Epsten Grinnell & Howell APC

Attorneys Serving Community Associations SM

2016

Desert Community Association Legal Symposium

PROGRAM GUIDE

2016 Community Association Legal Symposium

Agua Caliente Resort & Casino
Rancho Mirage, California

Friday, November 18, 2016

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Attorneys Serving Community Associations SM

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2016 Community Association Legal Symposium

Table of Contents

Program Agenda 7

Exhibitor Network: 2016 Exhibitors 8

2016 Case Law Update 11

2016 Legislative Update 13

Five Basic Steps to Prevent Litigation 25

The Great Debate 26

Attorney Bios: Shareholders 30

Attorney Bios: Associates 38

Exhibitor Network: Exhibitor Ads 58

Exhibitor Network: Contact Information 75

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Program Agenda

8:00 a.m. – 8:45 a.m.	Registration, Continental Breakfast and Exhibition Networking
8:45 a.m. – 9:00 a.m.	**Opening Remarks** *By David E. Bruce, Esq. & Dea C. Franck, Esq.*
9:00 a.m. – 9:50 a.m.	**2016 Case Law Update** *By Mary M. Howell, Esq.*
9:50 a.m. – 10:10 a.m.	20 minute Break and Exhibition Networking
10:10 a.m. – 11:10 a.m.	**2016 Legislative & Fair Housing Update** *By Susan M. Hawks McClintic, Esq.*
11:10 a.m. – 11:30 a.m.	**Litigation Prevention: Five Basic Steps** *By William (Bill) S. Budd, Esq.*
11:30 a.m. - 12:00 p.m.	30 minute Break and Exhibition Networking
12:00 p.m. – 12:40 p.m.	Lunch and **Attorney Q & A**
12:40 p.m. – 1:20 p.m.	**The Great Debate** *Moderated by Mary M. Howell, Esq.* When the law is not crystal clear... Our lawyers debate, you answer a live poll and EG&H provides best solutions
1:20 p.m. – 1:40 p.m.	20 minute Break and Exhibition Networking Exhibitor Raffles

Thank You to our 2016 Exhibitors!

All Counties Fence & Supply
www.allcountiesfenceandsupply.com

Allied Universal
www.aus.com

Dunn Edwards Paints
www.dunnedwards.com

Empire Works
www.empireworks.com

Flood Response
www.floodresponse.com

MeterNet
www.meternetusa.com

Pacific Western Bank
www.pacificwesternbank.com

Roof Asset Management
www.ramroofmgmt.com

AMS Paving, Inc.
www.amspaving.com

Artistic Maintenance
www.artisticmaintenance.com

Automation Price
www.automationpride.com

Four Seasons Tree Care
www.fourseasonstc.com

Frazier Pest Control
www.frazierpestcontrol.com

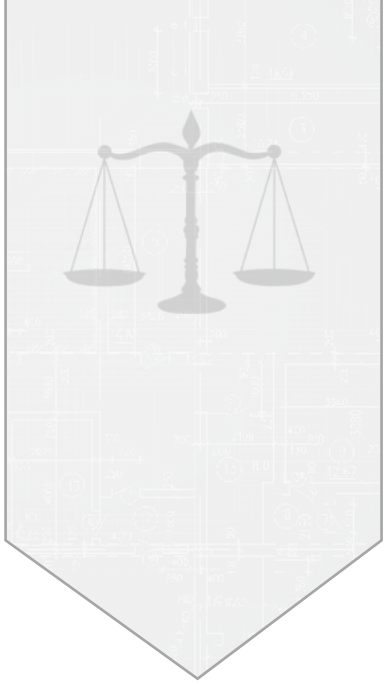
LaBarre/Oksnee Insurance
www.hoains.com

SCT Reserve Consultants
www.sctreserve.com

Southern Cross Property Consultants
www.southerncrosspc.com

Three Phase Electric
www.hoalighting.com

Thank you Animal Samaritans for your participation in our 2016 Legal Symposium.



CASE LAW

UPDATE

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2016 Case Law Update

CASE SUMMARIES, *By Mary M. Howell, Esq.*

1. Fiduciary Duty

Palm Springs Villas II v. Parth (2016) 248 Cal.App.4th 268; rev. denied 10/12/2016: While in office, former director's willful ignorance of limitations on authority imposed by governing documents supports a cause of action for breach of fiduciary duty in action brought by association against former director.

2. Attorneys' Fees

Almanor Lakeside Villas Owners Ass'n. v. Carson (2016) 246 Cal.App.4th 761: Association is prevailing party in its action to enforce rental rules against commercial properties owned by defendants.

Rancho Mirage Country Club HOA v. Hazelbaker (2016) 2 Cal.App.5th 252: Association entitled to attorneys' fees in action to enforce mediation agreement.

3. Assessment Collection

In re Guajardo 2016 Bank. LEXIS 769: In determining the priority of competing liens (association v. IRS), association's earlier recorded assessment lien was senior, but only as to the amount shown on the lien when recorded.

In re Warren 2016 U.S. Dist. LEXIS 49917: For purposes of establishing secured creditor status in bankruptcy proceeding, association's assessment lien secured only the overdue assessments as of the date of recording the lien, and did not extend to further arrearages incurred after the date of recording the lien.

4. Open Meetings Act

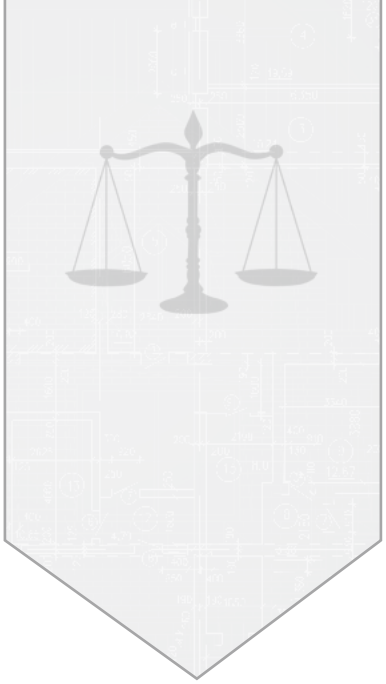
Cruz v. City of Culver City (2016) 2 Cal.App.5th 239: City's discussion prompted by correspondence did not violate the Brown Act even though the letter was not on the agenda.

5. Constitutional Law

Harrison v. City of Rancho Mirage (2016) 243 Cal.App.4th 162: Municipal ordinance requiring someone over age 30 to sign agreement in short-term vacation rentals not subject to antidiscrimination provisions of Unruh Civil Rights Act.

6. Adverse Possession

Nellie Gail Ranch Owners Assn. v. McMullin (2016) Cal.App. LEXIS 918: The McMullins failed to prove their claim for adverse possession because they could not show they were not required to pay any property taxes on common area property that was taxed proportionately to the individual homeowners. The Court also denied the McMullins' claim for an equitable easement and upheld a mandatory injunction allowing the association to remove from the area McMullins' retaining wall and sports court, and regrade and restore the common area at McMullins' expense.



LEGISLATIVE
UPDATE

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2016 Legislative Update

NEW LAWS FOR COMMUNITY ASSOCIATIONS, *By Susan M. Hawks McClintic, Esq.*

REMINDERS OF PAST LEGISLATION

1. Annual Budget Report

As of July 1, 2016, Civil Code section 5300 was amended to require the annual budget report of a condominium project to include a separate statement describing the status of the common interest development as a Federal Housing Administration (FHA)-approved condominium project and as a Federal Department of Veterans Affairs (VA)-approved condominium project.

2. Repairing and Replacing Exclusive Use Common Area

Beginning January 1, 2017, Civil Code section 4775 will provide that the owner of a separate interest is responsible for maintaining the exclusive use common area and the association is responsible for repairing and replacing the exclusive use common area unless the declaration provides otherwise.

Important note: If your association adopted a maintenance matrix as part of the rules rather than as part of the CC&Rs, the maintenance matrix may not be in compliance with Civil Code section 4775 or the holding in *Dover Village Association v. Jennison* (2010) 191 Cal.App.4th 123.

NEW LEGISLATION
DAVIS-STIRLING COMMON INTEREST DEVELOPMENT ACT

3. SB 918 Owners Must Provide Annual Notice of Address

Civil Code Section 4041

This new law requires an owner of a separate interest to provide written notice to the association of all of the following on an annual basis:

(1) The address or addresses to which notices from the association are to be delivered.

(2) An alternate or secondary address to which notices from the association are to be delivered.

(3) The name and address of the owner's legal representative, if any, including any person with power of attorney or other person who can be contacted in the event of the owner's extended absence from the separate interest.

(4) Whether the separate interest is owner-occupied, is rented out, if the parcel is developed but vacant, or if the parcel is undeveloped land.

The association must solicit these annual notices from each owner and enter the new data into its books and records at least 30 days prior to mailing the annual budget report and annual policy statement.

If an owner fails to provide the notices set forth in (1) and (2) above the property address is deemed to be the address to which notices are to be delivered.

4. AB 2362 Pesticide Application by Unlicensed Pest Control Operator

Civil Code Section 4777

Existing law generally requires a landlord or his or her authorized agent to provide notice to tenants, and under certain circumstances tenants of adjacent units, of the use of pesticides at the tenant's dwelling unit or in common areas if the landlord or authorized agent applies any pesticide without a licensed pest control operator.

This new law requires a common interest development association or its authorized agent to provide notice to an owner and any tenant and under certain circumstances to owners and any tenants of adjacent separate interests, if pesticide is to be applied without a licensed pest control operator to a separate interest or to a common area. The law prescribes the contents of the notice and how it is to be provided. If an owner or tenant agrees to immediate pesticide application, a revised notification procedure can be used.

The notice may be posted after the pesticide application if the pests pose an imminent threat to health and safety.

5. AB 1963 Construction Defects

Civil Code Section 6000

The Davis-Stirling Common Interest Development Act requires certain conditions to be met before an association may file a complaint for damages based upon a claim of construction defects. This law was scheduled to sunset or expire on July 1, 2017, and is now extended to July 1, 2024.

MISCELLANEOUS LEGISLATION IMPACTING COMMUNITY ASSOCIATIONS

6. SB 1431 Service of Process in Gated Communities

Code of Civil Procedure Section 415.21

Existing law requires specified persons to be granted access to a gated community for a reasonable period of time for the sole purpose of performing lawful service of process.

The law is amended to additionally require granting access to an investigator who is employed by an office of the Attorney General, a county counsel, a city attorney, a district attorney, or a public defender, upon the display of proper identification.

7. AB 2231 Care Facilities and Day Care Homes

Health and Safety Code Sections 1596.819, 1596.859, et al.

Existing law establishes the State Department of Social Services to license and regulate residential care facilities, day care centers, and family day care homes and impose civil penalties for a licensing violation.

Commencing July 1, 2017, the amount of civil penalties to be imposed for a licensing violation is increased. The bill would require the department to make a good faith effort to work with the licensee to determine the cause of the deficiency and ways to prevent any repeat violations, and to adopt regulations setting forth the appeal procedures for deficiencies.

8. AB 551 Rental Property: Bed Bugs

Civil Code Sections 1942.5, 1954.1 and Chapter 2.8 (commencing with Section 1954.600) of Title 5 of Part 4 of Division 3

Landlords must provide a prospective tenant, on and after July 1, 2017, and to all other tenants by January 1, 2018, information about bed bugs. A landlord cannot show, rent, or lease a vacant dwelling unit that the landlord knows has a bed bug infestation.

MOBILEHOMES AND MANUFACTURED HOUSING

9. SB 1092 Advertising a Short-Term Rental

Business and Professions Code Sections 22592 and 22594

Existing law requires an internet hosting platform to provide a specific notice to an occupant listing a residence for short-term rental that states that if the occupant is a tenant, listing the room, home, or condominium may violate the lease or contract and could result in legal action by the landlord, including possible eviction.

This requirement is extended to include a statement advising the offeror to review any restrictions on coverage under the offeror's homeowners' or renters' insurance policy related to short-term rental activities and to include mobilehome offerors.

10. AB 587 Mobilehomes: Registration and License Fees; Property Taxes

Civil Code Section 798.15; Health and Safety Code Sections 18092.7, 18116.1, 18550 and 18550.1; and Revenue and Taxation Code Section 5832

Existing law subjects manufactured homes or mobilehomes sold as new prior to July 1, 1980, to a vehicle license fee and requires annual payment of the fee. Nonpayment of certain fees and penalties, including the vehicle license fee, constitutes a lien on the manufactured home or mobilehome, and prohibits the Department of Housing and Community Development from issuing a duplicate or new certificate of title or registration card or amending the permanent title record of the manufactured home or mobilehome that is the subject of that lien.

This law is amended to state that when a person who is not currently the registered owner of a manufactured home or mobilehome applies to the Department for registration or transfer of registration of the manufactured home or mobilehome prior to December 31, 2019, and meets other specified requirements, the Department must waive all outstanding charges assessed by the Department prior to the transfer of title of the manufactured home or mobilehome, release any lien imposed with respect to those charges, issue a duplicate or new certificate of title or registration card, and amend the title record of the manufactured home or mobilehome.

Mobilehomes and manufactured homes not subject to the vehicle license fee are subject to local property taxation and require the Department to withhold the registration or transfer of registration of any manufactured home or mobilehome subject to local property taxation until the applicant for registration presents a tax clearance certificate or conditional tax clearance certificate issued by the tax collector of the county where the manufactured home or mobilehome is located.

Existing law requires the county tax collector to issue a tax clearance certificate or conditional tax clearance certificate if specified requirements are met.

This new law states that when a person who is not currently the registered owner of a manufactured home or mobilehome subject to local property taxation applies to the Department for registration or transfer of registration of the manufactured home or mobilehome prior to December 31, 2019, and meets other specified requirements, the department must issue a conditional transfer of title. A county tax collector will be required to issue a tax liability certificate to a person with a conditional transfer of title who applies for the certificate prior to January 1, 2020.

Beginning January 1, 2020, it is unlawful for any person to use for occupancy any manufactured home or mobilehome that does not conform to the registration requirements of the Department if the Department provides notice to the occupant of the registration requirements and of any registration fees due.

CONTRACTORS, CONSTRUCTION AND DEVELOPMENT

11. SB 1069; AB 2299; AB 2406 Granny Flats, Second Units, and Garage Conversions

Government Code Sections 65582.1, 65583.1, 65589.4, 65852.150, 65852.2, 66412.2 and 65852.22

In 2002, the Planning and Zoning Law was added to State law to authorize a city or county to regulate the intensity of land use and also authorize a local agency to provide by ordinance for the creation of second units in single-family and multifamily residential zones. Many municipalities imposed stringent requirements to discourage the second units. These three new laws are the State's response to the local agencies attempts to discourage second units.

The new laws declare that allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock and that these units are an essential component of housing supply in California.

The changes to Government Code section 65852.22 took effect immediately to amend the Planning and Zoning Law to require the local ordinances to include standards for the creation of a junior accessory dwelling unit, required deed restrictions, and occupancy requirements. The ordinance may not require, as a condition of granting a permit for a junior accessory dwelling unit, additional parking requirements. A local agency is allowed to reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction. Allowing garage conversions is contemplated by the requirements.

Local jurisdictions will be amending their requirements to comply with the new State law. Local agencies will be blocked from charging connection fees for the granny flats for water and sewer service. Other requirements, such as adding fire sprinklers for small accessory dwelling units, are eliminated under the legislation.

12. SB 269 Disability Access

Civil Code Sections 55.53 and 55.56; Government Code Sections 4459.7, 4459.8, 8299.06, 65941.6 and Article 4 (commencing with Section 65946) to Chapter 4.5 of Division 1 of Title 7

Existing law specifies that a violation of construction-related accessibility standards personally encountered by a plaintiff may be sufficient to cause a denial of full and equal access if the plaintiff experienced difficulty, discomfort, or embarrassment because of the violation.

This law is changed to establish a rebuttable presumption that certain technical violations do not cause a plaintiff to experience difficulty, discomfort, or embarrassment, if specified conditions are met.

13. AB 1793 Contractors: License Requirements: Recovery Actions

Business and Professions Code Section 7031

Existing law authorizes a person who utilizes an unlicensed contractor to bring an action in any court of competent jurisdiction in this state for recovery of compensation paid to the unlicensed contractor for performance of any act or contract. The law authorizes a court to determine that a contractor has substantially complied with licensure requirements if specified conditions are met, including that the contractor did not know or should not reasonably have known, that he or she was not duly licensed when the performance under the contract occurred.

This law is revised to state that the substantial compliance judicial doctrine does not apply where the person who engaged in the business or acted in the capacity of a contractor has never been a duly licensed contractor in this state. However, the court may determine that there has been substantial compliance with licensure requirements under this section if it is shown at an evidentiary hearing that the person who engaged in the business or acted in the capacity of a contractor (1) had been duly licensed as a contractor in this state prior to the performance of the act or contract, (2) acted reasonably and in good faith to maintain proper licensure, and (3) acted promptly and in good faith to remedy the failure to comply with the licensure requirements upon learning of the failure.

14. AB 2486 Contractors' State License Board: License Search by Location

Business and Professions Code Section 7018

Prior to January 1, 2019, the Contractors' State License Board must add an enhancement to the current contractor license check search function that would permit consumers to search for a licensed contractor by either ZIP Code or geographic location.

15. AB 1732 Single-User Restrooms

Health and Safety Code Section 118600

Commencing March 1, 2017, all single-user toilet facilities in any business establishment must be identified with all-gender toilet facilities signage. Inspectors, building officials, or other local officials responsible for code enforcement will be authorized to inspect for compliance with these provisions during any inspection.

16. SB 1196 Bureau of Security and Investigative Services

Business and Professions Code Section 7599.54

This Bureau regulates locksmiths, private patrol operators, alarm company operators, and security services. The Alarm Company Act requires that certain agreements entered into by an alarm company pertaining to alarm systems, including lease agreements, monitoring agreements, service agreements, and installation agreements, be in writing and any initial agreements entered into on or after January 1, 2017, that contain an automatic renewal provision for a period of more than one month must disclose and describe the automatic renewal provision.

EMPLOYEES

17. AB 2337 Required Notice to Employees Re Victims of Domestic Violence, Sexual Assault, or Stalking

Labor Code Section 230.1

Existing law prohibits an employer from discharging or in any manner discriminating or retaliating against an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off from work for specified purposes related to addressing the domestic violence, sexual assault, or stalking.

On or before July 1, 2017, the Labor Commissioner must develop a form for employers to use to inform each employee of his or her rights established under this law and post it on the Commissioner's website. The form and a version created by the employer must be used to provide specific information in writing to new employees upon hire and to other employees upon request. Employers are not required to comply with the notice of rights requirement until the Commissioner posts the form in its website.

18. AB 2535 Wages: Itemized Hours Statements

Labor Code Section 226

Existing law requires an employer to provide employees an accurate itemized statement in writing containing specified information, either semimonthly or at the time the employer pays the employee his or her wages. That specified information includes showing total hours worked by the employee, unless the employee's compensation is solely based on a salary and the employee is exempt from payment of overtime.

19. Department of Labor Final Rule on Overtime

On May 18, 2016, the Department of Labor published the Final Rule on Overtime. The effective date of the final rule is December 1, 2016.

The Final Rule focuses primarily on updating the salary and compensation levels needed for Executive, Administrative and Professional workers to be exempt from being paid overtime.

20. AB 1843 Applicants for Employment: Juvenile Court Criminal History

Labor Code Section 432.7

An employer may not ask an applicant for employment to disclose, or utilize as a factor in determining any condition of employment, information concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court law.

21. SB 1063 No Wage Discrimination Based on Race or Ethnicity

Labor Code Sections 1197.5 and 1199.5

Existing law prohibits an employer from paying any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, unless the employer demonstrates that specific, reasonably applied factors account for the entire wage differential.

This amendment also prohibits an employer from paying any of its employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work.

22. California Amended Fair Employment and Housing (FEHA) Regulations

FEHA now protects unpaid interns and volunteers from discrimination.

Gender discrimination is broadened to include gender expression, gender identity, transgender and sex stereotyping.

Employers must update and redistribute policies.

Employers of 50 or more employees must have anti-bullying training.

"Assistive animals" necessary as a reasonable accommodation do not need to be trained.

The State Regulations are impacted by new Americans with Disability Act Regulations definition of physical impairments.

DROUGHT AND WATER

23. SB 814 Excessive Water Use Prohibited

Water Code commencing with Section 365

A new law is added to declare that when the Governor has issued a proclamation of a state of emergency or during a period in which an urban retail water supplier has moved to a stage of action in response to a local water supply shortage condition, excessive water use by a residential customer in a single-family residence or by a customer in a multiunit housing complex is prohibited.

During these time periods, each urban retail water supplier must establish a method to identify and discourage excessive water use. As a method to identify and discourage excessive water use, the water supplier may establish a rate structure that includes block tiers, water budgets, or rate surcharges over and above base rates for excessive water use by residential customers.

24. SB 7 Water Sub-Meters for New Rental Buildings

Health and Safety Code 17922.14 ; Civil Code Section 1954 and Chapter 2.5 (commencing with Section 1954.201 to Title 5 of Part 4 of Division 3); and Water Code Section 517 and Article 5 (commencing with Section 537) to Chapter 8 of Division 1

NOTE: Not Applicable To Common Interest Developments – Yet

This new law expresses the intent of the Legislature to encourage the conservation of water in multifamily residential rental buildings through means either within the landlord's or the tenant's control, and to establish that the practices involving the submetering of dwelling units for water service are just and reasonable, and include appropriate safeguards for both tenants and landlords.

Creates the Water Measurement Law which requires a water purveyor that provides water service to a newly constructed multiunit residential structure or newly constructed mixed-use residential and commercial structure and that submits an application for a water connection after January 1, 2018 to measure the quantity of water supplied to each individual dwelling unit as a condition of new water service and permit the measurement to be by individual water meters or submeters.

NOTARIES

25. AB 2217 Increase in Notary Public Fees

Government Code Section 8211

The fee for acknowledgment of a deed or other instrument is increased to $15 for each signature.

26. AB 2566 Notaries Public: Acceptance of Identification

Civil Code Section 1185

Existing law relating to property transfers prohibits the acknowledgment of an instrument unless the officer taking it has satisfactory evidence that the person making the acknowledgment is the individual

who is described in and who executed the instrument. Existing law provides that an officer may reasonably rely on a passport issued by a foreign government if it is stamped by the United States Citizenship and Immigration Services of the Department of Homeland Security.

This law is amended to authorize the acceptance of a valid passport from the applicant's country of citizenship or a valid consular identification document issued by a consulate from the applicant's country of citizenship as proof of identity. It also eliminates the requirement that the passport be stamped by the United States Citizenship and Immigration Services of the Department of Homeland Security.

TRUSTEE SALE

27. SB 983 Mortgages and Deeds of Trust

Civil Code Sections 2924c, 2924d and 2924.11

Existing law requires a mortgagee, beneficiary, or authorized agent to record a rescission of a notice of default or cancel a pending trustee sale upon the borrower executing a permanent foreclosure prevention alternative. In the case of a short sale, existing law requires the rescission or cancellation of the pending trustee's sale to occur when the short sale has been approved and proof of funds or financing has been provided. The reference to rescission in the case of a pending trustee's sale is eliminated.

Existing law limits the amount of trustee's or attorney's fees that may be charged in connection with the enforcement of certain terms of obligation upon default in payment under a mortgage or deed of trust prior to reinstatement of a monetary default, or until the notice of sale is deposited in the mail, or otherwise at any time prior to the decree of foreclosure. This base limitation on the amount of those trustee's or attorney's fees is increased by $50.

PRIVACY

28. AB 2828 Computerized Personal Information: Breach

Civil Code Sections 1798.29 and 1798.82

Existing law requires a person or business conducting business in California and any agency that owns or licenses computerized data that includes personal information to disclose a breach in the security of the data to a resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person in the most expedient time possible and without unreasonable delay.

This new law expands the requirement to include notice that the encryption key or security credential was, or is reasonably believed to have been, acquired by an unauthorized person and the person, business, or agency that owns or licenses the encrypted information has a reasonable belief that the encryption key or security credential could render that personal information readable or useable.

29. AB 1723 Debt Collection and Identity Theft

Civil Code Sections 1785.16.2 and 1788.18

Existing law requires a debt collector that receives a copy of a police report filed by the debtor alleging that the debtor is the victim of an identity theft crime and a written statement in which the debtor claims to be the victim of identity theft to cease collection activities until completion of a review. Existing law requires the debt collector to review and consider all of the information provided by the debtor and other available information and authorizes the debt collector to recommence debt collection activities only upon making a good faith determination that the information does not establish that the debtor is not responsible for the specific debt in question.

This new law is the Identity Theft Resolution Act. It requires the debt collector, upon receipt of the police report and written statement described above, if it furnished adverse information about the debtor to a consumer credit reporting agency, to notify the consumer credit reporting agency that the account is disputed, and initiate a review, as specified, within 10 business days. The debt collector must send notice of its determination to the debtor no later than 10 business days after concluding the review. The debt collector that does not recommence collection activities under these provisions must notify the creditor, no later than 10 business days after making its determination, and if it furnished adverse information to a consumer credit reporting agency, to notify the agency to delete that information no later than 10 business days after making its determination.

30. AB 1671 - Eavesdropping

Penal Code Sections 632, 633.5 and 637.2

Existing law makes it a crime for a person to intentionally eavesdrop upon or record a confidential communication by means of an electronic amplifying or recording device without the consent of all parties to the confidential communication. There is an exception for obtaining evidence reasonably believed to relate to the commission by another party to the communication of certain crimes. A confidential communication is any communication carried on in circumstances that reasonably indicate that any party to the communication desires it to be confined to the parties thereto.

Any person who has been injured by a violation of this prohibition on eavesdropping upon or recording confidential communications may bring an action against the person who committed the violation to enjoin and restrain the violation and seek monetary damages.

This law is amended to provide that monetary damages of up to $2,500 can be imposed per violation or imprisonment in a county jail not exceeding one year, or in the state prison for 16 months or 2 or 3 years. If the person has previously been convicted of eavesdropping or certain invasion of privacy crimes, existing law requires the person to be punished by a fine not exceeding $10,000, by imprisonment in a county jail not exceeding one year, or in the state prison for 16 months or 2 or 3 years.

HR 3700 – FEDERAL LAW

31. Housing Opportunity Through Modernization Act of 2016 - FHA

This new law modifies the administration and delivery of a number of Federal housing programs, including FHA. The bill was approved unanimously by the U.S. House and the Senate. Proposed Regulations were published on September 28th for a 60-day comment period ending on November 28th.

Owner-occupancy ratios: Currently, 50% of condominiums must be owner-occupied for a community to be FHA certified. That will change to 35% unless FHA can provide justification for a higher percentage. The Proposed Regulations include a range between 25% and 75% but claim 50% is consistent with projects having a residential purpose.

Transfer fees: H.R. 3700 forces the FHA to stop rejecting condominium communities that charge transfer fees when units are sold. Like Fannie Mae and Freddie Mac, FHA will back loans in communities that charge transfer fees to pay for community services such as pool upkeep, trash collection and landscaping.

Flexibility on the amount of commercial space in a condominium community. The legislation gives lenders more flexibility in approving FHA condominium loans in mixed-used communities.

Condominium recertifications: For a condominium community to be approved to offer FHA financing, it has to be certified and then recertified every two years. H.R. 3700 requires HUD to make the recertification process substantially easier than the certification process. The plan is that communities would be updating documents rather than resubmitting documents. H.R. 3700 provides no timeline for implementation of this provision.

No short term rentals. The Proposed Regulations prohibit transient or hotel purposes.

WHAT DIDN'T PASS

1. AB 1720 allowing homeowners' attorneys at association meetings.
2. AB 1799 allowing associations not to send out ballots when an election is uncontested.

WHAT IS STILL PENDING

1. The Federal Amateur Radio Parity Act allowing ham radio operators in community associations passed the House and moved on to the Senate.

—FIVE BASIC STEPS TO PREVENT—

LITIGATION

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Five Basic Steps to Prevent Litigation

By William (Bill) S. Budd, Esq.

There may of course be instances where litigation is advisable or unavoidable, but by following these basic tips, you have a much better chance of resolving your dispute amicably or avoiding litigation altogether!

1. Keep them in the loop.

One of the best ways to avoid conflict and misunderstanding is to ensure the Members know what's going on. This may include informing them about upcoming projects, special assessments, budgets and scheduling. Discontent can often arise when Members are left to their own imaginations about significant (and even routine) events. Respecting your Members and keeping them well informed can go a long way towards avoiding litigation.

2. Keep good records.

Many disputes can be avoided by being able to quickly access relevant documents. These should include contractual agreements as well as correspondence and notes taken contemporaneously to record the substance of conversations and telephone calls. This may be a good time to review your records retention policy and to ensure that important documents exist in both electronic form and hard copy.

3. Put yourself in their shoes

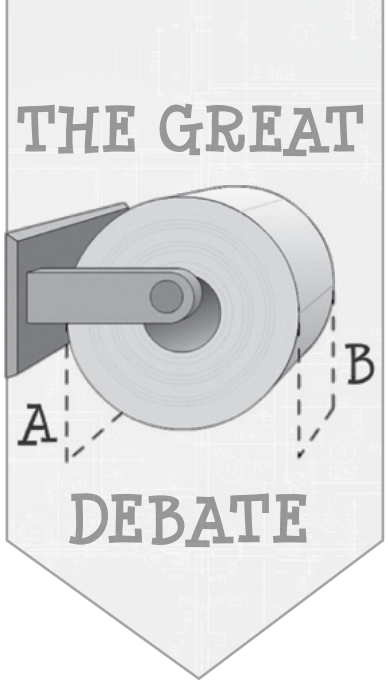
Try to think objectively, put yourself into the other side's position and work out what is motivating the decision to litigate or refusal to negotiate. Is it simply personal animosity, or does the other party have a genuine reason for commencing litigation? Remember the proverbial broken clock, even difficult people are right once in a while.

4. Act before it escalates

If you take steps to deal with a hiccup when it arises, you can often prevent it developing into a major problem and positions becoming entrenched. It's no use ignoring a glitch or complaint and hoping it will go away. It's best either to bring the matter to a head or to seek advice from a professional before the matter inadvertently escalates.

5. Read the Law and Documents

It sounds trite, but "we've always done it this way" is not a good legal defense. All too often we are "sure" the law or governing documents say something that they don't (or they do say something that we aren't aware of). It is not uncommon for Associations to violate clear provisions of the governing documents for decades. Even in contracts with third parties, once you have an agreement, read it carefully and understand its day-to-day operation. Time and time again, we see examples where an accepted regime falls short of the provisions specified in the law, governing documents, or contract. Everything goes swimmingly until the parties fall into dispute.



DISCLAIMER: The opinions expressed in the presentations and materials are suggestions and educational opinions of Epsten Grinnell & Howell, APC on general legal issues involving community associations and may not be relied upon in addressing any association's specific legal questions. Your association and management firm may have developed varying and different policies and procedures which fully satisfy all applicable law.

Together we debate some of
today's hottest Community Association issues!

Our attorneys provide opposing interpretations of the law, viewpoints and perspectives.

You share your opinions and we provide
best practice solutions for you and your communities!

Moderated By:

Mary M. Howell, Esq.

Opposing Attorney
Opinions & Perspectives Presented By:

William (Bill) S. Budd, Esq.

David E. Bruce, Esq.

Kieran J. Purcell, Esq.

Susan M. Hawks McClintic, Esq.

Dea C. Franck, Esq.

Debora M. Zumwalt, Esq.

The Great Debate

How should a board proceed when the law isn't black and white?

Artificial Turf

1. If, pursuant to the CC&Rs, an association is obligated to maintain landscaping in the front yard of an owner's lot, may the association prohibit an owner from installing artificial turf in his front yard?

2. May an association impose restrictions on the percentage of a lot that may be covered by artificial turf?

Solar Panels

A condominium association received an architectural application from an owner asking whether she could install solar panels on the common area rooftop. The association is made up of stacked type condos.

3. Is the association required to allow this homeowner to install the solar panels?

4. Does the approval of the other owners need to be obtained before the solar panels are installed?

Capital Improvements

5. If the association's governing documents limit the board's power to expend money on capital improvements, does this limitation apply to turf replacement?

Towing

An association has a CC&Rs provision that prohibits vehicles from being parked in separate interest driveways. A homeowner is consistently parking her car overnight in her driveway. The association has posted notice after notice on her car warning her that her car is in danger of being towed and invited her to a hearing on this violation, but the owner never responded or appeared at the hearing.

6. May the association tow her car from her driveway?

Voting

7. Does an association board (or anyone else) have a right to know who has voted in an amendment election to make it easier to solicit ballots from non-voters?

Pets and Service Animals

An association has a rule that states that no pets are allowed in the pool area. An owner is requesting that the association allow her dog to swim with her in the association pool. She is not obviously disabled. The owner presented the association with papers showing that the dog is a registered assistance animal.

8. Must the association allow this?

Smoking

A homeowner smokes inside his condominium. An adjoining homeowner who admits that he has an incredible sense of smell complains to the association that he can smell the cigarette smoke in his condominium and he hates the smell. The adjoining homeowner's wife cannot smell the smoke. The association's CC&Rs contains language which prohibits nuisances.

9. May the association restrict smoking within a homeowner's condominium?

Common Area Encroachment

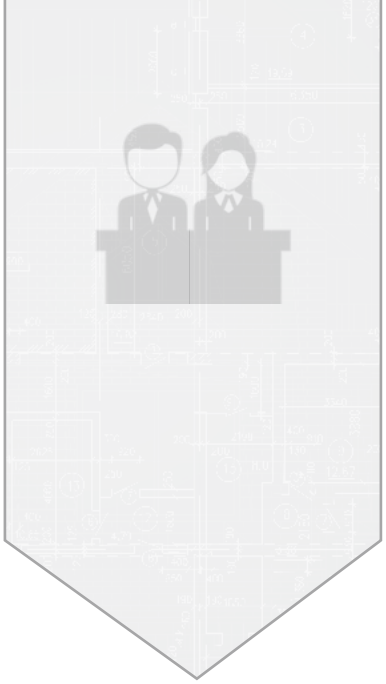
In 2005, a homeowner increased the size of her patio. The 2016 board recently discovered that the patio addition encroaches into the common area. The homeowner claims that the 2005 board approved her patio addition. Neither the homeowner nor the board can find any records that evidence the association's approval.

10. Can the 2016 board now require this homeowner to remove the portion of the patio addition that is not on her lot?

Community Volunteers

The board of a small association of 12 residences is looking for ways to be more fiscally prudent. A group of homeowners approached the Board with an idea that once a month they would volunteer their time for a "neighborhood" cleanup day to eliminate the need for a landscape contractor.

11. Is this a good idea?



EPSTEN GRINNELL & HOWELL

ATTORNEYS

Personalized service with a team of experienced and knowledgable professionals.

JON H. EPSTEN

Sr. Managing Shareholder and General Counsel to the Firm
Co-Chair, Construction Defect Practice Group
Co-Chair, Construction Law Practice Group

Practice Areas:

Community Association Counsel
Construction Defect
Construction Law
Civil Litigation

Jon H. Epsten is the founding shareholder in the law firm of Epsten Grinnell & Howell, APC. Jon is a native San Diegan who graduated from the University of San Diego and obtained his law degree from Thomas Jefferson School of Law, graduating with scholastic merit.

For years, Jon acted as a community association manager. He has attended more than 1,800 association meetings. Jon's work on behalf of community associations encompasses providing advice on all types of corporate matters including directors' and officers' defense, mold and mildew litigation, interpretation and enforcement of governing documents, assessment collection, construction defect litigation, and reconstruction issues. Jon has participated in and been lead counsel on many construction defect cases resulting in multi-million dollar settlements and currently oversees the firm's construction defect and construction law departments. Jon also advises associations on risk management and insurance, and contract issues.

Jon has taught as an adjunct professor of law at California Western School of Law. He is past president of both the San Diego Chapter and the Greater Inland Empire Chapter of the Community Associations Institute (CAI), and has testified as an expert witness in community association-related issues. Additionally, Jon was a contributor to the Continuing Education of the Bar Publication, "Advising California Common Interest Communities." He acts as a law faculty instructor for the Community Associations Institute. Most recently, Jon was honored by the San Diego Business Journal as among the "Best of the Bar" 2016 and by San Diego Magazine as one of San Diego's "2016 Top Lawyers."

Jon is an active member of the California Association of Community Managers (CACM), was a member of its Professional Standards Committee, and has been appointed to the CACM faculty. Jon is a member of the College of Community Association Lawyers (CAI), the San Diego County Bar Association and the Foothills Bar Association. Jon was honored with the Distinguished Service Award by both the San Diego Chapter and the Greater Inland Empire Chapter of the Community Associations Institute, and has received the CAI National Hall of Fame Award. He has been the co-chair of the Committee on Common Interests Subdivisions for the State Bar, and has acted as a probation monitor for the State Bar.

DOUGLAS W. GRINNELL

Shareholder
Co-Chair, Construction Defect Practice Group

Practice Areas:

Construction Defect

Doug Grinnell is a shareholder in the law firm of Epsten Grinnell & Howell, APC. He graduated cum laude from the University of Delaware in 1976 with a degree in political science and received his law degree from Pepperdine University in 1978.

Doug has been an active trial attorney since 1979. From 1980 to 1984, he served as a trial attorney with the United States Navy. Since 1984, he has engaged exclusively in the representation of homeowners, community associations and consumers. He has been responsible for numerous class-action, multi-million dollar jury verdicts and settlements. Doug has handled more than 150 construction defect cases in California and, in 1996, was the recipient of the Outstanding Trial Lawyer Award for the highest construction defect judgment ever in the State of California ($15.5 million).

Doug is a member of Consumer Attorneys of California (CAOC) and serves as Chairman of CAOC's Homeowners' Rights Committee. He is also a member of the San Diego County Bar Association, the Community Associations Institute (CAI), and the California Association for Community Managers (CACM). He has lectured frequently at Continuing Legal Education courses throughout California and has published many articles on the topics of construction defects and community association law.

An avid outdoorsman, Doug enjoys running, biking, hiking, golfing and skiing.

SUSAN M. HAWKS MCCLINTIC

Co-Managing Shareholder
Chair, Community Association Transactional Practice Group

Practice Areas:

Community Association Counsel

Sue Hawks McClintic is known for giving practical, commonsense advice without the legalese. Sue joined Epsten Grinnell & Howell, APC, in October 1990 and became a shareholder in 1999. She has supervised the firm's transactional law department since 2008 and was named co-managing shareholder in August 2014. Sue graduated from the University of Notre Dame Law School in 1983 and is originally from Nebraska so she is big football fan!

During her more than twenty year career in community association law, Sue has developed a special expertise in document interpretation, amendment, and restatement. Each fall, Sue is a featured speaker at the Epsten Grinnell & Howell Legal Symposium where she educates an audience of more than 650 clients and guests on newly passed laws that affect Common Interest Developments. When the Davis-Stirling Common Interest Development Act was re-written in 2014, Sue gave more than 20 presentations to nearly 500 community association managers and board members explaining the changes in the law.

Sue is past co-chair of the Common Interest Development subsection of The Real Property Section of the California State Bar Association. She regularly participates in seminars and contributes to newsletters and other publications. She has also served as a consultant to review proposed chapters of books to be published by Continuing Education of the Bar (CEB), a branch of the California State Bar Association.

MARY M. HOWELL

Shareholder
Chair, Senior Communities Practice Group

Practice Areas:

Community Association Counsel
Senior & Fair Housing
Civil Litigation

Mary Howell graduated from the University of California, San Diego in 1972 with a B.A. in biology. She is a 1976 graduate of the University of San Diego School of Law. In practice in San Diego since December of that year and now a shareholder in the law firm of Epsten Grinnell & Howell, APC, Mary's practice is limited to the representation of community associations. Clients include associations in San Diego, Riverside, and Orange counties. In addition to counseling associations on corporate governance and interpretation and enforcement of governing documents, Mary's case work on behalf of associations encompasses litigation of CC&R enforcement cases, appellate representation, defense of common interest developments (e.g., breach of fiduciary obligation, wrongful termination, failure to maintain) and actions for declaratory relief.

A long-time champion of senior housing, Mary is well-known for her advocacy of seniors and her work on behalf of senior communities in California. As a respected authority on the topic, she has authored texts for attorneys on the federal and California laws that relate to age-restricted communities. Mary has been lauded for her work by numerous civic organizations and state and local governments.

Mary has also been an adjunct professor of law at Thomas Jefferson School of Law, and has authored numerous articles and handbooks for homeowner associations, including Small Claims Court for Homeowner Associations, and the Resource Manual for California Senior Communities. Mary has served as a judge pro-tem for San Diego County courts and has appeared in various cases as an expert witness on community association issues. She also serves on the Steering Committee of the State Bar's Fair Housing and Public Accommodations Subsection.

Between 1994 and 2013, Mary has served as an instructor for the California State Bar's Continuing Education of the Bar classes on community associations and the Davis-Stirling Act. She is a past president of the San Diego Chapter of the Community Associations Institute and a frequent lecturer at CAI's national Community Association Law Seminar as well as CACM's annual legal Symposium. Mary is a member of CAI's College of Community Association Lawyers (CCAL). She serves on CAI's amicus team and CACM's legislative committee. She recently co-authored the updated CEB text on Advising California Common Interest Developments, published in 2013. In 2014, the San Diego Daily Transcript named Mary as a Top Attorney in the Real Estate & Construction Transactional practice category.

KIERAN J. PURCELL

Shareholder

Practice Areas:

Community Association Counsel

Kieran Purcell graduated from the University of Colorado at Boulder in 1985. After serving seven years in the United States Navy, Kieran joined Epsten Grinnell & Howell, APC as a law clerk while attending California Western School of Law. Upon graduation in April 1995, Kieran became an attorney with the firm where his work on behalf of community associations includes providing advice on all types of corporate matters including litigation, interpretation and enforcement of governing documents and reconstruction issues. He has been a shareholder of EG&H since 2002.

Kieran spent three terms on the Board of Directors of the San Diego Chapter of the Community Associations Institute (CAI), where he served as its President, co-chaired the National Seminar Committee and co-chaired the Golf & Tennis Charity Classic. Currently, Kieran serves on the Legislative Support Committee for the San Diego Chapter, in support of CAI's California Legislative Action Committee (CLAC), and teaches the Common Interest Development Law Course. During his tenure with CAI, Kieran has earned the San Diego Chapter's President's Award four times, and in 2006 was recognized with the Samuel L. Dolnick Lifetime Achievement Award.

In September 2015, Captain Kieran Purcell retired from the United States Navy after 30 years of active and reserve service, including 3 tours as Commanding Officer.

A former President of the San Diego Chapter of the University of Colorado Alumni Association, Kieran served 5 years on the University's National Alumni Board of Directors.

RIAN W. JONES

Shareholder

Practice Areas:

Civil Litigation

Rian W. Jones has over 30 years of experience as a litigator and has tried over 60 Superior Court jury and bench trials. Prior to joining Epsten Grinnell & Howell , APC in 2008, Rian was a partner at Lewis, Brisbois, Bisgaard & Smith and prior to that a partner and trial counsel at Cuff, Robinson & Jones. His current practice focuses on all aspects of civil litigation handled by the firm including enforcement of CC&Rs, the defense of homeowner associations and HOA boards, Employment Law, Real Property issues and General Liability claims including environmental claims (mold, asbestos, etc.). Rian has earned an AV® PreeminentTM Peer Review Rating from the prestigious Martindale-Hubbell Law Directory and has received numerous awards and professional recognition including being named as one of San Diego's Top Lawyers and one of the Top Lawyers in California for the last several years. Rian is a Barrister in the American Inns of Court Foundation.

During his career as a litigator, Rian has successfully handled lawsuits involving claims of personal injury, property damage, product liability, premises liability, breach of contract, toxic tort claims, employment law/wrongful termination claims, fraud, conversion and unfair business practices.

Rian attended Brigham Young University and Western State University in San Diego (now Thomas Jefferson School of Law) where he received his B.S. (1981) and J.D. (1984) degrees. He was admitted to the California Bar in 1985 and also is admitted to practice before the U.S. District Courts for the Southern and Central Districts of California as well as the Ninth Circuit Court of Appeals. He has been a lecturer for various continuing legal education programs dealing with Civil Procedure, Litigation, Depositions and Jury Selection. He has served as a Judge Pro Tem for the San Diego Superior Courts from 2000 to 2006, hearing settlement conferences, and has been an Arbitrator on the Court's approved panel since 1990, having heard and decided over 100 arbitrations in that time.

Rian is a native San Diegan and is active in his community. He has served as a Boy Scout Leader in various capacities including as a Varsity Team Coach and Explorer Post Advisor. Besides a life-long love for camping and hiking, Rian enjoys travel, photography, and golf. He is fluent in Italian and loves traveling to Italy.

ANNE L. RAUCH

Shareholder
Co-Chair, Construction Defect Practice Group
Chair, Appellate Practice Group

Practice Areas:

Community Association Counsel
Construction Defect
Civil Litigation
Appellate Counsel

Anne Rauch graduated magna cum laude from California State University, San Diego, with a degree in psychology in 1992, received her law degree from the University of San Diego School of Law (USD) and has practiced law in California since 1996.

Anne practices in the areas of general civil litigation focusing primarily on design and construction disputes, and litigation involving real estate transactions and property rights. She handles complex litigation matters and has honed her skills in civil law and motion practice to the benefit of Epsten Grinnell & Howell, APC's association and commercial clients who find themselves in litigation. She has also handled many appellate matters for the firm's clients. Her work on civil writs and appeals has resulted in several published decisions shaping the law in construction claims in *Bodell Construction Company v. Trustees of The California State University* (1998) 62 Cal.App 4th 1508 (representing the Trustees), *Treo @ Kettner Homeowners Association v. Superior Court* (2008) 166 Cal.App.4th 1055; *Villa Vicenza Homeowners Association v. Nobel Court Development LLC* (2011) 191 Cal.App.4th 963 (review granted); *Pinnacle Museum Tower Association v. Pinnacle Market Development* (US), LLC (2012) 55 Cal.4th 223 (as counsel for amici curiae Consumer Attorneys of California and Executive Council of Homeowners), to name a few. Anne has also given back to the legal community in a variety of ways by serving as pro bono counsel on matters of widespread public interest. For example, she represented the Coalition for the Restoration of Parental Rights, as amicus curiae, before both the California Court of Appeal and the California Supreme Court, resulting in the published opinion of *In Re Marriage of Harris* (2004) 34 Cal. 4th 210. In 2014, the San Diego Daily Transcript named Anne as a Top Attorney in the Real Estate & Construction Litigation category.

While in law school, Anne served as a Judicial Extern at the California Court of Appeal, Fourth District, Division One. She also served on the Board of Directors of the Women's Law Caucus at the University of San Diego School of Law, and in her third year of law school served as the liaison between the USD Women's Law Caucus and the Lawyer's Club of San Diego. Anne is now active in the legal community as a member of the San Diego County Bar Association, Community Associations Institute, and from 2000-2001 served as the Co-Chair of the Membership Committee for the San Diego Chapter of the Community Associations Institute.

Anne is active in the San Diego community as a member of The Thursday Club Juniors, a division of The Thursday Club, a philanthropic organization founded in Balboa Park in 1921 that supports multiple community service projects in San Diego each year. Anne has served on the Board of Directors for many years in various capacities and is current the 2016-2017 President of the Board.

LORI F. BESSLER

Senior Attorney
Co-Chair, Construction Law Practice Group

Practice Areas:

Construction Law
Civil Litigation

Lori F. Bessler is Co-Chair of the firm's Construction Law Practice Group, exclusively representing commercial property owners and common interest developments. She focuses her practice on complex litigation involving construction, real property, and contractual disputes, as well as advising clients in the negotiation of contracts and pursuit of alternate dispute resolution.

Lori has nearly 20 years of experience in a variety of matters including construction issues, breach of contract, negligence, breach of fiduciary duty, property disputes, easements, unfair business practices, fraud and intentional torts. Lori also provides strategic counsel to clients on construction related transactional matters, including the preparation and negotiation of construction contracts with the goal of avoiding litigation. She has successfully mediated and arbitrated more than 100 disputes.

Lori is admitted to practice before all California state courts and the United States District Courts for the Southern, Central and Eastern Districts of California. She is a Barrister of the Hon. Fiorenzo V. Lopardo American Inn of Court. She is also a member of the State Bar of California and San Diego County Bar Association, Construction Section. Lori is certified in construction compliance by Lorman Education Services and is an associate member of the Contractors Owners Association of America.

Lori received her juris doctor in 1996 from Loyola Law School in Los Angeles where she was a member of the St. Thomas More Law Honor Society and on the Dean's List. As an undergraduate, she was an intern to the Hon. Bert Glennon, Jr., Judge of the Los Angeles Superior Court. Lori enjoys volunteer work and recently joined the Children at Risk Committee of the San Diego Bar. She previously sat on the Board of Directors of PAWS, San Diego, and volunteered for School on Wheels, tutoring children living in the Salvation Army transitional village.

DAVID E. BRUCE

Senior Attorney

Practice Areas:

Community Association Counsel

David Bruce received his B.A. in international relations from San Francisco State University in 1991 and his J.D. from New College of California, School of Law in 1995. David worked for more than four years at the California Department of Real Estate (DRE) as both a Deputy Commissioner reviewing the filings of developers in connection with his issuance of Public Reports and as a Real Estate Counsel disciplining licensees and developers in administrative law hearings on behalf of the DRE. He then worked for a major national homebuilder as an in-house counsel where he was responsible for all legal affairs for the homebuilder's Central Valley and Inland Empire areas of operations during the real estate boom years of the early to late 2000s. There, he worked on all aspects of real estate development including drafting and negotiating land contracts and creating all of the legal documents required for the start-up of associations, including the governing documents and other ancillary agreements between a developer and an association. He also reviewed and approved condominium plans and association budgets.

Prior to joining Epsten Grinnell & Howell, APC David was in solo practice where, in addition to working on various real estate matters, he represented both employers and employees in employment law disputes. He testified as an expert witness concerning the application of the Subdivided Lands Law, was an advisor for the CEB Practice Book, Forming California Common Interest Developments and is the author of the "State Regulation of Common Interest Subdivision Sales" chapter within the CEB Practice Book.

David is a veteran of the United States Air Force (enlisted) and United States Army (commissioned).

WILLIAM (BILL) S. BUDD

Senior Attorney

Practice Areas:

Community Association Counsel
Civil Litigation

Bill Budd is a cum laude graduate of Thomas Jefferson School of Law. During law school, Bill was on the editorial staff of the law review, competed as an oral advocate in the American Bar Association moot court competition, and taught a writing seminar for first semester law students for three semesters.

Bill brings a wealth of hands-on experience to the practice of law. Prior to attending law school, Bill worked as a community association manager for over ten years, during which time he attended more than 800 board meetings. He also earned the prestigious PCAM designation, demonstrating his commitment to the community association industry. Bill is a member of the Professional Standards Committee of the California Association of Community Managers (CACM).

Bill has extensive experience in all aspects of business and community association management, including construction, maintenance, finance, and personnel matters. Along with providing general business and transactional advice, Bill has represented many clients in litigation, including prevailing in five cases before the Court of Appeal; two of which resulted in published opinions that are now binding authority in California. [*SB Liberty, LLC v. Isla Verde Assn., Inc.* (2013) 217 Cal.App.4th 272, 280 (Board's right to exclude non-members from board meetings); and, *Trilogy at Glen Ivy Maintenance Assn. v. Shea Home, Inc.* (2015) 235 Cal.App.4th 361, 372 (Successful defeat of an Anti-SLAPP motion brought by Shea Homes)] Bill has also testified in Superior Court as an expert witness on community association issues.

DEA C. FRANCK

Attorney at Law

Practice Areas:

Community Association Counsel

Dea C. Franck earned her Juris Doctor summa cum laude from Thomas Jefferson School of Law in 2011 where she graduated as class valedictorian. Her activities in addition to academics included standing as Editor-in-Chief of the Jefferson Law Review as well as serving a clerkship as a Peggy Browning Fellow for the National Labor Relations Board Division of Judges in San Francisco, California. Dea also served as a judicial extern in the United States District Court, Southern District of California for Federal District Judge Jeffery T. Miller and Magistrate Judge William V. Gallo.

Prior to joining Epsten Grinnell & Howell, APC, Dea gained experience as a post-bar judicial law clerk in the Intermediate Court of Appeals for the State of Hawaii clerking for the Honorable Associate Judge Alexa D. M. Fujise. Now at Epsten Grinnell & Howell, APC, Dea works in the Indian Wells (Coachella Valley) office as Community Association Counsel, focusing on transactional issues such as governing document interpretation, rule drafting, contract review, and governing document enforcement. She is a member of California Association of Community Managers (CACM) and Community Associations Institute (CAI) and is actively involved in various committees for the Coachella Valley Chapter of CAI, including the committee for Quorum Magazine, published by CAI for managers, professionals, and business leaders in the community association industry.

Dea enjoys living in the Coachella Valley and believes in the importance of giving back to the community she loves. She proudly sits on the Board at Animal Samaritans, a non-profit animal welfare organization in the Coachella Valley, and donates many hours of her free time socializing the cats and dogs up for adoption at Animal Samaritans' Adoption Center. Dea is the doting owner of two rescue cats from the organization.

MANDY D. HEXOM

Senior Attorney

Practice Areas:

Civil Litigation
Construction Law

Mandy D. Hexom, practicing general civil litigation since 2001, focuses her practice on disputes involving contracts, real estate, construction, common interest developments, and employment. Mandy has tried and arbitrated cases in San Diego and Riverside Counties involving complex commercial real estate matters, tort claims, contract disputes, easements, and construction. In 2011, serving as trial counsel for a commercial retail center, Mandy obtained a multi-million dollar award for the client on a cross-action. In handling various litigation matters over the years, Mandy has gained the knowledge and experience to understand and manage the layers and complexities of litigation and its potential implications. Ultimately, Mandy is committed to providing quality services to her clients, being a zealous advocate, exceeding expectations.

At Willamette University College of Law, Mandy was Editor-In-Chief of Willamette Law Online, she competed at nationals in Atlanta, Georgia with the moot court, and was an Order of the Barristers honoree upon graduation. Admitted to the California Bar in 2001, she is also admitted to practice before all of the U.S. District Courts in California. In 2015, Mandy was named "Best of the Bar" by the San Diego Business Journal. Born and raised in San Diego, Mandy lives in the San Diego's North County with her husband and their two boys.

JOYCE J. KAPSAL

Senior Attorney

Practice Areas:

Community Association Counsel
Civil Litigation
Construction Defect

Joyce graduated Phi Beta Kappa from the University of Arizona where she obtained her B.A. degree in political science and J.D. degree from the University of Arizona College of Law.

Joyce joined Epsten Grinnell & Howell, APC in October 2004 and is a member of the firm's litigation department. Joyce's practice is devoted to representing condominium and homeowner associations in all types of litigation related matters including CC&R disputes, enforcement actions, small claims appeals, property disputes, breach of fiduciary duty claims, view disputes, fair housing and construction related matters. She also represents condominium and homeowner associations in mediations and alternative dispute resolution proceedings.

In her early years of practice, Joyce served as a research attorney for the San Diego County Superior Court where she honed her research and writing skills which has since resulted in five published appellate decisions and numerous unpublished decisions.

Joyce is licensed to practice law in California and Arizona and is also admitted to practice before the United States Supreme Court. Joyce is a member of the State Bar of California, the State Bar of Arizona and the San Diego County Bar Association. She is also a member of Community Associations Institute (CAI) and California Association of Community Managers (CACM).

PEJMAN D. KHARRAZIAN

Attorney at Law

Practice Areas:

Civil Litigation
Community Association Counsel

Prior to attending law school, Pejman was a certified community association manager and brings this knowledge and insight to his representation of common interest developments. Pejman understands the challenges community associations, their boards, and managers face and tailors his practice to meet these specific needs.

Pejman's practice includes all aspects of civil litigation, with a focus on common interest developments, governing document enforcement, contract disputes, D&O liability, general liability, construction, and other real property issues. Pejman also provides counsel to common interest developments, corporations, and other business associations, including contract review and negotiation, mediation and dispute resolution, corporate governance, and governing document interpretation.

Pejman graduated from James Madison University with a bachelor of business administration. He received his Juris Doctor from Thomas Jefferson School of Law, magna cum laude, and served as Notes Editor for the Thomas Jefferson Law Review. During law school he interned at the California Court of Appeal, the San Diego Superior Court and the California Department of Justice. Pejman held a post-graduate judicial clerkship at the Superior Court for the Commonwealth of the Northern Mariana Islands and assisted with matters before the U.S. District Court for the Northern Mariana Islands.

Pejman is admitted to practice in all California State Courts and the United States District Court for the Southern and Central Districts of California. He serves on the board of the Thomas Jefferson School of Law Alumni Association and the Iranian American Bar Association. He is involved in the San Diego Chapter of the Community Associations Institute and serves on its Manager Support Committee. Pejman is also an active member of the San Diego County Bar Association.

Awards:

2014 Young Attorney - San Diego Daily Transcript
2015 Best of the Bar – San Diego Business Journal
2016 San Diego Rising Stars – Super Lawyers
2017 San Diego Rising Stars – Super Lawyers

DAVID A. KLINE

Attorney at Law

Practice Areas:

Community Association Counsel

David Kline has been a member of the California State Bar since February 2006 and joined the firm's transactional practice group in 2014.

David received his undergraduate education at San Diego State University, graduating in 1997 with a Bachelor of Arts (B.A.) degree in political science and a minor in English. In 2000, he graduated from the University of Houston Law School with a Juris Doctor (J.D.) degree. While at law school, he was a member of the Mock Trial team and received many awards for his contributions. Upon graduation, he worked as an enforcement specialist and staff attorney for the Fair Housing Council of San Diego, a private nonprofit organization. In that capacity, he investigated complaints of housing discrimination and trained attorneys, association managers, and other industry professionals to prevent liability from a risk management perspective.

Before joining Epsten, Grinnell & Howell, APC David spent 7 years representing community associations in litigation, assessment collection, and transactional matters. His extensive experience includes defending homeowners associations against claims of housing discrimination filed with the Department of Fair Employment and Housing (DFEH); litigating matters involving violations of architectural restrictions, pet restrictions and senior occupancy violations; preparing amendments and restatements of governing documents; and advising boards of directors regarding their responsibilities under the Davis-Stirling Act and the governing documents.

David is a member of the San Diego County Bar Association, the California Association of Community Managers and is an active member of the Community Associations Institute.

JODI A. KONORTI

Senior Attorney

Practice Areas:

Community Association Counsel

Jodi A. Konorti graduated from California Western School of Law in 2005. Jodi originates from Vancouver, British Columbia, and holds her bachelor of arts degree in criminology from Simon Fraser University in Vancouver. While at California Western, Jodi served on the Board of Editors as Executive Lead Articles Editor for the California Western Law Review and International Law Journal and was an Honors Instructor for Legal Skills I. Jodi also served as a Judicial Extern to Justice Alex C. McDonald in the California Court of Appeal, Fourth District, Division One.

After passing the California State Bar in 2005, Jodi was Associate General Counsel for one of San Diego's largest real estate brokerages, until she moved to private practice. Jodi practiced in the area of real estate law where she represented real estate brokers, agents, and private parties in transactional and litigation matters, including landlord-tenant disputes, residential and commercial real property purchase and sale disputes, residential and commercial lease disputes, and easement disputes.

Jodi joined Epsten Grinnell & Howell, APC, in 2008 as a transactional attorney and assists the firm's clients with document interpretation and amendment, contract review and negotiation, dispute resolution, easement issues, covenant enforcement, corporate governance, and a multitude of other common interest development and real estate matters. Since joining the firm, Jodi has authored and published numerous legal advisories and magazine articles on a wide-range of common interest development legal issues and has gained a reputation for bringing reason to high-conflict disputes and being prompt in project completion and response.

Jodi is a member of the State Bar of California, the American Bar Association, and the Real Estate Division of the San Diego County Bar Association. Jodi is also a member of the San Diego Chapter of the Community Association Institute's Common Assessment magazine committee.

KARYN A. LARKO

Senior Attorney

Practice Areas:

Community Association Counsel

Karyn Larko joined Epsten Grinnell & Howell, APC, after graduating cum laude from California Western School of Law in 2007. While attending law school, Karyn worked as a law clerk for Ezekiel Cortez, a prominent federal criminal attorney in San Diego.

Before becoming an attorney, Karyn had a successful career spanning more than 15 years in business management, marketing and public relations. As a result of her substantial business experience, Karyn possesses well-honed communication, problem solving and conflict resolution skills, which are of particular benefit in the practice of community association law. Karyn assists the firm's clients on a wide range of matters, including covenant and rule enforcement, document interpretation, restatement and amendment, ADA and DFEH compliance, contract preparation and negotiation, loan document review, preparation, interpretation and enforcement of licenses and easements, and dispute resolution. Karyn also assists the firm's condominium association clients navigate the dynamic FHA certification and VA approval processes. Since joining the firm's transactional law department, Karyn has earned a reputation among her clients and her colleagues for being both knowledgeable and accessible.

Karyn has written articles on a variety of issues pertaining to community association law.

Karyn holds a bachelor's degree in commerce and administration with a double major in marketing and business operations from Victoria University, Wellington, New Zealand. She is a member of the State Bar of California, the San Diego County Bar Association, the Community Associations Institute (CAI) and the California Association of Community Managers (CACM).

ELISA M. PEREZ

Attorney at Law

Practice Areas:

Assessment Recovery

Elisa M. Pérez is a native of Southern California and received her bachelor of arts degree from the University of California, San Diego, where she studied history, international relations and economics. Prior to passing the California State Bar in 2008, Elisa concentrated her law school curriculum on international business and real estate. She received high honors from the University of San Diego School of Law for her work in land use with the City of San Diego Redevelopment Agency and completed graduate course work in International Business Transactions and Comparative Constitutional Law under the instruction of the late United States Supreme Court Justice Antonin Scalia, in Nice, France. She also attained an internship with the Spanish law firm of De Pasqual & Marzo in Barcelona, Spain, where she dealt with real estate and corporate matters for companies operating primarily in Spain, England and France.

Since 2008, Elisa has maintained her focus on property law matters in representing homeowners and homeowner associations alike in litigation, small claims, assessment collection, and enforcement matters. She has counseled municipal agencies in landlord/tenant actions involving habitability issues in mobilehome parks and has worked with the California Department of Housing and Community Development on behalf of property owners. Elisa is well-versed not only in property law at the local and state levels, but also in the practical aspects of how such laws affect homeowner associations, property owners and tenants on a day-to-day basis here in California. In keeping her focus on property law, Elisa joined Epsten Grinnell & Howell, APC in 2012. She currently handles foreclosure and litigation matters related to the recovery of assessments, including collection of judgments awarded.

As an active member of the community, Elisa enjoys supporting organizations promoting equality of opportunity and human rights, such as Habitat for Humanity, the San Diego County Hispanic Chamber of Commerce, Camfed and Rachel's Women's Center. She is also fluent in Spanish.

TRINETTE S. SACHRISON

Attorney at Law

Practice Areas:

Construction Defect
Appellate Counsel

Trinette Sachrison graduated magna cum laude from University of California, at Berkeley in 1992, with a Bachelor of Arts degree in psychology. She has been a member of the California State Bar since 1995, having graduated from California Western School of Law, cum laude, in 1994. During law school, Trinette served as a Judicial Extern to Justice Don R. Work in the California Court of Appeal, Fourth District, Division One. She was also a staff editor of the California Western Law Review, and served on the Executive Council of the Advocacy Honors Board.

Over the course of 18 years, Trinette's practice has focused primarily on civil litigation, specializing in construction defect litigation, insurance bad faith and personal injury. For the past several years, Trinette has placed an emphasis on handling state and federal court appeals. Trinette's appellate work has resulted in several successful published and unpublished opinions. The most recent include *Shirk v. United States,* 773 F.3d 999 (9th Cir. 2014), and *Lano v. Carnival Corporation*, 621 Fed.Appx. 373 (October 22, 2015).

Prior to joining Epsten, Grinnell & Howell in December of 2015, Trinette was a senior attorney with Kaye, Rose & Partners, where she defended major international and domestic cruise line clients in matters arising on the high seas and in international and state territorial waters. She was also responsible for instituting a nationwide transformation of the consumer arbitration procedures in cruise line passage contracts for United States citizens.

Trinette is also licensed to practice in Arizona, having passed the bar in 2007, and admitted to practice before the U.S. District Courts for the Northern, Southern and Central Districts of California, as well as the Ninth Circuit Court of Appeals. Trinette, a San Diego native, is a member of the American Bar Association and San Diego County Bar Association.

NANCY I. SIDORUK

Senior Attorney

Practice Areas:

Community Association Counsel

Nancy I. Sidoruk received her B.A. from U.C. Berkeley in 1990, finishing her degree in three years while an Alumni Scholar and active member of the Cal Band. She graduated first in her class at the University of La Verne College of Law in January 1994. A scholarship student, she was law review editor-in-chief, moot court finalist, and honored in multiple subjects, including real property, and was a judicial extern for the California Court of Appeal.

With Epsten Grinnell & Howell since 2006, Nancy counsels clients on document interpretation, enforcement and amendment, director duties and responsibilities, meetings, elections, corporate governance and related transactional matters. She is a dedicated Community Associations Institute (CAI) chapter and California Legislative Action Committee (CLAC) volunteer, including: CAI-Greater Inland Empire (CAI-GRIE) Board of Directors (President, 2015; Executive Committee, 2014-16); President's Award (2010); Legislative Support Committee (LSC) Chair (2009-13; Committee of the Year, 2013); and, Committee Chair of the Year (Magazine, 2003). Nancy's dedication as the CAI-GRIE CLAC delegate (2010-16) and liaison (2009-10) led to her receipt of the 1st CLAC Statewide Volunteer of the Year (2010) honor and her appointment to CLAC's Legislative Strategy & Research Committee (2014-2016), tasked with forward planning, strategy development and legislative research. Under Nancy's leadership, CAI-GRIE was nationally recognized by CAI for Chapter Management & Development successes (25th Anniversary President's Theme, 2015; Legislative Support Committee, 2012) and was recognized by CLAC as 2009 Turn-Around Chapter.

Nancy has been regularly involved with firm programming, education and practice growth, including serving for several years as both community association counsel and the firm's Director of Practice Development. Known for her focus on education and attention to detail, Nancy has co-edited the firm's Community Association Law Resource Book and was founding editor of its e-newsletter. Nancy is a frequent author and speaker, including at CLAC Legislative Day and other programs. Nancy has also contributed to The Law Journal of the California Association of Community Managers (CACM).

Nancy earned an M.B.A. from the University of Redlands, where she earned a 4.0 GPA and membership in the school's society for leadership/academic excellence. She holds a certificate in geographic information systems (GIS). Nancy has also practiced criminal and personal injury law with an emphasis on negotiation, and taught as an adjunct professor of paralegal studies. She brings practical prior business experience as a marketing professional, especially serving the community associations industry, and has regularly volunteered on multiple nonprofit boards and committees during the past twenty-five years.

VINCENT J. SINCEK

Senior Attorney

Practice Areas:

Community Association Counsel
Civil Litigation

Vince Sincek is a native San Diegan. He received a B.A. in philosophy from the College of San Luis Rey in 1969. Vince's early career was that of a Licensed Land Surveyor in the State of California. His strong aptitude for mathematics and trigonometry soon propelled him into civil engineering where his land use experience, the recommendations of others in the profession, and the successful completion of a State of California licensing examination earned him the professional designation Registered Civil Engineer. Vince spent 24 years in the engineering and land use professions, including owning and managing his own firm.

In 1997, Vince earned his law degree cum laude from the University of San Diego School of Law. Joining Epsten Grinnell & Howell, APC in the spring of 1998, his expertise in engineering and land use has enabled him to make valuable contributions to the firm's real estate and construction law practice areas. Respectfully dubbed the "dirt expert" by his EG&H colleagues, Vince continues to be an important source of knowledge in legal matters involving litigated boundary disputes, drainage, land use, and easement issues. He also represents homeowner associations in governance matters.

JUSTIN M. STOGER

Senior Attorney

Practice Areas:

Community Association Counsel
Civil Litigation
Construction Law

Justin M. Stoger has more than 10 years' experience as a civil litigator and has successfully represented clients in construction contract disputes, mechanic's lien and stop notice enforcement claims, bond claims, employment discrimination and wage and hour litigation, real property disputes, fraudulent transfer claims, personal injury and premises liability claims, claims for unfair business practices, and general business and commercial litigation. Justin brings his extensive experience representing contractors in the public and private works context to the firm's civil litigation department, and now focuses his practice on representing project owners in construction litigation, and representing community associations in CC&R enforcement, in defense of claims against community associations and their boards, and all other aspects of civil litigation the firm handles.

Justin earned his B.A. in sociology from Boston University in 1998, graduating cum laude, where he rowed crew and played football, and earned his J.D. from the University of Miami (FL) in 2002, graduating magna cum laude. A native New Yorker, Justin worked for a commercial litigation firm in New York for two years before moving to San Diego in 2005.

Justin is licensed to practice in all California and New York state courts, is a member of the San Diego County Bar Association and its construction law group, and is admitted to the Southern, Eastern, and Central Districts of California, and the Southern and Eastern Districts of New York.

When he's not practicing law, Justin enjoys running, snowboarding, and everything baseball.

JESSICA THOMPSON DURAN

Attorney at Law

Practice Areas:

Construction Defect
Construction Law

Jessica Thompson Duran received her B.A. in Political Science: International Relations from the University of California, San Diego in 2002. She earned her law degree from California Western School of Law in 2005 where she was a member of the Business Law Society and the Women's Law Caucus. While in law school she received honors for her commitment to pro bono work in serving the political refugee community.

Jessica joined Epsten Grinnell & Howell, APC in 2014 in the construction defect department where she assists the firm in complex litigation matters involving the design and construction of residential buildings. Jessica's experience includes construction defect and insurance litigation as well as landlord tenant law.

Jessica is a member of the California Bar Association, the Construction Law Division of the San Diego County Bar Association and the Lawyer's Club. Jessica is a supporter of the Court Appointed Special Advocate (CASA) program and has volunteered as an advocate to disadvantaged youth in court proceedings. In 2014, Jessica was awarded the California Bar Association's Wiley Manuel Award for her outstanding achievement in Pro Bono work.

In addition to her pro bono work, Jessica enjoys quality time with her new family, practicing yoga and taking cooking classes in international cuisine.

CARRIE M. TIMKO

Senior Attorney

Practice Areas:

Community Association Counsel
Civil Litigation

Carrie M. Timko has been an attorney with Epsten Grinnell & Howell, APC since 2007. She was born and raised in Warren, Ohio and graduated magna cum laude with a Bachelors of Business Administration from Kent State University in 2000. After being awarded a full scholarship to Stetson University College of Law in St. Petersburg, Florida, she graduated cum laude in December 2002 with her Juris Doctor. Carrie also earned her Master of Business Administration from Stetson University in 2002.

While she assists her clients with general corporate matters, her practice focuses on litigation, including enforcement actions, contract issues, and government claims. Carrie has also succeeded on several appellate matters before the Fourth District Court of Appeal in San Diego and Orange Counties. She has authored several articles on relevant community association issues for industry publications, and has spoken at several industry events. Carrie is a member of the California and Hawaii Bars, and the San Diego County Bar Association. She has also participated in the Louis M. Welsh American Inn of Court and has served on the Educational Committee for the San Diego Chapter of CAI. She currently serves on the Legal Steering Committee for CACM.

GORDON A. WALTERS

Attorney at Law

Practice Areas:

Construction Defect

Gordon Walters is an associate attorney with Epsten Grinnell & Howell, APC. Gordon has been a part of the construction department since joining the firm in 2011 and has handled numerous complex litigation matters since his time as a law clerk while attending law school. Gordon has also assisted in the handling of numerous appellate matters for the firm's clients and has successfully litigated governing documents disputes through trial.

Gordon graduated from the University of San Diego School of Law in 2010, where he participated in several Moot Court competitions and was a member of the Intellectual Property Legal Association and the Sports and Entertainment Law Society. Prior to law school, Gordon graduated from the University of Maryland, College Park, where he received a B.A. in criminology and criminal justice and a citation from the College Park Scholars Program.

Gordon is a member of the State Bar of California and the San Diego County Bar Association.

JILLIAN M. WRIGHT

Attorney at Law

Practice Areas:

Community Association Counsel
Construction Defect

Jillian Wright graduated cum laude from the University of California, Hastings College of the Law in 2012. She received her B.A. in both psychology and political science from University of Southern California, magna cum laude. While in law school, Jillian worked as a certified law student for Hastings Civil Justice Clinic where she successfully represented plaintiffs in a wage and hour bench trial. While at Hastings, Jillian served as the Executive Submissions and Acquisitions Editor for the Hastings Women's Law Journal and competed in the ABA's Law Student Division Client Counseling Competitions. In 2011, Jillian was awarded the California Bar Association's Wiley Manuel Award for Outstanding Achievement in Pro Bono.

Jillian is a member of the State Bar of California, the San Diego County Bar Association, the Consumer Attorneys of California the Consumer Attorneys of San Diego and a former member of the Louis Welsh Inn of Court (2013-2014).

DEBORA M. ZUMWALT

Senior Attorney
Co-Chair, Assessment Recovery Practice Group

Practice Areas:

Assessment Recovery

Debora Zumwalt graduated from the University of California, Irvine, in 1984 with degrees in economics and political science. She received her law degree from California Western School of Law in 1990.

Debora's entire legal career has been spent representing community associations throughout Southern California. She joined Epsten Grinnell & Howell, APC, in 1994, where she supervises the firm's Assessment Recovery Department. Debora oversees nearly 2,500 collection matters and her department successfully collects an average of $250,000.00 in delinquencies each month for our association clients. Debora frequently publishes articles on assessment recovery issues in the firm's newsletter, as well as in industry-related publications.

Debora recently retired as a Girl Scout leader after 13 years of leading her daughter's Girl Scout troop. She continues her long-time volunteering at the Old Globe Theatre in San Diego.

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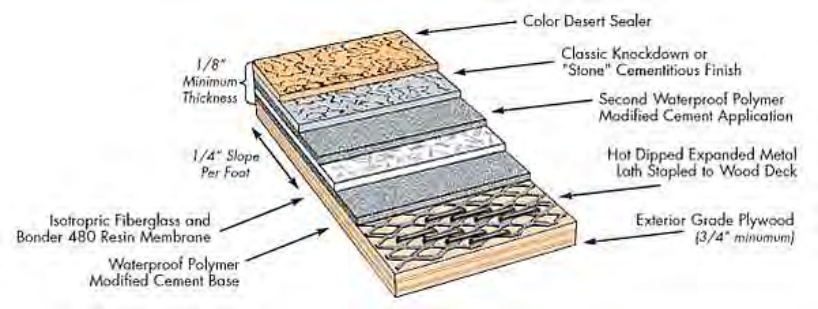

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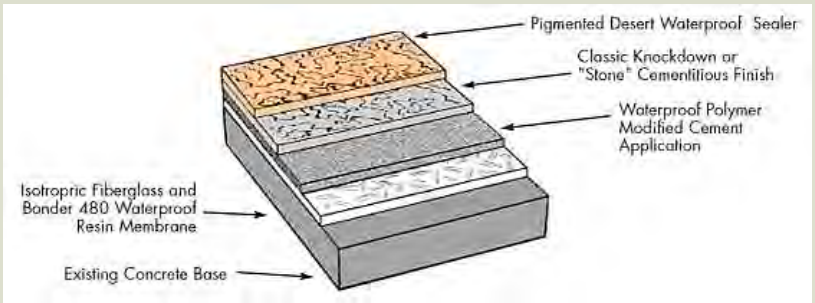

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KNOWLEDGE INTEGRITY COMMITMENT SUCCESS

For 30 years, Epsten Grinnell & Howell, APC has been a recognized leader in community association law throughout Southern California.

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CELEBRATING 30 Years 1986 - 2016

We are a leader in our field for a reason. We work hard to earn our reputation and believe each day is another opportunity to solidify it. By preserving our founding mission of knowledge, integrity, commitment and success, we strive to be an entity that garners the admiration of not only our clients, but also that of our business associates, suppliers and our more than sixty employees.

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