

## IN THIS ISSUE



**TAKE NOTE:  
AVOIDING  
THE TOP FIVE  
MEETING MINUTE  
MISTAKES** - There

are times to take notes and times to put down the pen. Be confident in knowing what's essential and what's putting your board at risk.



**IT'S NOTHING  
PERSONAL:  
HOW TO  
CONDUCT  
SUCCESSFUL,  
UNBIASED DISCIPLINARY**

**HEARINGS** - A former deputy district attorney shares effective tips your board can follow to keep disciplinary hearings courteous, professional and streamlined.



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## Service Provider Insurance Considerations

BY LARRY F. RUSSELL, ESQ. - RUSSELL & MALLETT, LLP

**M**anagers know that a chain is only as strong as its weakest link. When a service provider that was recommended by a management company turns out to be the weak link, it can sour a valued business relationship or even lead to a lawsuit for damages due to the service provider's non-performance. Most

management companies have a number of tested "go-to" service providers experienced in day-to-day tasks. But, sometimes new service providers are needed for a unique project, or a board will demand multiple new service providers to be selected through an interview process. In each case, there are a number of important

considerations to prequalify a service provider.

Consider a manager who recently sent a plumber to an upscale condominium project. The plumber, who had performed well for years, undertook a simple repair, which resulted in a leak that cascaded down six stories causing \$350,000 in structure-based damage. Members

presented additional claims for damage to valuable personal belongings in excess of \$150,000. To make matters worse, one member's child developed a respiratory condition from mold growth and the member filed suit for personal injury against the association, its board, the plumber and (of course) the management company.

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# It's Nothing Personal

## How to Conduct Successful, Unbiased Disciplinary Hearings

BY JOHN D. HANSEN, ESQ. - BAYDALINE & JACOBSEN LLP

**A**s a former deputy district attorney, I watched and conducted criminal hearings and trials on a daily basis. People often ask, "How do you avoid making it personal?" For prosecutors, defense attorneys and judges, it's necessary to personally detach from cases and simply apply the law.

But, for community associations, the board must fill the role of judge, jury, prosecutor and often even the witness. When the non-compliant homeowner is a neighbor, it can be a great challenge for board members to remain fair and objective. However, by putting certain practices and policies in place, a board can effectively and fairly conduct disciplinary hearings, without getting caught up in personal feelings and added stress.

**COURTESY:** The first step is treating all owners with respect and courtesy. In some cases, it may be more appropriate to call a member Mr. or Mrs. rather than use first names – this makes a difference for many people. Consider having the board appoint a particularly considerate director as the primary administrator of the hearing process.

**PROCEDURE:** Maintain proper decorum by adopting a procedure and applying it consistently. In a criminal trial, the prosecutor argues his/her case, the defense responds, and the prosecutor rebuts. In the same manner, a board should

adopt a policy for presenting the alleged violation (including the facts and applicable rule), allowing the homeowner to respond and then offering a rebuttal. Each side should be allowed to speak or present without interruptions. A record should be kept of evidence, statements and the board's decision. If the owner is called to a hearing and doesn't show up or doesn't respond in writing, the hearing should be held regardless.

**PRIVACY:** Sometimes an owner feels like his or her private issues are being published to the public, which causes that person to become more defensive. Pursuant to Civil Code § 1363(g), the disciplinary hearing may be held in executive session if requested by the member. However, many members are not aware of this right. In order to protect the member's rights and stay within the requirements of the Civil Code, hearing notices should presume the owner wants to meet in executive session, but also offer that the matter may be heard in an open session. As an alternative, allow owners to submit their arguments in writing in lieu of attending.

**DECISION:** Once the evidence has been presented and each side has an opportunity to speak, the board will need to deliberate and decide. Although the Civil Code does not address this stage in a hearing, the jury system can be used as a model since it is



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constitutionally based. A jury deliberates in private, and its deliberations are protected. Boards should follow this model and hold their deliberations in private and only announce the results to the member by sending him or her a formal notice within 15 days of the hearing. However, if a hearing is held in an open meeting, deliberations should also take place in the open meeting.

**POLICY:** In order to put all of this into practice, boards should adopt a written policy outlining who is allowed to speak; the order of speakers; time limits; the manner in which evidence is considered; and how deliberations will take place. This written policy can be given to members to manage their expectations of the hearing and

to demonstrate professionalism and fairness. The board does not need to be a machine, but a hearing should also not become bogged down with personal issues that make the process partial or create unnecessary stress for the board or the association members.

A fair and impartial hearing process can improve member compliance and allow your hearings to be conducted smoothly and efficiently.

### ABOUT THE AUTHOR



*John D. Hansen, Esq. is an attorney at Baydaline & Jacobsen LLP, which provides general counsel and litigation services to more than 800*

*community associations in the Bay Area and Central Valley.*