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*Bucking the Trends: The Impact of
Legislative Trends on Community
Association Governance*

By:

Matt D. Ober, Esq., CCAL
Richardson Ober, P.C.

Amy K. Tinetti, Esq., CCAL
Hughes Gill Cochrane Tinetti, P.C.

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Community Associations Institute
6402 Arlington Blvd., Suite 500
Falls Church, VA 22042
www.caionline.org

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BUCKING THE TRENDS: THE IMPACT OF LEGISLATIVE TRENDS ON COMMUNITY ASSOCIATION GOVERNANCE.

By Matt D. Ober, Esq, CCAL, Richardson Ober, P.C.

Amy K. Tinetti, Esq., CCAL, Hughes Gill Cochrane Tinetti, P.C.

Trend: a general direction in which something is developing or changing; tendency, movement, drift, swing, shift, course, current, direction, progression, inclination, leaning; bias, bent.

Community association governance as we know it is being challenged by several legislative trends. The model of uniformity and what is in the best interest of the community as a whole is facing opposition from members demanding flexibility and individuality in rule enactment and enforcement bolstered by strict legislative micro-management of property use, maintenance and repair, areas where the association previously had broad unfettered discretion. These competing interests create tensions as boards struggle to modernize their communication and enforcement styles, comply with their significant fiduciary duties and maintenance responsibilities, and respond to increasingly technical standards and regulations imposed by the legislature. This heavy-handed regulation by individual state legislatures has undermined the self-governance model upon which associations are founded, leaving owners and volunteer leaders perplexed regarding the foundational principles of governance on which communities have traditionally relied.

For the most part, our community associations were established with a structure of one size fits all: mandatory association membership, legally binding governing documents, and common maintenance and funding obligations, all overseen by a volunteer board of directors with broad discretion to carry out the management of the development and govern the association in a manner that is for the best interests of all members. Indeed, for the most part, our governing documents and community association government structure are still uniform throughout the country. As community association law practitioners, we are familiar with the basic system of how a community association operates, collects assessments, enforces maintenance obligations, approves architectural modifications, elects a governing board, or enforces the governing documents against a member who is not in compliance.

But times have changed since the days when the concrete foundations of community association governance were first poured into place. We are experiencing a social and political climate where many people feel emboldened to challenge, disrupt, and/or question authority where and when it suits his or her needs. In our own local communities, we are facing challenges to governance in many ways; whether questioning a rule that has no reason, a procedure that lacks efficiency, or perhaps a leadership model from days gone by that isn't responsive to the needs of a new

generation. Community association leaders can no longer rely upon business as usual, whether it involves approval of an application to install a solar energy system on a roof, display of a sign expressing a political opinion, or use of a service animal within the common area. Failure to recognize and address individual rights over community property rights may result in associations running afoul of the law and losing favor with the communities that association leaders have pledged to serve.

A big challenge to our industry is the fact that changing our community association governance structure is a slow and often tedious process, which contrasts unfavorably with the fast pace of technology and innovation experienced in other areas. In general, community associations and those who govern them often are conservative by nature and resistant to change. But resisting change in the face of a changing social or political demographic gives rise to an undercurrent of dissatisfaction within the community. In the worst cases, that tension can erupt into divisiveness, recall of directors and an earful to a legislator or local political organization, eventually becoming the seeds of legislation on all topics of community association governance.

Without question our community governance structure is rooted in the representative democratic model where members knowingly buying in to residential communities and elect leaders who will govern while protecting the value of their most precious asset. By their knowing and voluntary purchase into a common interest development, these members agree to be governed by those they elect. But the “trend” toward challenging authority has made its way into our communities, leading to a growing membership that is questioning the status quo, business as usual or the lack of transparency on all levels.

This is not to suggest that community association residents are unhappy or that common interest development living is on the decline. To the contrary, community association ownership remains the fastest growing form of homeownership.¹ Given the overwhelming positive statistics on community association living, one wonders why state legislators across the country feel compelled to regulate them in such a detailed manner. Despite reams of regulations related to transparency, open meetings, records access, financial disclosure, and fair elections procedures -- all spelled out in our governing documents -- more and more legislation is aimed at micro-managing our formerly independent, self-governing private residential communities. Of course,

¹ Statistics show that Americans living in community associations are overwhelmingly satisfied in their communities. 87% of residents have a positive overall HOA experience; 84% say their board members serve the best interest of their communities; 69% say their community managers provide value and support to residents and their associations; and 88% say their association’s rules protect and enhance property values or have a neutral effect.

in the age-old “bad facts, bad law” tradition, some of the legislation is a product of a single community or lone constituent issue. Other bills are presented as hot topics, urgency measures, or so-called trends sweeping the country that are attractive to legislators seeking favor with their growing constituency of owners within common interest developments. And, of course, other legislation just makes sense given the current climate.

On balance, the new legislation we will discuss below seeks to exert more control over how our communities are governed, managed, maintained, and scrutinized. Each of these statutes seem to erode the notion of common interest developments as impermeable private, self-governed, financially independent residential communities. As a result, the new legislation also affects the enforceability of our governing documents and our way of governing our communities. This requires the community association lawyer to assist our communities in anticipating the trends, and to proactively modify our governing documents and governance models to ease the tension created by the wave of legislative micro-management.

In this article, we highlight examples of enacted or pending laws throughout the country. We note the impact of these legislative trends on the governing documents and community association leadership. Finally, we provide some possible ways to amend the governing documents to anticipate new laws on the horizon or respond to the laws enacted, as necessary.

1. PROPERTY RIGHTS AND ENVIRONMENTAL LEGISLATION

a. Backyard Gardens and Other Limitations on an Association’s’ Right to Control Use of Property

Two states – California and Maryland – recently have enacted legislation requiring associations to permit backyard agriculture. In 2015, Civil Code Section 4750 was enacted in California; the law provides that any provision in a governing document that “effectively prohibits or unreasonably restricts the use of a homeowner’s backyard for personal agriculture” is void and unenforceable. The California law expressly applies only to yards that are “designated for the exclusive use of the homeowner” (although “backyards” are not otherwise defined). However, like other laws pertaining to use of exterior separate interests or exclusive use common area (clothesline regulations, for example), associations are permitted to apply provisions of the governing documents that impose “reasonable restrictions” on the use of a homeowner’s yard for personal agriculture.

Backyard gardens were also authorized by Maryland House Bill 434 and Senate Bill 62, both of which were proposed in 2017. If approved, the law would have prohibited provisions in governing documents that disallow the installation or cultivation of a backyard garden on single-family property (which, by definition in Maryland, includes “townhouses”).

b. Turf Wars

Installation of artificial turf is another area of controversy and detailed legislation. In response to a decade-long drought, legislation was adopted in California in 2015 that makes governing documents prohibiting the use of artificial turf void and unenforceable. Like other law regarding the use of property within associations, Civil Code Section 4735 permits associations to apply reasonable rules and restrictions regarding landscaping.

A similar statute, Senate Bill 1113, was proposed in Arizona in 2017. If approved, the law would have restricted associations from prohibiting the installation or use of artificial turf “on a member’s property” but would have permitted “reasonable rules” regarding the installation or use of the artificial grass.

c. Low Water-Use Plants/Drought Tolerant Landscaping

The lengthy drought which affected the West Coast states has also spawned legislation regarding drought-tolerant landscaping. For example, in addition to permitting the use of artificial turf, California’s Civil Code Section 4735 restricts associations from enforcing governing documents that prohibit or have the effect of prohibiting low-water use plants.

Senate Bill 161 was proposed in Nevada in 2017. If approved, the law would have modified Nevada Revised Statute 116.330, which already restricts governing documents from prohibiting the installation of drought tolerant landscaping provided an architectural application is submitted and the landscaping is “selected or designed to the maximum extent practicable to be compatible with the style of the common-interest community”. Nevada Revised Statute 116.330 defines “drought tolerant landscaping” as including “mulches,” “decorative rock,” and “artificial turf.” Senate Bill 161 proposed to deem “unreasonable” any decision by a board or provision of the governing documents requiring an owner to choose among “five or fewer genera of plants” when installing drought tolerant landscaping.

House Bill 2722 amended the law in Oregon (Oregon Revised Statute 100.005) effective June 22, 2017 and made irrigation requirements imposed on an association or a unit owner void and enforceable if the Governor declared, or the Water Resources Commission issued, a finding regarding the existence of a drought or that a drought was likely or an ordinance was adopted by the “governing body of a political subdivision within which the condominium is located” that requires conservation or curtailment of water use. The law expressly protects an association’s rights to adopt rules requiring the reduction or elimination of irrigation and the installation of xeriscape.

These laws continue to chip away at associations’ authority to self-govern with respect to the aesthetic appearance of the property in favor of environmental protections. Community

association law practitioners are encouraged to work with the governing bodies of their associations to adopt “reasonable” restrictions that allow associations to exercise control within the boundaries of the law. Any restrictions should be adopted with an eye towards flexibility as the laws and technology continue to change the “landscape.”

[Sample rules regarding artificial turf are enclosed with these materials.]

d. Hung Out to Dry

Environmental concerns also appear to be the impetus for regulating clotheslines and other clothes drying apparatus. Clothesline prohibitions used to be customary in governing documents, presumably on aesthetic grounds and also as an imposition of class restrictions (because wealthier communities could afford clothes drying machines and did not need to dry clothing for free outside). Changing perceptions of appropriate use of resources, as well perhaps the reality that only wealthier people can afford homes with yards which can accommodate clotheslines, have resulted in a change in community attitudes regarding clotheslines. Formerly eyesores, clotheslines have become a green and eco-friendly way to dry clothes and save the planet at the same time.

Although seemingly innocuous on its face, such “green” legislation often results in the unintended consequence of stripping associations of their right to govern their own property, perhaps even resulting in unconstitutional taking of property. Indeed, solar- and environmental-related legislation continues to follow the regulatory trend which began in sunny Western states. Even Massachusetts has jumped on the environmental takings bandwagon, with Senate Bill No. 1117- “solar drying of laundry” (aka clotheslines) legislation which prohibits barring the installation and use of clotheslines or charging a fee for such installation or use and provides that if a covenant, restriction, rule or by-law prohibits the use of clotheslines upon the request of a unit owner or tenant, the homeowner or association must hold a meeting to reconsider the prohibition.

California, Colorado, Florida, Hawaii, Maine, Maryland, Utah and Vermont have already adopted legislation restricting the prohibition on clotheslines in community associations. California, Maryland and Hawaii have standalone laws regarding clotheslines, whereas the laws for Utah, Vermont, Colorado, Florida and Maine are contained within statutes addressing “energy devices,” “solar energy devices,” or “energy efficiency matters.” California’s law (Civil Code Section 4750.10) permits the use of clotheslines and drying racks in backyards only and specifically provides that balconies, railings and awnings are not “drying racks.” The laws in Florida and Vermont are very similar and both provide that they do not apply to patio railings in condominiums, cooperatives, or apartments.

All the laws regarding clotheslines, other than those in Florida and Vermont, reference an association's ability to adopt "reasonable" restrictions on clotheslines, including aesthetic restrictions regarding dimensions, placement or external appearance.

Legislation was proposed in Hawaii (Senate Bill 235) in the 2017-2018 legislative term that would have expanded the scope of the existing statute to limit prohibitions on clotheslines in apartments and condominiums (the existing statute applies to "single-family residential dwellings" and "townhouses"). The proposed bill was not approved.

Legislation was proposed in Massachusetts (Senate Bill No. 1117) that was consistent with the existing laws described above; the law would prohibit associations from banning the installation or use of clotheslines, but would permit associations to adopt rules reasonably restricting the placement and use of clotheslines.

Given the existing laws and proposed laws regarding clotheslines, the use of clotheslines as energy-saving devices appears to be on the rise and is encouraged as a matter of public policy. Community association practitioners can assist their clients by drafting rules including reasonable restrictions so that boards are prepared to proactively address the issue by allowing the use of clotheslines while still protecting the aesthetics of the community and the integrity of the homes and other structures in the community.

Sample rules regarding reasonable restrictions on clotheslines are enclosed with these materials.

[Sample rules regarding clotheslines are included with these materials.]

e. Let the Sun Shine In

Perhaps the most contentious example of forced use of common area for environmental policy purposes concerns installation of solar energy systems on condominium roofs. The number of U.S. homeowners who have their own solar panels has grown steadily since 2000. The increased interest in harnessing the sun's power in the face of a rising market for high density residential living, seems to have attracted the solar industry's attention to the growing number of consumers who can't put panels on their own roofs.

Across the country, state lawmakers are taking steps to enable private companies, nonprofits, homeowners associations and others to develop and run community solar projects. Approximately twenty-five states currently prohibit or offer the ability to prohibit covenants or restrictions placed upon homeowners which would prevent the installation of solar powered panels and associated devices; however, only California expressly allows the installation of panels on common area roofs of multi-unit condominium buildings. Others suggest that common area installation is permitted with association control.

The Illinois statute, for example, provides that a property owner may not be denied permission to install a solar energy system by any entity granted the power or right in any deed restriction, covenant, or similar binding agreement to approve, forbid, control, or direct alteration of property. However, for purposes of the Illinois law, an association may determine the specific location where a solar energy system may be installed on the roof within an orientation to the south or within 45 degrees east or west of due south provided that the determination does not impair the effective operation of the solar energy system. The Florida statute, however, specifies that a property owner may not be denied permission to install solar energy devices with respect to residential dwellings and within the boundaries of a condominium unit, suggesting that the systems are not allowed on common area. [Florida Condominium Law 163.04]. Texas falls on the far end of the regulatory range and specifically excludes installation if so prohibited by the governing documents and the area is located on property owned or maintained by the property owners' association or is located on property owned in common by the members of the property owners' association; (i.e., common area). Texas Property Code Sec. 202.010. [See also Revised Code of Washington 64.38.055 which is expressly excludes applicability to common area.]

Solar panels have been around for decades, but legislation relating to solar energy systems is evolving rapidly and is, in many cases ambiguous or over-reaching. Even homeowners in pro-solar states like California are struggling with unclear statutory language, a situation which has been significantly exacerbated by a recent extension of the California Solar Rights Act.

Recent 2017 amendments provide homeowners with the right to install solar on the common area roofs and adjacent garages and carports of condominium properties, subject to only “reasonable” restrictions that “do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conversation benefits.” Previously, such installations required the approval of two-thirds of the members to grant of exclusive use of common area to an individual owner. This push for all things solar has resulted in California telling community associations what they can do with common area without regard for the right of the association and its members to control their commonly-owned property. This derogation of individual property is rights has risen to a level not previously seen on the state or federal level. Some argue that California’s new community association solar rights legislation in particular is an unconstitutional taking of property. As the courts have not yet spoken on this issue, practitioners will have to wait and see, tailoring rules to comply with the statutory requirements while trying to maintain some control over common area through “reasonable restrictions.”

Notably, a similar argument regarding takings was made at the time of California’s electric vehicle (EV) legislation, which clearly sets forth the rights for EV owners to install charging stations in common areas. When the legislature dealt with this precise issue by setting forth what

constitutes reasonable restrictions on charging stations in California Civil Code Section 4745, it was argued that such rules were unlawful for requiring EV stations to be allowed in common areas without two-thirds membership approval. Despite CAI-CLAC arguing against the taking as “unconstitutional”, the legislature decided that the EV legislation did not involve an unconstitutional government taking.

California’s experience with its Solar Rights Act, including these recent developments, are just a hint at what can be expected in other states across the nation. As solar continues to set record growth rates, states will likely find themselves in the position of having to either create solar rights laws or amend the ones already on their books. While the California statute and similar laws throughout the country are effectively nullifying CC&Rs prohibitions regarding solar panel installation, these laws do protect the Association’s right to regulate the installation with “reasonable rules.” Given the impact of solar panel installations on maintenance and repair responsibility and property damage liability as well as the impact on community aesthetic, it is imperative that Association’s adopt solar energy installation policies and procedures to be well positioned to exert what little influence that have left regarding how a resident can install solar energy systems and their responsibility to the association and their neighbors in doing so.

[A sample policy is enclosed with these materials that addresses the impact of the California statute and can be incorporated for use in other States.]

f. Where There’s Smoke

The dangers of smoking and secondhand smoke have been well-documented. As a result, many states have enacted legislation prohibiting smoking in public places. As the public policy in favor of protecting non-smokers has intensified, anti-smoking legislation is now expanding to include restrictions on smoking in private places, including homes. Secondhand smoke in community associations presents health and safety concerns for residents and can raise other nuisance-related issues, such as odor. In multi-unit buildings, these issues are often intensified because of the way the buildings are constructed. Smoke can travel through ventilation systems, pipes, walls, windows, floorboards, electrical sockets, and even cracks in plaster. Some anti-smoking legislation now applies directly to common interest developments. The “reach” of the legislation is varied, from restrictions to smoking in enclosed common areas (hallways, clubhouses, etc.) to unenclosed common areas, exclusive use common areas (including balconies and lanais) and even separate interest units.

The most recent legislative year saw anti-smoking legislation that would have impacted community associations proposed in seven states. Pending in Hawaii, House Bill 267 and Senate Bill 151 would have given associations the authority to adopt rules and regulations affecting “the use of or behavior in units,” specifically including requiring unit owners to prohibit smoking inside

units as part of lease agreements and prohibiting smoking on lanais and “in all common elements.”

House Bill 5741, known as the “Multi-Unit Residence Common Area Safety Act,” was proposed in Rhode Island. The proposed legislation would have prohibited smoking in common areas except for designated smoking areas located in unenclosed areas of the common area, subject to certain restrictions. The bill was held in committee for further study. Interestingly, the bill defined “smoke” as including “tobacco smoke, electronic smoking device vapors, marijuana smoke, and crack cocaine smoke.”

The most extensive state legislation recently proposed was in Vermont. House Bill 127 proposed prohibiting “the possession of lighted tobacco products . . . anywhere on the property of condominiums and other multi-unit housing including rented dwelling units, individual living units, interior common area, interior exclusive use areas, and within 50 feet of these locations.” The bill permits a condominium association or other multi-dwelling unit to designate outdoor smoking areas, subject to certain restrictions. The bill has been referred to committee.

Anti-smoking legislation is commonly seen at the city and county level and these ordinances can have a tremendous impact on community associations. Some ordinances require the creation of non-smoking units in multi-unit housing communities, others ban or restrict smoking in common area (enclosed and/or unenclosed). Some declare that exposure to secondhand smoke is a nuisance, and others ban smoking in exclusive use common areas such as balconies and patios. In California, state-wide smoking bans have not been successful, so the trend is adoption of local city and county ordinances that prohibit smoking. Some of these ordinances are extremely restrictive and feature complete bans on smoking everywhere in common interest developments, including inside individual units. One example of this type of smoking ban is found in the City of San Rafael (in the San Francisco Bay Area), which recently enacted legislation that is currently considered the strictest in the country. San Rafael’s ordinance bans smoking cigarettes inside any dwelling that shares a wall with another dwelling. The author’s stated goal with respect to the ordinance was to eliminate secondhand smoke from permeating through doors and windows, ventilation systems, floorboards and other susceptible openings. The benefit of many local ordinances is that enforcement is placed in the hands of the municipality and not in the hands of the association.

- Smoke Signals from the Courts

Even in the absence of specific anti-smoking restrictions or statutory bans, courts have found that associations can be liable for the failure to abate the nuisance created by secondhand smoke. In *Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th 1540, Melinda Birke and her father and guardian ad litem, John Birke, filed suit for nuisance against Oakwood Worldwide (a manager and operating of apartment complexes including the one where the Birkes lived) for the failure of Oakwood to limit secondhand smoke in the outdoor common areas of the apartment complex; Birke alleged Oakwood's failure to ban smoking in outdoor common areas was a substantial fact in causing Birke's aggravated allergy and asthma systems. The California Court of Appeal found that Birke's complaint alleged a valid nuisance claim against Oakwood. Additionally, the Court found that, as the Birkes' landlord, Oakwood had a duty to maintain its premises in a reasonably safe condition. The court noted that there is no question that secondhand smoke is a health risk and that even low levels of exposure are considered a nuisance.

The Bella Palermo Homeowner Association in Orange County, California, was determined to be 60% responsible for the emotional distress allegedly suffered by the Chaunceys, tenants residing in a condominium, following a five-week jury trial in 2011. The Chaunceys claimed that their neighbors and their visitors smoked "incessantly" on the patio and adjoining sidewalks next to the Chaunceys' unit and that there was a "constant infiltration" of secondhand smoke entering the unit through the windows and sliding glass doors. The Association was found to be partially responsible for not enforcing the anti-nuisance provision in the Association's CC&Rs.

Public policy certainly supports anti-smoking restrictions in governing documents. However, the breadth of any restriction may be determined by applicable ordinances and the feasibility of enforcement. As referenced above, some local ordinances may include enforcement options that are preferable to making a governing board of an association the enforcement authority. Complaints regarding secondhand smoke often relate to complaints simply about odor; it is often incredibly difficult to identify the source of the odor and smoke. Associations may wish to consider not only whether anti-smoking restrictions are appropriate for their particular communities, but also whether they can reasonably enforce such restrictions.

Even if a local ordinance is in effect, associations may wish to adopt stricter restrictions for their communities. Given the current state of affairs, it appears as though a prohibition on smoking in common areas is the most easily defended and enforced. A prohibition on smoking in exclusive use common area (such as balconies and patios) may be more difficult to defend and enforce. There is no question that a prohibition on smoking in individual dwelling units would be the most difficult to defend and enforce, although there is certainly legislative and scientific support for such restrictions. Boards should keep in mind that amendments regarding the use of the

common area and/or the use of the “separate interest” often require the approval of a high percentage of the members.

With respect to scope, boards may wish to consider how to define the term “smoke” and whether that term will include vapor from electronic smoking devices, marijuana smoke and other types of smoke (similar to the Vermont bill referenced above), especially given the fact that “vaping” is itself a trend and marijuana use is being legalized in several states.

The cases that we have seen to date relate to an association’s alleged failure to enforce “standard” anti-nuisance provisions. Associations that adopt anti-smoking restrictions should be prepared to enforce not only the anti-smoking restrictions but also the anti-nuisance provisions in the governing documents.

2. CLASH OF TITANS: PROPERTY RIGHTS AND FREE SPEECH RIGHTS

Common interest developments have become the battleground for clashes between property rights and political speech. For example, Missouri recently amended Section A. Chapter 442, Revised Statutes of Missouri preventing a deed restriction or covenant running with the land that prohibits or has the effect of prohibiting the display of political signs. Like similar bills in other jurisdictions, the law does allow reasonable rules as to size, time, number, placement and manner of display, and allows an association to remove a political sign placed on common area.

Efforts to regulate the display of the American flag, an area many thought was settled long ago, also have increased in recent legislation across the country. New York Assembly Bill A7822 (pending) would prohibit a landlord’s ability to restrict its tenant from displaying an American Flag. Oklahoma House Bill 1337 protects a community association member’s right to display the American flag (up to 20 feet in size) on his separate interest or exclusive use. Other states have adopted variations on this theme, seeking to expand the type of “American-related” flags an owner has a right to display in a community association. Tennessee Senate Bill 469 ostensibly protects veterans’ rights by prohibiting a community association from adopting or enforcing a governing document provision that prohibits, restricts, or has the effect of prohibiting or restricting a property owner who is a veteran from displaying the flag of the United States of America or an official or replica flag of any branch of the United States armed forces, including the POW-MIA flag, or both, on the property owner's property. The Tennessee law does allow an association to adopt reasonable regulation on flag pole height, construction and location, and how the flag is displayed. It also allows an association to prohibit a flag or flagpole on common area. Finally, our current political climate seems to have inspired pending legislation in the form of Ohio House Bill 230. House Bill 230 would prohibit a community association from enforcing a governing document provision that prohibits or has the effect of prohibiting the display of a thin blue line flag (in support of police) or emblem on a flag pole, within the limited common areas

and facilities of a unit owner or on the immediately adjacent exterior of the building in which the unit of a unit owner is located, provided the flag or emblem is displayed in accordance with any state law, local ordinance or resolution, or a proclamation by the governor of the state.

These patterns suggest that the boundaries of constitutionally protected speech are expanding and the traditional Association restrictions on speech, particularly written speech in the form of flags and banners, need to reflect these changing definitions. An association's aesthetic preferences, even those couched in the form of a safety regulation will almost certainly need to take a back seat to a resident's freedom of speech, assembly, or even religion.

Perhaps the greatest recent assault on the view that in private residential communities "every person's home is his or her castle" occurred in California with Senate Bill 407, which pits property rights in a private residential community against freedom of speech and expression. With Senate Bill 407, an individual's right to exist in a private residential community association reasonably free of interference from others was forced to stand down against an individual's right to canvas a community with "noncommercial solicitation" at reasonable times and in a reasonable manner. Senate Bill 407 adds Civil Code Section 4515 to the Davis-Stirling Common Interest Development Act to protect community association members and residents ability to 1) peacefully assemble or meet; 2) invite public officials, candidates and homeowners representatives to the community to speak on matters of public interest; 3) canvass and petition the members, residents and board about, or distribute or circulate information about common interest development living, association elections, legislation, election to public office, or the initiative referendum or recall process. The law effectively renders void governing document provisions that prohibit a member or resident from engaging in the above activities.

In addition, this law carves out a resident's right to use common area, facilities or the separate interest for an assembly or meeting about the above topics (if not otherwise in use) without being required to pay a fee, make a deposit, obtain liability insurance, or pay the premium or deductible on the association's insurance policy in order to use the common area for the above purposes. Finally, SB 407 imposes a civil penalty of \$500 for each violation of the statute. The concerns about this legislation are several. While it does not allow an owner or resident to invite the general public into the community association, the law does subject a community's residents to being approached, petitioned, and provided flyers are any number of subjects.

Many residents will see this trend as an invasion of their privacy or right to quiet enjoyment in their homes. Up until now, residents enjoyed a level of privacy in their common interest developments, free from canvassing or petition on legislative or political issues. Many will find this law offensive. Moreover, although the law limits canvassing, petitioning, distributing and circulating to reasonable hours and in a reasonable manner, it seems to leave an association with relative little authority to regulate the activities protected by this bill. Finally, it is problematic

that the law carves out an exception from paying common facility rental fees as long as the use is for a purpose protected by this statute, when other residents may be required to pay a fee for other personal uses. In this way, the law requires the association (and other members) to subsidize a member's use of a common area facility as long as it is being used to address common interest development living, association elections, legislation, election to public office, or the initiative referendum or recall process.

Finally, as municipalities and governmental agencies struggle with efforts to remove religious or political statues in the public squares and public buildings, we continue to see increased debate over allowing religious symbols in our communities. As with the free expression issue, the free exercise of religion appears to take precedence over associations' property rights. Particularly with regard to restrictions in an association's governing documents, legislatures in many states have determined that property rights must give way to personal rights in the area of expressing one's religious beliefs. The power of an association to enforce architectural restrictions has faded away as states enacted laws protecting a resident's right to display signs of religious observance on exteriors of units, including front doors, balconies, and similar exclusive use areas. Most recently, Texas is protecting the right to express religious beliefs in community associations through House Bill 522 which amends the Texas Property Code to void any restrictive covenant that prohibits a property owner or resident from displaying or affixing on the owner's or resident's property or dwelling one or more religious items the display of which is motivated by the owner's or resident's sincere religious belief, subject to reasonable rules and regulations regarding length of display and materials used.

The steady trickle of laws aimed at religious freedom over property rights suggests that, in common interest developments across the country, the ongoing clash between the governing documents and religious dogma, between our desire for architectural uniformity or aesthetic harmony and our natural inclination toward individual expression will continue.

a. Right to Lease and Short-term Rentals

The limits of an owner's right to use his or her home as he or she pleases has been tested again in the form of "home sharing," or short-term rentals and informal private B&Bs. The short-term rental market has exploded with the advent and success of Airbnb, VRBO and similar online platforms. Given the number of community associations in the country, it is not surprising that short-term rentals have impacted community associations, just as they have impacted municipalities and the hotel industry. Because this new housing platform grew so fast and was completely unregulated, at least in the beginning, municipalities and associations alike have been struggling to keep up. Like the regulation of clotheslines and landscaping, however, association regulation of short-term rentals is more of an "everything old is new again" situation as the old restrictions against boarding houses suddenly take on new life in the digital age.

Most of the legislation on short-term rentals has been at the local level. Some municipalities, including Anaheim, New York City, and Santa Monica, have banned short-term rentals altogether. Other municipalities require that hosts obtain certain levels of liability insurance. Others, including San Francisco, require hosts to obtain a license, tax revenue on short-term rentals, and require that hosts live in the unit for a certain number of days out of the year. San Francisco's legislation, like that of other municipalities, specifically permits community associations to prohibit short-term rentals, thus protecting associations' right to self-govern.

The most recent legislative cycle saw legislation on rentals proposed in at least 14 states. In Virginia, for example, the 2016 "[a]ct to amend and reenact §§ 55-79.87:1, 55-79.97, 55-79.97:1, 55-509.3:1, 55-509.4, 55-509.5, and 55-509.6 of the Code of Virginia, relating to the Condominium and Property Owners' Association Acts; rental of units; disclosure packets," does not specifically relate to short-term rentals, but potentially impacts associations' enforcement authority with respect to short-term rentals by limiting associations' rights to charge rental fees and expressly providing that associations do not have the right to evict tenants. Other proposed legislation, like that seen at the local level, primarily relate to the ability of municipalities to collect transient tax (see Assembly Bill 4048 and Senate Bill 2574 in New Jersey).

Some of the proposed legislation, such as House Bill 1133 in Indiana and Legislative Bill 628 in Nebraska, limits municipalities' rights to prohibit short-term rentals, but expressly exempt community associations, leaving them free to self-govern as they see fit. Other legislation, like House Bill 497 in Tennessee, permit municipalities to regulate and tax short-term rentals and permit associations to prohibit or restrict short-term rentals in their communities. Still other legislation, like Senate Study Bill 1009 in Iowa and Assembly Bill 4441 in New Jersey, give municipalities the authority to regulate short-term rentals but do not expressly address the right of associations to do so.

Especially troubling is legislation like Idaho House Bill No. 511 which, in 2016, amended Section 55-115 of the Idaho Code to prohibit associations from adding, amending or enforcing any covenant, condition or restriction in any way that limits or prohibits the rental, for any amount of time, of any property, land or structure thereto within the jurisdiction of the homeowner's association, unless expressly agreed to in writing at the time of such addition or amendment of the affected property.

Thankfully, this type of legislation that effectively prohibits associations from self-governance with regard to rental and use of commonly owned property is rare.

b. Courts Weigh in on Short-Term Rentals

Because of the rapid proliferation of short-term rentals, most of the cases regarding enforcement by associations do not relate to restrictions specifically prohibiting short-term rentals. Rather, they relate to already-existing restrictions, such as the typical restriction requiring the residential use of property and prohibiting the commercial or business use of the property. The decisions regarding these cases have not been consistent.

In *Vonderhaar v. Lakeside Place Homeowners Assn., Inc.*, No. 2012-CA-0022193-MR (Ky. Ct. App. August 8, 2014), a Kentucky appeals court upheld a trial court ruling that short-term rentals constituted a business and commercial purpose, in violation of declaration which permitted only private residential use of lots. In support of its decision, the Court noted that the owners treated their property as a business for tax purposes, identified the property as a “motel,” advertised the property on various rental websites, had a rental agreement including check-in and check-out times and paid hotel taxes on the property. The Court held that because the owners characterized the property as a business with the IRS, they couldn’t characterize it to the contrary to the Association. The Court also noted that there was a significant difference between a long-term rental to a family and short-term rentals to different people on a frequent basis.

The Texas Court of Appeals reached a similar conclusion in *Tarr v. Timberwood Park Owners Association, Inc.*, No. 04-16-00022-CV (Tex. App. Nov. 16, 2016). The Association’s restrictive covenants did not include a minimum lease term but did include a restriction requiring that the homes be used “solely for residential purposes.” The Court found that phrase to be unambiguous and with a definite legal meaning. The Court determined that the term “residence” required “both physical presence and an intention to remain,” and that transient use was not for residential purposes.

However, in *Santa Monica Beach Property Owners Assn, Inc. v. Acord*, No. 1D16-4782 (Fla. Ct. App. Apr. 28, 2017), the Florida Court of Appeal held that the short-term rental of property did not violate a restriction in the restrictive covenants prohibiting business use of units, even though the unit owners obtained a business license to operate their rental business and were required to collect state and local taxes on the rentals. The Court noted that the renters were using the property for residential purposes and the rental term did not convert the use to one that was commercial. The Court further noted that the omission of an express prohibition on short-term rentals in the restrictive covenants meant that covenants must be construed in favor of free and unrestricted use of the property especially where the use in question was predictable, such as vacation rentals near the beach.

The Colorado Court of Appeals reached a similar conclusion in *Houston v. Wilson Mesa Ranch Homeowners Association, Inc.*, No 14CA1086, 2015 COA 113 (Colo. Ct. App. August 13, 2015). The Association's restrictive covenants prohibited the use or occupation of property for commercial or business purposes. The board of directors, upon learning of Houston's rentals, established an administrative rule that prohibited rentals for fewer than 30 days without board approval. Houston argued that the adoption of the rule was an unlawful attempt to amend the covenants; the board responded that commercial use was already prohibited. The Court determined that the renters were using the unit for residential purposes (eating, sleeping, etc.) and that the owner's receipt of income did not transform the residential use into commercial use. Like the Florida Court of Appeal, the Court found that ambiguity in the covenants must be construed in favor of the unrestricted use of the property. The Court also held that the adoption of a rule was insufficient to create a prohibition on short-term rentals and that the covenants themselves must be amended.

The decisions regarding amendment of restrictive covenants with respect to short-term rentals are also inconsistent. The Washington Supreme Court, in *Wilkinson v. Chiwawa Communities Association*, 180 Wash. 2d 241 (Wash. Apr. 17, 2014), invalidated an amendment approved by a majority of the homeowners prohibiting short-term rentals. The Court determined that the drafters of the covenants included detailed provisions regarding property use in the restrictive covenants and, if the "drafters wanted to prohibit rentals of a particular duration, they would have done so."

The Washington Supreme Court also determined, in *Filmore LLLP v. Unit Owners Association of Centre Pointe Condominium* (Wash. Ct. App. Div. 1, Sept. 2, 2014) that an association can amend its restrictive covenants to prohibit short-term rentals. However, because leasing is a "use" the approval of 90% of the homeowner was required pursuant to the Revised Code of Washington. The Association's claim that the restrictive covenants only required the approval of 67% of the homeowners was rejected.

The Louisiana Court of Appeal, in *New Jax Condominiums, Inc. v. Vanderbilt New Orleans, LLC*, No. 2016-CA-0643 (La. Ct. App. Apr. 26, 2017), reached an opposite conclusion in find that the two-thirds approval requirement in the bylaws trumped the building restriction's unanimous consent requirement. An amendment prohibiting short-term rentals was also upheld by the Idaho Supreme Court in *Adams v. Kimberley One Townhouse Owner's Assn, Inc.*, Docket No. 42192, 2015 Opinion No. 57 (Idaho June 22, 2015). Homeowner Adams argued that amendments to the declaration were limited to only the existing restrictions and the adoption of new restrictions was not permitted. The Court found that the amendment (which was approved by 89% of the owners) simply provided clarity to the existing single family residential requirement.

In California, it is fairly typical for CC&Rs to contain supermajority approval requirements, especially with respect to certain amendments to the CC&Rs, including leasing. In California, there is also a statute that permits associations to petition the court for relief if the CC&Rs require supermajority approval and majority approval is obtained. The California Court of Appeal, in *Ocean Windows Owners Assn. v. Spataro*, No. D066852 (Cal. Ct. App. Mar. 22, 2017) (an unpublished decision), approved amendments to the CC&Rs that included restrictions on short-term rentals. The amendments were approved by a majority of the owners, but the 75% approval threshold in the CC&Rs was not met. In approving the amendments, the Court noted that the rental restrictions were rationally related to protecting and preserving the Association as a whole.

c. Short-Term Rental Restrictions in the Governing Documents

Although problems associated with short-term rentals (including violations of the governing documents, security implications, and property damage) have been well documented, what is best for any particular association will depend on a number of factors including applicable ordinances, the location of the community and the demographics of the owners. Some associations in urban or vacation areas may choose to permit short-term rentals subject to certain restrictions. In *Watts v. Oak Shores Community Association*, 235 Cal.App.4th 466 (2015), the California Court of Appeal upheld the Association's rules regarding short-term rentals which included fees which were only applicable to short-term rentals. The Court determined that the rules were reasonable, and found that not only the evidence but common sense supported the fact that short-term renters cost the Association more than long-term renters or permanent residents.

For those associations that wish to prohibit short-term rentals altogether, the cases discussed above make it clear that the adoption of specific prohibitions on short-term rentals is preferable to relying on existing restrictions, such as restrictions prohibiting commercial or business uses. Although many (if not most) CC&Rs contain minimum lease terms of 30 days, it is now commonplace for us as practitioners to draft restrictions that contain not only a minimum lease term, but also specifically prohibit short-term rentals via online platforms such as Airbnb and VRBO, even if the owner resides in the unit and merely rents a room to a roommate.

[Sample amendment language addressing short-term rentals is enclosed with these materials.]

3. RESTRICTIONS ON BOARD AUTHORITY: THE BATTLE FOR TRANSPARENCY

For a while now, we have witnessed a challenge to authority in our political institutions, long seen as impenetrable. Community associations are not immune from such challenges as we are seeing across the country. Armed with just enough law in their arsenals, members seem more emboldened to speak out and challenge community leadership. In everything from elections to meeting conduct, our community governance is being challenged. Directors no longer have the unfettered ability to govern without opposition. Fewer and fewer members who knowingly decide to reside in a common interest development are complacent to have their property rights controlled by a board of 3, 5, 7 or sometimes 9 directors without at least being allowed to provide input, or to question the decisions made by the elected few. Cries for “transparency” are being deployed by suspicious and critical members not only to gather information about board decisions as in the past but as a means of influencing volunteer directors in matters which do not require member approval.

No clearer is this effort to tear down the castle wall than in the areas of board transparency and perceived conflicts of interest. For example, pending in Arizona, is revised Statute 33-1811 aimed at regulating how a board can address contracts where a conflict of interest is present. This law renders void and unenforceable any contract that provides a direct financial benefit or other consideration to any member of the board of directors, or any person who is a parent, grandparent, spouse, child or sibling of a member of the board of directors or a parent or spouse of any of those persons. The law would mandate that the member declare the conflict in an open meeting of the board before the board discusses or takes action on that issue and that member may then vote shall not vote on that issue. A Connecticut effort at financial transparency, Connecticut Proposed Bill 5805, seeks to make available to all owners the personnel and salary records of persons employed by, or under contract to provide services on behalf of, an association.

Perhaps the most notable of these “transparency” laws is Florida House Bill 1237 which added many checks and balances on community association governance and board authority. This sweeping legislation keeps a board in check by including fines and/or criminal penalties for: 1) solicitation and/or acceptance of kickbacks; 2) forgery of a ballot; 3) theft or embezzlement of funds; 4) destruction of or refusal to allow inspection of records. Moreover, being charged or indicted requires removal of the director and prohibits election or appointment to the board while charges pending. Further measures of note include 1) making bids an official association record and therefore subject to member inspection; 2) prohibiting hiring of counsel who also represents the managing agent; 3) creating certain rebuttable presumptions of conflicts of interest and requires any conflict of interest to be disclosed in the agenda; 4) that any determined conflict requires that the director not engage in the activity or resign and, if not, the director is

deemed removed from office; and, 5) any contract entered into without the proper conflict vetting and disclosure is voidable by 20% of the members. This bill also imposes board terms limit, financial reporting and disclosure requirements and prohibitions on use of debit cards. And finally, the Florida law limits an association's ability to suspend a member's voting rights unless that member meets a minimum delinquency threshold.

There is clearly a growing trend to protect members against abuses by those in power. Hawaii has legislation pending similar to the Florida law but not nearly as comprehensive. House Bill 177 requires written disclosure of a director's financial interest before engaging in activity in which presents a conflict with the Association and a third-party provider. This bill also prohibits a director from receiving gifts from any third-party providers. And Hawaii's proposed House Bill 177 goes a step further with a pending form of "whistle blower" which seeks to protect against retaliation for complaining of a violation, filing a complaint or participating in an investigation.

States are taking to micromanaging not only how community associations maintain and manage the property and use restrictions, but also how the entity conducts its business. Several proposed laws address meeting conduct, agendas and similar transparency driven measures. New Hampshire House Bill 501, for example, mandates that an association board take minutes and that those minutes be available in 15 days of an owner's request. The bill is silent on whether those minutes must be approved before being released or the impact of a request for minutes before the board will be meeting to approve the minutes. In New York, an effort is pending through Assembly Bill A5816 to adopt a residential condominium owners "Bill of Rights" including: 1) that all applications and dispute resolutions be processed in a reasonably expeditious manner pursuant to uniform procedures and timetables adopted in writing; 2) that elections results be posted within a day of their being available; 3) that Board vacancies be filled by meeting within sixty (60) days of the vacancy; and, 4) that certain documents be made available to owners within ten (10) days of a request. With these items, coupled with additional provisions on posting, financial disclosure and special assessment limitation, such measures seek to regulate the board on a broad range of community governance issues traditionally left to the directors themselves, or at least the bylaws, to regulate. New York was successful this year in opening the books on community associations with Senate Bill S6648, described as "An act to amend the not-for-profit corporation law, in relation to the right of a member of a homeowners association to review books and records." This law, which took effect immediately, clarifies what financial records an association's members can access and specifically identifies invoices, ledgers, bank accounts, reconciliations, contracts, and "any documents related to the expenditure of homeowners association dues."

Perhaps the major catalyst to the “transparency” legislation is the wave of community association board and manager fraud and embezzlement cases in the headlines. In Green Valley, Arizona, a small community outside Tucson, a “trusted” 79-year-old community member, Wendall Byram, was accused of stealing \$200,000 from his association, while the rest of the board looked the other way. As one resident noted, “he apparently has the full trust of the board members.” Reportedly, the board never asked to look at bank statements and Wendell kept two sets of books. In Indio, the Sun City Shadow Hills senior community association of 3,450 homes is investigating “financial discrepancies” of \$110,000 believed connected to a former employee of the association’s management company. The discrepancy was supposedly discovered through the management company’s “internal accounting controls.” Among the most noteworthy of community association fraud and embezzlement cases comes out of Nevada where one community association manager is said to have defrauded 34 community associations out of more than 1.6 million dollars; much of the money was taken by the manager through electronic signature transfers without board approval.

Florida’s House Bill 1237 was approved in June by Governor Scott, perhaps as a solution to all things that ail community association transparency and financial security, and the ever-increasing effort to place blame on volunteer community association leaders or community managers for the lack of discipline and control over community association operations. This bill imposes criminal penalties on condominium violations such as electoral fraud, theft of funds and conflicts of interests. This bill aims to prevent some of the conflicts and interested party relationships that are viewed as creating an environment that allows for the financial irregularities and mismanagement to thrive. The new law prevents an association lawyer from also representing its manager; prevents a board member or manager from purchasing a unit sold through assessment lien foreclosure; prohibits an association from employing or contracting with any service provider that is owned or operated by a board member, any person that has a financial relationship with a board member, or a relative by blood or marriage of a board member or officer; and, allows 20 percent of the membership to void a contract between a board member and a third party in which a conflict exists that was not properly noticed to the members.

In terms of financial reporting and transparency, House Bill 1237 mandates the most recent financial report be provided to a member within five (5) days of a request. Further, use of debit cards is prohibited. The bill prohibits an association, or any officer, director, employee, or agent of an association, from using a debit card issued in the name of the association, or which is billed directly to the association, for the payment of any association expense. The use of a debit card issued in the name of the association or billed directly to the association for any expense that is not a lawful obligation of the association is punishable as credit card fraud. Finally, the new law provides enhanced penalties for any director or manager receiving kick-backs from vendors and service providers.

Finally, concerned that fraud in the board election process has significantly impacted some associations, in a further, albeit indirect, effort at curbing community association fraud and mismanagement, the Florida legislature has imposed director term limits, enhanced criminal penalties for forgery in connection with a ballot, and places limitations on an association's ability to suspend a member's voting rights for nonpayment of any fee, fine or assessment.

Advocates of the Florida legislation and those like it in states across the country claim these laws are necessary to rein in out of control associations that to some had turned into "mini dictatorships" or "totalitarian regimes." One might respond with "careful what you wish for." As mentioned, an important benefit of common interest development communities is that, in exchange for the right to self-govern, municipalities are able to transfer to the associations the responsibilities of developing and maintaining infrastructure expenses of roads, water, sewer, landscaping and lighting systems, for example. This benefits the association members while indirectly benefiting the municipalities with enhanced property values. Plus, the municipality still benefits from the tax revenues of the multi-unit, but separately taxed, development.

It's no wonder these communities seek to be left to their own governance, without unreasonable government interference. But the lack of internal controls, of hands-on oversight and prudent financial management, coupled with perceived lack of transparency and unchecked-delegation to management has placed community associations under scrutiny in this age of member distrust and challenge to unfettered authority.

This heightened level of scrutiny may explain the amount of ombudsman legislation activity. Approximately ten (10) states either passed or introduced some form of ombudsman or dispute resolution legislation. Hawaii is considering taking matters a step further with a "Condominium Unit Owner Hotline" in House Bill 242, "for the purpose of providing condominium unit owners with legal information in matters relating to disputes with a condominium's board of directors." A companion measure establishes a condominium education trust fund and would require directors to complete an online ethics training course. And finally, perhaps emboldened by the success with House Bill 1237 above, newly introduced into the 2018 legislative session, Florida House Bill 625 would establish an Office of Community Association Hearings and transfers powers and responsibilities of arbitrators to community association hearing officers. Moreover, the proposal would authorize community association hearing officers to hold hearings and impose sanctions.

Perhaps the wave of legislation aimed at imposing the will of third parties on community association boards is a result of a growing challenge to governing authority sweeping across the country. Perhaps it is the result of governing documents that are not equipped effectively to not only address but to resolve disputes between owners and their governing boards, before these disputes escalate or wind up in court. Perhaps it's a growing level of distrust in the governing

body fueled by a few bad apples whose stories appear on the front-page news, or a lack of transparency in how are communities are operated and managed, and how the money is being spent. One thing is certain – community associations have to do a better job of keeping their own house in order before the state legislature does it for us.

One very effective tool toward greater accountability is the adoption and consistent enforcement of bylaw provisions addressing board qualifications, protocol, ethics, and obligations. Backing these provisions up with consistent regulation and enforcement through a board conduct policy will go a long way toward reassuring residents that their leaders are looking out for the community’s best interest. It may also keep the homeowner versus board abuse disputes off the front-page news and out of the legislature. In the area of financial security and preventing theft by directors, management or staff, our communities must do a better job of minding the store through self-regulation. Boards must be reminded of their fiduciary obligation to the corporation. That obligation includes safeguarding the community’s assets, which in turn means that a system of review, and of checks and balances must be employed to deter any conduct that would place the association’s funds at risk. Among the tools some communities are looking into are enhanced auditing and reporting requirements, requirements of multiple check signing and fund transfer approval, and increased oversight over association financial activities. Alternatively, we may see these items added as amendments to existing law, to further strengthen financial transparency and accountability.

4. Legislating Elections – Transparency, Combatting Apathy and Establishing Qualifications for Candidates and Directors

The legislation with possibly the biggest impact on the right of community associations to self-govern is legislation regarding elections and member voting, specifically when such legislation affects association members’ ability to elect their governing body. The proposed legislation on elections in the most recent legislative cycle was varied in scope and included legislation on proxies, cumulative voting, and minimum quorum and approval requirements. The overall trend appears to be towards imposing election standards to improve transparency in elections and avoid election fraud.

a. Election by acclamation

Some legislation also recognizes the fact that it is often difficult to get people to run for the board of elections and, as a result of homeowner apathy, elections are often uncontested. Legislation was proposed and adopted in Nevada in 2017 (Nevada Revised Statute 116.3103) permitting “election by acclamation” in the event an election is uncontested. The law provides that if, as of the close of the nominations period, the number of nominees is equal or less than the number of directors to be elected to the board, the nominated candidates are deemed elected and the

remainder of the vacancies may be filled by appointment of the board until the next regularly-scheduled election.

Similar legislation has been proposed in California for the past two years, most recently as Assembly Bill 1426. The reason for the proposed legislation is to reduce the costs associated with the statutorily-required dual-envelope mailed secret ballot system if the results of the election are already known. The proposed legislation contains a number of requirements that an association must meet before an election is declared uncontested, however the legislation has been strongly opposed because of concerns that it creates “cronyism” in association boards of directors.

b. Qualifications for candidates; requirements of directors

Another trend is imposing statutory qualifications for candidates to boards of directors. Detailed legislation was proposed in Massachusetts (House Bill 687), which included the following qualifications for candidates to the board: (1) the candidate is up-to-date in assessments and condominium maintenance fees; (2) the candidate is a current unit owner; (3) the candidate is up to date on city or town property tax assessments; and (4) the candidate is not subject to a current foreclosure.

Legislation was proposed in New Jersey (Assembly Bill 4091) that, among other things, established a statutory definition for “good standing” for voting and for candidates for the board. The bill defined a member in “good standing” as: (1) in compliance with the governing documents; (2) current in the payment of common expenses, late fees, interest on unpaid assessments, legal fees, or other charges lawfully assessment; and (3) no failure to satisfy a judgment for common expenses, late fees, interest on unpaid assessment, legal fees, or other charges lawfully assessed. The bill further provides that a member is in good standing if he or she is in full compliance with a settlement agreement with respect to the payment of assessments, legal fees or other charges lawfully assessed, or the association member has a pending, unresolved dispute concerning charges assessment which dispute has been initiated through an alternative to litigation.

Legislation does not stop at qualifications for candidates; it may also include requirements for directors once in office. In a bill (Senate Bill 244) that was ultimately vetoed by New Mexico’s governor, board members would have been required to certify in writing to the secretary of the association within 90 days of election or appointment to the board that the member: (1) has read the community documents; (2) will work to uphold the community demands and policies to the best of the member’s ability; and (3) will faithfully discharge the member’s duties to the association.

c. Court Decisions Regarding Elections

California's law regarding elections and voting requires that every association adopt election rules which, among other things, include qualifications for candidates. In *Friars Village Homeowners Assn. v. Hansing* (2013) 220 Cal.App.4th 405, the Association's Bylaws contained requirements that candidates for the Board be record owners of property within the development and reside in the development. The Association's Board of Directors adopted election rules that imposed additional qualifications on candidates, including rules preventing a person from seeking a position on the Board if the candidate was related by blood or marriage to any current board member or to any current candidate for the board (called the "relationship rule"). The election rules also included a requirement that each candidate be in "good standing" to run for the Board (i.e., current in the payment of assessments and other obligations). Mr. Hansing argued that the relationship rule violated his statutory right to self-nominate and that the rule was inconsistent with the other governing documents (making the rule unenforceable). The California Court of Appeal determined that the right to self-nominate only applied to candidates who met all the qualifications, that the relationship rule was not inconsistent with the governing documents or the law, and that the relationship rule was reasonable and designed to protect the best interests of the Association (to avoid voting blocks on the Board).

d. Governing Document Trends

Depending on applicable law and the governing documents, an association may be able to adopt procedures whereby a vote by ballot can be avoided if the results of the election are predetermined (i.e., the election is uncontested).

With respect to qualifications for candidates, it would seem to be in every association's best interests to adopt qualifications to ensure that those who run for election to the association's governing body meet certain basic qualifications designed to ensure that the candidate will be able to serve to protect the association's best interests. Often the term "member in good standing" is utilized but is not defined in either the applicable law or the governing documents. In the event the law and the governing documents do not contain a definition, association should establish good standing qualifications (including a definition for "good standing") and any other qualifications that are in the best interest of the particular association in terms of its own self-governance.

[A sample board qualification bylaws provision and a Board Conduct Policy is included with these materials]

5. A Horse of a Different Color- The trend against Fake Service Dogs and Assistance Animals.

Although not necessarily a community association legislative “trend” per se, one need not look too long before finding a news story about a community association dispute over a service animal. Many a community association lawyer has addressed their share of miniature terrier versus Labrador disputes, usually in lobbies or elevators. Immediately, the owner of the attack-terrier claims service animal protection, despite the fact that the owner is not disabled. A Google news search for “fake service dog” returns approximately 3,670,000 hits. It is not unusual for a community association resident or restaurant patron to pass off their miniature schnauzer as their service animal. This trend has recently led state governments to try to curb the problem through legislation, not aimed at community associations but possibly applicable (or at least available) nonetheless. These laws criminalize the intentional misrepresentation of service animals. The push to crack down on fake service animals has been gathering steam in recent years: Virginia implemented its new law in 2016, and Colorado followed suit this year. Massachusetts is now considering a similar proposal. The Massachusetts house bill seeks to apply a \$500 fine to pet owners who even falsely imply that their animal may be a service dog. In California, the penalty is \$1,000 and up to six months in jail. Yet, despite the fact that many states now have laws criminalizing the misrepresentation of a pet as a service animal, there remains considerable confusion surrounding what a service dog actually is. A bill introduced in Wisconsin threatens to add to the confusion by blurring the line between service animal and support or comfort pet. If it becomes law, you'll be able to take any animal on a plane simply by telling the airline that it's an Emotional Support Animal (ESA). The bill seems to include ESAs in its definition of service animals.

Service dogs, which are trained to perform tasks for a person with a disability, were first used by people with vision and hearing impairments. They are now also used by those who use wheelchairs or have other impairment in mobility, people who are prone to seizures or need to be alerted to medical conditions, like low blood sugar, and people with autism or mental illness. The American Humane Association, which promotes the welfare and safety of animals, says there are 20,000 service dogs working in the U.S.

Supporters of these new laws compare those misbehaving dog owners to people who acquire handicap signs, so they can park in spaces intended for disabled people.

Service dogs receive extensive training to work or perform tasks for the benefit of an individual with a disability. But our confusion between the laws applicable to service dogs and comfort animals and our reluctance to challenge a resident passing off a fake has allowed many imposters to go unchallenged. The growing use of ESAs which are intended to provide comfort to those with anxiety or other emotional problems adds to the confusion. Those who want to pass off

their pet as a service dog, do so easily and convincingly. People are hesitant as they don't want to offend legitimate use of a service dog by a disabled person.

Moreover, when confronted with a person who alleges to be disabled and who states their dog is a "service dog" the only questions that may be asked are: is the dog a service animal required because of a disability? And, what work or task the dog is trained to perform? The federal Americans with Disabilities Act (ADA) defines service dogs as "dogs that are individually trained to do work or perform tasks for people with disabilities." The work or task must be directly related to the person's disability. However, dogs are not required to be certified, to wear any identification, to have an ID card, or to be professionally trained. "Assistance animal," on the other hand, is defined in the Fair Housing Act as an animal that works, provides assistance or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Of course, while vests may help the fake service dogs gain entry, their behavior, and that of their owners, often gives them away. Trained service dogs don't bark, knock things down, jump on people, play or fight with other dogs. And owners of real service dogs don't carry them in their bags or in shopping baskets. The sentiments expressed in the language of these "fake service dog" laws is that having a service dog is not a free pass to any violations of the law. People must be comfortable enough to ask the right questions.

Last June, Colorado Gov. John Hickenlooper signed House Bill 16-1426 "Concerning Intentional Misrepresentation of Entitlement to An Assistance Animal" into law. The law makes it a criminal offense to misrepresent a dog as a service dog or for someone to misrepresent themselves as a disabled person. Persons knowingly violating the law may be fined \$25 for a first offense to up to \$500 for a third offense. The law also provides for the education of the public on the issue, including law enforcement officials; the new law specifies the requirements for professionals to determine if someone disabled and in need of a service dog. In July, 2017, Wyoming became the 16th state in the nation to enact laws relating to misrepresenting service animals. House Bill 114 makes doing so a misdemeanor offense, punishable by a fine up to \$750. In California, under Penal Code 365.7 PC, "service dog fraud" is a misdemeanor. Potential penalties include up to six (6) months in county jail and/or a fine of up to one thousand dollars (\$1,000).

A similar law on the books in Florida classifies misrepresenting a dog as a service animal as a second-degree misdemeanor. Those who are caught breaking the law face a \$500 fine and up to 60 days in jail. In addition, they must perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than six months.

In today's community associations many animals are passed off as "assistance animals." While management and staff are entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability, if the disability and need for accommodation is obvious or known, then the housing provider may not request additional information. If the disability or reason for the accommodation is not obvious or known, a medical professional, service agency, or a reliable third party in a position to know about the disability may also provide verification of a disability.

With fake service dog laws on the books, community associations should consider amending their governing documents to incorporate language addressing service dogs and comfort animals (and the laws criminalizing fakes) into their CC&Rs, rules or policies, and specifying that misrepresentation of an assistance service animal is a criminal offense. Reference to state law on fake service animals can not only deter misrepresentation of animals as assistance animals but also empower community association management, staff and boards to ask the right questions in order to prevent those who seek to evade the community's animal restrictions.

6. Reacting to Disasters: Knee Jerk Legislation

When tragedy strikes, it is human nature to consider what could be done to prevent a reoccurrence. However, in its zeal to protect, legislators sometime go way overboard in well-meaning but ineffective and needlessly expensive ways. One example of this type of scenario has arisen in California regarding balcony safety and maintenance. On June 16, 2015, six students were killed, and seven students were injured when a balcony on which they were standing collapsed. The event occurred at an apartment complex in Berkeley, California. In response to the tragedy, the City of Berkeley adopted emergency legislation requiring periodic inspections of balconies and repair of any damage which poses a threat to health and safety.

In 2017, Senate Bill 721 was proposed in California. The proposed law is modeled after the City of Berkeley's ordinance and applies not only to apartment buildings, but to condominium projects as well. If adopted, the law would require associations to inspect and verify the condition of "building assemblies" that the association has an "obligation to repair, replace, restore or maintain" every six years. "Building assemblies" is defined as "balconies, decks, porches, stairways, walkways, entry structures, and their supports and railings" that extend beyond the exterior walls of the building, have a walking surface elevated more than six-feet above ground level and "rely in whole or in substantial part on wood or wood-based products for structural support or stability. . . ." Associations would be required to verify that the building assemblies and their associated waterproofing elements are in a "generally safe condition" and in "adequate working order" so that the health, safety and welfare of the public or occupants is not in danger.

Senate Bill 721 raises a number of concerns regarding the extent of the “inspection” required and the risks inherent to associations and their contractors in “verifying” the condition of the building assemblies which go beyond the scope of this manuscript. Senate Bill 721 also provides that, if a building assembly is “found to be in need of repair or replacement, hazardous, structurally deficient, or non-compliant by the inspector” it “shall be corrected by the association.” Even conditions that do not pose an immediate threat to the safety of the occupants must be repaired in less than a year and conditions that impose an immediate threat must be repaired.

As proposed, Senate Bill 721 specifies that all required repairs are “emergency situations” for the purpose of levying assessments; emergency assessments can be levied without a member vote. The financial impact on associations and their members if this bill becomes law could be crushing. The onerous inspection and testing burdens will create a tremendous strain on the budgets of both associations and their members. Even if all building assemblies are found to be in perfect working order, the cost of mandatory destructive testing and evaluation of components by an architect, contractor, and structural or civil engineer every six years will require significant increases in budgets and assessments. This could very well result in diminished property values and increased foreclosure rates and could push seniors and others on fixed incomes out of condominium ownership.

Especially troubling about Senate Bill 721 is the fact that it was proposed in response to an incident at an apartment complex, not a condominium association where the balconies are typically owned by all owners in common and the governing board has an existing legal obligation to inspect, maintain and repair building components and budget accordingly.

Florida seems to have engaged in a similar overreaction with regard to its fire safety laws. Florida’s fire prevention and control law, Ch. 633, F.S., designates the state’s Chief Financial Officer (CFO) as the State Fire Marshal. The State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules. The state fire prevention codes and standards required existing multi-family buildings 75 feet or taller, including condominiums and cooperatives, to be retrofitted with fire sprinkler systems. The deadline for retrofitting of condominiums and cooperatives has been extended from time to time.

The Florida Fire Prevention Code allows an engineered life safety system (ELSS) as an alternative to a sprinkler system, and defines an ELSS as a system that consists of a combination of: 1) partial automatic sprinkler protection; 2) smoke detection alarms; 3) smoke control; and 4) compartmentation or other approved systems. In 2003, the Legislature amended the requirement to retrofit a residential condominium or cooperative building by providing that unit owners in residential condominiums and cooperatives may vote to forego retrofitting a building with a fire sprinkler system or engineered life safety system (ELSS) upon the approval of two-thirds all voting interests in the affected condominium or cooperative. However, residential condominiums and cooperatives could not vote to forego retrofitting a sprinkler system in any “common area” of a “high rise” building. In 2010, the Legislature again amended the law regarding retrofitting by: 1) providing that unit owners may vote to forego retrofitting a sprinkler system in common areas of a high-rise building; 2) reducing the voting requirement to forego retrofitting a sprinkler system from a two-thirds vote to a majority vote; and, 3) prohibiting local government from requiring retrofitting before the end of 2019. The Legislature also removed the ability of a residential condominium or cooperative to vote to forego retrofitting a building with an ELSS. Currently the law provides that an association, condominium, or unit owner is not required to retrofit common elements, association property, or units of a residential condominium to meet current codes in a building that has been certified for occupancy by the applicable government entity if the unit owners vote to forego retrofitting by majority vote. There is currently no statutory authority for condominiums or cooperatives to forego retrofitting a building with an ELSS.

House Bill 653, introduced in Florida in 2017, would have: 1) allowed a condominium to vote to forego retrofitting of an ELSS as well as a fire sprinkler system by a two-thirds vote of the members, allowing all condominium buildings greater than 75 feet in height to vote to waive retrofitting requirements; and 2) prohibited a local authority from requiring retrofitting of a fire sprinkler system or ELSS until on or after January 1, 2022.

Although sensitive to the extreme financial burden that fire-protection retrofitting has on the cost of living for Florida residents, in the immediate aftermath of the London Grenfell High Rise fire that took over 70 lives Florida Governor Scott vetoed the bill concerned that it allows condominium residents to opt out of any sanctioned fire retrofitting method which “creates an extremely dangerous environment for both residents and first responders.”

Although the existence of safe building assemblies and fire safety measures are essential to ensuring safe residential communities, micro-managing community associations by dictating when and how the common owners maintain, repair and protect their properties, is counterintuitive to the idea that common interest developments were created to take the burdens off of government and allow residents to regulate themselves in their own private

residential communities, including evaluating the community's shared needs and determining on their own what is in their particular community's best interest. Recent trends suggest that state legislatures want it both ways: they want to shift the cost of municipal services on to private residential community associations while telling them when and how we should spend the owners' money or what is in their own best interest. Legislation that dictates the timing and extent to which communities maintain and repair their property interferes with the common interest development budget and reserve processes and will result in assessment increases that could bankrupt associations and their members.

[END]

Sample forms follow.

SAMPLE GOVERNING DOCUMENT PROVISIONS

Artificial Turf

**Green Acres Community Association
Artificial/Synthetic Turf Rules and Guidelines**

These Rules and Guidelines relate to the installation, maintenance and replacement responsibilities pertaining to artificial or synthetic turf (or lawn or grass) on [separate interest, exclusive use common area]; they are adopted pursuant to [rule adoption authority].

1. Definitions. All capitalized terms that are not otherwise defined in these Rules and Guidelines shall have the meanings ascribed to them in [reference to definitions document].

2. Application. The installation of artificial/synthetic turf is subject to the provisions of the CC&Rs regarding design review and any Design or Architectural Guidelines. An Owner who wishes to install artificial/synthetic turf is required to submit an application and notify the Design Review Committee (“DRC”), in writing, of the nature of the proposed improvement/alteration and furnish such information and documentation as the DRC may require, including any plans and specifications. An Owner who wishes to install artificial/synthetic turf must submit an application to the Association’s management company, and receive notification of DRC approval, **PRIOR** to installation of any artificial/synthetic turf. A complete application to install artificial/synthetic turf shall include: (i) the application; (ii) plans and specifications as described below; (iii) sample of artificial/synthetic turf, as described below; (iv) proof of minimum standards for artificial/synthetic turf, as described below; (v) identification of the color of the proposed artificial/synthetic turf; (vi) a sample of the infill or “top dressing” to be used, as described below; (vii) information about permeable backing, base and drainage, as set forth below; (viii) proof of contractor’s licensing and insurance, as described below; and (ix) a copy of the manufacturer’s warranty. The DRC may request additional information prior to rendering a decision on an application to install artificial/synthetic turf.

3. Plans and Specifications; Sample. Any Owner who wishes to install artificial/synthetic turf shall submit, with the application and other information required by these Rules and Guidelines, the following: (i) a site plan showing where the artificial/synthetic turf will be installed; (ii) a brochure or spec sheet from the contractor showing the proposed material; and (iii) a detailed description of the sub-grade preparation. In addition, the Owner must provide a sample of the turf. The sample must: be at least 6” x 6” in size; identify where the turf was manufactured (e.g., USA, China); and identify the turf manufacturer. The turf manufacturer must be a member of the Synthetic Turf Council (syntheticturfcouncil.org). Only 100% polyethylene turf is permitted. Artificial/synthetic turf and all infill materials must be free of lead and any other heavy metal materials.

Each plan must comply with all local ordinances, including [applicable ordinances].

4. Minimum Standards. The standards for the artificial/synthetic turf with respect to Face Weight, Tufting Gauge, Pile Height, and Net Backing Weight must be provided at the time the application is submitted, and the minimum standards set forth below must be met.

However, artificial/synthetic turf that meets the minimum standards may not be installed without the approval of the DRC.

Turf Term	Association Standard	Definition/Association Standard
Face Weight (or Pile Weight)	Minimum of 60 ounces	The "Face Weight" refers to the amount of material per square yard. For example, a 36-oz. piece of turf will seem sturdier than an 18 oz. piece of the same yarn type because there is more yarn in the same size piece of turf. Shadow Lakes requires a minimum face weight of 60 oz.
Tufting Gauge	Minimum of ½ inch	The distance between two adjacent lines on the backside of the backing material, usually using "inch" as the unit. Shadow Lakes requires a minimum tufting gauge of ½".
Pile Height	Minimum of 1.75 inches and maximum of 3 inches	The height of the pile (the "carpet" or "yarn" on top of the artificial grass backing), usually measured in inches. Shadow Lakes requires a pile height of at least 1.75 inches and no more than 3 inches.
Net Backing Weight	Minimum of 20 ounces	This is the total weight of the layers of primary backing and the ounces of secondary coating used per square yard. The average turf has 6-8 ounces of primary backing and about 20 ounces of secondary backing for a total of 26-28 ounces per square yard. Shadow Lakes requires a net backing weight of at least 20 ounces.

5. **Color.** Only color blends (at least two colors and preferably three) shall be accepted. "Field green," "olive green" and "lime green" blends are preferred for a natural look.
6. **Infill.** A sample of the infill (or "top dressing") to be used shall be provided (in a plastic bag) with the application and other materials/documentation identified herein. Only infill of the silica sand variety is permitted; rubber infill (made from old tires) is prohibited. The use of landscape spikes as an alternative to infill or top dressing is prohibited.
7. **Permeable Backing, Base and Drainage.** Turf backing must be completely permeable to allow for uniform and complete drainage. A complete application must identify the base rock depth. The base must be at least two (2) inches of permeable base mixture compacted and shaped for a natural look. It is suggested that wire mesh be installed under the base rock. A minimum drain rate of 30 inches per hour to an adequate drainage system underneath the artificial/synthetic turf is required to prevent run-off, pooling, and flooding.

8. Contractor Standards. Contractor must: (i) be licensed by the Contractors State License Board (CSLB) and (ii) carry general liability and workers compensation insurance.
9. Warranty. A minimum warranty of ten (10) years for full replacement against manufacturer's defects, installation, ultraviolet light degradation, and weed barrier is required. A minimum warranty of one (1) year for labor is required.
10. Permits and Approvals. All necessary permits and approvals from municipalities or other jurisdictions are the sole responsibility of the applicant. A copy of any required permit(s) must be submitted with the application.
11. Fees; Consultants. The DRC may charge a reasonable fee or fees for the review of artificial/synthetic turf applications, drawings, plans, and specifications, which may include the cost of retaining outside consultants including, but not limited to, artificial/synthetic turf installers, landscapers, soils experts, or other contractors.
12. Installation. Artificial/synthetic turf must be installed in such a way as to appear seamless and uniform. Rolls must be installed so that the blades all lean in the same direction and toward the street. An appropriate solid barrier device (i.e., concrete mow strip) is required to separate artificial/synthetic turf from soil and live vegetation. The border shall be $\frac{1}{4}$ to $\frac{1}{2}$ inch lower than the hardscape. Artificial/synthetic turf shall be trimmed to fit against all regular and irregular edges to achieve a natural look and shall be installed to allow for expansion and contraction with changes in seasons and temperatures to avoid rippling and stretching. The artificial/synthetic turf must be secured with nails every 8 to 12 inches along the perimeter and every 6 to 8 inches along the seams.

The installation of artificial/synthetic turf against a light-colored house is not recommended as the turf can melt with sun/heat exposure. It is recommended that windows facing artificial/synthetic turf reflect sun or are anti-glare; heat from the sun off of windows can melt and/or discolor artificial/synthetic turf.

13. Inspection. The DRC reserves the right to inspect the artificial/synthetic turf prior to installation to confirm that the artificial/synthetic turf complies with that approved by the DRC. The DRC reserves the right to inspect the artificial/synthetic turf after installation to ensure the artificial/synthetic turf installed complies with any conditions of approval and these Rules and Guidelines.
14. Maintenance. Artificial/synthetic turf must be maintained in like new condition, color and uniformity with no tears or seams visible. Faded artificial/synthetic turf must be promptly replaced pursuant to these Rules and Guidelines. Pile must be maintained with regular raking as necessary for natural-looking pile. Additional infill must be added as necessary. Leaves and other debris must be removed regularly. Ripples in artificial/synthetic turf must be stretched and tightened as necessary.

15. Repair and Replacement. The Board of Directors reserves the right to require removal/replacement of any area of artificial/synthetic turf which does not meet the standards set forth in these Rules and Guidelines or when installation or maintenance is inconsistent with the conditions of approval and/or these Rules and Guidelines. Tears, ragged edges, loose turf, faded turf and similar issues must be repaired within 30 days of discovery, or upon notice by the Association of the need for repair. When artificial/synthetic turf reaches the end of its lifespan and no longer appears natural in color and appearance, or has suffered irreparable damage or wear, the turf must be replaced. The approval of the DRC is required for any landscaping change, including the replacement of artificial/synthetic turf.

16. No Liability for Design Review. Neither the Board nor the DRC shall be liable for approval or disapproval of an application. Additionally, neither the Board nor the DRC shall be responsible for any damage to artificial/synthetic turf, including damage from tree roots, following artificial/synthetic turf installation.

The foregoing Artificial/Synthetic Turf Rules and Guidelines were adopted by the Board of Directors of Green Acres Community Association at an open meeting of the Board held on _____, following notice to the Members, the opportunity for Member comment, and Board consideration of Member comments.

GREEN ACRES COMMUNITY ASSOCIATION

Date: _____

By: _____
[name; officer position]

Clotheslines

ARID HILLS COMMUNITY ASSOCIATION

RULES REGARDING CLOTHESLINES AND DRYING RACKS

1. Clotheslines and drying racks are permitted only in enclosed backyards designated for the exclusive use of the [separate interest] owner. For the purposes of these Rules, the term “backyard” includes any enclosed yard area located behind a residence and also includes any ground-level, enclosed patio.
2. “Clothesline” shall include a cord, rope or wire from which laundered items may be hung to dry or air. A balcony, railing, awning, or other part of a structure or building does not constitute a clothesline.
3. “Drying rack” means an apparatus from which laundered items may be hung to dry or air. A balcony, railing, awning, or other part of a structure or building shall not qualify as a drying rack. Furniture, exercise equipment and bicycles shall also not qualify as drying racks.
4. Clotheslines and drying racks may not extend above the fence line and must not be visible from the Common Area. Clotheslines and drying racks must be screened from the view of adjacent [separate interests] to the greatest extent possible.
5. Clotheslines and drying racks may not be permanently affixed to any structure, including any building, fence or outbuilding. Owners shall be responsible for any damage to property the maintenance, repair and replacement of which is the responsibility of the Association caused by the installation or use of clotheslines or drying racks.
6. Clotheslines and drying racks must be maintained in good working order. Laundry should be removed promptly after it has been dried or aired. Any clothesline or drying rack that is not in good working order must be removed.

Solar Installation Policy

MOUNTAIN SHADE VILLAS CONDOMINIUM ASSOCIATION

SOLAR ENERGY SYSTEM APPLICATION AND INSTALLATION RULES

The Mountain Shade Villas Condominium Association is supportive of measures aimed at protecting the environment and solar power generation, and supports the proper installation of solar energy systems as a way to produce clean energy and reduce dependence on other pollution generating sources of power. However, these objectives must be balanced against reasonable community architectural and aesthetics standards and safety.

Any solar energy system must meet applicable health and safety standards imposed by the state and local permitting authorities. Further, the installation of solar panels on certain areas has the potential to impact common area or areas maintained by the Association and consequently lead to water intrusion and damages to Units. Therefore, strict adherence to these rules is required prior to any owner installing solar energy systems. All applications for installation of Solar Panels shall be reviewed in accordance with these Architectural Standards and shall comply in all respects with Civil Code Sections 714 and 714.1, and 4746.

PRIOR APPROVAL

No solar energy system installation may commence until the plans and specifications have been submitted to and approved by the Board of Directors in accordance with these Standards and the CC&Rs. Compliance with these rules and the CC&RS is separate and apart from compliance with City or County building permit requirements. The approval by the Board of any solar energy system installation does not waive the necessity of obtaining any City and/or County permits, and obtaining required City and/or County permits does not waive the need for ARC approval.

Requirements for Solar Energy Equipment Installation.

Any approved system will be conditioned upon the following:

1. The Owner must submit a report prepared by a qualified consultant showing that the proposed installation site is suitable for the proposed installation, and that the solar energy system's installation will not present a risk of damage to any roof or structure, common area or another separate interest.
2. For any installation on a common area roof or adjacent exclusive use garage or carport, the Owner must also do the following:
 - a. Notify the owners in the building where the solar is intended to be installed.
 - b. Agree to maintain and provide proof of homeowner liability coverage.
 - c. Submit a solar site survey showing the placement of the solar energy system to determine the usable solar roof (or adjacent carport or garage area).

- d. Include with the solar site suitability survey a determination of equitable allocation of usable solar roof area among all owners sharing the same roof, garage, or carport. Owner's solar installation area shall be limited to Owner's share of the equitable allocation of solar roof area. The Association shall not be required to prune or require pruning, trimming or removal of trees and/or shrubs to accommodate the installation of the solar energy system.
- e. The cost of the solar site suitability survey and equitable allocation shall be the owner's responsibility.
- f. Provide for installation only be by a licensed and properly insured installer knowledgeable in the installation of solar energy systems. Prior to installation, the installer shall have insurance coverage that meets the following minimums: (i) Worker's Compensation with minimum coverage required by California law; and (ii) Contractor's General Liability and property damage insurance with policy limits of at least \$1,000,000.00. The installer must, prior to installation, provide copies of certificates of insurance for the above policies and endorsements which name the Association as additional insured.
- g. Agree to assume all maintenance, repair, replacement and/or removal of the solar energy equipment, as well as pay the cost to restore the common area following removal and, to remove and reinstall the equipment to allow for roof and roof-related maintenance, repair or replacement.
- h. Agree not to permit the solar energy system to become a hazard or fall into disrepair. Owner shall be responsible for correction of any safety hazards and solar energy system repair and/or replacement. Owner shall be responsible for the cost of repainting or replacement of the visible ancillary components of the solar energy system, such as conduits, plumbing and supports.
- i. Agree to pay the costs of damage to the common area, exclusive use common area or separate interest resulting from the installation, maintenance, repair, replacement or removal of the solar energy system.
- j. Agree to disclose to prospective buyers the existence of any solar energy system and the separate interest owner's responsibility for same.
- k. Agree to take all steps necessary to protect any existing roof warranty and to be responsible for damage to the Association as a result of a roof warranty voided from the installed solar energy system.
- l. Agree that there shall be no exposed penetrations into building structures, walls and roofs, from the installation and operation of the system. Any penetrations for wiring or piping for the solar energy system shall be properly sealed and

waterproofed in accordance with industry standards and building codes in order to prevent moisture penetration and resulting structural damage.

3. To secure the Owner's agreement and obligation associated with placement of the solar energy system in common area or exclusive use common area, the Owner shall execute a Covenant regarding installation of solar energy system which shall be recorded with the County Recorder's office and which shall contain the following provisions. The Covenant shall be prepared by Association legal counsel and paid for by Owner.
 - a. Owner shall covenant, warrant, promise and agree that said Solar energy equipment will be installed in accordance with the manufacturer's instructions and all applicable building codes and regulations.
 - b. Owner shall assume all liability for damage or injury to the Project, the Common Area, Owner's separate interest and to other separate interests in the community and to other persons caused or contributed to by the installation, maintenance, use and/or removal of the solar energy equipment. Owner is expressly responsible for any and all damage caused by the Solar energy equipment installation and maintenance.
 - c. The Owner agrees to defend, indemnify and hold harmless the Association and any resident for any loss, damage or from any claim or liability caused by or arising from the installation, maintenance, use and/or removal of the solar energy equipment.
 - d. Owner shall agree to maintain the Solar energy equipment and any portion of the Property affected by the installation of the Solar energy equipment including, but not limited to any required repairs in and around the area of the solar panel installation.
 - e. Owner understands and agrees that the solar energy system shall be used by Owner only and for the purpose of generating electricity for use by Owner's Unit. Failure to abide by this provision shall constitute a breach of this Covenant.
 - f. At such time as the covenant ceases or is terminated, or at such earlier time as the Owner removes the Solar Equipment, Owner shall at Owner's sole expense, restore the affected area of the Property, including but not limited to, any roof and roof system, to its condition prior to the installation.
 - g. Owner will agree that at any time the Association requires the Solar energy equipment to be removed to allow the Association access to the area, Owner agrees to remove the panels within ten (10) business days' notice at Owner's sole cost and expense. If the Solar energy equipment is not removed within ten (10) business days, the Association may proceed to remove it and specially assess the Owner for any and all costs associated with the removal. It is expressly

understood that such a special assessment shall be subject to enforcement and lien as a regular Association assessment, pursuant to the CC&Rs and applicable Civil Code provisions.

- h. If Owner does not comply with any of the obligations under this Covenant, after ten (10) business days written notice, the Association may remove the solar energy equipment, restore the affected area, and specially assess the Owner for any and all costs associated with the removal and restoration. It is expressly understood that such a special assessment shall be subject to enforcement and lien as a regular Association assessment, pursuant to the CC&Rs and applicable Civil Code provisions.
- i. The right to maintain the solar energy equipment on the roof may be terminated upon thirty (30) days advance written notice from Association to Owner, or ten (10) business days after Association issues advance written notice of a breach of this Covenant by Owner, if said breach is still not corrected by the tenth (10th) day after issuance of the notice.
- j. The rights granted by the Association as reflected in this Covenant shall not be transferrable without the express written approval of the Board of Directors. If a buyer or a transferee does not agree in writing to assume responsibility for the solar energy system, all solar energy equipment shall be removed by the Owner, and the affected roof area restored to their condition prior to the installation, no less than thirty (30) days prior to any sale or transfer date. The Association shall specially assess the Owner, or any subsequent owner of the Lot for any and all costs associated with the removal of the solar energy equipment and restoration of the roof and other affected areas. It is expressly understood that such a special assessment shall be subject to enforcement and lien as a regular Association assessment, pursuant to the CC&Rs and applicable Civil Code provisions.
- k. Owner agrees to have all Solar energy equipment regularly maintained and in good repair. If Owner fails to maintain the Solar energy equipment then upon (10) days written notice, the Association may cause the removal of the Solar energy equipment and restoration of the affected roof areas. The Association shall specially assess the Owner for any and all costs associated with the removal and restoration of the roof and other affected areas. It is expressly understood that such a special assessment shall be subject to enforcement and lien as a regular Association assessment, pursuant to the CC&Rs and applicable Civil Code provisions.
- l. Owner understands and agrees that the Association shall have no liability or responsibility to Owner arising out of the approval of any plan, drawing and/or design. Further, by approving the application, the Association shall have no liability or responsibility arising out of: (1) the safety, structural integrity, workmanship, engineering and/or the soundness of the plan, drawing and/or

design in the application itself or the work performed pursuant thereto; and/or (2) the compliance with Health & Safety or building codes or other laws or ordinances applicable to the proposed plan, drawing or design.

CONTENTS OF APPLICATION

All applications for solar energy equipment installation shall be submitted to the Board of Directors care of the Association Manager. Each application must be complete when submitted and shall include:

1. A sketch, drawing or architectural plans detailing the location and dimensions of the installation, including photographs depicting the panels and equipment as installed. The application shall identify the panel manufacturer and model number and provide present detailed drawings/maps that show the location of the proposed equipment.
2. The name and license number of the contractor(s) performing the work.
3. Detailed specifications for the solar energy system.
4. A solar site survey completed by a licensed contractor qualified in the installation of solar energy systems showing the placement of the solar energy system to determine the suitability of the area where the equipment is to be installed and , in the case of installation on a common area roof, garage or carport, the usable solar roof area(or adjacent carport or garage area) along with a determination of the equitable allocation of usable solar roof area among all owners sharing the same roof, garage, or carport.
5. Proof of notification to all owners in the building where the solar energy system will be installed.

Enforcement: Failure to obtain the necessary approval from the Board constitutes a violation of the CC&Rs and may require removal of work at Owner's expense. The Association has the authority to commence legal actions to restrain any threatened breach of these restrictions and to enforce all of their provisions, which provides for the reimbursement to the Association for legal fees and expenses to enforce compliance. Should any owner fail to commence work within six (6) months of approval, the approval shall be deemed revoked and applicant must submit a new application for approval, prior to commencement of any installation.

Smoking

Sample CC&Rs Amendments

Prohibition on Smoking. In order to protect the health, safety and welfare of all Residents of the Development; to comply with [local smoking ordinance reference here]; and to protect against damage to the Development caused by fire, the smoking of cigarettes, e-cigarettes, cigars, any other tobacco or nicotine product, marijuana, and/or other legal or illegal substance in the Common Area, whether indoors or outdoors, including Exclusive Use Common Area, is strictly prohibited. "Smoking" shall include the inhaling, exhaling, burning or carrying of any lit cigarette, cigar, e-cigarette, any other tobacco or nicotine product, marijuana, and/or legal or illegal substance, and shall include smoke and vapor from any activity drifting from the interior of a Unit to the Common Area.

Section 1.01 Smoking.

Smoking Prohibited in Common Area. The Association Common Areas are smoke-free. No owner, family member, tenant, resident, guest, business invitee, or visitor shall smoke cigarettes, cigars, e-cigarettes, or any other smoking product, anywhere within the Common Areas of the Property. This prohibition shall include outside and enclosed Common Areas, and exclusive use common areas.

Disclosure. Any owner who sells his/her unit shall specifically disclose to all potential buyers and realtors that smoking is prohibited in Common Area. Any owner who rents or otherwise allows someone other than the owner to reside within or occupy their Unit shall disclose to all persons who reside within his/her Unit that smoking is prohibited within all Common Areas, prior to their residency or occupancy.

Enforcement. Each owner is responsible for the actions of all other persons residing within or visiting his/her unit and shall be subject to disciplinary action or a court action for an injunction, or any remedies available for the violation of this section. This section may be enforced in a court of law by any resident or the Association. If any resident or the Association is required to hire legal counsel to enforce this section, the resident or the association shall be entitled to recover his/her or its attorney's fees and costs incurred, whether or not litigation has been commenced. The association may collect the attorney's fees and costs it incurs through the use of a special assessment levied against the owner of the unit and an assessment lien, if necessary.

OPEN AIR HOMEOWNERS ASSOCIATION

Proposed rule regarding Secondhand smoke abatement

Cigarette and Cigar Smoke Abatement

In the event a complaint is filed with the Association by any owner or resident about secondhand cigarette or cigar smoke coming from any unit, including but not limited to the unit balcony area, the residents of the unit where the secondhand smoke originates, upon notice from the Board of Directors or Management, shall be prohibited from smoking in their unit without suitable smoke abatement equipment. Such equipment may include, but not be limited to, ash tray purifiers or air purifiers designed to reduce or eliminate secondhand smoke. In the event the unit where the smoke originates is not owner occupied, it shall be the responsibility of the unit owner to require the tenant comply with these smoke abatement procedures.

Information about samples of suitable secondhand smoke abatement devices are available with Association Management upon request.

NO BREEZE COMMUNITY ASSOCIATION

Rule change Re: Smoking

Smoking of any kind including, but not limited to, pipe, cigar, cigarette, marijuana, tobacco or vapor cigarettes, is prohibited anywhere within the common areas and exclusive use common areas (including, but not limited to, balconies, patios and garages) of the No Breeze Condominium property. Smoking is permitted only within an individual unit provided all measures are taken by the unit occupant to prevent smoke from escaping from the unit into the common areas, exclusive use common areas (balconies or patios) or any other unit. Any resident who allows smoke to escape their unit into the common areas, exclusive use common areas (balconies or patios) or any other unit, shall be required to install filters and other smoke mitigation devices to prevent the smoke from leaving the unit.

Short Term Rentals

PROPOSED AMENDMENT PROHIBITING SHORT-TERM RENTALS

(l) Rental Restrictions.

- (i) Requirements for Rental. An Owner who wishes to rent his or her Unit shall:
 - (aa) Do so pursuant to a written lease or rental agreement. The lease or rental agreement shall be for an initial term of at least six (6) months and shall expressly provide that its terms are subject to all the provisions of the Governing Documents (defined for the purposes of this section as the Articles of Incorporation, Bylaws, Declaration of Covenants, Conditions and Restrictions, and any operating rules) and that failure of the tenant, members of the tenant's household, invitees or guests to comply with applicable provisions of the Governing Documents shall constitute a breach of the terms of such lease or rental agreement;
 - (bb) File a copy of the signed lease or rental agreement with the Board within five (5) days after the lease becomes effective. The Owner may redact or blackout the financial terms (i.e., the amount of rent and security deposit) from the copy of the lease or agreement provided to the Board;
 - (cc) Provide the tenant(s) with a copy of the Governing Documents and any subsequent changes thereto; and
 - (dd) Notify the Board of the name of each tenant and of the members of the tenant's household.
 - (ee) Have the duty and responsibility to keep the Board apprised of his or her current address and telephone number.
- (ii) Rental of Entire Unit. No Owner shall rent or lease less than the entire Unit except as permitted in (iii), below. The preceding sentence is intended to prohibit the operation of a rooming house or similar operation within the Project.
- (iii) No Subletting or Short-Term Rentals; Roommates. No portion of any Unit shall be sublet nor shall any Owner lease a Unit for transient or hotel purposes. Owners are prohibited from offering all or part of any Unit for short-term rental (i.e., for a period of less than six (6) months), through Airbnb, VRBO or other similar websites or entities. No person who is not an Owner or resident may occupy any portion of a Unit, for any period of time whatsoever for any compensation or consideration whatsoever to the Owner or resident, including without limitation, the payment of money and/or trade and/or barter of other goods, services, or property occupancy rights; any such person shall not constitute nor be deemed to be a guest. However, a resident Owner may share his or her Unit with a roommate or other persons with whom the Owner maintains a common household and such persons may pay rent to the resident Owner, provided the term of the lease is at least six (6) months in duration.

(iv) Time-Share Arrangements Prohibited. No Unit shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time-sharing agreement, plan, program or arrangement, including, without limitation, any so-called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time-sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess any Unit in the Project rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time. This Section (l) shall not be construed to limit the personal use of any Unit in the Project by any Owner or his or her or its social or familial guests.

(v) Implementation. Upon request from the Board after this First Amendment is recorded, each Owner renting or leasing a Unit shall provide such information as the Board may reasonably require to implement the provisions of this subsection (l), including but not limited to the names of the tenants and the members of the tenants' household and the duration of the lease. Upon request by the Board, such Owners shall also provide the Board with a statement signed by the tenants acknowledging that they have read and understand the Governing Documents and will abide by the provisions contained therein.

(vi) Association as Third Party Beneficiary. The Owner and the tenant(s) of any Units subject to this Declaration shall be conclusively deemed to have agreed that the Association is an intended third party beneficiary to the contract between the Owner and the tenant(s); that failure of the tenant, members of the tenant's household, or guests to comply with the Governing Documents shall constitute a breach of the terms of the contract between the Owner and the tenant(s); and that the Association shall have the right but not the obligation to enforce the contract and to pursue every remedy available under the contract, under the Declaration, including but not limited to the rights granted pursuant to Section (vii) below, or under the law, including eviction, to the same extent as the Owner of the Unit. The Association's right to maintain an eviction action shall arise only in the event that (a) the Association has given notice to the Owner detailing the nature of the infraction and the Owner has had a reasonable opportunity to take corrective action or to appear before the Board to present arguments against eviction by the Association, and (b) the Owner has not taken action to prevent and/or correct the actions of the tenant giving rise to the damage or nuisance.

(vii) Assignment of Rents as Security for Payment of Liens. As security for the payment of all liens provided for under the Declaration, each Owner hereby gives to and confers upon the Association the right, power, and authority during the continuance of such ownership to collect the rents, issues, and profits of the Owner's Unit, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligations under the Governing Documents in payment of any indebtedness to the Association or in performance of any agreement thereunder, to collect and retain such

rents, issues, and profits as they may become due and payable. Upon any such default, the Association may at any time, upon ten (10) days' written notice to such Owner, then (either in person, by agent, or by a receiver to be security for such indebtedness) enter upon and take possession of such Owner's Unit or any part thereof, in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable legal fees, upon any such indebtedness, and in such order as the Association may determine or as required by applicable law. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default under the Governing Documents or invalidate any act done pursuant to the Declaration. The assignment of rents and powers described in this Section (vii) shall not affect, but shall in all respects be subordinate to, the rights and power of the holder of any first mortgage on any Unit, or any part thereof, to do the same or similar acts.

(viii) Owner Responsible for Tenant's Actions; Indemnification of Association. Each Owner leasing or renting a Unit shall be responsible and strictly liable to the Association for the action of such Owner's tenant(s) in or about all Units and Common Area and for each tenant's compliance with the provisions of the Governing Documents. To the fullest extent permitted by law, every Owner of a Unit that is occupied by persons other than the Owner pursuant to a rental agreement or lease or otherwise, agrees to and shall indemnify and defend the Association, its Directors and agents and shall hold them harmless from and against any cost, loss, claim or damages of any kind, arising out of the conduct or presence of the occupants of the Unit, including but not limited to legal fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or non-enforcement by the Association of the Governing Documents with respect to such occupants.

(ix) Owner Prohibited from Using Common Facilities while Unit Rented. Any Owner who leases or rents his or her Unit and does not still reside in the Project shall not be entitled to use and enjoy any Common Area facility during the period the Unit is occupied by a tenant or tenants.

Board Member Qualifications Bylaw Provision and Conduct Policy

SAMPLE BYLAW PROVISION

Director Qualifications

Number and Qualification. The Board of Directors will consist of five (5) Directors, each of whom must be a Member of the Association. No person, either in such person's capacity as a natural person or as a designated representative of an entity or artificial person, shall be a candidate for the Board of Directors, or once elected, shall continue to serve as a member of the Board if that person:

- (a) is not a Member in "good standing," as defined in these Bylaws;
- (b) is delinquent by more than sixty (60) days in payment of any Assessment, fee or fine;
- (c) is subject to other discipline by the Association for violation of the Governing Documents;
- (d) is engaged as an opponent in a legal proceeding against the Association;
- (e) resides with or has a joint ownership interest in a Lot with another Director;
- (f) has been convicted of a felony;
- (g) owns less than a one half (50%) interest in a Lot or Lots;
- (h) has failed or refused to sign the Board member conduct and ethics policy;
or,
- (i) has reached the terms limit described below.

Election and Term of Office.

- (j) The Board of Directors will be elected by vote of the general membership of the Association at an annual meeting of members called for that purpose.
- (k) Directors shall serve two (2) year terms. Terms shall be staggered so that two (2) directors will be elected in alternate years, and three (3) directors elected in the other alternate years.
- (l) Terms. Each Director shall hold office until his term has expired and a successor has been elected or until such Director's death, resignation, removal or judicial adjudication of mental incompetence.
- (m)

(n) Tie Vote. In the event of any tie between two candidates, the tie shall be decided by a single coin flip. Among those tied, the candidate with the last name earlier in the alphabet shall be “heads” and the candidate with the last name later in the alphabet shall be “tails”. A tie involving more than two persons shall be resolved by a blind drawing by the Inspector of Elections from among the candidates' names. The first name drawn by the inspector shall be elected.

TRANSPARENT GARDENS HOMEOWNERS ASSOCIATION

BOARD MEETING, DIRECTOR AND MEMBER CONDUCT RULES

In an effort to allow for more efficient, productive and professional Board meetings, the Yorba Linda Village Board of Directors adopts the following rules for the conduct of its Board meetings. These rules are intended to facilitate the Board's administration of its meetings, set forth certain Director and Member protocol, and advise Members who wish to attend of acceptable Board Meeting behavior.

A. BOARD RESPONSIBILITIES

Association directors are responsible generally for enforcing the Association's Governing Documents, collecting and maintaining the Association's financial resources, insuring the Association's assets against loss, and keeping the Common Areas maintained and in a state of good repair. In carrying out these responsibilities, directors must use their best efforts to:

1. Regularly attend Board meetings.
2. Review material provided in preparation for Board meetings.
3. Review the Association's financial reports.
4. Make reasonable inquiry on matters on the agenda before making decisions.

B. BOARD MEMBER CONDUCT

Each director must conduct himself or herself in dealings with third parties, in good faith, and in the best interests of the Association. Directors must safeguard and keep confidential information they receive in executive session, and other proprietary or confidential information that belongs to the Association and that they receive through their role as Association directors.

1. Private Gain; Self-dealing. This occurs when directors make decisions that materially benefit themselves spouses, friends, relations, or anyone who shares a personal or financial interest with the director, at the expense of the Association. Such benefits may include money, privileges, special benefits, overlooking delinquency or violations of the Governing Documents, gifts or any other item of value. Accordingly, no director shall:

- Solicit or receive any compensation from the Association for serving on the Board or any committee.
- Negotiate or provide instructions to, or contract with vendors without prior Board approval.
- Solicit or receive, any material gift, gratuity, favor, entertainment, loan, or any other thing of value for themselves or their friends or relations, from a person or company who is seeking a business or financial relationship with the Association.

- Seek or obtain preferential treatment for themselves or their relatives, use Association property, services, equipment or business for their own benefit in any material respect, except as is provided to all members of the Association.

2. Confidential Information. Directors are responsible for protecting the Association's confidential information. As such, they may not use confidential information for their personal benefit or that of their friends or relatives. Directors shall not share any confidential information obtained as a Board member with any non-Board members or third parties (other than agents, representatives or employees of the Association who also are bound to maintain the confidentiality of the information received).

Confidential information includes, without limitation:

- Private or personal information about any Association member.
- Private or personnel information about any of the Association employees.
- Disciplinary actions against Association members.
- Information about any member's delinquent assessment account.
- Legal matters in which the Association is or may be involved. Directors may not discuss the merits of pending legal matters in which the Association is involved, with persons not on the Board. Failure to follow these requirements may constitute a breach of the attorney-client privilege and may result in the loss of confidentiality in the information released.

3. Accuracy of Information. All Association data, records and reports conveyed must be accurate and truthful, in all material respects, and prepared in a proper manner.

4. Interaction with Vendors and Management. To ensure efficient management operations, avoid conflicting instructions from the Board to management and avoid potential liability, directors shall observe the following guidelines:

- The Board president shall serve as liaison between the Board and management and provide direction on day-to-day matters including but not limited to determining items to be on the agenda for upcoming meetings.
- Directors may not give direction to management, employees or vendors unless expressly authorized by the Board or these rules to do so.
- No director may interfere with the conduct of the Board during meetings or at any time management or a designated Board member is carrying out the decisions of the Board.
- Directors are prohibited from harassing, threatening or intimidating management, employees, vendors, directors, committee members, and/or owners, whether orally, in writing, physically, or otherwise.

5. Professional Behavior. Directors are obligated to act with proper decorum during Board meetings or at any time they are carrying out the business of the Association. Although a director may

disagree with the opinions of others on the Board, or with the vote of the majority, they must treat all Board members with respect and carry out the decisions of the Board as voted by the majority. Directors shall act in accordance with Board decisions and shall not act unilaterally or contrary to the Board's decisions. Further, directors are expected to conduct themselves with courtesy toward each other, and toward managing agents, vendors and Association members.

C. OPEN MEETING ACT- Member Conduct

1. General Board Meetings are open to the members to attend, pursuant to Civil Code. Any member may attend Association Board meetings unless the Board is meeting in Executive Session.

2. Members in attendance are permitted to address the Board only at the designated members comment portion of the meeting, or unless otherwise permitted by the Chair of the Board meeting, **and at no other time**. The Board may establish sign-in procedures or other methods for identifying those members who wish to be heard. Member comments made during member's open forum may be noted in the minutes at the discretion of the secretary or Board; however, the minutes will not contain the member's comments.

3. In order to allow the Board sufficient time to cover the Board meeting agenda items, members will be permitted to speak for up to three (3) minutes, unless the Board grants a member's request to speak for a longer period of time, or if extenuating circumstances require a longer period.

4. With limited exception, the Board is not permitted to discuss or take action on any item that is not on the Board meeting agenda. Therefore, the Board will not comment upon a member's open forum comments, or respond to questions raised by a member during the member's open forum.

5. Directors, members and any other individuals permitted to attend a Board meeting shall conduct themselves in a respectful, professional manner. Any member not in compliance with these rules will be asked to leave the Board meeting or escorted out if necessary. The following conduct will not be permitted:

- Rude or profane language or personal attacks.
- Racial, ethnic, gender, religious or age-based comments.
- Shouting, yelling, screaming, fist pounding or similar conduct.
- Physical threats, including non-verbal communications such as gestures or using body language in such a way as to intimidate.
- Interrupting others recognized by the Chair or otherwise permitted to speak.
- Any behavior that is intended to or has the effect of interfering with the orderly business of the Board meeting.

6. Policy Against Tape Recording or Video Taping Meetings. Board meetings are open to Association members only. Members in attendance have the right to speak freely without the fear or intimidation of being recorded without their consent. Further, the Board has the authority to adopt rules regulating conduct of attendees at Board meetings. As such, it is the policy of this Board that taping or recording of Board or Association meetings by Members or directors is strictly prohibited.

D. VIOLATIONS OF BOARD MEETING CONDUCT RULES.

1. Directors or members who violate these rules are subject to discipline including, but not limited to:

Violation by a member:

- Exclusion or removal from the Board meeting.
- Fines.
- Other appropriate discipline authorized by law or the Governing Documents.

Violation by a director:

- Censure,
- Removal as an officer of the Board,
- Recall by the membership, and,
- Legal action.
- Other appropriate discipline authorized by law or the Governing Documents.

2. Be advised that any action taken by a Board member in violation of these rules may result in a loss of Directors and Officers liability coverage or indemnity for that director in the event of a claim.

Adopted _____, 2018

Dated: _____

President

Dated: _____

Secretary