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Thank you for coming down for the MC le class to talk today about some Hoa law. Just some basics and some recurring issues that I see in my office. As a brief introduction, my name is Jay Brown, I've been practicing in this area for 27 years. I've seen it grow from then little pamphlet with the Davis Stirling act to, you know, however many pages it is now. And that's probably 75% of my practice. So I deal with these issues on a on a daily basis. You see the name my firm, and I always give this disclosure before I start, if you're a homeowner or an attorney that represents somebody in a homeowner's association and you recognize my firm, or me, please don't ask me a question about that particular Hoa or that particular issue because I won't know. And anyhow, it's not a good idea. So if you've recognized the name and have an HOA issue with that particular Hoa, please save it. So the intent of the class, like I said, is just to give you some basics, kind of a starting point. and answer some questions. If you have it, feel free to raise your hands during the presentation I'll, I'll take questions, and then to talk about some recurring issues that I see happening in my office. So first off, I just like to how many people here live in an HOA. A lot of them I gave a handout, which I'm supposed to read the disclosure they see AI handout is provided reprinted with permission of Community Association Institute. And you can learn more by visiting ca ai online.org. Anyhow, this is the most recent information I could find on their website. And you can see just the growth. So if you look back when I started in 91, little over 130,000, probably communities up to 344,000. And it's growing. When I started there were just a few firms that handled Hoa work. Now there are many and Hoa work is not popular. But there's there's enough of it that there is now a whole industry of attorneys that represent family members of homeowners associations against the HOA. So we've arrived, I guess, the HOA law saying I just give this to you Just for your information. So you can see that Hoa law is not going away. And I'll talk about some new legislation. The Hoa is used to be kind of the whipping boy for the legislature. But it's kind of toned down a little last few years. So diving right in resources, I've listed

a couple here. And this first one the CB book, advising California common interest communities. I know the law library has at least one set of those two sets, the two volume set. This is a great resource. I go there a lot to start out my research if there's a difficult issue. They come with a form book or a forum CD, you can download forms on there, great resource. And then ci which I've already mentioned and provided the the hand up for you guys, if if any of you are on Hoa board, I would advise you to check out ca your property manager may already be a member of it, but they have a lot of good resources, a lot of good forums, a lot of good articles, and do a lot of presentations around the county for board member education and also property manager education. So how many people have ever been on a board of directors of an HOA? Well, thank you for serving it's a thankless job. You have to have a very thick skin. And it's been my experience in the years I've been doing it despite what you see in the news, you know on Turco files you know, hoa is are whipping boy for Turco, it seems like by and large they run like they're supposed to run dedicated volunteers take their job seriously. And the HOA is function as they're supposed to function.

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But that being said, it's the outlier cases that are instances that create all the all the new legislation. Sources of law declaration of restrict somes, oftentimes referred to as CCN, Rs, covenants, conditions and restrictions. bylaws, most HLS are incorporated, although they don't have to be incorporated articles of incorporation rules and regulations. Those were adopted by the board of directors and distributed to members members have a chance to comment on the rules and and can vote to repeal them if they get enough support. Election rules that came into existence three or four years ago. Hoa is are supposed to have a set of election rules that kind of mirror the election rules that are set forth in the Davis Stirling common interest Development Act. So anybody that bought a house, did you guys read your declaration of restrictions? bylaws before you signed us code papers? Now? You did? Okay. Yeah, I find most people if they live in a senior community, they've read their CCN. ours. Or if they have a particular issue, like maybe they have kids, and they want to put a basketball hoop out front, they might read it, but by and large, people don't read it. They just you know, you buy a house, you get a stack of documents that closing, you thumb through it, you sign it, and you're off and running. As an attorney, if you represent clients as I would advise them to take a look at them, at least thumb through some of the use provisions. A lot of the language is boilerplate. But you can check the Table of Contents where talks about use and maintenance, especially in a condo development, which what you're responsible for. Sending out those are the that's the starting point. And any Hoa question that may come into your office is look at the governing documents. And if you have an HOA that's represented by a property management company, don't rely upon the property managers interpretation of the governing documents. do your own research, because I found sometimes low property managers are very helpful in the day to day operations. Sometimes they get things wrong. So yeah, use best practices. Take a look at it yourself. see any other sources of law Civil

Code Section 4000. This is the Davis Stirling act. Basically, you're subject to the Davis Stirling act. If you have common area, we represent a few Hoa is around the county that don't have any common area and are not subject to the Davis Stirling act. And they cycle through property managers because property managers Can't they don't fit into the box for the property management company. different set of rules Civil Code Section 51. That sec. That's the Unruh Civil Rights Act. And if you have a senior community that those rules apply in Civil Code Section 51, it basically permits age discrimination that allows the 55 plus communities to survive. And excuse me, the other source of law, corporations code, obviously. Civil Code Section 798. If you represent a mobile home community, there are a number of mobile home communities we represent that are actually condominiums, their condominiums for mobile home, can you own the airspace and you plop your mobile home down in there. Any of those are that Civil Code Section deals with mobile homes. Civil Code Section 714. There's some new sections added to that 714 and 714 point one I'll talk about that later deals with solar panels on multi unit buildings. They used to be that if you had a you know four unit or a condo complex with four units in a building, the HOA onto the roof, it's common area, you could say no solar panels. There's a new code section that stops that practice you have to permit solar panels or solar energy systems are called city codes. case law. Yes. Is that for an individual unit?

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What happens is if an individual unit wants to put solar panels on their building, they can do it. They have to have a licensed contractor. They have to do a survey that will show how to equitably allocate the space on the roof to accommodate all the units if future unit owners want to put solar panels on I don't know No idea how it works in a high rise down here, where you've got 200 units. And but yeah, hopefully they're all energy efficient to begin with city codes and then case law, obviously your other other sources of law. So that's where you would start. If you have an HOA question coming in. It's kind of the hierarchy, the declaration, civil code, and then work your way down. And I'm I mentioned there, there are a ton of websites out there. A number of these law firms have very good websites, I'll give a plug to some of them. But you can go and start your research there. They've categorized it by case category. And subject matter. So that's you can tell another way that Hoa law has arrived is now law firm, large law firms are devoting websites to these issues. So basic governance on the page two, basic governance of an HOA, what are the board's responsibilities, the main one is common area maintenance, you want to make sure that the community stays looking good that what you bought into remains the same. So that that's the main the main priority of the board of directors. And it's also usually the exclusive control of the board. Members done. And this is still the common misconception is people buy into an HOA, they say, Okay, I one vote, one unit, like we get to vote on everything, whether or not the pool is going to stay open in the winter, or you know, certain trees going to be cut down. But no, that's the exclusive board control. And sometimes they'll delegate it to a committee, but the membership doesn't get to vote on all that stuff. That's not a true democracy.

members get to vote on certain things, you know, who's elected to the board, maybe to overturn the rules, large special assessments, things like that. But by and large, it's a corporation, you elect board members, they run it like a corporation. If you don't know the names of your board members or your Hoa, it's probably running pretty well. So another main, main thing for a board member is to investigate complaints, whether it's, you know, barking dog, I mean, I say barking dog, because that happens all the time. You know, it doesn't matter if it's a condo, single family home, two acre, minimum, lot, whatever, there's always a barking dog issue going on. investigate it, document it. So that if it does come to the point of litigation or mediation, the board can show that they've done their best to investigate the problem and made a good faith effort to investigate it. budget. This is important. And there's some new legislation that came down. That goes into effect in January, the HOA is responsible for preparing and distributing a budget to the members. And as part of that budget process, the board has to go out. Take a look at the common area elements, you know, how many years left on the roof, as a pool, the new coping, we need a new pool motor things like that. You get a reserve study every couple of years you look at that. You look at your assessments, okay? Will the assessments cover all the budgeted items, and still leave some for reserves, and then you meet with your property management company. They plug it all into a document and board approves it and it gets sent out to the membership. That's a very important function of the board of directors. Sometimes boards will defer that responsibility to the property management company. But ultimately, the liability rests with the board of directors. And that's what led to Assembly Bill 29 quill sort of 2912 which goes into effect in January. The purpose of this legislation is purpose of the bill. According to the author, there has been an increase in fraudulent activities related to the finances of Hoa is one example from a retirement community describes excuse me, $110,000 discrepancies in Hoa finances related to their management company.

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You know, I've been doing this 27 years, the number of fraudulent things happening with the property manager, I can count on one hand, I don't think it's a huge problem. But like I said, there's this must have made headlines somewhere and a legislator jumped on it, but, but what came out of it is not not too bad. So what happens now is boards must get fidelity insurance to protect their finances. And it also requires, you know, withdraw from reserve account that requires basically, Board approval, it used to be just had to have a board signature, a board member and another officer that now needs a written finding from the board of directors. So that's kind of the upshot of 2912. And hopefully, that will do help protect the HOA is in their finances. But like I said, I don't, I haven't found that to be a big problem. But, you know, this one must have made headlines, review finding out Oh, that's the other thing that came out of this bill. boards now have to review their finances monthly. Okay, that means look at the checkbook. Take a look at their budget, how their expenses are going for the year. If you have a board and you only meet quarterly, you can set up a committee to look at the to look at the financials. But that's the other

offshoot of this bill. They want the board's to be more aware on a monthly basis. Civil Code Section 5600, which is next up next on the list. And the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents in this Act. The boards don't like to raise assessments. Part of its political you know, they know if they raise assessments, they may not get reelected. Part of it is sales, right? You're going to sell a house or sell your house and the monthly assessments are $150 less not too bad. But if your funding requirements call for it to be 300 a month, you know, it might affect some sales, take some potential buyers out of the market. But the board has a fiduciary obligation to impose those assessments

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to perform their act or perform their obligations. And if it means a special assessment, it means a special assessment.

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I've had one as large as $30,000 per unit. It wasn't easy to swallow for the members. But most of them came up with it. A few of them ended up selling but they needed it. The development had kind of like wood shake siding, and it was just shot and it was old and a lot of water intrusion damages. So they had to get rid of it. Most special assessments luckily are not that large. And when people have trouble financing it a lot of ways will actually get a loan from a bank. And then the HOA is responsible for that loan, but it's secured by the payment of assessments so that the individual members can make smaller payments throughout the life of the loan. And it makes it easier to get large projects done to finance large projects. Funding reserves. There's like a mentor, you can't be afraid Afraid to assess sufficient to fund the reserves. Okay, because of breach of fiduciary duty to not fund your reserves. And, you know, that's a scene that in many, many lawsuits where that's one of the one of the arguments they use when people don't want to pay the large special assessment. They say the HOA breached their fiduciary duty because they didn't properly fund the reserves over all these years. Is there a percentage of reserves or did they say 100% or 75? Well, that's the thing. You're not required to fund your reserves at 100%. I have Hoa is where they have maybe $2,000 in their reserve account. They just can't afford it. So there's no set requirement, but what the board has to do is they look at the reserve study. They see the recommendation there. They look at their membership. What are they paying currently? What can they pay, you know, not everybody can pay $500 a month and a lot of the communities so it wouldn't make any sense to go that high. You have to look at other mechanisms. And funding reserves is a is a big problem. And my firm represents a lot of smaller Hoa is up to 4050 units. And a lot of these were built in the 70s and early 80s. And there's a lot of deferred maintenance. And, you know, roofs need to be replaced windows or just says, you know, water coming in. Insurance deductibles have gone sky high. But they don't have the reserves, so they have to get loans. The

problem with the loans is you have your your delinquencies can't be below a certain threshold. So if you have 25% of your unit owners that are more than two months delinquent, you're not going to get a bank loan, and you're stuck, you're stuck having to do a special assessment and hoping the members can come up with with the funds. I have kind of a general rule. When people ask me about buying a condominium, I tell them, don't buy it until it's been. It's been built for five years, let everything kind of shake out. They're going to file any sort of construction defect litigation, it should have happened within five years. And then unload it after 15 years. Because that's when everything is going to start going and the special assessments are going to come so you have a window there for condos in my opinion. Yeah. I live in an HOA Yes. My Hoa is not typical. Pay $70 a year, we had an embankment that we maintained. We were able to deed that embankment to the HOA adjacent to us. So we have no common area to maintain. We pay $70 a year. So we get we get a budget. We get insurance. We have an architectural committee. They don't do a whole lot. You know the developments mid 70s, late 70s. I would say 110 or so. We had a board that came in about 15 years ago.

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And they got on and you know, the board president did a big remodel and like a three storey tower and stuff and he got passed. But they literally said this is a horror story. They literally went out and measured how far your ground cover extended onto the sidewalk and then real violation notices. Yeah, they got ousted. And now we have I think it's the same board members. I couldn't tell you his name, but I know what car he drives and where he lives. And I know what doggy walks every night. But, you know, unless Well, I don't know if they're taking any action because I haven't. Frankly, I haven't been to a board meeting and he hears they tried to get me on the board and I said none and now I deal with this at work all day. I don't want to deal with it at the house. You know, but yeah, I would buy in another Hoa. A great deal. A great benefit of an HOA is the amenities you might get. Pool, clubhouse, tennis courts, that you know if you were to try and do that on your own, you know, you can buy in Rancho Carmel Valley someplace like that. But if you can't afford it, you buy into an HOA, you got all that stuff there. So yeah, I would buy another Hoa buying downtown San Diego, San Diego. That's true. So yeah, so that's reserves. Another duty of the board of directors is elections, you got to run elections. I've had boards that say, Well, nobody wants to run. So we're just staying on. Well, that's great. But the code requires you to have an election. So that's one of the functions is running the elections. There are companies out there that will come in and run your elections for you. You know, they'll collect the ballots, they'll prepare the ballots. And they'll do the count and they'll open them at a meeting. You can pay them to do it. Sometimes elections get very contentious. We've had to hire security guards for meetings where they open ballots. My office just collected ballots for an HOA we don't represent but it was an attorney. I knew and the The two sides didn't trust each other but they agreed to have the ballots sent to my office. We stuck them in a box when the date came we taped them up I signed the tape and gave them to the attorneys and they went open it there's a lot of distrust

and balloting and one of the functions of the board is to appoint the inspector of elections and kind of oversee that basic enforcement of governing documents so I've got two cases here. If any of you've done any work in Hoa law you know these cases notice that it's been around since 1994. lady had a cat no pet calm no pet condo. Somebody found out she had a cat it was argued that you know she should be able to keep it because it didn't bother anybody but it was a no pet complex at the time. And the court said you know we can't just look at the Snyder said we got to look at the how this would affect the community as a whole if we allow her to have a pet. Pretty soon somebody is gonna have a crazy young Labrador running down the hallway knocking people over that's probably why the other no pet calm rule. So anyhow, so nurse that stands for limited effect on the entire complex or the entire Hoa not the individual member. Landon Landon happened right down here in La Jolla, called La Jolla, condominium calm complex. Kind of the business judgment rule for Hoa as you can read. I cited a section in here. The Jolla club dominium. One of the owners objected to the method of termite treatment, the balconies The court said no, we're going to defer to the HOA to decisions regarding maintenance and repair and defer to their presumed expertise if they've done, you know, due diligence relied upon experts and made the decision in good faith. So

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Tony, nurse and Landon are still still two very important cases. Not the next page member opportunity to be heard. So you know, if you're a member, an HOA, you go to a board meeting, you have a right to talk, you don't have a right to monopolize the conversation, that you can run it like a city council meeting where you get three minutes or five minutes or something like that. But you have the opportunity to be heard. If it gets out of hand, you know, the board president can halt the meeting, take a recess ask the person to leave things like that. But it's very it's very important, right for the members of an HOA to go be and be heard. dispute resolution. These have been on the books for a while. Civil Code Section 5900 is internal dispute resolution. This is where a member or a board request to meet out at the project, maybe in somebody's yard where there's a dispute or architectural project going on or to listen to the neighbor's dog or something. So you go out there and you try and resolve it and hopefully reduce it to writing. They amended the code section couple of years back to provide for attendance by attorneys, which I don't think is a very good idea. Because it just tends to solidify people's positions. It's very expensive. So I think what happens now is if there's an IDR request, the board may say we're sending our attorney, the other side has a right to an attorney all of a sudden you're sinking 1000s of dollars into a dispute that might have been resolved under the original IDR rule, but now attorneys are permitted ADR that's been on the books for a while if you're filing gonna file a lawsuit for less than $5,000 and seeking declaratory relief or something like that, then you've got to offer ADR either mediation or arbitration. I think most of the most people offer mediation or a lot of good mediators mediation providers around then the the mediators are very familiar now, with Hoa disputes. We've been doing enough of them that they feel comfortable handling Hoa disputes

Same things with judges. When I first started, judges couldn't understand why Hoa disputes ended up in their courtrooms. I thought the neighbors should be able to work things out. Obviously, judge if they could they wouldn't be in your department. One of my first conferences and chambers was with a judge who's not in North County anymore. We got back there, you wanted to hear a little bit about the case. And he looks at me and he says, Mr. Brown, I wouldn't buy a place in an HOA for all the blinking p in China. Okay, this is gonna be a little difficult, but attitudes have changed. You know, like I said, judges have seen enough of these cases, they realize that sometimes neighbors can't work it out. And, you know, they're they're in their courtroom. Assessment. There's a case that came down, I think it was last year, early this year. I've cited it here. I'm gonna butcher this first name, goudelock versus 6001. Association. That's actually out of the state of Washington, but it's a federal court case, bankruptcy case. That determined that the personal obligation to pay assessments occurring postpetition. Now, this is only in a chapter 13 doesn't apply to a chapter seven postpetition was dischargeable as a pre petition debt. So in this case, Lady Oh, two condo fell behind. filed bankruptcy. Hoa went into court, but in the meantime, the lender on the property brought the assessments current to that point. The lady, the owner, I think tried to give the unit back to the bank, you know, but that's very difficult. banks don't want them back unless they foreclose.

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So the HOA went back and tried to get relief to get those post petition assessments. But the lady wasn't living in the condo. But her name still appeared on title. The court said in chapter 13, we're going to discharge even those post petition debts and the remedy of the HOA is to foreclose it relieved of the personal obligation for those assessments, but the HOA can still go in and foreclose on their assessment. So take a look at that I put the site there if you if you deal in any sort of assessment, collection or bankruptcy, you want to take a look at that. Owners cannot offset assessments because they don't like the way the HOA is being operated. That's gets back to exclusive board control of the common area. I still get this question or this argument sometimes, because I'll talk to individual homeowners, if they call me up. They don't like something the board did. And you know, one example is, you know, the board isn't heating the pool can't swim My laps and the months of, you know, November through March, I don't agree with it. I'm not gonna pay assessments or they're not maintaining the green belt, that's, that's turning brown, lots of weeds, I'm not gonna pay, you can't do that you got to pay the assessments, essentially pay him under protest and take action against the board, go to a board meeting as a good thing. Try and get elected to the board get appointed to a committee. In my practice, if I have an owner that's complaining a lot. Sometimes, you know, maybe they just don't know how an HOA functions or, you know, they're not privy to a lot of the documents that the board sees. And I'll say, you know, can you point Sancho to landscape committee, you know, he doesn't agree with the way these trees are being trimmed. Let's put them on the committee and see if he's got any good ideas or you can see how difficult it is. That's an option. lanes, decided

here for assessment liens. under the Fair Debt Collection Practices Act, Attorney, attorneys are considered debt collectors. So you have to give proper notices. I didn't cite it in here. But local Hoa firm, there's a case they got popped for an improper assessment. I think they'd done everything under properly under the Davis Stirling act, but it didn't comply strictly with the notices under the Fair Debt Collection Practices Act. And I believe the standard under the Fair Debt Collection Practices Act is the least sophisticated debtor, hey, that's not a very high threshold. So you've got to you've got to assume that the person that's reading your collection letter is the least sophisticated debtor that take a look at the Fair Debt Collection Practices Act. And again, there are attorneys out there that look to sue Hoa for assessment violations. And include the law firm, our law firm got caught up in a lawsuit because we foreclosed on a on a home. As for the HOA, and we were dragged into a lawsuit, even though we've done everything correctly, you know, it doesn't take much to go down there and file a lawsuit. So just be careful and read the Fair Debt Collection Practices Act as it applies to debt collectors and attorneys. Find boards still want to know, some boards that I have one port president right now he's a retired Marine, Colonel. And he wants everything done yesterday, and he doesn't understand why he can't just call and have a car towed or why you can't just put you know, $50 fine on somebody whose account and I have to explain this. I'm sure there are several in Escondido. No, they are fines are not characterized as a lien you have to go the members entitled to due process, right you got to give them notice call into a hearing and then you can impose a fine, but you have to have a fine policy and has to be set forth in the rules and regulations. You know, $50 for the first violation $100 for the second violation, things like that. And then what typically happens is the once the fines get to a certain level, the HOA will take that owner to small claims court

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which is kind of a pain now because it's all downtown and property managers like in Escondido and Fallbrook. They don't like to travel downtown. The other thing that happens is, the HOA will use it as a negotiating tool and say, you know, you just trim your tree at the property line and we'll forgive the fines that are imposed. That happens a lot. Sometimes the the when the unit goes into escrow, if there's still outstanding fines, you can make a demand for those fines. And they'll oftentimes get paid. But generally they used as a as the negotiating tool unless the property is occupied by a tenant. And you know, landlords are usually in the business to make money unless they're renting to a family member. If you start finding the homeowner, you will generally get compliance. They'll either get rid of the tenant or bring their unit into compliance. Pets. You have to allow a pet now, one pet you can still set rules regarding size and things like that. But you need to allow pet I put down here poop DNA, there is a company out there that will go analyze dog poop and tell you who the violator is. That's not picking up their poop. So beware. I haven't used the company but they advertise in the CEI magazine and things like that. So somebody is using them?

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Or did they get their reference sample? Yeah, you know, I haven't called to find out all the details.

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But yeah, I mean, and that, you know, the dog. Yeah, I don't know how it works. I mean, most of the time, if you get if you have an issue where there's a dog, that's where the person's allowing the dog to poop in the common area all the time not picking it up. Generally, you have eyewitnesses, you have people taking pictures, you have security footage, something like that. So it's pretty easy. But, you know, but there's a company out there that does that. Is there a case law on pitbulls in the state? No, Pitbull. You can. What I advise boards is go to their insurance company and say, you know, our any you know, we have this policy with you. Are there any breeds that are prohibited? And they'll probably say a pitbull. And I don't know, you know, you go to a pound now and it seems like it's all pit bull mixes. I don't know what percentage has to be pit bull or how you even measure that. To be a violation, but yeah, you can, you can restrict breeds.

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So

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number five, your basic transparency in government and government and governance of Hoa, there's a lot of suspicion among members. You know, they think the HOA is making decisions behind back, they're hiding behind their brother's landscape company, you know, doing things like that, where generally it's just they don't have the information, you know, they haven't been to a board meeting, they haven't looked at the members, or the minutes. So if you were, if you, if you provide the proper notice of a meeting habit at a convenient time and place, distribute the draft of the minutes, you're supposed to do that within 30 days, or post it somewhere. That goes a long way to heading off some of these complaints. If the members see that they're these official, you know, minutes out there that, you know, do a decent job of recording what happened. That'll lay a lot of their fears. Another thing, if you're at a board meeting, and you have to break for Executive Session, you know, if you can explain to the members why you're going into executive session that is required for litigation, or employee matters, or discipline or something like that, instead of just saying, alright, the board has to go to executive session, we'll be back out in 20 minutes, and then there's left, what are they doing, they're making some back room deal. So just, you know, you don't disclose what you're going to talk about, necessarily, but you explain why the purpose is for Executive Session. And disclosure of documents. I don't typically get involved in this because most and these notices and minutes and all these typically handled by property management

companies, and they do a pretty good job of, you know, give it's pretty standard, how much notice you have to give for a regular meeting and a special meeting, or things like that. And they handle that. That disclosure of documents. I've listed Civil Code Section 5200. There's a whole laundry list of documents that a members entitled to.

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Yes. I'm curious. So the sincerity obsessions and the notice of meaning. Do you draw heavily on the Brown Act as an

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example? Brown? Well, as an example, the Brown Act doesn't apply. But yeah, yeah. And I think that because

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absolutely, settings, and examples, hundreds 1000s of examples across the states.

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Yeah, court cases. And a analogize. Hoa is to governments. And so the look at the brown eye, they'll say, you know, the Brown Act doesn't apply. But it did. You know, this is what we'd looked at. So yeah, they do draw on that. So yeah, take a look at 52 Civil Code Section 5200. For disclosure of documents. I'm generally of the opinion if it's not privileged, and that, you know, isn't isn't gonna violate somebody's privacy, then let somebody take a look at it. There are firms and property managers that say no, it's not set forth in the code. We're not getting into, you know, no matter what, but you got to kind of you got to take in case by case basis, you know, if you, if you show this person, this document that's not privileged or doesn't disclose something private about another member, will it stop their argument or stop them from pressing an issue forward? And if it does, or if you think it does, then you might want to disclose it to what's trending now. Or what do I see a lot of short term rentals. It's been in the news a lot in the city of San Diego, City of Carlsbad, where my office's adopted a short term rental policy and eating it allows short term rentals in the coastal area, which basically runs all the way down. Carlsbad village down the coast and then tucks back up into la costa can't prohibit short term rentals in those areas. Before this case, I've cited Greenfield versus Mandalay shores, we would take the tack that yeah, it's permitted by the city, but your cc NRS prohibit rentals less than 30 days. So therefore, you can still enforce the ban on short. term rental. Then this green via Greenfield versus Mandalay shores Community Association came down. And this was a community in Oxnard, California, right on the coast. And coastal communities, we get a ton of pressure for these Airbnb short term rental areas.

So, you know, the HOA passed a rule that you couldn't rent it for less than 30 days. You know, the Coastal Commission, or the the city got city got involved or not the Coastal Commission got involved. Coastal Commission said, you know, we're going to consider it a development. That's kind of a stretch but a development. And you need to get this rule because it affects access to the beach by the public, it should be determined by the city and the Coastal Commission. So if you have an HOA that's subject to the Coastal Commission, which I believe is 1000 feet from the beach, right? As this case says you can't restrict short term rentals unless the unless you get city and Coastal Commission approval. So take a look at that one.

46:20

Does that impact if you're not in that coastal region? In other words, taking make a rule in the condo that restricts the time of a rental greater than what the city ordinance restricts?

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If you can, if you're not in that coastal zone, okay. So if you're in Escondido, you can have rental restrictions. That's not not a problem. When I got emotional support animals, it seems like earlier this year, I had one of these cases in my office at any given time. You know, and you have to analyze it. case by case basis, right is this. Somebody will typically here's how I handle it, how it works. There's a complaint about a barking dog. There's a complaint about a dog attacking another dog. There's a complaint about a dog attacking a person, you contact the owner of the dog. All of a sudden it's an emotional support animal. Okay. I had to on behalf of an HOA get rid of a dog that it was a condo complex, the dog bolted down the hallway, tore through the front gate, and it was a writer and gave but they put the bamboo up for privacy. went through that past the elderly lady that live there, chased the cat out onto the back balcony, attack the cat, the lady got to the cat, or got to the balcony, the cat was in the dog's Jaws, she started hitting the dog with their shoe and finally dropped the cat. Then the kid that was watching the dog came running down got the dog, the lady took the cat to the vet. Well got her sister to come get her because this lady didn't drive got to the vet cat died. When we said you know you got a vicious animal here, you can't have it in this condo complex. Get a letter from an attorney. It's an emotional support dog. You know, it doesn't matter if it's a vicious animal. It that Trumps emotional support allegations. But if you do get a claim for emotional support, and I shouldn't belittle all my because I see the extreme ones but you take a look at it if if somebody produces a note from a health professional, that they need this animal to relieve stress is typically what we get stress or anxiety then that generally ends it unless the dogs causing other issues, you know, barking at all hours or anything like that you still enforced the other rules. But that's generally the end of the discussion. As long as they have something from a health professional. And you know, and when I tell you about emotional support animals, you got to distinguish that from a service animal. The service animals trained to perform a certain function, you know, a seeing eye dog or

something like that. emotional support animals don't need any training at all. They're just there to help person relax generally, like I said, relieve stress so that there's a whole laundry list of question. It's a total pyramid tree you can go on to the fair housing. Fair Employment Housing Commission, I think has that now all the questions you're allowed to ask but generally if they present the note from a health professional That ends the NZ argument, I've had eight boards that want to go after the doctor, they think it's a crock, and it shouldn't happen. But you know, I'm not prepared to do that at this point. There are, you can go out online and get a certificate that your dog is an emotional support animal. And they will put you in contact with the doctor. The one I came across was a doctor out of Oregon. I could tell him about the dog and your issues, and they'll write a letter for you. It's a form letter. But like I said, unless the dog is causing other issues that generally ends that discussion. And it protects the board, because now they have a letter from a medical professional that this person needs the emotional support animal.

50:52
curious about something? Is this something that? I mean, it seems to me like it's a whole level of liability. When you, let's say, kill one of these animals or extending them to the human, give rise to a claim of emotional harm to this human under as a personal injury.

51:25
I think that might be a stretch, because you know, dogs are our chattel right there. Just personal property. a doctor's note? Well, at a service dog, I can see maybe your argument because you've paid a lot of money maybe to get this special service dog that detects when your kid's blood sugar goes low or something like that. Or maybe it's a show animal. The generally people don't pay for emotional support animals.

51:50
It's it's the injury to the human psyche. Yeah, that he experienced by this harm to this negligent infliction of emotional distress. sighs Yeah. Well,

52:02
no. You and you got to prove that they accept the witnesses. You're dealing Oh, yeah, right there standards that have to be applied. I'm just saying

52:10
that there's this kind of weirdness that's being created with these. And yeah, you know, there's

kind of going to the store, I wouldn't want to have put them in the car. And so now that our emotional support dog,

52:22
oh, yeah. Anyway, it just seems very strange. And you can ask I mean, that the library, if somebody comes in with a dog here, and now we're mangy, it may be and they say it's an emotional support animal. That's it. I haven't seen that case. But I'm sure it's probably coming down the pipe prohibiting smoking. This continues to be an issue. You know, there's no right to smoke. You can you can ban smoking and condos. You can ban smoking and multi unit buildings. I suppose you could ban smoking in the single family. Hoa, if it creates a nuisance. That's a Rickard still going on. About a European russborough. supporting people. I don't even think you have to go that far. I just came back from the south. And I can tell you there are a lot more people smoking in the south than here in California. I have a medical right to smoke. You know, I don't think there's been a case on that. But yeah, that issue I can see coming up. And then you know, it's a balancing act. You know, if you have if you have a medical condition that requires your use of, you know, medical pot to relieve pain or whatever, that that conflicts with the person next door that might be allergic to smoke.

54:03
You How do you resolve that? You get a smokeless? Yeah, there you go. brownies. There you go. They get high enough to forget. That's right.

54:14
a phase where it made it illegal to allow your smoke to leave your burger walls. I don't think we're you couldn't impose a nuisance to a neighbor. They had they had the obligation to contain it or eradicated before it got away from their space. If you can do that. Great. I mean, I thought that was part of the evolution of smoking.

54:43
Well, I mean, you kind of have that with the, the vaping I guess I mean, it's not smoke, but that's an anticipates. Then you got the smell because this thing

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which I thought that that had been resolved that I spoke or couldn't He could not enjoy smoking if the smoke made it through the common wall. Well, it's Jason.

55:09
Yeah, it's not a it's not part of the Civil Code. But yeah, that would you could make the argument that it's a nuisance and therefore you can limit and require that the smoke not travel beyond his walls. The problem in a condo complex though is I mean, a lot of those air ducts and, and things in the walls aren't airtight, they're going to seep through and, and cause problems for the neighbor regardless. But I've had cases where there was a smoking issue up in Encinitas. When we resolved it where the person had the smoke on the east patio, out their backyard because the prevailing winds had to come in from the west and blow it off into the canyon, which was great till Santa Ana blew in and then you got issues and anyhow there are ways to work around the the smokeless ashtrays. I'm not sure how effective those are. But the last thing before one o'clock shows up solar energy systems on condo roof. Look at Civil Code Section 714. point one and then there's also a provision in the Davis Stirling act. I mentioned it briefly. But you can't prohibit solar panels on common area multifamily roofs anymore. So yeah, that's it. See Any questions? I'll hang out? Yeah. Our trailers and he always you know, are those? No, no, there are. There are Hoa is that consist of mobile homes, some of them are considered condominiums. So the HOA owned all the land, and you buy an airspace and instead of having, you know, brick and mortar condo, you just plop your mobile home in there. But otherwise, it's treated like a condominium. The thing is, I heard that after so

57:01
many years and make them sell in mobile homes get brand new ones like 30 years, you have to upgrade to new.

57:09
I don't think that's a set law. But I know in in parks, maybe a rental Park, if you move out, they may endure your coaches in this disrepair they might require a new coach to come in. But But those are rental parks. In an HOA setting, I suppose they could come after you again for nuisance or something like that if your mobile home is in disrepair, but kind of 55

57:33
or older. And there's a probate a young family moving saying what is the board?

57:42
What does the board do? Well, hopefully they call me before they go out and take matters into their own hands. And because I know it can be a catch 22 track type thing? Well, so you got to

probate. So the qualifying senior citizen has moved and the child that inherited the house moves in that's what you're talking about. Yeah. So they're still subject to the to the 55 age requirement. And they could be forced to move.

58:16

Is there still that reasonable time or when does the board have to add?

58:21

Well, the board should act when they find out about the violation. But most of those cases are resolved by providing a timeline to get out or an incentive, you know, for the for the underage person to move out. If it's a situation where a senior has caregiver or something in the house. I live in caregivers and their provisions in the code for a number of months. They can stay afterwards but in a situation like yours where they just move in when the when the qualifying resident dies. That's a violation right there. Yep. All right. Thank you all for coming.