

SOUTH COAST HOMEOWNERS ASSOCIATION

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SPECIAL LAW MEETING WITH BETH GRIMM – JULY 20

Beth A. Grimm, an attorney in private practice in Pleasant Hill, CA (East SF Bay Area) will be making a presentation to South Coast members on Thursday, July 20 at 7 PM at the Holiday Inn in Goleta. This will be her third presentation to South Coast; her first two programs were very well received. Ms. Grimm is the chair of CAI's California Legislative Action Committee, author of the *California Legal Digest* for Homeowners Associations, a statewide speaker on HOA issues and the author of numerous books and articles dealing with the law and Homeowner Associations. Topics to be covered will include pending 2000 legislation and the implementation of reasonable rules and regulations in homeowners associations. A separate reservation sheet is enclosed with this newsletter. Please note the alternative instructions if you wish to make your reservation after July 2nd, as I will be on vacation from July 4-16th.

2000 OPERATING COST MANUAL FOR HOAs RELEASED

Enclosed with your newsletter (for full members only) is the recently updated *Operating Cost Manual for Homeowners Associations* issued by the California Department of Real Estate. This booklet can use a useful tool in developing your association's budget although it is not a substitute for your association's own experience, previous maintenance history and contractor estimates. Additional copies are \$6.00 each postpaid.

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

CAN THE PRESIDENT VOTE AT BOARD MEETINGS?

On more than one occasion and a couple times recently, it has been suggested that the President, Chairman or other presiding officer of the association is ineligible to vote at the board meeting except to break a tie. (For example, in the United States Senate, the Vice-President is the presiding officer but not a Senator and can only vote to break a tie). This notion is apparently based on a concept in Robert's Rules of Order that prohibits the chair from voting except in the case of a tie vote by the directors.

Most association bylaws do not specify what form of parliamentary procedure is to be used by the association. Further, your association bylaws regarding the conduct of your meeting and the rights and responsibilities of board members and officers will take precedent over Robert's Rules in the event of a conflict. Also, if there is a conflict with state law, the law takes precedence over Robert's Rules.

These meetings are of the board of **directors**, not a board of officers. In nearly all associations that I am aware of, members elect directors and then the directors select officers. The California Corporations Code, in section 7211(a), permits all directors to conduct a board meeting and does not limit the power of any director to vote, even if the director is the President or Chairman. If an officer was not a director, then the officer would not be permitted to vote as a director, unless the bylaws otherwise provide. So, if your President/Chairman is a director, he/she is entitled to participate and vote on all matters before the board just like any other director.

LEGISLATIVE ANALYSIS UPDATE – AB 1859 – LE PARC HOA

In you May 2000 newsletter, page 5, we wrote about the financial disaster that befell a Simi Valley association and pending legislation that would mitigate some of the adverse financial impacts to its members. Briefly, the Le Parc association was hit with a \$6.6 million dollar judgement as a result of slanderous conduct by board members towards a contractor hired to fix damage from the Northridge Earthquake.

The court required the association to levy an emergency assessment against its members of \$25,000 each to pay the judgement. In the meantime, the court's receiver took all of the regular assessment income and applied it to the judgement. Additional information provided by the legislative analysis assigned to this bill showed that this judgement was a result of binding arbitration, perhaps as part of the contract that the association signed with the contractor. Binding arbitration, even if legally flawed, cannot be appealed. Under the facts of the case, the association should not have been held liable for the slanderous or defamatory statements of directors where the association board did not authorize the directors' statements. In addition, there had been a dispute with the association's insurance company (Farmers' Insurance Group) as to whether the association was covered for this type of claim. In January 2000, Farmers agreed to pay the judgement

after the contractor agreed to reduce it to \$5 million and the association agreed to waive further claims against the insurance company. As a result, the association members did not have to pay the remainder of the judgement.

It is also important to note that members can obtain loss assessment coverage on their own individual insurance policies. \$25,000 and \$50,000 limits are common.

IMPLEMENTING A SPECIAL ASSESSMENT

At one time or another, it is not uncommon for an association to have to consider imposing a special assessment on its members. Many times, a special assessment is a result of inadequate reserve funds, a major expense that occurs sooner than expected or is substantially more expensive than budgeted or an operating expense that increases beyond that anticipated in the budget. The imposition of a special assessment is usually covered in the association's governing documents and is also laid out in California Civil Code section 1366.

MEMBER VOTE REQUIRED

Normally, a vote of the members is required to approve a special assessment. There are exceptions, to be discussed later. In order to impose a special assessment, a majority of the owners (more than 50%) of a quorum (also more than 50%) permitted to vote under the California Corporations Code. For example, in a 100-unit association, if 65 members voted (over 50%), then it would take 33 yes votes (more than 50% of the 65 voting) to impose the assessment. Your association's attorney should be consulted to ensure that the vote is handled properly. Proxies may be used for voting.

Just like regular assessments, at least 30 days notice must be given to impose the assessment, once the assessment is approved by the members. Also like regular assessments, the special assessment is delinquent 15 days after its due date. Late fees, interest and collection costs can be added to delinquent special assessments. Again like regular assessments, a lien can be filed if the special assessment remains unpaid, subject to Civil Code Section 1367.

EXCEPTIONS TO MEMBER VOTE

As noted earlier, the board can impose a special assessment without a vote of the members in two situations. First, the board may impose a special assessment of up to 5% (or multiple special assessments that total up to 5%) of the budgeted gross expenses of the association for that fiscal year. This law, Civil Code section 1366(b), restricts a special assessment the board can impose without a vote of the members to a fairly low amount. For example, a board of a 40-unit association with budgeted gross expenses of \$100,000 could impose special assessments under this section totaling up to \$5,000 during the fiscal year. Divided by 40 units, the maximum assessment per unit would be \$125. These types of assessments are used most commonly to make up a shortfall in the operating account that may have occurred due to a utility rate increase, change in insurance coverage or unanticipated minor maintenance. If your association assessments

are variable or partially variable (different members pay different assessments based upon square footage of unit, number of bedrooms or some other criteria), then be sure to consult with your governing documents to determine how the special assessment is to be assessed to the members. It may not be the same as how regular assessments are assessed.

A second exception provides that the board can impose a special assessment without a vote in certain “emergency situations”. There is no dollar limit on the amount that can be assessed under this section. If you are planning to use the emergency situation exception to impose an assessment, be sure to get your attorney’s opinion. Different people (and attorneys!) will have different opinions about what constitutes an emergency. As provided in Civil Code Section 1366(b), an emergency situation is any one of the following:

- 1) An extraordinary expense required by an order of the court. (e.g. Le Parc, previous)
- 2) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible where a threat to personal safety is discovered.
- 3) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the pro forma operating budget under Section 1365. However, prior to the imposition or collection of an assessment under this subdivision, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

For example, if the association needs to re-roof and has not set aside any reserve funds, it would be hard-pressed to use exception 3 to impose an assessment without a member vote. The board should know what its reserve obligations are through its reserve study. However, exception 3 might be available to a board that finds that it is required to replace a “40-year” roof in 15 years as a result of “El Nino” and improper installation of the original roof. An example of exception 2 might be the repaving of your parking lot after an inspection by your insurance agent who indicates that your coverage might be cancelled due to the unsafe conditions found during the inspection.

IMPLEMENTING THE SPECIAL ASSESSMENT

When soliciting a vote on special assessments, some members will simply “vote their checkbook”. If they have to write a (large) check, they will simply vote “no”. For larger assessments, offering to accept installment payments or a discount for a lump-sum payment may facilitate approval by some members who may not have the means (or desire) to make a large payment up front. Making a payment option available will necessitate more work for your treasurer or property manager to track the payments but it could spell the difference between passage and failure.

A number of years ago, a client association needed to make a special assessment. An option was provided to pay the entire assessment of \$412 or allow members to make 12 payments of \$36 per month (\$432). Approval was received by membership vote and exactly 50% of the members paid the entire amount up front and 50% of the members elected to pay in monthly installments. Collections were accelerated when a member paying in installments, sold his unit. Your property manager, CPA or attorney should be able to assist you in setting up an installment payment program.

OTHER FUNDING OPTIONS

Civil Code Section 1366 also allows an association board to increase its regular assessment by 20% without a members' vote as part of the budget process. Depending upon what the association needs the funds for and how soon funds are required, the association can build a line item into its pro forma operating budget to generate additional funding. While beyond the scope of this article, an association may be able to obtain a loan to meet a major maintenance obligation that can be repaid from increased operating assessments over several years. An article appeared in our October 1998 newsletter on Borrowing for Major Repairs, which described the process of obtaining a loan to meet major Association obligations.

AFRICANIZED BEE NOTICE

By: Barbara Perrier, Vice President
Green's Entomological Service, Inc.
Ventura, CA 800-541-1606

Ventura County is now declared to be a "Colonized African Bee County" by the County Agriculture Department. We recently had two calls for bee eradication that turned out to be Africanized Bees. One swarm was 85% Africanized; the other was 59%. Bees tend to swarm and become active in early spring. Our concern is that these swarms are break off groups from large Africanized bee colonies somewhere within the Port Hueneme and Ventura areas.

BACKGROUND – There was an experimental African Bee project in South America and some queens were released accidentally. The reason for the experiment was that the beekeepers were looking for a bee that would be comfortable in the heat, produce more honey and be less susceptible to mites and other diseases. The African bee fits the bill. It produces more honey than the European Bee, the larva hatch faster, is smaller and therefore the overall hive space would be utilized less for the bees themselves making more room for the honey. Because of its aggressive behavior, there is not much that can be done to stop the African bee from taking over the European colonies as it moves north and it will eventually become the dominant strain of bees.

It is almost impossible for the average person to distinguish the African bee from the European bee. The fact that it is slightly smaller is not that big a deal when comparing the two bees. We could be looking at a colony of European bees that simply did not have an adequate supply of pollen and therefore, did not grow as large. Whenever we treat bees

that we suspect to be Africanized, we submit a large number of them to the County Agriculture Department for positive identification.

The African bees will usually nest in lower areas than the European bee. For instance, bees nesting in a ground level water meter is not normal for European bees and will most likely be Africanized bees. The Africanized bees have much more aggressive behavior. So, if you get a call that bees are being very aggressive and low to the ground, they will most likely be Africanized HoneyBees.

In compliance with Senate Bill 250, "All persons controlling bees (Africanized or European) for hire must hold the proper Structural Pest Control License and be registered as Certified. The hive must be removed unless the owner signs a specific waiver. An exception exists for persons engaged in the live capture of bees without pesticides. Insurance requirements must be met. They may not use smoke or even soapy water to control the bees. Also under this new law, the pest control operator is required to open the wall and remove the hive and honey from the wall voids. This is not to be a simple pick it up and dispose of it removal. Rather, it requires opening and scraping the walls and wood studs, possibly doing wood removal, which may be very expensive. So if you have bees on the interior of buildings, you will either have to have the hive removed or sign a carefully written waiver and be aware that the honey may melt and stain walls, rodents and various insect pests may be attracted to the honey and honeycomb. Also, bees will be attracted to the honey, leading to a likelihood of reinfestation. In addition, the honey would be contaminated either by pesticides or insecticidal soap. Failure to remove a hive could leave the association vulnerable in the event of injury.

We recommend caution to anyone using leaf blowers or other loud machinery, especially if you notice a number of bees around. If you have a call regarding bees, we recommend you caution people/children to stay clear of the area. Even dead bees can sting, when stepped upon or mishandled.

Not every pest control company is certified to treat African bees. Costs to eradicate are based upon the size and location of the hives and the number of bees involved.

UPCOMING MEETINGS

July 20 – Association Law Meeting with Beth Grimm, 7 PM – Holiday Inn, 5650 Calle Real, Goleta

August 30 – Reserves, Budgets, Accounting and other Things Financial with Michael J. Gartzke, CPA, 7 PM Holiday Inn, 5650 Calle Real, Goleta

September 16 – Community Association Institute, Channel Islands Chapter Trade Faire – Ventura

September 30 – Community Association Institute, Mid-California Chapter Trade Show – San Luis Obispo