

Park Paseo Homeowner Association Issues

9 Mar 2020

1 Website Issues

(a) Missing Data

The Managing Agent should have told you that Associa is no longer putting the Board Aenda, the Board Minutes or the newsletter on our website. I would like to know the reason.

- a. The Annual policy (§4950(b)) statement references our website which contains this reference as containing the Board Minutes.

(b) Website missing an Architecture Committee Form

The Home Improvement Application is missing from the [Architectural Information](#) page of the Association Website.

(c) Board Contact Information

The website does not have contact email, phone numbers, or addresses for the Board as a whole nor any member of the Board. I suggest that we install a phone with voice mail and call forwarding, and change the call forwarding phone number each month to the Director on call.

We should never release personal phone numbers. Past newsletter's have the following phone numbers:

- a. Mina Brooks 714-356-4448
- b. Yumi Renshus 949-385-3595
- c. Gus Aarnaes 714-544-9898

2 Annual Policy and General Distribution

(a) VA Certification Mandatory Disclosure Statement Reserve Study

The annual reserve study is not included in the 21 Nov 2019 General Notice of the Annual Policy Statement and Annual Budget. The Annual Policy statement says that the study is available but no contact information is provided. The Davis-Stirling Act Section §5320(a)(2) states that this report is gratis. This information should be included.

Please email me the Reserve Study and full unaudited financial statement.

(b) Annual Report Reference to VA

The current status URL (vip.vba.va.gov/portal/vbah/vbahome/condopudsearch) is not valid.

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3 Proposal for Website Documents

Davis-Stirling Act Section §4530(a)(1) allows the posting of documents referenced in §4528 on our website. I propose that all documents of interest be posted. This includes:

- (a) Annual budget report or summary (§5260, §5320(a)(2)), §5320(b). This includes the Annual Summary, audited and unaudited budget, Annual Policy Statement and other sundry matters
- (b) Reserve Study
- (c) Assessment and reserve funding disclosure summary
- (d) Financial Statement Review (audited statement)
- (e) Insurance information (included in Annual budget)
- (f) Regular assessment (included in Annual budget)

4 email rather than send by post

The Davis-Stirling Act Sections §4040 and §4045(b) allows for email or fax delivery of Individual and General Documents. It is cost effective to send all notices not otherwise prohibited by email and/or fax to all requesting Association members. See Davis-Stirling Act Sections §5260(c) and (e) and (f), §5300 (b)(3), §5310(a)(4)-(5)

If this option is considered favorably by the Board then I suggest that the Board inform all members that they have the option to receive certain information by email. I further suggest that the emailed products include the Board Agenda and Minutes and all general notices. If there is an opt-in/opt-out choice then I suggest that member settings be permitted on the website.

5 Separate Invoice from Newsletter on Monthly Assessment Mailings

Each month I receive an email showing my Association assessment and payments. Attached to, and part of, the assessment statement is the monthly Association newsletter. I request that the Association newsletter be separate from the assessment in monthly mailings.

6 Capital Expenditures for Common Area Improvements need Member Approval

Bylaw Article VII, Section2 (2) states “Incurring aggregate expenditures for capital improvements to the common area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year.” The emphasis is on gross expenses not gross receipts nor accumulated reserves. This impacts all decisions related to improvements to be less than or equal to \$44,400. Additionally, the CC&Rs set the maximum increase of the yearly assessment at no more than 5% without a vote, see CC&R V(3)(a) and V(3)(b).

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7 Error in CC&R page 15, ARTICLE V, Section 2(a)

"If the ... assessment ... is set ... for One Hundred Three Dollars (\$103.00), the Association may increase the assessment ... to One Hundred Twenty-One Dollars and 55/100 (\$121.55)" This should be changed to read "If the ... assessment ... is set ... for One Hundred Three Dollars (\$103.00), the Association may increase the assessment ... to One Hundred eight Dollars and 15/100 (\$108.15)".

8 Architecture Committee Executive Session

The Board has an executive session to discuss various matters as defined in §4935(a) and Bylaws (IV)(5). What powers has the Board delegated to the Architecture Committee that allows them to have an Executive Session? If no powers have been delegated then this Executive Session is not allowed by the Open Meeting Act, §4900.

9 Board Executive Sessions

The Board has an executive session to discuss various matters as defined in §4935(a) and Bylaws (IV)(5). These matters include personnel issues, member issues, litigation, and we might be able to extend this to discussions of competitive bids, plus other matters. What is not included in an Executive Session are issues of fees and expenses, whether to retain or not retain various firms.

The Board can not meet in Executive Session to discuss payment of fees, §4935, §5200(a). The Board is not following the Davis-Stirling requirements for Executive Sessions. The Association's attorney or Managing Agent, an employee of the company retained by the Association///s, should have informed you of this.

10 Board Meeting Minutes

No action can be taken by the Board not on the Board Agenda, §4930(a). I suggest the meeting minutes have:

- (g) The votes taken on each action of the committee with director's yays and nays, Bylaws (VIII)(5) requires that the Secretary record them. This has episodically been included in Board Minutes. I suggest that this be a permanent feature.
- (h) Acknowledgment of all members speaking at a meeting with a summary of their comments. Members attend meetings with an intent to be heard or to listen. Those who speak are speaking about issues that that other members may take notice of and be concerned about. They should not be hidden.

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11 Request for email

Please send General Notice messages by email to me.
Please email me the monthly Board Agenda and Minutes.

12 Request for Contract

I request a copy of the contract with Associa for inspection and review.

13 IDR for Copying Rights to Architecture Committee Documents

This is a request for Internal Dispute Resolution.

14 Charges for Archival Material

At the 10 Feb 2020 Board Meeting the Managing Agent stated that inspection of the requested record was not within the scope of her activities, and that there would be a charge for this. No reference to this charge is in the Board Meeting Minutes.

The management firm employed by the Association was employed to manage our archive requirements. Any fee charged to the Association reflects negligence in carrying out this duty. The charge should be rejected. If a fee has been charged, please forward the charge and rationale to my email address for my inspection.

15 PPHOA Board Meetings and Decisions

The Board is composed of five (5) Directors. Each Director must be an Association Member, and each Director must be elected by Association members. Delegation of powers can only be to committees, officers or employees, CC&R VII(1)(c).

In addition, the Association Bylaws Article VII (6)(a) states “The President, shall preside at all meetings of the Board of Directors ...” Article VIII (6)(b) states “The vice-president shall act in the place and stead of the president in the event of his absence” and Article IV(6) states “The President, or, in his absence, any Directors ... shall preside at meetings of the Board of Directors. ”, noting here that if the President and both vice-presidents are not in attendance, then the Board does not have a quorum rendering the last proviso moot.

The Board can delegate its powers, CC&R VII(1)(c) and VII(3)(10), Bylaws VII(3)(10), §4155. Delegation is restricted to “... committees, officers, or employees”, CC&R VII(3)(10). The Davis-Stirling Act, the Bylaws and the CC&Rs, in all instances, treats the Managing Agent in a manner separate from employees or staff. The Board can only delegate powers it has and delegation is

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limited. The Managing Agent can not preside over Board Meeting or any Association committee including the Architecture Committee.

The Davis-Stirling Act Sections §4930(b)(1) and §4930(b)(2) provides the following opportunities for the Managing Agent to speak.

- (i) Respond to a question, make a report, make an announcement.
- (j) Ask for clarification.

The presiding person in charge of any member Board or Committee has a conflict of interest when the items under consideration are adverse to the persons self-interest. Above and beside the Association Bylaws which prohibit any but a Board Director from presiding over Board Meeting (Articles IV(6), VIII(8)(a) and VIII(8)((b)), the conflict causes the Managing Agent to not be a suitable candidate for this position. The Managing Agent is an employee of the management company, and not the Association. The Managing Agent employer deserves loyalty, not the Association.

Further, if a non-Association member makes a 'binding' decision then the Association may become civilly liable if challenged, see §5800(a), §5806, CC&R VIII(1)(c) and XIV(13) .

Association CC&Rs

Section	Title	Article Text
V(3)(a)	Covenant for Maintenance Assessments	... the annual assessment may be set at any amount which is not more than five per cent (5%) above the maximum allowable assessment for the previous year ...
V(3)(b)	Covenant for Maintenance Assessments	... the maximum allowable assessment for the following year shall be one hundred five per cent (105%) of the increased amount approved by the members ...
VII(1)(c)	General Duties and Powers	delegate its powers to committees, officers, or employees
VII(1)(c)	General Duties and Powers	The Association shall have the rights to delegate any of its powers according
VII(3)	Delegation of Powers	The Association shall have the rights to delegate any of its powers ... however, no such delegation, whether to a professional management company ... shall relieve the Association of its obligation to perform such delegated duty .
VIII(1)(c)	Insurance Types	Fidelity coverage against dishonest acts on the part of directors, officers, employees or volunteers
XIV(13)	Nonliability of Officials	... neither the Board, the Architectural Committee, any committees of the Association or any member of such Board or committee shall be liable to any Member or the Association ...

Association Bylaws

Article	Title	Statement
IV(6)	Conduct of Meetings	The President, or, in his absence, any Directors ... shall preside at meetings of the Board of Directors.
VI(1)	Regular Meetings	Should said meeting fall upon a legal holiday, then that meeting shall be held ... on the next day which is not a legal holiday.
VII(1)(12)	Powers	Declaring the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings ...

Association Bylaws

Article	Title	Statement
VII(1)(13)	Powers	Employing a manager, ... and to prescribe their duties
VII(2)(2)	Actions prohibited w/o Membership Approval	Incurring aggregate expenditures for capital improvements to the common area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year.
VII(3)(1)	Duties	It shall be the duty of the Board or Directors to: Cause to be kept a complete record of all its acts
VII(3)(4)	Duties	Supervise all ... agents of this Association to see that their duties are properly performed.
VII(3)(10)	Duties	Delegate its powers
VII(8)(a)	President	The President shall preside at all meetings of the Board of Directors ...
VII(8)(b)	Vice-President	The vice-president shall act in the place and stead of he president in the vent of his absence
VIII(8)(c)	Secretary	The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the members

Davis-Stirling Act References

Ref	Title	“Statute Text”
4035(b)(1)	Document Delivery Methods	By email, facsimile, or other electronic means, if the association has assented to that method of delivery. ...
4040(a)	Individual Document Delivery	If a provision of this act requires that an association deliver a document by “individual delivery” ...
4040(a)(2)	Individual Document Delivery	Email, facsimile, or other electronic means ...
4040(a)(2)	Individual Document Delivery	Email, facsimile, or other electronic means ...
4045(b)	General Document Delivery	if a member requests to receive general notices by individual delivery, all general notices to that member ... shall be delivered pursuant to Section 4040
4155	Item of Business	... except those actions that the board has validly delegated to any other person or persons, managing agent, officer of the association, or committee ...
4158(a)	“Managing Agent” – Defined	A “managing agent” is a person who, for compensation ,... exercises control over the assets of a common interest development.
4528	Form for Billing Disclosures	List of documents and their fees available to a member selling a home.
4530(a)(1)	Disclosure Documents Provided by Association	Upon written request, the association shall,... provide the owner of a separate interest ... with a copy of all of the requested documents specified in Section 4525.
4900	Open Meeting Act	
4910(a)	Board Meetings Required for Actions; Exceptions	The board shall not take action on any item of business outside of a board meeting.
4920(a)	Board Meeting Notices and Agenda; Timing	,... the association shall give notice of the time and place of a board meeting
4920(b)(2)	Board Meeting Notices and Agenda; Timing	,... board meeting is held solely in executive session, the association shall give notice of the time and place of the meeting... .
4920(d)	Board Meeting Notices and Agenda; Timing	Notice of a board meeting shall contain the agenda for the meeting.
4925(a)	Right to Attend and Speak	Any member may attend board meetings, ,... except in, executive session. ,..., a member of the association shall be entitled to attend a teleconference meeting ,...
4930(a)	Agenda Required for Board	Except as ,... the board may not discuss or take action on any item at a nonemergency meeting

Davis-Stirling Act References

Ref	Title	“Statute Text”
	Discussion	unless the item was placed on the agenda,...
4930(b)	Agenda Required for Board Discussion	,... a director, a managing agent or other agent of the board, or a member of the staff of the board
4930(b)(1)	Agenda Required for Board Discussion	(ed. the management agent) Briefly respond to statements made or questions posed by a person ,...
4930(b)(2)	Agenda Required for Board Discussion	(ed. the management agent) Ask a question for clarification, make a brief announcement, or make a brief report on the person’s own activities, Ask a question for clarification, make a brief announcement, or make a brief report on the person’s own activities, whether in response to questions posed by a member or based upon the person’s own initiative. .
4930(c)(1)	Agenda Required for Board Discussion	(ed. A Board Member) Provide a reference to, or provide other resources for factual information to, its managing agent or other agents or staff.
4930(c)(2)	Agenda Required for Board Discussion	(ed. A Board Member) Request its managing agent ,... to report back to the board ,... or take action to direct its managing agent or other agents or staff to place a matter of business on a future agenda.
4930(c)(3)	Agenda Required for Board Discussion	Direct its managing agent or other agents or staff to perform administrative tasks that are necessary to carry out this section.
4930(e)	Agenda Required for Board Discussion	Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership.
4935(a)	Board Executive Sessions	The board may adjourn to ,...executive session to consider litigation, matters relating to ... contracts , ... member discipline, ... personnel matters ... meet with a member
4950(b)	Board Minutes	The annual policy statement ... shall inform the members of their right to obtain copies of board meeting minutes and of how and where to do so
4955(a)	Civil Action to Enforcing Meeting Requirements	A member of an association may bring a civil action ... for a violation of this article
4955(b)	Civil Action to Enforcing Meeting Requirements	A member who prevails in a civil action to enforce the member’s rights ... shall be entitled to reasonable attorney’s fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500)

Davis-Stirling Act References

Ref	Title	“Statute Text”
5200(a)(8)	Association Records	Agendas and minutes of meetings of the members, the board, and any committees appointed by the board ,... .
5205(a)	Procedures Concerning Availability of Association Records	The association shall make available association records ... for inspection and copying by a member of the association... .
5205(h)	Procedures Concerning Availability of Association Records	Requesting parties shall have the option of receiving ... records ... by electronic transmission
5260(c) - (f)	Member Delivery of Requests to Association	All requests for documents should be sent by email (see 4040).
5300 (b)(3)	Annual Budget	... the association shall provide the full reserve plan to any member upon request.
§5310(a)(4)	Distribution of Annual Policy Statement	Notice of a member’s option to receive general notices by individual delivery
§5310(a)(5)	Distribution of Annual Policy Statement	Notice of a member’s right to receive copies of meeting minutes
5320(a)(2)	Right to Distribute	Instructions on how to request a complete copy of the report at no cost to the member shall be printed ... on the first page of the summary.
5320(b)	Right to Distribute	... if a member has requested to receive all reports in full, the association shall deliver the full report to that member, rather than a summary of the report.
5501	Review of Financial Statements	... review is ratified at the board meeting ... and that ratification is reflected in the minutes of that meeting.
5800(a)	Limitations on Officer and Director Liability	A volunteer officer or volunteer director ... shall not be personally liable in excess of the coverage of insurance
5806	Fidelity Bond Coverage	... the association shall maintain fidelity bond coverage for its directors, officers, and employees