SOUTH COAST HOMEOWNERS ASSOCIATION

P. O. BOX 1052, GOLETA, CALIFORNIA 93116
(805) 964-7806
www.southcoasthoa.org
gartzke@silcom.com

Volume 28, Number 2 **February 2015**
Michael J. Gartzke, CPA, Editor

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2015 SPRING LAW UPDATE WITH ATTORNEY BETH GRIMM

TOPIC ONE: Boards that lose the trust of members seem to invite numerous problems. This session is about meetings and difficult political issues and uprisings. I will talk about what to do if a group of concerned owners seemed to be forming? How can a board diffuse the situation, or prevent it from festering into a great big political and legal problem? How does a board prepare for a meeting it knows will be challenging or uncomfortable? What about a meeting where a hotly contested election is taking place? What about recall meetings/elections? Are they manageable? How should boards comport themselves? What about owners? What can be accomplished at such a meeting? What happens if the Board is recalled and there is no new board?

TOPIC TWO: Trust building. What does being "professional" mean? Whether you are a manager or a director? How important is Ethics? Avoiding Bias? And why? Does it pay to hold on too tightly to a contract that's gone south? Should your service providers be evaluated annually? Why or why not? Should the Board seek owner input on this? What do you do when managers only wanting to use "their" vendors and don't want to consider other qualified vendors that the association has used previously? Are maintenance and professional services "commodities" or do professional relationships matter?

MODERATED QUESTION AND ANSWER SESSION

Date – Saturday, March 28, 2015

Time - 10:00 AM – Noon
9:45 – Light Refreshments

Place – Encina Royale Clubhouse – 250 Moreton Bay Lane, Goleta

CPA REVIEW REPORT CHANGING DURING 2015

By: Michael J. Gartzke, CPA

Associations with more than $75,000 in annual revenue are required by California Civil Code Section 5305 to have their financial statements reviewed by a "licensee of the California Board of Accountancy" (i.e. a CPA) on an annual basis. These statements include a balance sheet, income and expense statement, statement of changes in fund balances, statement of cash flows, notes to the financial statements and required supplementary information about major repairs and replacements. At the front of the financial statements is the "Independent Accountant's Review Report". This report is required to be included on all reviewed financial statements.

A CPA's association with financial statements and the requirements for the conduct of the engagement of the audit, review, compilation or preparation of the financial statements are governed by pronouncements of the Financial Accounting Standards Board and the Accounting and Review Services Committee (ARSC) of the American Institute of Certified Public Accountants, among other entities. In October, ARSC issued Statement of Standards for Accounting and Review Services (SSARS) #21 which governs the conduct of review engagements. SSARS 21 is effective after December 15, 2015 although CPAs may implement its provisions earlier.

Of interest to associations which receive review reports in the change in the wording of the independent accountant's review report that goes with the financial statements. The report now includes headings for each paragraph to emphasize and hopefully clarify what is included and the responsibilities of the Association and the Accountant. Some language in the report has been changed and rearranged although much remains the same.

For example, the report clearly indicates that management's responsibility is:

"Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation and maintenance of internal control relevant to the **preparation and fair presentation of financial statements that are free from material misstatement whether due to fraud or error**" It is not your accountant's responsibility to clean up problems. If there are questions or issues that have arisen in the Association's accounting, those can be handled outside of the review engagement, hopefully before year-end. Under the Accountant's paragraph, please note that it's the accountant's responsibility **"to obtain limited assurance as a basis for reporting whether I am aware of any material modifications that should be made to the financial statements".** Accountants perform review procedures and collect review evidence to support the amounts shown on the financial statements. Accountants propose adjustments to the Association's accounting when warranted.

You may see the new report from your CPA during the upcoming year. Since it is not required until 2016, some CPAs will not adopted it until that time. I decided that I will use the new report for all reviews I complete for periods ending December 31, 2014 and later.

INDEPENDENT ACCOUNTANT'S REVIEW REPORT

To the Board of Directors and Members
South Coast Homeowners Association

I have reviewed the accompanying financial statements of South Coast Homeowners Association which comprise the balance sheets as of December 31, 2014 and 2013 and the related statements of revenue, expenses and changes in fund balances and cash flows for the years then ended. A review includes primarily applying analytical procedures to management's financial data and making inquiries of Association management. A review is substantially less in scope than an audit, the objective of which is the expression of an opinion regarding the financial statements as a whole. Accordingly, I do not express such an opinion.

Management's Responsibility for the Financial Statements
Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement whether due to fraud or error.

Accountant's Responsibility
My responsibility is to conduct the review engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the American Institute of Certified Public Accountants (AICPA). Those standards require me to perform procedures to obtain limited assurance as a basis for reporting whether I am aware of any material modifications that should be made to the financial statements for them to be in accordance with accounting principles generally accepted in the United States of America. I believe that the results of my procedures provide a reasonable basis for my conclusion.

Required Supplementary Information
Generally accepted accounting principles require that the supplementary information about future major repairs and replacements be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the AICPA, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic or historical context. I did not compile, review or audit the required supplementary information and, accordingly, do not express an opinion or provide any assurance on the information.

Accountant's Conclusion
Based on my review, I am not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with accounting principles generally accepted in the United States of America.

Goleta, California
February 27, 2015

THE IMPORTANCE OF RECONCILING BANK STATEMENTS PROMPTLY

By: Michael J. Gartzke, CPA

The reconciliation of the association's bank account statements is a bookkeeping/accounting process that should be done as soon as practical to determine whether any errors have been made on the association's books or by the bank. A complete discussion of bank reconciliation processes and procedures for analyzing bank reconciliations can be found on our website – www.southcoasthoa.org and click on the "Resources" tab and then scroll down to the financial topics outline from October 2010. In recent months, I've seen some things that I don't recall seeing before when reconciling bank accounts. These errors reinforced my belief that reconciliations must be done as soon as practical.

1) **Check clearing twice –** When reconciling a bank account for one of my "volunteer gigs", there was an image of a check clearing the account. When I brought up the bank reconciliation from the prior month on the computer, that check was not shown as outstanding/uncleared on the prior month reports. The check was dated 4 months earlier so I went back to that month's statement and found that the same check had cleared in the month issued. It appears that checks are now imaged at the branch where they are deposited. I don't know how it was put through a second time although the teller had seen it before. He was surprised that it was 4 months between the first and second clearing of the check. I can't recall seeing that before and that wasn't high on my list of places to look when the bank account did not reconcile

2) **Check/debit cleared account but not ours –** One of my association clients showed me a bank statement recently where someone had gone into the branch and withdrew $400 in cash from his account. The withdrawal ticket showed his account number which did not look anything like the Association's bank account number. The ticket was coded with the Association's account number – perhaps two checks got stuck together and the funds were removed from the association's account. Another trip to the bank to sort out (different bank!)

3) **Check posted to wrong account in accounting system –** While many associations generate operating fund payments via computer software, some reserve fund payments may be posted manually into the system due to their infrequency. Posting to the wrong bank account will lead to a check shown as outstanding when it has cleared another account. If the other account reconciles, that means the payment has been entered twice causing the books to be misstated.

Please note that the bank is not responsible for correcting errors after 60 days of issuance of the bank statement. Timely bank reconciliation is very important to avoid potential losses.

FINANCIAL DATA ANALYSIS – A CONTINUING SERIES

By: Michael J. Gartzke, CPA

Many of you know that I track certain financial data for all the associations that I provide a reviewed financial statement for. Currently, that database has 70 associations in it covering over 5,500 dwelling units, primarily in south Santa Barbara County. I have provided analyses on some of the data in previous newsletter articles and meeting outlines. You can find these articles and outlines on the www.southcoasthoa.org website. It is my goal to find the time to analyze this data in more detail during 2015 and provide updated information to you in subsequent newsletters. Here's some expense analysis that I found interesting. (I hope you do, too!)

Utilities –
The database shows total utility expense for calendar year 2013 and fiscal year 2014 to be $5,434,820. Based upon total operating assessments (not reserve assessments) of $19,814,600, utilities represent approximately 27.4% of the average association's operating budget. Depending upon what utilities your association provides, your percentage can be significantly different. Here is a breakdown of utility expense paid

Water/sewer	-	$2,703,883	- 49.7%
Trash	-	976,183	- 18.0
Electricity	-	805,778	- 14.8
Natural gas	-	480,907	- 8.9
Cable TV	-	406,079	- 7.5
Other	-	61,990	- 1.1

Some associations have little or no utility expense. The lowest is $4 per unit per month and the highest is $166 with the median at $81 per month.

Water -
Only 1 association did not have any water expense (100% well water). Overall, water is the third largest operating expense for associations after insurance and landscaping. Some associations pay for their members' water use (especially older condo associations), some pay for common area landscaping and some have water use for a pool and spa. There is quite a wide spread in water and sewer costs among our area associations. The city of Santa Barbara includes sewer charges in their water bills. Goleta, Montecito and Carpinteria include sewer fees in the property tax billing. Here is the spread of water costs per unit per month paid by associations:

$0	- $15	- 12 associations
$15	- $30	- 18
$30	- $50	- 16
$50	- $75	- 17
$75 – up		- 7

The average monthly water cost per member per month was $39.78 and the median (half above and half below) was $40.27, very close. Any discussion by water districts and cities to adjust water rates due to the drought will impact most associations. The city of Santa

Barbara is exploring some substantial rate increases during 2015 if the City Council decides to reactivate the desalination plant. Your owners need to be aware of these mid-year change possibilities. How many times have you heard "How come our assessments are going up?"

Trash -
53 of the 70 associations had a trash pickup expense. Six of these were small common area costs leaving 47 that include trash removal in their services for which are paid through members' operating assessments. For those associations, the average monthly cost was $21.78 per unit per month.

Electricity –
All the associations have some electric expense. The range of service is especially wide with some as little as running irrigation controllers to common area lighting to pool and spa motors and in a few instances, interior electric within the units. The median cost was $8.10 while the average cost was $12.14 per unit per month.

Natural Gas –
55 of the associations have natural gas costs. Gas is used for hot water heating where one gas heater is used to serve multiple units. Most associations with pools use gas to heat the pool and/or spa. 52 of the 70 associations have a pool and/or a spa. With the apparent increase in natural gas supplies in recent years and the lack of supply disruptions (Hurricane Katrina), natural gas prices have declined in recent years. The median cost for those associations with gas expense was $6.51 per unit per month and the average cost was $9.55.

Cable TV –
7 of the associations have a bulk contract with the cable company to provide TV or internet service to the residents. Like those of us who subscribe to cable TV, these associations have seen their costs increase. Yet, the average cost per member per month was "only" $37.90 per member per month while the median cost was $42.91. For these associations, cable TV is a significant component of the operating assessment.

Other Utilities –
Included in this category would be expenses such as soft water service and telephone for gates/elevators. These are not major budget considerations for most associations.

2014 CALIFORNIA LEGISLATION EFFECTIVE IN 2015

These excepts have been obtained from the State of California legislative website – www.leginfo.ca.gov. Text of the new laws can be found at that site under these bill numbers and the *2015 Condominium Bluebook* That we sent to members earlier this year. No commentary has been provided here. This is the summary information our legislators receive about each bill. AB means Assembly Bill, SB means Senate Bill along with the sponsor's name. More detailed information can be found under the "Resources" tab on the www.southcoasthoa.org website or by using the following link –

http://www.southcoasthoa.org/resources/2015%20law%20and%20legeslative%20update.pdf

SB 992, Nielsen. Common interest developments: property use and maintenance.
Existing law makes void and unenforceable any provision of the governing documents of a common interest development or association that prohibits use of low water-using plants, or prohibits or restricts compliance with water-efficient landscape ordinances or regulations on the use of water, as specified.

Existing law prohibits an association from imposing a fine or assessment on separate interest owners for reducing or eliminating watering of vegetation or lawns during any period for which the Governor has declared a state of emergency or the local government has declared a local emergency due to drought.

This bill would exempt from these prohibitions against imposing a fine or assessment an association that uses recycled water for landscape irrigation.

This bill would also provide that a provision of the governing documents is void and unenforceable if it requires pressure washing, as defined, the exterior of a separate interest and any exclusive use common area appurtenant to the separate interest during a state or local government declared drought emergency.

This bill would incorporate additional changes in Section 4735 of the Civil Code proposed in AB 2104, that would become operative only if AB 2104 and this bill are both chaptered and become effective on or before January 1, 2015, and this bill is chaptered last.

AB 2565, Muratsuchi. Rental property: electric vehicle charging stations.
Existing law generally regulates the hiring of real property. This bill would, for any lease executed, renewed, or extended onand after July 1, 2015, require a lessor of a dwelling to approve a written request of a lessee to install an electric vehicle charging station at a parking space allotted for the lessee in accordance with specified requirements and that complies with the lessor's approval process for modification to the property. The bill would except from its provisions specified residential property, including a residential rental property with fewer than 5 parking spaces and one subject to rent control. The bill would require the electric vehicle charging station and all modifications and improvements made to the property comply with federal, state, and local law, and all applicable zoning requirements, land use requirements, and covenants, conditions, and restrictions.

The bill would also require a lessee's written request to make a modification to the property in order to install and use an electric vehicle charging station include his or her consent to enter into a written agreement including specified provisions, including compliance with the lessor's requirements for the installation, use, maintenance, and removal of the charging station and installation of the infrastructure for the charging station. The bill would also require the lessee to maintain in full force and effect a $1,000,000 lessee's general liability insurance policy, as specified.

Existing law regulates the terms and conditions of residential and commercial tenancies. Existing law defines and regulates common interest developments and voids any condition affecting the transfer or sale of an interest in a common interest development that prohibits or unreasonably restricts the installation or use of an electric vehicle charging station in a designated parking space in the development, as specified.

This bill would void any term in a lease renewed or extended on or after January 1, 2015, that conveys any possessory interest incommercial property that either prohibits or unreasonably restricts, as defined, the installation or use of an electric vehicle charging station in a parking space associated with the commercial property.

The bill would prescribe requirements for lessor approval of a lessee request to install or use an electronic vehicle charging station and would require that a lessor approve a request to install a charging station if the lessee agrees in writing to do specified acts,
including paying for various costs associated with the charging station and maintaining insurance naming the lessor as an insured.

AB 2430, Maienschein. Transfer disclosures.
The Davis-Stirling Common Interest Development Act requires an association, upon written request, to provide the owner of a separate interest, or a recipient authorized by the owner, with a copy of specific documents relating to transfer disclosures that the owner is required to make to a prospective purchaser of the owner's separate interest. That act authorizes the association to collect a reasonable cost for delivery of those documents but prohibits any additional fees for electronic delivery.

This bill would require the cost for providing the required documents to be separately stated and billed from other charges that are part of the transfer or sales transaction. This bill would authorize an association to collect a reasonable fee from a seller for its actual costs in providing documents under these provisions and would require a seller to be responsible for compensating an association, person, or entity for providing documents under these provisions. This bill would also require a seller to provide a prospective purchaser with certain current documents that the seller possesses free of charge. This bill would prohibit a seller from giving a prospective purchaser the required documents bundled with other documents. This bill would make conforming changes to a codified form.

AB 1738, Chau. Common interest developments: dispute resolution.
The Davis-Stirling Common Interest Development Act defines a common interest development and requires it to be managed by an association. The act requires an association to provide a fair, reasonable, and expeditious procedure for resolving a dispute between an association and a member involving their rights, duties, or liabilities under the act, the Nonprofit Mutual Benefit Corporation Law, or the association's governing documents. The act authorizes an association to develop its own procedure for these purposes and requires this procedure to satisfy specified minimum standards, including, among others, that a resolution of a dispute, pursuant to the procedure, binds the association and is judicially enforceable, and that an agreement, pursuant to the procedure, binds the parties and is judicially enforceable, as specified. The act also requires that the procedure provide a means by which the member and the association may explain their positions.

This bill would additionally require the resolution or agreement under an association's procedure for resolving these disputes between an association and a member to be in writing and signed by both parties. The bill would authorize a member and an association to be assisted by an attorney or another person in explaining their positions at their own cost.

The act also establishes an alternative procedure applicable to an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure as

described above. Under these provisions a procedure that, among other things, authorizes either party to request, in writing, the other party to meet and confer, prohibits the association from refusing a request to meet and confer, and requires the parties to meet and confer in good faith in an effort to resolve the dispute, is deemed a fair, reasonable, and expeditious dispute resolution procedure. The act provides that an agreement reached under this procedure binds the parties and is judicially enforceable if specified conditions are satisfied.

This bill would additionally require the alternative procedure to provide either party the right to have an attorney or another person participate when meeting and conferring provided at their own cost.

The bill would require an agreement reached under the alternative procedure that binds the parties and is judicially enforceable to be in writing and signed by both parties, as specified.

AB 968, Gordon. Common interest developments: common areas: maintenance and repairs.
The Davis-Stirling Common Interest Development Act governs the management and operation of common interest developments. These provisions require that a common interest development be managed by an association and also set forth the duties and responsibilities of the association and the owners of the separate interests with regard to maintenance and repair of common and exclusive use areas, as defined. Unless otherwise provided in the common interest development declaration, the association is responsible for maintaining, repairing, or replacing the common area, other than the exclusive use common area, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to the interest.

This bill would, beginning January 1, 2017, instead provide that, unless otherwise provided in the declaration, the association is responsible for maintaining, repairing, and replacing the common area, the owner of each separate interest is responsible for maintaining, repairing, and replacing the separate interest, and the owner of the separate interest is responsible for maintaining the exclusive use common area appurtenant to the separate interest while the association is responsible for repairing and replacing the exclusive use common area.

AB 2561, Bradford. Personal agriculture: restrictions.
Existing law regulates the terms and conditions of residential tenancies, and prohibits a landlord from interfering with a tenant's quiet enjoyment of the premises.

This bill would require a landlord to permit a tenant to participate in personal agriculture in portable containers approved by the landlord in the tenant's private area, as defined, if certain conditions are met.

Existing law, the Davis-Stirling Common Interest Development Act, defines and regulates common interest developments and authorizes the board of directors of the association that manages the development to adopt and amend the operating rules for the development.

This bill would make void any provision of a governing document of a common interest development that effectively prohibits or unreasonably restricts the use of a homeowner's backyard for personal agriculture.

SOUTH COAST NEWSLETTER SPONSORS

ACCOUNTANTS

Michael J. Gartzke, CPA
5669 Calle Real #A
Goleta, CA 93117
805-964-7806

James L. Hayes, CPA
2771 Santa Maria Way #A
Santa Maria, CA 93455
805-937-5637

Gary Vogel, CPA
17130 Devonshire Street, #201
Northridge, CA 91325
818-357-5535

Walpole and Co., LLP
Mary Widener, CPA
70 Santa Felicia Dr
Goleta, CA 93117
805-569-9864

Robert A. Ayres, CPA
25050 Avenue Kearney, #207
Valencia, CA 91355
661-430-9276 x302

BOOKKEEPING SERVICES

The Bottom Line
Nancy Gomez
P. O. Box 91809
Santa Barbara, CA 93190
805-683-3186

Laura McFarland, CPA
McFarland Financial
720 Vereda del Ciervo
Goleta, CA 93117
805-562-8482
www.mcfarlandfinancial.com

Debbie Quigley – Accounting Services
P. O. Box 62157
Santa Barbara, CA 93160
805-967-8117
Debbie@debbiequigley.com

Oasis Bookkeeping
Patti Karr
P. O. Box 132
Carpinteria, CA 93014
805-684-7461

ATTORNEYS

Beth A. Grimm
3478 Buskirk #1000
Pleasant Hill, CA 94523
925-746-7177
www.californiacondoguru.com

James H. Smith
Grokenberger & Smith
152 East Carrillo
Santa Barbara, CA 93101
805-965-7746

David A. Loewenthal
Loewenthal, Hillshafer & Carter, LLP
21 E. Carrillo #230
Santa Barbara, CA 93101
866-474-5529

Steven McGuire/
Christopher Haskell
Price, Postel & Parma
200 East Carrillo, Suite 400
Santa Barbara, CA 93101
805-962-0011

Adrian Adams
Adams Kessler PLC
2566 Overland Ave #730
Los Angeles, CA 90064
310-945-0280

Kathleen Weinheimer
Attorney at Law
420 Alameda Padre Serra
Santa Barbara, CA 93103
805-965-2777

ATTORNEYS (Continued)

Myers, Widders, Gibson, Jones & Feingold, LLP
Kelton Lee Gibson
5425 Everglades Street
Ventura, CA 93003
805-644-7188

FINANCIAL SERVICES

Union Bank
Mahendra Sami
445 S. Figueroa St, 10th Floor
Los Angeles, CA 90071
877-839-2947

ASSOCIATION MANAGEMENT

Coast Community Property Management
Sandra G. Foehl, CCAM
P. O. Box 8152
Goleta, CA 93118
805-968-3435

Crowley Management Company
Bill Crowley
P. O. Box 286
Summerland, CA 93067
805-684-0989

P Walters & Co
Patti Walters
P. O. Box 838
Carpinteria, CA 93014
805-689-8485

St. John & Associates
Kristin St. John CCAM
5266 Hollister Ave, #108
Santa Barbara, CA 93111
805-683-1793

Goetz Manderley
The Management Trust
Gordon Goetz
2429 Professional Pkwy #102
Santa Maria, CA 93455
805-343-1265

Team HOA
Geoff McFarland
720 Vereda del Ciervo
Goleta, CA 93117
805-562-8482
www.teamhoa.com

Professional Association Management
Paula Scott
P. O. Box 7934
Santa Maria, CA 93456
805-714-3823

RESERVE STUDIES

Stone Mountain Corporation
Chris Andrews
P. O. Box 1369
Goleta, CA 93116
805-681-1575
www.stonemountaincorp.com

Reserve Studies, Inc.
Les Weinberg
9420 Topanga Canyon Blvd.
#201
Chatsworth, CA 91311
800-485-8056
www.reservestudiesinc.com

INSURANCE

Timothy Cline Insurance Agency
Tim Cline, CIRMS
725 Arizona Ave #100
Santa Monica, CA 90401
805-299-0899

Bill Terry Insurance Agency
Barbara Terry
4213 State St #205
Santa Barbara, CA 93110
805-563-0400

Baxter Insurance Services
Dan Baxter
225 East Carrillo #201
Santa Barbara, CA 93101
805-963-4048

CONTRACTORS

Acme Detection
Gary Fuller
1081 E, Mountain Dr
Santa Barbara, CA 93108
805-565-LEAK (5325)

Blake Fuentes Painting, Inc.
79 S. Kellogg Avenue
Goleta, CA 93117
805-962-6101

United Paving
Justin Rodriguez
3463 State Street #522
Santa Barbara, CA 93105
805-563-4922

Santa Barbara Painting
Gustavo Dabos
5874 Hollister Ave
Goleta, CA 93117
805-685-3548

Colortrends Painting
Nolan Church
805-739-1527
colortrends@gmail.com

General Pavement Management
Tom Welch
3543 Old Conejo Road #105
Newbury Park, CA 91320
805-933-0909

LANDSCAPE CONTRACTORS

Kitson Landscape Management, Inc.
Sarah Kitson & Mike Waggoner
5787 Thornwood Drive
Goleta, CA 93117
805-681-7010

TriValley Landscapes
Colin Anderson
35 W. Main Street, Suite B #152
Ventura, CA 93001
805-535-0119

ORGANIZATIONS

Community Associations Institute (CAI) Channel Islands Chapter
P. O. Box 3575
Ventura, CA 93006
805-658-1438
www.cai-channelislands.org

Executive Council of Homeowners - ECHO
1960 The Alameda #195
San Jose, CA 95126
408-297-3246
www.echo-ca.org