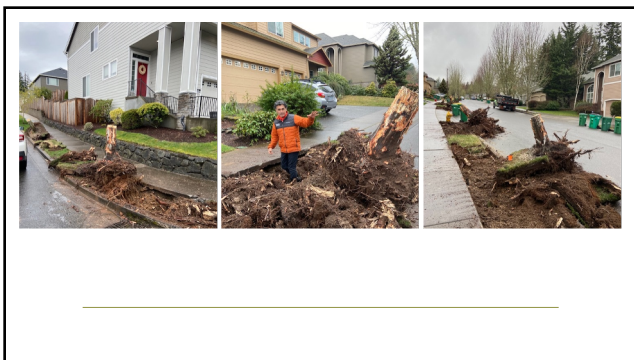
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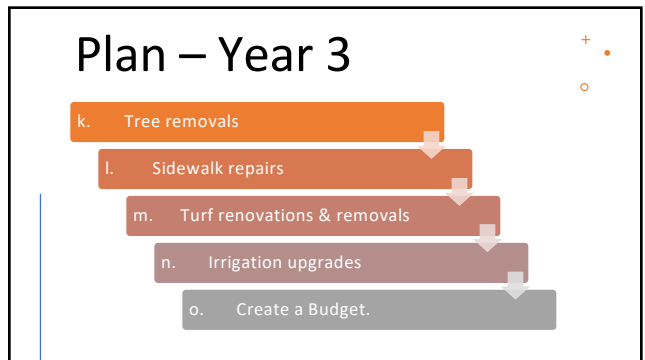
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Plan – Year 5

- p. Tree Removals
- q. Major renovation projects
- r. Irrigation renovations
- s. Plant removals and replacements – High to Low Maintenance
- t. Create a Budget

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Franken Board:

Tips and Tricks for Mangers and Community Leaders to Manage their Boards

KELLY G. RICHARDSON

PARTNER



CONTACT

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 Pasadena, CA 91101

PRACTICE AREAS

- Civil Litigation
- General Business
- Construction
- Real Estate Contracts
- Real Estate Disputes
- Real Estate Risk Management
- Common Interest Developments

EDUCATION

- University of Southern California, J.D.
- University of California at Riverside, B.A., Political Science

BAR ADMISSIONS

- California, 1983

EXPERT WITNESS

- Real Estate Standard of Care
- Common Interest Developments

COMMUNITY

- Board of Directors, Various Local Churches
- Board of Directors, Local Private Schools
- Board of Directors, Pasadena Salvation Army, 2000-Present
- Weekly Homeless Outreach Program, Pasadena 2001-
- Cliffs Club Interval Owners Association Board of Directors 2019 -
- Cliffs at Princeville Apartment Owners Association Board of Directors 2020-

KELLY G. RICHARDSON is co-founder and Partner of Richardson | Ober | DeNichilo. In practice since 1983, Kelly is known as a devoted and successful trial attorney and advisor to real estate professionals, property and business owners, and common interest developments.

Kelly is heavily committed to the real estate profession. He serves as legal counsel for Six Southern California Associations of Realtors® ("CAR"), and is a member of the CAR Legal Affairs Forum and Housing Committees. For more than 20 years, Kelly was a GRI faculty member teaching GRI coursework on risk management, construction and development issues to hundreds of Realtors® annually. Kelly is a popular lecturer to Associations of Realtors®, professional real estate organizations and major brokerages and has authored numerous articles on real estate law in local and national business and trade publications. He is a licensed real estate broker, and is periodically consulted as an expert witness on the standard of care of real estate professionals.

Kelly is a leading advocate for California community associations, serving common interest developments for over 32 years. In 2006 he was the 16th California attorney admitted into the College of Community Association Lawyers (CCAL), an elite group of attorneys serving the common interest community housing sector. In 2016, he was the international President of the Community Associations Institute (CAI), an organization with 45,000 members in four countries, and served on its Board of Trustees for seven years. For 16 years he has authored a weekly syndicated column on homeowner association legal issues, currently appearing in approximately 16 publications.

While he uses his experience and expertise to help clients steer clear of litigation, when litigation proves to be necessary and unavoidable, Richardson is an accomplished trial attorney and fierce courtroom advocate. He was in 2010 admitted to the American Board Of Trial Advocates, an elite jury trial attorney organization, skipping its entry-level membership and receiving admission as an "Associate" ABOTA member. He has prosecuted and defended major claims in construction, corporate and real estate law, as well as claims of breach of contract, franchise fraud, personal injury, unfair competition, professional negligence, wrongful death, breach of fiduciary duty, construction defect, and banking negligence.

Mr. Richardson is licensed to practice before all California state and local federal jurisdictions, and is a member of the Real Estate and Litigation Sections of the State Bar, Los Angeles County and Pasadena Bar Associations. He holds an "AV" rating with the prestigious Martindale Hubbell attorney listing organization – the highest available rating for competence and ethics, based upon peer review input.

PROFESSIONAL ASSOCIATIONS

- Community Associations Institute (CAI), National President, 2016
- CAI Board of Trustees 2011-2017
- California Association of Community Managers (CACM), Past Faculty Member, Legal Steering Committee Community Associations Institute (CAI), Greater Los Angeles Chapter President, 2004
- College of Community Association Lawyers, CCAL Fellow, admitted 2006
- American Board of Trial Advocates, 2010-
- CAI California Legislative Action Committee, Chair 2009 & 2010
- California State Bar Association, Real Estate & Litigation Sections
- Settlement Officer, Glendale & Pasadena Superior Courts, 1996-2013
- Los Angeles Superior Court Arbitrator/Mediator, 1998-2011
- California Association of Realtors (CAR), Member, Legal Affairs Forum, 1999-
- CAR Home Ownership & Investment Housing Committees, 2011-
- CAR and National Association of Realtors 2008-
- Chinese American Real Estate Professionals Association
- Los Angeles County Bar Association
- Pasadena Bar Association

PROFESSIONAL ACCOLADES

- AV® Martindale-Hubbell Peer Review rating

Prior to founding the firm now known as Richardson | Ober | DeNichilo in 1994, Kelly was a partner in the Pasadena law firm of Barker & Richardson.

Leadership

- 2016 National President, CAI
- Fellow, CAI College of Community Association Lawyers (CCAL)
- Seven years of CAI Board of Trustees Service
- Long-time Past Faculty and Member of Legal Steering Committee, California Association of Community Managers (CACM)
- Member of the Legal Affairs Forum, Homeownership and Investment Housing Committees of the California Association of Realtors® (CAR)

Select Courses, Authored and Taught

- Instructor and co-author Graduate Realtors Institute course #112, "Land Use, Construction Overview and Environmental Concerns", 1998-2019
- Co-author/originator, 8 hour CAI California Law Course for Common Interest Development Managers
- Co-author/originator, 3 hour CAI Basic Board Education Course
- Numerous (32+) courses on Real Estate Law

Other Publications

- "Avoiding Conflict," Common Ground Magazine, 2002.
- "Condos, Covenants and Co-ops", Realtor Magazine, January 2015
- "Simply the Best", Common Ground Magazine, January 2019
- Co-author/originator CAR "Guide to Common Interest Developments"
- Weekly Columnist on HOA law in 14 newspapers – 2006-present
- Periodic articles in newspapers, trade magazines, and Association of Realtor® publications on common interest development and real estate law
- Frequently sought after by media regarding HOA and real estate issues

Other Distinctions

- "Super Lawyer" in real estate law
- CAI National Rising Star award, CAI, 2004
- Mae Russell Hall of Fame, CAI Orange County Chapter, 2009
- CAI Byron Hanke award, 2019





Transparency In Volunteer Boards – A Dozen Tips For New Association Directors

By Kelly G. Richardson, Esq., CCAL

As a volunteer director, the trust of your community is precious, and truly the only reward that one receives for board service. If a director is not trusted by the neighbors, volunteering to work for the community becomes less meaningful, and certainly less rewarding. However, trust is not automatic, and it can be easily destroyed.

Making good decisions for the association's best interests is not enough. One must make decisions in a manner which is above reproach, and a manner which displays integrity at work. Here are twelve tips to help build and preserve the trust of the membership in your board's volunteer work:

INITIAL ATTITUDE

- Begin board service with the proper attitude, which is an attitude of service, not control. With the right frame of mind, you'll be less offended when someone asks you to explain board decisions.

BOARD MEETINGS

- Other than the very few items permissible in closed session, make sure that board discussion is in open session. While it is easier for the board to work in closed session or "working meetings", this violates the law and destroys the legitimacy of the open board meetings. Members will not trust a board which acts in secret on matters which should be in open session.
- Board actions taken due to emergencies or other circumstances outside of a board meeting should be disclosed in the next board meeting, and the reasons noted why the matter could not wait for the next meeting. Then, with a motion recorded in the minutes, vote to ratify the action.
- Listen during Open Forum – show your neighbors you are willing to listen to new information and new ideas. Do not argue but take notes. Not all Open Forum remarks require the board to respond, but many may require investigation from management or a committee. Members who know you are really listening to them during Open Forum will be more likely to trust and respect your service, as you show them respect.
- If you are voting upon something affecting your building and not the entire community, or some other matter which concerns you distinctly more than the community, abstaining from voting is not enough –step away from the board and join the audience.

COMMUNICATION

- Work with your chair or manager (or whoever sets the agendas) to make sure the agendas are truly informative, and not designed to be so broad as to not inform the members as to what will be decided in a particular meeting.
- Try to increase communication with the members who do not attend board meetings. Newsletters, web sites, and bulletin boards are common vehicles to increase communication. When a major issue is in play, such as a major reconstruction contract, consider occasional “town hall” meetings, where the only item of business is to report to the members on what is happening and how things are going with the project.

ASSOCIATION FUNDS

- It is not YOUR money, it is the community’s money – there are few financial questions that are out of bounds. Except for the rare instance where confidentiality is important (pending negotiations, for example, or member arrearage questions) questions regarding association money should be answered without hesitation.
- Make sure the person who signs the checks is not the same person who prepares the checks.
- Do not take compensation of any kind for your board service, and do not ask for reimbursement of anything for which you cannot show proof of an out of pocket expense paid.

VENDORS

- Avoid doing business with a member of the association or a relative of a member, unless it is first disclosed to all members.
- Keep vendor relationships clean. Obtain three bids for all significant contracts. If a bidder asks for an unfair advantage or offers any benefit to you as a director individually, drop them from consideration – a vendor who will cheat to get or keep the account will also eventually cheat you.

Association openness brings trust and confidence, which in turn reduces conflict – and therefore reduces the stress of board service.

Your “Day Job” is Different Than Your “Night Job”

Reprinted from the “HOA Homefront” Newspaper Column

By: Kelly G. Richardson, Esq. CCAL

Serving as a volunteer director is hard enough, but it often is made more difficult by directors themselves. The problem is not a lack of good will, good thinking or hard work, but a misunderstanding about the basic nature of volunteer board service.

In one’s career, whether in business, government service or elsewhere, one learns to deal with chain of command. In one’s job, one learns to exercise authority, and to respond to the authority above. In the normal corporate setting, the officer has authority to unilaterally make decisions. The president particularly is not only empowered but expected to make important decisions about almost all major management issues. The competent executive rarely if ever needs to meet with the corporate board of directors to make decisions.

Many competent, diligent and honorable people find themselves continually frustrated with volunteer service on their homeowners association board, and often are surprised to find themselves in conflict with other homeowners regarding their work for the association. This is usually not due to bad intent or mismanagement, but because the volunteer did not fully appreciate that the non-profit corporation is a very different organization from that person’s “day job” role as a business employer, employee, or supervisor.

While a business corporate president normally has broad authority to run the business, the HOA president has very little authority. While the business president controls the corporation and is ultimately held to answer for its success or failure, the HOA president controls very little and (if in the proper role) normally cannot be held personally responsible for anything. The business president runs things, while the HOA president is a coalition builder and the board runs things.

The HOA president normally serves at the pleasure of the board. Just as any officer position, the president can be replaced any time the majority of the board determines some other director would better serve the corporation. The HOA president

has only one vote, and has to obtain the votes of other directors before a decision is made. In fact, the typical president mainly has the power to set the agendas, call meetings, and chair them. Everything else is normally a decision made by at a majority of the directors.

There is no doubt that having to wait for your board colleagues is less efficient than the management of a business. However, in the business setting the officer is paid and in return is also held accountable for the officer’s decisions and actions. In the HOA, the officer is not compensated, and if following proper board process (as opposed to individual actions) is not held personally accountable (i.e. liable) for board decisions.

The association president who “takes things into their own hands” may find that such decisions are much quicker and more efficient. However, that president may be exposed to avoidable liability, since the non-profit corporation acts through its board of directors, not one officer.

If a board in open session grants authority to an officer on a subject, that action should be documented in the minutes. When circumstances do not permit the board to meet before the officer makes a decision, that officer should make sure the decision is ratified in a board meeting as soon afterward as possible, to document the decision was a corporate action. Understand how your “night job” is different, and it might just become easier.

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Kelly G. Richardson, Esq. is a Fellow of the College of Community Association Lawyers and Partner of Richardson | Ober | DeNichilo LLP. This article was previously published in HOA Homefront™, a syndicated column appearing in 14 newspapers throughout Southern California. Send questions to Kelly@RODLLP.com. Past Columns can be found at www.HOAHomefront.com. Articles are of an educational purpose and are not a substitute for legal advice.

Board Balancing Act

Reprinted from the "HOA Homefront" Newspaper Column

The ancient Chinese concept of yin and yang deals with opposite and inseparable forces. Common interest developments ("homeowner associations") have their own "yin and yang" issues, in which four basic and inseparable priorities must be balanced to produce a successful and harmonious community.

The four interests to be balanced are the association's corporate, real estate, financial and community priorities. Each are critically important areas of emphasis for a healthy community, and the neglect or over-emphasis of one of these priorities often is the root of major association problems and conflict.

The "Corporate:" HOAs are a legal entity, and are governed by legal documents such as covenants and bylaws. Boards must obey laws and the governing documents and observe the corporate process.

The "Real Estate:" HOAs are real estate developments, and their boards must act to preserve, protect and maintain the common area and its architectural theme. Buildings, streets, and other common elements must be repaired and maintained.

The "Financial:" HOAs collect money from the owners and then spend it to benefit the association community. Money must be collected diligently and be spent wisely. Budgets, bids and bills are part of the "bottom line" in the association's financial world.

The "Community:" HOAs are made up of people who chose to live in a way which trades some independence for the benefits of cooperatively sharing some control with one's neighbors. The community interest attends to the fact that the members are not just stockholders or investors but neighbors, and boards promote the peacefulness of the community.

A closer examination the cause of many HOA struggles can often reveal an imbalance between these four central facets of association operation, as certain of these priorities may have been overemphasized or neglected.

The real estate often can conflict with the financial, as a board tries to keep the property in good repair but at the same time keep the budget under control. It can be tempting to put off preventative maintenance or reduce landscaping or janitorial services, in order to try to keep from increasing assessments and "hold the line" on expenses. The financial responsibilities demand that the board is careful to spend reasonably, but if taken too far, can result in member unhappiness as the property deteriorates in appearance.

The corporate interest often can conflict with the association's community interest. The legalities are important, but too often boards, managers, and lawyers address only part of most decisions, asking "can the board do this," but failing to ask "*should* the board do this?" Community interest might influence a board to take extra effort to inform the community in advance of a significant project, even though the board has the legal power under the bylaws to pursue it without member vote or input. Community interests might also occasionally influence a board to issue a warning before citing a member who has broken a rule, or to plan and fund community social events to promote interaction between neighbors.

Excellent association living depends upon balancing these competing priorities, making sure the association obeys the law and follows its governing documents; property in the community is well-maintained and presentable; assessment funds are carefully collected and carefully spent; and the community is a pleasant place to live, with residents feeling they are considered and valued by their association.

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Border Protection— Roles and Boundaries of the HOA Team Members

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For many years, advising associations was at times very stressful, as boards would sometimes disregard my best advice for them. However, a defining moment in my HOA law career was when I realized that my role is to tell the board the truth and provide to them my best advice, but compelling the board to follow my advice was not my responsibility. Once I had better understanding of my role, things became less stressful. Each member of the HOA team has its own boundary, and each team member staying within that role helps the entire HOA team.

Managers – Managers take action managing the association, carrying out board directions and providing important advice helping boards operate within the Business Judgment Rule. Managers do not make decisions, except those specifically assigned to them by the board.

Boards – The board decides things but doesn't implement its decisions. The Board provides direction to management and approves contracts with other HOA vendors. Boards should not co-manage the HOA, but should allow the manager to carry out the board's directives. Boards normally don't oversee vendors - that is what you pay management to do.

Vendors - Service providers (including managers) should perform their contract and avoid HOA politics. Endorsing or opposing board candidates is outside their role and is unethical - they must stay neutral.

Officers – in HOAs, individual officers (even Presidents) have little power. Everything they do is only upon the express authorization of the board. HOA officers occasionally confuse their limited non-profit role with the more powerful role given officers in for-profit corporations.

Individual Directors- A single director has no power except the power to cast a vote on board decisions - the power rests in the board. Well-intentioned directors can usurp the board's role by acting without board authority; usually justifying it by claiming action was needed. But the well-intentioned director

becomes a “renegade” by taking actions, which is reserved for the board, such as instructing the manager or other vendors, or making contractual commitments for the association.

Committees – Except for architectural committees, most committees are advisory to the board and do not act. Committees typically are assigned an ongoing important subject, and advise the board by issuing “reports,” hopefully written, suggesting certain board actions. Committees do not make commitments to association vendors, and their meetings are less formal. Boards should avoid doing committee work in the board meetings, just as the committee avoids doing board work.

Committee Members – A committee member should be part of a team. However, sometimes extremely interested and active committee members step outside their role by speaking for the committee when the committee has not met. A committee of one is not a committee!

Individual Homeowners – The governing documents list certain matters that are subject to membership vote where individual homeowners can participate. Beyond these, let the board handle things because they are legally responsible. Non-directors should not participate in board discussions except for open forum input. Another common homeowner boundary issue arises when homeowners instruct HOA vendors, but that is the manager's role. One of the great benefits of association living is that the board, manager, and vendors handle many community matters – so let them!

Check YOUR boundaries, and stay within your proper role. When everyone does THEIR job and allows others to do theirs, the HOA wins.

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