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SOUTHCOAST – MARCH 2015 - TRUST-TRUST BUILDING
BY Beth A. Grimm, Attorney

DEFINITIONS

noun: **trust:**

1. Firm belief in the reliability, truth, ability, or strength of someone or something.
"relations have to be built on trust"

[confidence](#), [belief](#), [faith](#), [certainty](#), [assurance](#), [conviction](#), [credence](#);

synonyms: [reliance](#)

"good relationships are built on trust"

antonyms: [distrust](#), [mistrust](#), [doubt](#)

2. Acceptance of the truth of a statement without evidence or investigation.

"I used only primary sources, **taking nothing on trust**"

3. The state of being responsible for someone or something, "a man in a position of trust."

synonyms: [responsibility](#), [duty](#), [obligation](#)
"a position of trust"

4. A hope or expectation, "a hope or expectation that leadership will do a good job."

5. IN LAW: confidence placed in a person or persons by making that person/s responsible for property belonging to others or an arrangement whereby property is held in a trust.

synonyms: [safekeeping](#), [protection](#), [charge](#), [care](#), [custody](#);
trusteeship, the Common Area is "held in trust for owners"

verb: **trust**; : belief in the reliability, truth, ability, or strength of someone or something.

synonyms: rely on, depend on, bank on, count on, be sure of
"he can be trusted to carry out ..."

DO YOU THINK TRUST IS IMPORTANT TO RUNNING AN HOA? ... WHY? ... WHY NOT?

WHAT DO YOU THINK DESTROYS TRUST IN AN HOA BOARD?

WHEN YOU KNOW THE MEETING/SITUATION WILL LIKELY BE CHALLENGING- HOW TO TAKE THE BULL BY THE HORNS

TYPES OF DIFFICULT MEETINGS:

- An anti-Board contingent continually disrupts meetings.
- You know that chaos is likely at an upcoming meeting because of a proposed large special assessment.
- You have lost control of a document update / amendment project because of negative opposition messages being circulated by some owners, time for a meeting.
- OTHERS?

**Prepare ...prepare ...prepare ... YOU CANNOT PREPARE TOO MUCH!
Plan to make a good presentation!**

A comfortable room, size, temperature, fresh air/snacks if possible, water at the least, chairs.

If no good orator on the board, reading a script at the opening of the meeting can be invaluable.

Avoid having the manager do the talking, except when reporting to the Board or asked questions.

An Agenda to pass out

A homeowner forum / meeting policy

An egg timer

A process for owners to present questions, orally or in writing

A process for answers, either fact sheets / “experts” present / or promise of informational followup

Positive body language

Active listening posture

Reasonable boundaries

Limit choices / Responses

Respectful behavior towards all, even the “pain” in the room

Emotional control /leave baggage at the door

Business-like approach / professional / organized thoughts.

[In order for owners to trust a board, the directors must appear knowledgeable, direct, firm, no nonsense, responsive, interested, attentive and sincere.]

Difficult Political Issues

Uprisings. A group of concerned owners is forming. How can a board diffuse the situation, or prevent it from festering into a great big political and legal problem? Example: a contingent of dissatisfied owners has circulated a petition or letter demanding the manager be fired, or the directors resign and submitted it to the board. Action required? Advised?

Preempt chaos. Get proactive!

DO NOT JUMP INTO DEFENSIVE MODE AND STRIKE BACK!!

Take a breath. Get some legal advice to determine if petition requires an election.

Investigation.

Gather credible information to provide owners to counter allegations.

Communication to owners signing petition? All owners?

Survey

Allow/Recommend Manager response/Evaluation needed?

Townhall meeting?

Proceed in a business like professional way, regardless of the tenor of petition.

Provide information. Offer transparency. Encourage review of financial records. Circulate or post minutes. Offer to “Meet and Confer”.

Understand explanation of difference between a petition for a vote and petition demanding a specific action. (ex. Demand for board to resign vs. petition for recall election)

EXPECTING A HOTLY CONTESTED ELECTION?

Be prepared.

Have and follow good election rules. (It’s the law!)

Use **independent** inspectors.

[I shouldn’t have to say this but if owners are suspect of manager or board, use an outside inspector out of respect and good sense!]

Arrange townhall meeting for equal time presentations or debate on measure, or provide factual communication with reasons.

If opposition is raised or demands equal time, figure out a reasonable process for it.

IS A RECALL ELECTION THE WORSE THING THAT CAN HAPPEN?

Cons: political unrest, expensive, disruptive, any recalled directors can run again.

How should boards comport themselves? [CALL THE MEETING – 20 DAYS NOTICE, 30-90 DAY SCHEDULE, WHAT IF ELECTION COMING UP?] MIXED RESPONSES OF ATTORNEYS-if all directors are up for election, why not consider joint resignation to avoid recall and just have the election? If not all it is different.

Pros: gets the apathetic out and gives the board a platform to show what has been accomplished, explain what the problems are and the solutions planned, etc.

What about owners? What can be accomplished at such a meeting? What happens if the Board is recalled and there is no new board?

TRUST BUILDING!! PREPAREDNESS, RESPECT, ORGANIZATION, PRESENTATION

ACHIEVING TRANSPARENCY WITHOUT JEOPARDIZING NECESSARY CONFIDENTIALY.

What does being “professional” mean? Whether you are a manager or a director? Ethics? Avoiding Bias? And why?

Relationships-what if a contract has gone south? Should your service providers be evaluated annually? Why or why not? Should the Board seek owner input on vendors?

In house vendors? What if managers want to use “their” vendors and don’t want to consider other qualified vendors that the association has used previously? Do professional relationships matter? Has trust been destroyed? Can it be regained?

How?

Honesty

Willingness to stand up and speak to claims/charges.

Strength

Offer to be evaluated, consider summary, let people speak for themselves.

Communication with/to owners.

Be forthright about pros and cons of using in house vendors, having evaluations, coming out of hiding to defend allegations.

DIRECTOR ACTIONS THAT TEND TO BREED DISTRUST - even if well meaning.

What do you do if a director is divulging confidential information gained in executive session meetings or attorney-client privileged communications to the members?

Is it ever appropriate for a husband-wife to serve on the same board?

Is it ever appropriate for directors to receive compensation?

When should a director abstain from voting? (Is there a difference between abstaining and remaining silent?)

ARTICLE 8. Conflict of Interest [5350- 5350.]

5350. CONTRACTS INVOLVING DIRECTORS/DIRECTOR CONFLICTS OF INTEREST, INTERESTED DIRECTOR

(a) Notwithstanding any other law, and regardless of whether an association is incorporated or unincorporated, the provisions of Sections 7233 and 7234 of the Corporations Code shall apply to any contract or other transaction authorized, approved, or ratified by the board or a committee of the board.

(b) A director or member of a committee shall not vote on any of the following matters:

(1) Discipline of the director or committee member.

(2) An assessment against the director or committee member for damage to the common area or facilities.

(3) A request, by the director or committee member, for a payment plan for overdue assessments.

(4) A decision whether to foreclose on a lien on the separate interest of the director or committee member.

- (5) Review of a proposed physical change to the separate interest of the director or committee member.
- (6) A grant of exclusive use common area to the director or committee member.
- (c) Nothing in this section limits any other provision of law or the governing documents that govern a decision in which a director may have an interest.

Comment taken from THE DAVIS STIRLING ACT IN PLAIN ENGLISH: This section is new to the DS Act; however, the concept is not new. Before now, many directors did not realize they should not be voting on matters that could benefit them. As before in the law, seeing a conflict of interest because of some benefit to a board member did not mean there was a legally actionable one. If disclosed, contracts that benefit a director are not void just because they exist, but that does not mean that an owner or other director is barred from filing a legal action to challenge the board decision, whether or not the interested director voted. There are considerations about how far a board could go before a judge would find it breached its fiduciary duty by approving a contract that benefited one of their fellow board members.

The above STATUTE tells when directors should not vote with regard to certain matters, but fails to explain or recognize that there is a difference between abstention and simply not voting. And there is a difference.

Silent acquiescence is the subject of Attorney General ([Opinion No. 10-901, December 2011](#)) in addressing decisions of the Council on Developmental Disabilities. It has bearing as an AG opinion on a particular subject endemic to board actions.

[Points] From the decision:

THE HONORABLE LEROY G. SHIPP, CHAIR OF THE CALIFORNIA STATE COUNCIL ON DEVELOPMENTAL DISABILITIES, has requested an opinion on the following questions:

3. When the Council convenes a meeting to consider and to vote on matters before it, what are the effects of member abstentions?

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BG COMMENTARY: (I believe THE CONCLUSION that follows has bearing since the Davis Stirling Act does disqualify some directors from voting on certain matters. But the quorum issue is somewhat disturbing.

CONCLUSION of the OPINION

3. With respect to abstentions: (a) Council members who are disqualified by law from participating in a given matter may not be counted toward a quorum, and their abstentions may not be interpreted as support for, acquiescence in, or opposition to any actions taken by the Council; (b) members who are present and entitled to vote, but who abstain, are counted toward a quorum; (c) members who abstain by choice are deemed to “acquiesce” in the resolution reached by the Council—meaning that Council decisions will require majority support only from the members who actually cast votes, not from those who are entitled to vote—provided that the Council may not act without support from at least a majority of the Council’s quorum; and (d) a discretionary abstention may not be counted as a concurring or a dissenting vote absent a special rule to that effect.

Further BG Commentary: The below comments from the AG opinion do not align very well with the Director Conflict statute in the Davis Stirling Act because agreeing not to vote is not the same as silent acquiescence, or is it? In any case, majority rules. But the quorum issue above is somewhat disturbing.

...board members’ refusal to vote is, in effect, a declaration that they consent that the majority of the quorum may act for the body of which they are members...Such acquiescence cannot, of course, bestow a power on a body that is beyond its legal authority; hence, any action taken by a body must still be supported by the votes of a least a majority of the body’s quorum. (p. 10, para. 2.)

...the abstaining member [through silence] may accurately be said to have “acquiesced in” or “consented to” any resolution reached by the body, as long as the number of members voting was at least a majority of the quorum. (p. 13, para. 2.)

We likewise disapprove any suggestion that a body may validly take action without the support of concurring votes from at least a majority of that body’s quorum. (AG Opinion, p. 14, para. 1.)

Last QUESTION - If husband and wife are on board of 3, and neither can vote on a AC requests of theirs – how could it ever be approved?

(Hint - consider committees or member approval)
