

SOUTH COAST HOMEOWNERS ASSOCIATION

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MEET THE AUTHOR!

NEXT SOUTH COAST MEETING – MAY 17

Jan Hickenbottom, author of the newly published *Questions and Answers About Community Associations* will be our speaker on Saturday, May 17. Jan wrote the Condo Q & A columns for the Los Angeles Times from 1989-2001 and her book is a compilation of over 300 of these columns. Jan owns her own business, Condo Consulting Services in Irvine and hold the Professional Community Association Manager (PCAM) designation from the Community Associations Institute. We distributed one copy of Jan’s book to all members that joined South Coast in 2003. So bring your copy for signing. Additional copies will be available for purchase at the meeting.

The meeting will be held:

Moby Dicks Restaurant
Stearns Wharf, Santa Barbara
Registration – 9:00-9:30 AM
Breakfast 9:30
Program to follow
Cost - \$15 per person

Attendance will be limited to the first 60 paid reservations received. Complete the enclosed reservation form and mail with your check to our P.O. Box. We are really looking forward to Jan’s presentation. Plan now to join us for this very special event.

SB800: CONSTRUCTION DEFECT CLAIMS

By: David A. Loewenthal, Esq.

Editor's Note: David spoke about this new law at our January law forum in Goleta. He is with the law firm of Schimmel, Hillshafer and Loewenthal and is a South Coast member. For those considering buying a unit in a new common interest development, this bill dramatically changes how construction defect issues are mitigated.

The intent of SB800 is to facilitate and improve the resolution of construction defect claims. SB800 applies to single-family homes, condominiums and town homes originally sold on or after January 1, 2003, and is binding on all original purchasers and their successors in interest. The bill identifies new procedures for taking action against builders, architects and subcontractors for construction defects.

CONSTRUCTION DEFECTS INCLUDE:

1. WATER INTRUSION

(windows, patio doors, deck doors, roofs, chimney caps, decks, balconies)

2. STRUCTURAL

(foundations, slabs, stucco, exterior siding, exterior walls, soils)

3. HARDSCAPE

(paths, patios, irrigation, landscaping, drainage)

4. FIRE PROTECTION

(fireplaces, chimneys, electrical, mechanical)

A builder shall provide a homebuyer with a minimum one-year express written limited warranty covering the fit and finish of cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes and trim. A builder may, but is not required to, offer greater protection or protection for longer time periods in its express contract with the homeowner.

CHANGE OF STATUTE OF LIMITATIONS:

(ALL TIME PERIODS ARE FROM CLOSE OF ESCROW)

1. ONE YEAR

(noise transmission, irrigation systems, drainage)

2. TWO YEARS

(untreated wood posts, landscaping systems, dryer ducts)

3. FOUR YEARS

(plumbing, sewer, electrical, concrete flatwork, untreated steel fences)

PRELITIGATION PROCEDURES:

Prior to filing a lawsuit, the following procedures **MUST** be followed.

1. The builder must receive written notice describing the claim in sufficient detail so that the builder can determine the nature and location of the violations.
2. Within 14 days, builder shall acknowledge, in writing, receipt of the notice of the claim. If the builder fails to acknowledge receipt of claim, buyer is released from these requirements and may file a lawsuit.
3. The builder can elect an initial inspection and/or testing of the home, to be completed within 14 days of his acknowledgment of receipt of the buyer's claim. The builder may also request a second test within 40 days. If the builder fails to timely demand inspection or testing, homeowner may file suit.
4. Within 30 days, the builder shall provide copies of all relevant plans and specifications that pertain to the homeowner's residence.
5. The builder may offer to repair the defects or compensate homeowner for all the applicable damages. Then, the homeowner shall have 30 days to authorize the builder to proceed with repairs. The homeowner may also request that the builder provide 3 additional contractors who will do the repair.
6. The builder's offer to repair shall also be accompanied by an offer to mediate (limited to 4 hours) the dispute. If the builder has made an offer to repair the violation, and mediation has failed to resolve dispute, homeowner shall allow repair to be performed. Mediation shall occur within 15 days.
7. The builder must perform repairs with the "utmost diligence". Every effort shall be made to complete repairs within 120 days. If the builder fails to complete repairs within this time frame, the homeowner is released from these requirements and may file a suit. The builder may also make an all cash offer to settle instead of making repairs. The homeowner can accept the offer or reject it and file suit.
8. The statute of limitations are extended from the date of the original claim to 100 days after the repairs are completed. When the repairs are completed, the homeowner may file an action for violation of an applicable standard and/or for inadequate repairs.
9. If the builder has completed the repair, and before the homeowner may file a lawsuit, the buyer shall request mediation in writing, which shall occur within 15 days of the written request.

If a claim for **DAMAGES** is made, the homeowner is only entitled to the following:

1. Reasonable value of repairing any violation
2. Reasonable cost of repairing any damages caused by the repair efforts
3. Repairing and rectifying any damages resulting from the failure of the home to meet the standards
4. Reasonable cost of removing and replacing any improper repair by the builder
5. Reasonable relocation and storage expenses
6. Lost business income if the home was used as a principal place of business licensed to be operated from the home
7. Reasonable investigative costs for each established violation, and all other costs or fees recoverable by contract or statute

BUILDER'S DEFENSE:

The builder's defense may include, but is not limited to, unforeseen acts of nature; the buyer's unreasonable failure to mitigate damages or to provide access for inspections, alterations by the buyer, expiration of statutes of limitations, a successful repair by the builder, failure to give timely notice to the builder, failure to follow the builder's recommendations, or commonly-accepted homeowner maintenance obligations.

The information provided herein is general in nature, not a solicitation, and in no manner should be substituted for specific expert advice from a qualified professional.

STATE INTERVENTION IN HOA DISPUTES

From time to time, your editor receives calls about association boards not following its bylaws with respect to things like holding annual meetings, providing current financial information, holding secret board meetings and failing to adhere to other requirements of the California Corporations Code.

The California Attorney General's office has the authority to intervene on behalf of members of a nonprofit mutual benefit corporation (such as a homeowners association) who have been denied certain rights. The intervention is in the form of a "Notice of Complaint" letter sent to the board of directors.

If you need to complain that your nonprofit mutual benefit corporation has failed to hold regular meetings of members, failed to allow a member access to books and records of the

corporation, failed to provide annual financial reports to members, failed on request to provide a list of name and addresses of members, or failed to provide other specified member rights, you may submit your complaint in writing to:

Office of the Attorney General
Public Inquiry Unit
P. O. Box 944255
Sacramento, CA 94244-2550

Or via the Internet at www.ag.ca.gov/consumers/mailform.htm

Be sure to include an address for the nonprofit corporation (homeowners association) and your own return address.

After review of your complaint, and if appropriate, the Attorney General's office will send a "Notice of Complaint" letter with a copy of your complaint to the corporation and direct the corporation to respond to both the Attorney General's office and to you within 30 days. You will also receive a copy of the Attorney General's "Notice of Complaint".

According to the Attorney General's office, "many times our 'Notice of Complaint' from this office will be sufficient to prompt an otherwise recalcitrant board of directors to resolve your complaint. However, you may wish to discuss your problem with your own private attorney".

As an association, I don't think I would want to show up on the Attorney General's "radar" for failure to follow the governing documents and provide members with proper disclosures. On the other hand, there are members who just want to stir up trouble when their complaint is not valid. If a member's complaint is not valid you should be able to convince the Attorney General's office when you respond to a complaint.

NEW CC&R DISCLOSURE REQUIREMENT - AIRPORTS

By: James H. Smith, Esq.

Editor's Note: Jim is a partner in Grokenberger, Smith and Courtney, a Santa Barbara law firm. Jim is a founding member of South Coast and a frequent contributor to our programs. Jim also presented this information at our Goleta law forum and it generated some discussion due to the proximity of the Santa Barbara Airport to many Goleta-area associations.

A new section (1353) of the Davis-Stirling Act was added last year which will become effective for all CC&Rs recorded after January 1, 2004. If the association is located within an "airport influence area", new, restated or amended CC&Rs must include the following statement:

NOTICE OF AIRPORT IN VICINITY

"This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the

annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.”

An airport influence area, also known as an airport referral area, is an area in which current or future airport-related noises, overflight, safety or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by the local Airport Land Commission.

For example, the administrative office at the Santa Barbara airport has a map which outlines its airport influence area. Much of the Goleta Valley, especially the areas south of the 101 Freeway are part of the influence area. Some areas north of the 101 are also part of the influence area as small planes fly in this area prior to landing at the airport. Airports in other communities should be able to tell you whether your association is part of an airport influence area.

Failure to place the required disclosure into CC&Rs after January 1, 2004 may expose the association to liability from purchasers of units. For associations that have amended governing documents without using an attorney, this new provision could be a trap for the uninformed.

ARE YOU TENTING YOUR HOME OR CONDO FOR FUMIGATION?

Effective October 28, 2002, a new US Department of Transportation regulation requires only trained personnel can shut off and turn on natural gas service **before and after** tented fumigation jobs. To comply with this regulation, Southern California Gas Company has determined that only utility personnel are authorized to shut off and turn on gas service on tented fumigation jobs. Fumigation contractors are no longer authorized to perform these services.

Southern California Gas will provide the following at no cost:

Gas shut-off: Customers or fumigation contractors must call the gas company to schedule a gas shut-off order. A minimum 2-day notice is required.

Gas turn-on: Customers must call the gas company to schedule a gas turn-on order. You or an authorized agent must be present at the time of turn-on, and must provide the gas company with proof of Certification of Re-Entry (issued by your fumigation contractor) to ensure it is safe to re-enter the property. All appliances and house piping will be inspected for safety and efficiency as part of the gas turn-on service.

To schedule gas shut-off and turn-on orders for tent fumigation orders, call Southern California Gas toll free at 1-800-427-2200.

TREES OUT OF LINE

What you should know about trees and electric lines

By: Karen Christman, Certified Arborist

Editor's Note: Karen is a principal in Arbor Services, a full service tree care company based in Santa Barbara and Goleta. She was one of the speakers at our meeting on landscape issues last fall. This article is adapted from her February 2003 article in the SB Horticulture Consortium's newsletter, *Fruits of the Vine*. Karen can be reached at 687-7709 or by email at arbor5@prodigy.net.

Line clearing crews contracted by Southern California Edison (SCE) have a heavy workload of clearing vegetation from high voltage lines thanks to our comfortable Southern California climate. It often becomes a thankless task when the severe pruning techniques used for clearance put them at odds with property owners. A great or not-so-great example would be a series of mature Liquid amber trees that I inspected at a Santa Barbara HOA this fall that had been topped to a shocking height of approximately 15 feet. It was a textbook nightmare. The trees were lopsided and had stub cuts up to 6-inches in diameter! In time these trees will send out a thick canopy of watersprouts blocking sunlight to adjacent units and create a safety hazard in high winds - a budget and aesthetics surprise for the HOA. Ironically, the utility clearing crew had done their job to specification.

According to Patrick Gladden, Technical Specialist in the Line Clearing Department of SCE, the utility has the right to maintain clearance around high voltage lines for public safety and to prevent service loss. Palm trees, according to SCE's website, cause almost 25% of SCE's vegetation-related outages each year.

Clearance guidelines vary in accordance to codes put forth by the California Public Utility Commission and Forest Service. In the low fire risk areas within Santa Barbara city-limits for example, there must be 18 inch clearance from SCE primaries (these are the lines that carry 750 volts or higher) at all times. High-risk fire areas within the city-limits require four-foot clearance at all times. In the case of my client's liquid amber trees, the BIG cuts were made to prevent a repeat visit in the short-term. Multiple visits are not cost-effective, nor is pruning the entire tree to appease the owner (a Pandora's box of liability and taste issues).

The lower voltage lines that run directly to the house or office are not maintained by SCE unless they show severe signs of stress, strain or abrasion and need to be replaced, according to Gladden. These lines can be de-energized for safer pruning access upon request by contacting SCE.

HOA's can work with their professional tree care company to strategically prune back trees within utility line zones to prevent a visit with a utility line crew, but Gladden highly recommends meeting with a SCE field technician first. To receive prior notification from SCE that your property's trees are going to be pruned call the automated customer service line at 800-655-4555.

Making realistic selections of trees to plant under power lines or next to utility poles is key to avoiding conflicts. *Liquid amber styraciflua*, for example, grows to about 60 feet tall at a moderate pace. Place that under high voltage lines and expect it to be repeatedly topped to a height of approximately 15 feet (ouch!) by a line clearing crew. *Eriobotrya deflexa* (Bronze Loquat) or *Cassia leptophylla* (Gold Medallion Tree), however, have mature heights less than 20 feet tall. The SCE website (www.sce.com) is a good starting point with its planting list of suitable and unsuitable trees and palms.

As for my client's trees, removal and replacement with new trees appears to be the best option for the future. Whether or not it is a popular one is yet to be seen. For more helpful information on this topic refer to the International Society of Arboriculture's (ISA) handout "Avoiding Tree and Utility Conflicts".

For more information or a copy of the ISA brochure, please contact Karen at 687-7779

**PLEASE FEEL FREE TO MAKE COPIES FOR YOUR BOARD MEMBERS
SHARE THIS NEWSLETTER WITH YOUR ENTIRE BOARD OF DIRECTORS**

HOMEOWNERS ASSOCIATIONS HAVE A NEW FORM TO FILE WITH THE CALIFORNIA SECRETARY OF STATE

As noted in our January newsletter (pages 5-6), homeowner associations are now required to file two forms with the California Secretary of State on a biennial basis (every two years). The new form, which follows is “Form SI-CID” – Statement by Common Interest Development Association and is designed to provide specific information about your association to the Secretary of State’s office. It does not replace the Statement of Information that all California corporations file. Both forms will now be required for homeowner associations. In fact, unincorporated associations that do not file the Statement of Information are required to file the new statement.

How the new filing requirement will be implemented: Based upon a phone call to Secretary of State’s office, they will not send you the new form when they send you the Statement of Information to complete. Instead, when you complete the Statement of Information, you will be directed to request the new form if you are a homeowner association. You can call or write for it or download it from the Internet at www.ss.ca.gov. Or you can use the form that follows this article. The new form has the same due date as the Statement of Information. From now until December 2004, all associations will be required to submit their initial Statement of Common Interest Development. There is a \$30 fee to file the new Statement of Common Interest Development in addition to the \$20 fee to file the Statement of Information (total - \$50). Unincorporated associations will be required to file the new Statement of Common Interest Development in July 2003.

Filing requirements when there are changes to the information: A new Statement of Common Interest Development will be required during the 2-year period if the street address of the association’s on-site office changes, or the street address of the responsible officer or managing agent of the association changes. This interim statement has no filing fee and for those with internet access, you can fill in a new form online and submit it.

Penalties for failure to file: Failure to file this statement may result in the assessment of a penalty and suspension of the association’s rights and privileges, and powers as a corporation to the same extent and in the same manner as the penalty and suspension imposed pursuant to Corporations Code 8810 (Statement of Information filing).

When is the Statement of Common Interest Development due? The form is due every two years at the end of the month in which the original Articles of Incorporation were filed and can be filed up to 5 months before. If the corporation filed in an odd-numbered year, then the Statement will also be due in an odd numbered year. Likewise, if the corporation filed in an even-numbered year, then the Statement will be due in an even numbered year. For example, an association which incorporated on July 23, 1971 will need to file by July 31, 2003 while an association incorporated on November 5, 1982 will need to file by November 30, 2004.

Questions can be directed to the Secretary of State’s office 916-657-5448 or by mail at P. O. Box 944230, Sacramento, CA 94244-2300 or by Internet at www.ss.ca.gov. Your attorney, manager or CPA may be able to assist you as well.

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Santa Barbara, CA 93101
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805-964-9988

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Santa Barbara, CA 93108
805-969-5838

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Nina Corman, Exclusive Agent
830 E. Ocean Avenue
Lompoc, CA 93436
805-736-8944

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Santa Barbara, CA 93101
805-957-2065

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We still have a limited number of publications available for purchase:

2003 Condominium Bluebook – a reference guide including relevant California law, court decisions, model forms, etc. - \$16.00/each – postpaid

Questions and Answers About Community Associations – by Jan Hickenbottom, PCAM. This is a compilation of over 300 columns written by Jan that appeared in the Los Angeles Times from 1989-2001 - \$26.00/each – postpaid.

HOMEOWNER ASSOCIATION ORGANIZATIONS

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

Executive Council of Homeowners
ECHO
1602 The Alameda #101
San Jose, CA 95126
408-297-3246
www.echo-ca.org

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805-964-7806

MEETING REGISTRATION

MEET THE AUTHOR!

QUESTIONS AND ANSWERS ABOUT COMMUNITY ASSOCIATIONS

Jan Hickenbottom, author of the newly published *Questions and Answers about Community Associations* will speak to South Coast on **Saturday, May 17**

Moby Dicks Restaurant
Stearns Wharf, Santa Barbara
Registration – 9:00-9:30 AM
Breakfast 9:30
Program to follow
Cost - \$15 per person

Jan has been a professional in the community association industry since 1979 and has worked with associations of all sizes involved in crisis management, manager recruitment, board training and other consulting services. She has also served as an expert witness in court proceedings and provided mediation of association disputes.

Jan was instrumental in forming the California Association of Community Managers, a self-regulatory trade organization that was formed to educate and elevate the professional standards of care and ethics of community association managers. She has earned their CCAM designation along with the PCAM designation from the Community Association Institute. Jan's Condo Q & A column appeared in the *Los Angeles Times* from 1989-2001.

Space is limited to the first 60 paid reservations.

(Detach here)

Please find enclosed our check for \$ _____ to reserve for Jan's Hickenbottom's presentation on May 17.

Name(s) _____

Association or Business _____

Address _____

City, Zip _____ Phone _____

Email _____

