South Coast Homeowners Association

P.O. Box 1052
Goleta, CA 93116
805.964.7806
www.southcoasthoa.org
gartzke@silcom.com

Volume 34 – Number 2 – February 2023

IN THIS ISSUE

ANNUAL LAW AND LEGISLATIVE UPDATE MEETING

Thanks to all who "zoomed in" to our annual law and legislative update on January 11 with attorneys Jim Smith and David Loewenthal. We got an update on the legislative activity along with a discussion of several court cases interpreting California law. We also had a lively discussion on numerous topics in the unscripted Q&A session that followed the meeting. Our thanks to David and Jim for our program. If you were unable to attend the event, you can find their program materials on the following links on the South Coast HOA website:

David Loewenthal
https://southcoasthoa.org/resources/LHC%20Newsletter%2014.1.pdf

Jim Smith
https://southcoasthoa.org/resources/SCHOA%20Program%20Outline%2023.pdf

2023 Condominium Bluebooks Now Available

In late January, we shipped out the 2023 edition of the Condominium Bluebook to all members who renewed their membership. We have some extra copies available if you would like them for additional board members or professional staff. $22 each postpaid. Checks payable to South Coast HOA and mailed to the address above.

ASSOCIATION INSURANCE – A HOT-BUTTON TOPIC

This letter was received by South Coast HOA about association insurance. Personal information has been removed.

I am a resident in a South Coast area common interest development community. On October 17, 2022, our insurance agent, advised the Board that our insurance company would not renew our homeowners' insurance policy. He cited our living in a time of fewer carriers and higher rates driven by state wildfires. It seems an odd statement to me, because I inserted my current address in the State Insurance Commissioner's website, and this website reflected that I did not live in a fire hazard zone. In any event, our insurance company abandoned the "complex deal" of our association despite our premiums being paid in a timely manner over several years and a zero-claim history. In my opinion, this is an example of our insurance company eliminating their risks completely before possibly incurring an insurance payout. So why be in the insurance business in the first place?

My suggestion is for you to consider your putting "insurance for homeowners associations" on your next agenda for the South Coast Homeowner's Association (SCHA). Other associations may have previously dealt with this non-renewal matter or will be dealing with this matter in the future. How are these associations faring in finding a new carrier? Can our present State Insurance Commissioner be contacted and be informed about the current local situation? Can he provide any assistance?

Editor's Notes: This resident did indeed contact the insurance commissioner's office and their response follows. If any of our insurance professional members would like to prepare a program for South Coast members later this spring, please let Mike Gartzke know.

Several years ago when Kemper Insurance pulled out of California, I, as a private citizen personally contacted Salud Carbajal, our First District Supervisor, and Steve Posner, the State Insurance Commissioner. I explained how many local residents in Mission Canyon were without a State certified insurance option. At that time, Mr. Posner was instrumental in our former home being insured by a different carrier. I am forever grateful to Mr. Posner.

I am writing to you as a concerned citizen. I am not on the board, but when I was, I attended SCHA meetings and found their discussion of common issues relevant and helpful. Perhaps someone from our Board attends or will attend your next SCHA meeting. (Editor's Note – They do!)

FYI, on October 28, 2022, our association signed the necessary documents to secure insurance to replace our insurance company. Unfortunately, the new coverage is a "walls out" policy replacing more comprehensive coverage. The new premium for our property coverage is also much more than triple our previous premium. Our board will continue to look to secure coverage at a more favorable premium.

Here is the reply from the insurance commissioner's office:

Thank you for your inquiry to the California Department of Insurance regarding HOA Insurance.

We are aware that affordable residential insurance is getting harder to find in areas of the state that insurers identify as having a higher than average risk of wildfire. We can certainly understand your concerns with the present condition of the residential insurance market. Be assured that the Insurance Commissioner Ricardo Lara and California Department of Insurance staff have been working with the Governor's Administration, the State Legislature, and other stakeholders to come up with viable long-term solutions to the availability and affordability problem. CDI executives have met with several Homeowner Associations (HOAs) to obtain feedback on the issues they are facing with the goal of finding solutions.

Last year Commissioner Lara proposed new regulations intended to improve wildfire safety and drive down the cost of insurance for homeowners and businesses. The regulations are now state law. It is the first in the nation requiring insurance companies to provide discounts to consumers under the Safer from Wildfires framework created by the California Department of Insurance in partnership with state emergency preparedness agencies. Insurance companies are required to submit new rate filings incorporating wildfire safety standards created by the Department, and to establish a process for releasing wildfire risk determinations to residents and businesses within 180 days. Transparency is an important benefit of this regulation, by requiring insurance companies to provide consumers with their property's "wildfire risk score" and creating a right to appeal that score. You may wish to read the related Press Release on our public website.

While the Department does not have the legal authority to tell insurers what level of risk they must accept, we can certainly review the specific situation involving your HOA's master policy. If you would like our Department to review a rate increase or non-renewal received by your HOA, you may have the legal representative of the HOA submit a complaint by completing a Request for Assistance form accessible from our webpage, as the HOA is the policyholder, not the individual unit owner.

If you are shopping the market, we invite you to visit and explore the Department's Website which provides several tips and tools that may assist you in your search for residential insurance including the Home Insurance Finder Tool. For commercial property insurance, such as an HOA policy, visit our Find an Agent site to locate an agent or broker who may be able to shop the market.

Thank you again for taking the time to write us. In the future, if we can assist you with an insurance problem or provide you with additional information, please contact our Consumer Hotline at 1-800-927-4357 or visit us online.

Sincerely,

Alex Avalos
Senior Insurance Compliance Officer
California Department of Insurance
Consumer Communications Bureau
Phone: (866) 225-6585 x 6810
E-mail: alex.avalos@insurance.ca.gov

2023: CALIFORNIA HOMEOWNER ASSOCIATIONS FACE INSURANCE PRICING CHALLENGES

By Timothy Cline, CEO, Cline Agency Insurance Brokers

ABOUT THE AUTHOR: Timothy Cline is one of the United States' foremost authorities on insurance for common interest developments. He is CEO of Cline Agency Insurance Brokers, with offices in Los Angeles, California and Portland, Oregon. He and his staff specialize exclusively in coverage for condominium associations, homeowners associations, planned developments and cooperatives throughout California, Oregon, Washington, and Arizona. In addition to speaking weekly before homeowner groups. Tim and the Cline Agency are long-time members of South Coast HOA and has provided articles and programs to us previously. Insurance was a topic during our legal Q&A session at our January zoom meeting as well.

Unfortunately, insurance renewals in 2022 and 2023 will undoubtedly be the cause of considerable uncertainty for HOA boards. While the impact may not exactly be "across the board," the fact is that select common interest developments here in Southern California and in other brush-prone areas are experiencing some of the worst rates and terms seen in the last four decades. Condominiums, co-ops and apartment buildings throughout California, who must purchase coveage via the commercial insurance marketplace, are bracing itself against some of most undesirable renewal offers we've seen in some time.

Currently there are three areas experiencing this volatility:

1. **PROPERTY RATES**. California is increasingly becoming "brush fire central" in term of both frequency and severity. Depending on the project's proximity to brush, the renewal quotes may range from "flat" (rates and terms identical to expiring) to "extreme" with rates and terms coming through much as four times the prior rate. And to make matters worse, an unexpected outcome is that some carriers may simply not offer a renewal at all. Additionally, each carrier has a unique approach to the brush score that may be completely unacceptable to another carrier.

   California law requires a carrier to provide at least 60 days' notice of cancellation. Should a carrier wish to terminate their relationship with a client, they are required to provide nearly two months' notice. But even with that additional time to procure replacement coverage, it's not just a matter of paying more premium, the coverage is often only available from an Excess and Surplus Lines (California non-Admitted) carrier, and even despite the higher rates, the coverage may not be as broad as the expiring coverage. HOA boards, facing large premium increases are often so blinded by the realty of higher premiums, they often unable to even contemplate that the replacement coverage is far narrower in scope. Imagine, for example, that your Association's premium has doubled or tripled at renewal, but the coverage provides only "bare walls" protection, while the coverage the Association previously

purchased was “all in” where the definition of covered property previously included coverage for permanently attached fixtures and cabinetry as well as plumbing and electrical fixtures. The impact on unit owners of these so-impacted developments can be significant.

2. **COMMERCIAL UMBRELLAS.** For many years Commercial Umbrella coverage was plentiful and inexpensive. Times have changed. Because of large jury awards, purchasing commercial umbrella coverage has transitioned from a very simple, inexpensive proposition, to a complex, expensive placement if coverage is available at all — and underwriters are getting picky. “Tough to place” accounts which would include accounts with poor loss histories, unfenced water features, equestrian exposures, golf courses, food and beverage operations, may find the rates have suddenly gone from affordable to ridiculous.

   With the addition of Civil Code section 5805, the California legislature intended to offer civil liability protection to owners if the association carries a certain level of prescribed insurance that covers a cause of action in tort. Since passage of that law, HOAs have been utilizing commercial umbrellas as an inexpensive way to meet the necessary minimum $2,000,000 or $3,000,000 in liability protection.

3. **CATASTROPHE COVERAGE.** Natural disasters such as wildfires, earthquakes and flood make it difficult to predict the insurance market for the upcoming year, but so does manmade disasters such as the September 11th terrorist attacks — as well as human failures such as the governance issues which led to the eventual building collapse of the Champlain Towers South condo project in Florida. Since all of these potential claim sources can have an impact on reinsurance (the insurance that insurance carriers purchase) these events must be considered when forecasting the pricing of the “catastrophe coverage” for California’s common interest developments.

   We’re passed the end of what is generally identified as the Atlantic Hurricane Season (the months of June, July, August, September, October and November). The California Earthquake Authority (CEA) reminds us that “any season is earthquake season.” Global warming (or “Climate Change”) is causing scientists to conclude that California has a “year around” wildfire season.

   What advice would you give to HOA boards? Contact your agent/broker early (90 days prior to renewal). Order and review a copy of the loss history. See what tools may be available to better manage the rate (higher deductibles, narrower scope, etc). If your agent/broker is not a “condo specialist” now is an excellent time to align yourself with a CID insurance professional as the rough waters ahead certainly warrant having the most knowledgeable agent/broker in your corner.

THE DAVIS-STIRLING ACT – A BRIEF OVERVIEW

By: Michael J. Gartzke

In nearly any discussion of California law pertaining to common interest developments (condominiums, planned developments, etc.), you will see many references to the Davis-Stirling Act. What is the Act and why is it important?

Background: With the creation of housing within a homeowners association in the 1970s, California enacted some laws pertaining to this emerging form of housing. These laws were scattered throughout the California Codes, primarily the Civil Code. In the early 1980s, it was determined that a codification of all laws including new ones needed to be drafted by the California Legislature and the initial "Davis-Stirling Act" was passed in 1985. The relevant laws were included in Civil Code Section 1350-1374. "Oldtimers" like me remember that financial documents were discussed in Section 1365. If your CC&Rs were drafted from 1985-2013, you will see many references to these code sections in them. Nearly every year after its initial passage, the Act was amended and new sections added. In the mid-2000s, the Legislature tasked the California Law Revision Commission to rewrite the Act to submit to the Legislature for hearings and approval. The Commission is asked to review California laws on any subject to make recommendations for changes without the deadlines imposed by the end of the legislative session. (For example, any bill not acted upon in 2022 would have to be reintroduced in 2023 if the legislator wants it to be considered for passage and the process starts all over).

After a couple years of hearings, the Commission submitted a bill to the Legislature for passage in 2008. It did not pass so back to the drawing board for more hearings and discussion. A new bill was introduced in 2011 and passed in 2012 (effective 1/1/14) to delete the entire original Davis-Stirling Act and replace with a recodified Act now found in Civil Code Sections 4000-6150. Annual revisions continue. The Act can be found online and also in the annual *Condominium Bluebook* that you receive with your membership.

Here are some of the areas covered by the Act:

- How documents are sent to members (mail, email, etc.)
- Definitions such as common area, exclusive use common area, separate interests and governing documents
- Governing document requirements including a condominium plan
- Required disclosures to members
- Pest control
- Meetings and Elections
- Financial reports and Requirements
- Reserve Studies and Funds
- Delinquent Assessment Collection
- Insurance
- Dispute Resolution
- Construction Defects

Many questions, but certainly not all, can be answered upon a review of your governing documents (CC&Rs and bylaws) and the relevant Civil Code Sections. Additional laws such as those dealing with the conduct of meetings, election of the board, towing and corporate records can be found in other California codes such as the Corporations Code and the Vehicle Code. These relevant codes are also found in the *Condominium Bluebook*.

NEIGHBOR TO NEIGHBOR CONFLICT RESOLUTION
WHAT IS THE BOARD'S ROLE?

By: David A. Loewenthal, Esq.
Loewenthal, Hillshafer & Carter, LLP

Anyone who has served on a Board of Directors knows that one of the most difficult situations to deal with involves neighbor to neighbor disputes. There is really no limit as to what may constitute a neighbor to neighbor dispute since what one individual may find offensive another may find acceptable.

Examples of issues that may give rise to neighbor to neighbor disputes includes nuisances such as noise, odors, visual eyesores, etc. between neighbors; property damage between neighbors who share a common wall or floor/ceiling assembly and harassment related issues where there may be housing related discrimination.

Historically, in evaluating "neighbor to neighbor disputes" Boards would generally consider whether the dispute was limited to two owners and/or did not involve the common area. Assuming that was the case, Boards often would take the position that the Association would not get involved nor conduct any investigation.

In my opinion, the day of simply telling a neighbor that "the issue is between you and your neighbor and that the Association will have no involvement" is over. Boards of Directors have an obligation to perform a reasonable investigation when a neighbor dispute is brought to their attention and decide what, if any, action is warranted. Management's role in these matters may include obtaining and compiling information regarding the dispute; preparing a warning/violation letter; discussing the issues with the Board including recommending that the Association's counsel be brought in to evaluate the matter, etc.

Neighbor disputes often arise from a claim of nuisance. Homeowners are not entitled to complete isolation and separation from their neighbors; however, unreasonable noise, smell or eyesores certainly can constitute a nuisance. If the Board, after reasonable investigation, determines that a nuisance exists, the Board may take several steps including issuing a warning letter to the member who is allegedly creating the nuisance, request further information as to the issue and demand that the owner cease and desist the action that is the basis of the nuisance.

If the conduct continues, the Board can schedule a Board hearing for the individual who is allegedly creating the nuisance pursuant to Civil Code section 5855 for the purpose of determining if a fine or other disciplinary action should be taken against that homeowner. In the event of a hearing, the offending member must be given at least ten (10) days prior notice of the date, time and location of the hearing, the purpose of the hearing, and that they have a

right to address the Board of Directors regarding the issues that are the subject of the hearing. The Board must decide whether or not the information presented justifies taking further action such as issuing a fine. Within 15 days of the completion of the hearing, the Board of Directors must advise the owner in writing of the result of the hearing including if there will be a levying of fines or other disciplinary action.

A Board should only levy a fine if the Board has performed a reasonable investigation to determine the validity of the complaint which may include evaluating evidentiary support against the violating member. This includes considering any written complaints that have been presented to the Board; violations witnessed by members, residents, third parties, Board members, or the manager; independent confirmation by outside sources such as a police, animal control, building department report, etc. Ultimately, if the Association wishes to collect on a fine or enforce the governing documents, it may be forced to file a lawsuit. As such, unless the Board reasonably believes that its decision regarding the issuance of a fine or taking other disciplinary action is supported, it should not so proceed.

It is important to note that simply because the Association issues a warning letter and conducts a disciplinary hearing does not automatically obligate the Board to proceed forward with litigation even if the conduct continues. Generally, the Board has discretion in determining whether to proceed forward in instituting legal action against the offending party.

Neighbor disputes also arise when there is physical property damage between units often caused by water originating from one unit into an adjacent/connecting unit with attached walls or floor/ceiling assemblies. Generally, if the source of the water is a separate interest item, such as a washing machine hose, refrigerator water line, etc. the owner in control of that separate interest item would be responsible for the costs associated with the damage. Conversely, if the water source is a common area element, the cost of repair would generally be the Association's responsibility. A thorough review of the facts and the Association's governing documents including the Condominium Plan, Covenants, Conditions and Restrictions, Maintenance Matrix (if one exists) and Civil Code are essential in making these determinations.

Regarding neighbor to neighbor property disputes, the Association should perform a reasonable investigation into the cause and extent of the damage in determining responsibility. Board action may include submitting a claim to the Association's master policy of insurance since it is often the case that the Association' insurance has broader coverage than what the CCR's identify and members are often identified as beneficiaries under the policy and/or pursuant to the CCR's. Also, in cases of water related damage between neighbors, it is often better to attempt to limit the claim by remediating the damage, including dry out, as soon as possible and then continue to sort out who is actually responsible and costs.

Finally, an area that has become hotly contested over the last several years pertains to claims of harassment and housing related discrimination. Boards have an obligation to investigate claims of housing related discrimination once it is brought to the attention of the Board of Directors. Specifically, effective October 14, 2016, the U.S. Department of Housing and Urban Development (HUD) established regulations requiring all housing providers to take steps to end harassment. Homeowners Associations are included as a housing provider.

The alleged harassment must be related to the complaining persons membership in a protected class which includes harassment based upon race, color, religion, national origin, sex, familiar status, or disability. This includes homeowners Associations involving harassment by other residents, Board members, managers and vendors.

Pursuant to 24 Code of Federal Regulations section 100.7(a)(1)(iii) a person is "directly liable" for "failing to take prompt action to correct and end a discriminatory housing practice by a third party, where the person knew or should have known of the discriminatory conduct, and had the power to correct it." Pursuant to CFR Section 100.20 a "Person" includes associations which can be held liable for a resident's harassment of another resident when:

1) The harassment is based upon race, color, religion, sex, national origin, disability and familiar status;
2) The homeowners Association knew or should have known of the harassment;
3) The homeowners Association had the power to correct and end the harassment; and
4) The homeowners Association failed to take prompt action to correct and/or end the conduct.

In order to attempt to avoid liability, an Association's Board must take some action to address any alleged discrimination by residents or other people within the authority of the Board of Directors/Association. In a neighbor to neighbor discrimination claim, the Board's failure to take action could lead the Association to being sued and potentially be liable for monetary damages.

The type of action to be taken by the Association depends on the circumstances and factors involved. It could include a warning, either verbally or in writing, as well as the demand that the discriminatory conduct stops. If preliminary steps fail to correct the actions, a Board may consider proceeding forward with making a request for Alternative Dispute Resolution (Civil Code section 5925 et seq.) prior to commencement of an enforcement action. If ADR fails, legal action, including seeking a harassment restraining order, may be warranted. In performing its investigation, the Board may wish to engage the services of an independent investigator to interview the parties involved, witnesses, etc. and provide an opinion.

HUD's position on these types of claims is that a Community Association generally has the authority to deal with harassment claims as empowered by the Association's CCR's or by other legal authority including notices of violations, fines, etc.

In the Association's evaluation of the issues, facts, evidence, claims, etc. it could arrive at a decision that the complaining party is not a member of a protected class or that the discrimination is not attributable to that status. Not every claim of discrimination in fact rises to the level of a housing act violation. The Association should conduct a thorough review of the issues and claims and make an informed determination of what it can do to eliminate the claimed discrimination, if it determines the discrimination exists, or whether it is even actionable discrimination in the first place.

The historic positions of Boards that disputes between neighbors were not the Association's concern is no longer the case. Boards need to take appropriate steps, including a reasonable inquiry and investigation, in order to determine what action, if any, is required.

NEWSSLETTER PROFESSIONAL SPONSORS

ACCOUNTANTS

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

Gary Vogel, CPA
gvogelcpa@gmail.com
818-357-5535

Bryzek CPA
Ian Bryzek, CPA
731 South Lincoln Street
Santa Maria, CA 93458
510-538-6014

Jimenez & Company CPAs
Joyce Jimenez
PO Box 756
Camarillo, CA 93011
805-491-2126

BOOKKEEPING SERVICES

The Bottom Line
Nancy D'Amato
PO Box 91809
Santa Barbara, CA 93190
805-683-3186

Laura McFarland, CPA
McFarland Financial
7127 Hollister Ave #109
Goleta, CA 93117
805-562-8482
mcfarlandfinancial.com

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

Old Coast Property Management
Arnie Gonzalez
5266 Hollister Ave #121
Santa Barbara, CA 93111
805-563-1234
oldcoastmanagement.com

Blue Horizon Management Co.
Kevin Lehman, CCAM, CMCA, AMS, PCAM
2020 Alameda Padre Serra 220
Santa Barbara, CA 93103
805-586-2583
bluehorizonmanagement.com

Ferguson Management Group Inc.
Joseph Ferguson | President
CCAM, CAFM, CMCA, AMS, PCAM
27 W. Anapamu St, Suite 170
Santa Barbara, CA 93101
805-455-8911
fmgsb.com

ATTORNEYS

James H. Smith
Rogers, Sheffield, and Campbell
152 East Carrillo
Santa Barbara, CA 93101
805-963-9721

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

Myers, Widders, Gibson, Jones & Feingold, LLP
James E. Perero
5425 Everglades Street
Ventura, CA 93003
805-644-7188

Price, Postel & Parma
Christopher Haskell/Shareef Moharram
200 East Carrillo, Ste. 400
Santa Barbara, CA 93101
805-962-0011

ASSOCIATION MANAGEMENT

Coast Community Property Management
Sandra G. Foehl, CCAM
P. O. Box 8152
Goleta, CA 93118
805-318-9094

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

Team HOA
Geoff McFarland
7127 Hollister Ave #109
Goleta, CA 93117
805-562-8482
teamhoa.com

The Management Trust Central Coast
Gordon Goetz
5383 Hollister Ave #230
Santa Barbara, CA 93111
805-348-4080

Kennedy Accounting Systems
Alan Fray
1805 E. Cabrillo #F
Santa Barbara, CA 93108
805-962-1626

Blue Horizon Management Co.
Kevin Lehman, CCAM, CMCA, AMS, PCAM
2020 Alameda Padre Serra 220
Santa Barbara, CA 93103
805-586-2583
bluehorizonmanagement.com

Old Coast Property Management
Arnie Gonzalez
5266 Hollister Ave #121
Santa Barbara, CA 93111
805-563-1234
oldcoastmanagement.com

Ferguson Management Group Inc.
Joseph Ferguson | President
CCAM, CAFM, CMCA, AMS, PCAM
27 W. Anapamu St, Suite 170
Santa Barbara, CA 93101
805-455-8911
fmgsb.com

Bristol Property Management
Carolle van Sande
2920 de la Vina Street
Santa Barbara, CA 93105
805-963-5945

RESERVE STUDIES

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

INSURANCE

Cline Agency Insurance Brokers
Tim Cline, CIRMS
12400 Wilshire Blvd. Suite 200
Los Angeles, CA 90025
805-299-0899

Omnia Insurance and Risk Solutions
Richard Martinez
4213 State St #205
Santa Barbara, CA 93110
805-563-0400

Baxter Insurance Services
Dan Baxter
1033 Santa Barbara St.
Santa Barbara, CA 93101
805-963-4048

Steve Reich Insurance Agency
Joe Smigiel, President
280 N. Westlake Blvd #200
Westlake Village, CA 91362
805-379-5159

CONTRACTORS

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

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

ELECTIONS

Official HOA Elections, LLC
Will Morstad
133 E De La Guerra Street, Suite E
Santa Barbara, CA 93101
805-214-8018

ORGANIZATIONS

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

Educational Community for Homeowners - ECHO
5669 Snell Ave #249
San Jose, CA 95123
408-297-3246
echo-ca.org