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IN THIS ISSUE

2015 ANNUAL LAW AND LEGISLATIVE UPDATE

As we celebrate our 26th anniversary providing educational opportunities for Association board members and those serving area homeowners associations, please join us for our annual law and legislative update. Numerous laws were passed in 2014, effective in 2015 and several significant California court cases were decided that affect association management and operations. Our speakers will be:

James H. Smith, Grokenberger & Smith, Santa Barbara

David A. Loewenthal, Loewenthal, Hillshafer & Carter, Woodland Hills

In addition to the update, there will be time for a moderated, written question and answer session at the end of the presentations.

Date – Wednesday, January 21, 2015
Time - 6:15 – 7:00 PM – Hors d'oeuvres and networking
7:00 – 9:00 - Program
Place – Glen Annie Golf Club – Frog Bar & Grill
405 N. Glen Annie Road, Goleta (One block north of Cathedral Oaks Road)
Cost - $25 per person – limited to 80 attendees. Mail your check and list of attendees to the P. O. Box shown above. Last year's program sold out. See enclosed invitation.

2015 COMDOMINIUM BLUEBOOKS

We have just received copies of the 2015 Condominium Bluebooks. This handy reference has been distributed by us for over 20 years as part of your membership. For those who have renewed for 2015, you will receive it before the end of the year. Books are $20 each postpaid and orders can be sent to our PO Box address shown above.

WHAT SHOULD BE INCLUDED IN MEETING MINUTES

By: Sharon D. Brimer
Professional Recording Secretary

A Case for the Story

I have been serving as a recording secretary for over 25 years. In that capacity, I have taken the meeting minutes for homeowners associations, water districts, and nonprofit groups. I have seen the good, the bad, and the ugly. The information I present to you is a case for the story. The case for the story also supports boards that are open and transparent with the people to whom they are responsible.

One way to look at meeting minutes is to view them as the "story" of the organization. You want to be able to go back to see how the board conducted its business. Just capturing motions doesn't always accomplish that goal. I also don't believe one should have to refer to the board packet (supporting documents to the agenda) for clarity on a motion or a statement.

There are many ways to document meetings. Some boards are more formal than others, and I support a formal approach. Many community associations have filed Articles of Incorporation, which are business records after all. Comments like—Suzie didn't like Mike's recommendation—don't belong in meeting minutes.

At a minimum, what do you need in meeting minutes? Be sure to include the name of the association, the date, place, and time of the meeting, the names of the directors, and a listing of "others present". Who are the "others present"? I make a general rule that invited guests and staff, as well as anyone who makes a presentation, should be shown in the "others present" listing. Some boards also list "owners present". While some would argue against listing the owners' names in the meeting minutes, doing so can be helpful. Whenever there is a discussion about who was present, adding the owners' names ends the back and forth conversation: Was Mary there? No, I don't think so. Well, yes, I think she was. Bam, in the blink of an eye, 30 seconds are gone out of the meeting with no conclusion because people just don't remember things. Sometimes whether or not a person was present is important.

Next, every agenda item should be addressed and some documentation on how the topic was addressed should be provided, either by a formal motion or an objective comment relative to its disposition. Don't just skip this part. If the board needs more information or clarification, you don't need a motion just a simple notation: Item deferred to the March meeting for clarification. Staff to return with additional information.

Below are some examples of narrative comments that could be used in lieu of a motion:

1. The board considered Director Avery's recommendation to develop a Landscape Master Plan (LMP) for the Association's campus. The board determined it would like to proceed with the project and asked Director Avery to write up a set of specifications for board review. Item to be reconsidered at the April 25, 2014 board meeting.

2. Director Avery recommended that the board consider replacing the grass area next to the tennis courts with other types of landscape material. A discussion ensued and the

board agreed to defer the topic as it should be a consideration in the Landscape Master Plan. If the board determines it does not want to proceed with the LMP at this time, that decision should be brought up during the next budget cycle, no operating funds are allocated for this proposed project at this time.

Motions should be used when a decision needs to be made. Examples of topics that require motions include those that address how the Association's funds are spent, its operating or reserve revenues, and the contracts it has entered into. Just about any business decision needs a motion, including the establishment of policies, committees, and amendments to the rules and regulations.

Motions should be stand-alone statements. It is not sufficient to simply write: contract approved.

Below are some examples of better ways to write a motion:

Motion by Director Smith, seconded by Director Avery, to approve a contract with Brimer and Associates to provide recording secretarial services for $50/hr. for each board meeting. The contract to be re-evaluated at 12-month intervals with costs to be recorded to GL 7718. Motion passed 4-1 with Director Mahoney voting no.

Motion by Director Mahoney, seconded by Director Smith, to approve proposal number 49511 submitted by the Lighting Company to replace 55 street poles for $1,200 with costs to be recorded under GL # 6700. Motion passed 3-1-0-1 with Director Avery voting no and Director Evanston abstaining.

Motion by Director Mahoney, seconded by Director Avery, to approve a contract with RBI Landscape Services for an annual amount of $155,000 and to authorize the president to sign the contract. The contract is to be re-evaluated each year. This board does not authorize automatic increases for this account and any contract adjustments must be submitted to the board 90 days prior to contract renewal. Expenses to be recorded to GL# 2259. Motion passed 5-0.

What do the numbers mean? There are four possible ways to record a vote and who voted:

1st digit represents the Yes	2nd digit represents the No
3rd digit represents absent directors	4th digit represents any abstentions

Using those guidelines, the numbers in the sentence, Motion passed 3-1-0-1 with Director Avery voting no and Director Mahoney abstaining, would be understood as:

- Three members voted "Yes". One director voted "No". No directors were absent and one director abstained.

The numbers in the sentence, Motion failed 2-5 with Directors Avery, Mahoney, Smith, Brimer, and Lopez voting no, would be understood as:

- Two members voted "Yes" and five directors voted "No". (Be sure to name the directors voting no.)

A Case for Motion Numbers

Motion numbers can be assigned to each motion and then used as references in future meeting minutes and motions when a motion previously passed is amended or rescinded at a future board meeting.

For example: Motion by Director Mahoney, seconded by Director Avery, to rescind motion 2014-03 and approve the re-assignment of committee chairs as follows: xxxxxxxx.

This provides for a clearer tracking mechanism. Normally, I use the date of the meeting and a sequential number for the motion numbers. An example of a motion number that was assigned at the January 5, 2014 meeting would look like this: 010514-01, 010514-02, etc. If the motion is a General Session topic, then it would read: G010514-01. An Executive Session motion would be: E010514-07.

A Case for a Motion Log

While most software; i.e. MS Word, has search functions, it is easier to search a motion log for prior motions. Using the date in the motion number guides you back to the creating set of minutes for further clarification. Motion logs are easy to maintain by simply copying and pasting into a spreadsheet. The log would contain the motion number in one cell and the text of the motion in another cell.

Meeting minutes don't have to be long, but they should be complete. Sloppy motions and incomplete meeting minutes can lead to misunderstood decisions. Staff should not have to interpret what the board wants done.

WILL THE CHANGES IN THE HOA IDR (MEET AND CONFER) LAW IN CALIFORNIA TAINT THE PROCESS?

By: Beth A. Grimm, Attorney at Law

Editor's Note: *Beth is an attorney specializing in HOA law with 30 years of experience representing HOAs and owners that live in them, proposing and mediating solutions, offering education, and promoting preventive law. She comes to Goleta every year in the spring to bring wisdom and experience to South Coast HOA members in a program (March 28 – details to come). Visit her website -* ***californiacondoguru.com*** *and her blog at* ***condolawguru.com*** *and you will find a wealth of information, articles, resources, books and publications, and solutions.*

IDR stands for internal (or some call it informal) dispute resolution. It's supposed to help HOAs resolve disputes between boards and owners by providing a process that calls for a face-to-face meeting to discuss differences and try to come to resolution or agreement to settle the differences. It has been called "informal" dispute resolution, at least up until now. With the approval of AB 1738 by the California legislature (posing changes to Civil Code Sections 5910 and 5915), some say the "informal" process is out the window. I don't agree. Why? Because boards and owners who are reasonable and desire to resolve differences are

not affected in the least. Most people living in HOAs are reasonable, or alternatively they just don't care what happens; they are too busy to sweat the HOA "stuff", even if they don't like all of it.

That means most HOAs will not be affected. I hear lawyers and managers telling boards to add a line item to the budget, or increase the existing line item for legal fees, just because of this new law. Maybe that is warranted in associations that already spend a lot on legal fees because of infighting. But these HOAs are in the minority given the statistics. There are reportedly more than 45,000 homeowner associations in California. Statistically, a very large percentage of these HOAs have fewer than 50 owners. It's fair to say that probably 95%, maybe more of the HOAs in California, don't even have a line item for legal fees. They don't have time to fight. Most small HOA boards and most owners don't even know when they are out of legal compliance. Owners in these HOAs don't get into big fights with their boards; the vast majority don't even care what is going on. It's not necessary to panic or lose sleep over this law. Why do I say this? Because apathy is a much bigger problem in HOAs than how IDR or meet and confer meetings are handled.

That said, if any face-to-face meeting in an HOA evolves into attorneys "going at it", the value of the opportunity to talk and work it out is lost. There are already enough forums where lawyers can go head to head.

My experience in over 30 years of doing HOA legal work, performing services as a mediator, and offering information, education, and solutions to boards and owners is that if the parties are willing to talk, and to listen- 99% of the time any "problem" can be resolved! The 1% that can't are pushed to court, and sometimes the Judge pushes them back out! This is the very reason to consider alternatives like meet and confer and mediation. More and better solutions happen outside of rather than inside the courtroom, and for a lot less money.

So let's examine the change in the California IDR law and see why it was proposed, and how or whether the face of IDR might change because of it.

The position of the owners' group that sponsored the new law is that owners are at a distinct disadvantage in an IDR proceeding. Boards can and do bring anyone they want, using the HOA purse, and even alone outnumber the owners 3 or 5 to 1. On the board's side are the directors, the manager, and sometimes an attorney; sometimes even "witnesses". And yet there are situations where the board will refuse the owner's request for the same rank and file. Some owners don't feel that the board will even listen, unless the owner can thrust a lawyer on them. And some boards wouldn't allow that. In any case, IDR never has a chance if there isn't some transparency and honesty about what to expect, and some congeniality and mutual respect for the process itself.

The position of the opponents was that the bill would effectively eliminate the "informal" process, and raise the costs for HOAs in California.

The truth is that in any HOA where the board or an owner or both sides are inclined to fight unreasonably, the legal costs are likely to soar. As soon as you get one attorney involved, the need for two arises, and soon thereafter the fight is expanded or sometimes even shifts completely to recovering attorneys' fees. But it is not the IDR law that is responsible. It is the

misuse of it. If either party uses its attorney as a shield to hide behind, or a sword to bully, that defeats the concept of “meet and confer.”

It is good to know the changes that were made to the IDR law (it’s not new). And then I will provide some tips for dealing with it and IDR in general.

There are only two new things in AB 1738, the bill that modified the IDR law found in Civil Code Sections 5910 and 5915: (1) an owner is allowed to bring an attorney or representative to IDR (at their own cost), and (2) any agreement signed by both sides reached in IDR is enforceable in court. The law still suggests a default fair procedure where both sides can be speak and be heard, and requires the board to participate if an owner requests it. An owner does not have to participate if the board requests it and there is no penalty for refusing (although I had to set one board straight that wanted to fine an owner for refusing to come to an IDR/meet and confer meeting). It does not require either side to provide notice if they are intending to bring an attorney (although that would have been a sensible addition.)

There are some things a board and owner can do to give IDR the best possibility of working:

1. **The law says “The board shall designate a director to meet and confer.”** I suggest at least two board members attend to avoid a "he said, she said" argument after the IDR proceeding. If you send fewer than all directors, give those who attend some reasonable authority to negotiate a resolution. Don't advise them to sit there like sticks or open with a litany of "charges" (this would be a hearing). If the full board meets with the party rather than designating one or fewer than all members, the right in the law to appeal to the Board can be avoided. To avoid the feeling of a "lopsided" procedure, set the chairs in a circle instead of having 6 on one side of a table and one on the other. This may feel weird but there is no benefit to be had by creating a confrontational setting.
2. **The law does not require notice if either party is bringing legal counsel.** Boards, to avoid uncomfortable surprises, add to your letter to owners confirming the IDR the names of those that will attend including the attorney if there will be one present. If you prefer to proceed without an attorney, say this, “We do not plan to have legal counsel present. If you intend to bring legal counsel, please let us know at least ___ days before the meeting. If you bring an attorney without providing notice, we may have to reschedule the meeting so we can have the Association’s legal counsel present. We will not engage with legal counsel.”

   In fact, either a board or owner could use the following statement, because it’s true pursuant to California Rules of Professional Conduct for Attorneys- Ethics Rule 2-100: “If our attorney is not present and yours is, it is unethical for your attorney to speak to us since we are represented by counsel.” This should level the playing field if disclosure does not do it. And it is a handy reference to have in case an owner or board brings an attorney without giving notice to the other party.

   [By the way, here is the California rule for Attorneys which can be pulled in its entirety from the web.]

"Rule 2-100 Communication With a Represented Party

(A) While representing a client, a member [of the California Bar] shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer."

3. **Don't exclude key parties.** If the problems involve a tenant, allow the owner to bring the tenant if the owner asks, unless there is some good reason not to (like the tenant has threatened neighbors or the board). The tenant may need to hear the severity of the consequences first hand. If the owner wants to bring an interpreter because English is their second language, let them. Difficulty in communicating will encourage misunderstandings and deter resolution. If a husband wants to bring a wife or vice versa, let them (again, unless the person they want to bring is likely to impede talks).
4. **Remain calm; leave emotions in a zippered bag <u>outside the door:</u>** If there is a propensity on either side for outrageous conduct, just be prepared, remain calm, and try to dilute or minimize the effects of the behavior by ignoring it. The "zippered bag" is a good visual for taking emotions out of the discussions. If the actions of any particular board member are the cause of constant friction with the owner, I would suggest excluding that board member out of the proceeding. The point is to reach accord, not exacerbate the problem by appeasing the problem board member. If an offensive owner wants to bring representative that can be a good thing. Maybe the rep will discourage bad behavior on the part of the owner. IDR meetings should not be recorded or subject to video. If things get out of hand just leave. The point is not to "catch someone in the act" or to threaten someone into submission, but rather to try and provide a neutral forum for the parties to communicate reasonably.
5. **Try to create a setting that has a comfortable element to it.** This means with regard to decorum. There should be an opportunity for respect, give and take, and also some time available for memorializing agreements on paper. Some practitioners take pre-prepared papers with choices that can be altered and/ or blanks that can be filled in and initialed in the final agreement. This is the practice of mediators, i.e., to bring standard agreement forms with important phrases (like about non-admissions in settlement, each side bears their own attorney fees, etc.) and blanks to be filled in with parties' agreement language. Many boards schedule these sessions for the same evening as a meeting for convenience. If an IDR meeting is allotted only 10 or 15 minutes, it is not sufficient time to let the air out of the balloon (so to speak) so the parties can get down to talking. The Directors are, though, volunteers, and may have a lot on their plate, especially on a meeting night. For owners this may be their only cause, so there may be differences at the outset as to how much time should be allotted. Sometimes the parties will need help sorting out this very preliminary difference. Talk to a facilitator or mediator for some ideas on this, if you need help. For the purpose of a true IDR, do what you can to help the owner feel like you have given them an ear even if agreement is not achieved. Thank them for coming. Even if you don't "feel it", common courtesy is warranted.

The signing of AB 1738 into law is not the end of the world. I think we can all learn to live with it.

Spring law seminar with Beth Grimm – Saturday, March 28 at 10 AM at Encina Royale, 250 Moreton Bay Lane, Goleta. Topics and other details to be determined.

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