

# SOUTH COAST HOMEOWNERS ASSOCIATION

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## UPCOMING MEETINGS AND PROGRAMS

**2002 HOMEOWNERS ASSOCIATION EXPO AND CONFERENCE  
PRESENTED BY THE COMMUNITY ASSOCIATION INSTITUTE'S  
CHANNEL ISLANDS CHAPTER  
Friday, September 27 from 2-8 PM  
Seaside Park, Ventura County Fairgrounds, Ventura**

For over 10 years, our friends in Ventura County have put on this annual program for all in community associations. This year, the program is on a Friday afternoon and in a new location. In addition to 4 educational seminars, there will be a trade show with up to 70 vendors who provide services to homeowners associations that you can talk to and get information. Seaside Park is in west Ventura. Take the Ventura Avenue exit and follow the signs. A pre-registration flyer is included with this newsletter. There is no charge to attend so why not make an evening of it? Just remember that Santa Barbara's traffic gets "challenging" about mid-afternoon on Fridays.

**Speaking of Creeks – A forum to discuss the future of our creeks and beaches:** The City of Santa Barbara – Creeks Division asked us to publicize their meeting on Wednesday, September 25 from 6-9 PM at the Faulkner Gallery of the downtown Santa Barbara Library. For Santa Barbara area associations, a flyer is included with this newsletter as well. A number of associations are built alongside creeks. If you did not receive a flyer with your newsletter but would like additional information, you may call 897-2658 or email at [speakingofcreeksforum@hotmail.com](mailto:speakingofcreeksforum@hotmail.com).

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

## **WATER LEAKS - START TO FINISH – Part I**

By Beth A. Grimm, Attorney

**Editor's Note:** Many of you are familiar with Beth Grimm, an attorney from Pleasant Hill, CA who is very active with CAI and their Legislative Action Committee as well as ECHO, a northern California HOA group. She writes the California Homeowner Association Legal Digest and has spoken to South Coast members several times in recent years. Beth can be reached at 925-746-7177.

You have probably read more in the last year than you ever wanted to read about mold, water claims, the insurance crisis, and what is happening to homeowner associations. Few of the articles give practical solutions to deal with the issues. Most alarm readers. All require/suggest that the association consult with experts. This newsletter is intended to give homeowner association boards of directors some practical information about how to take steps to be proactive. Every mold claim starts with a water intrusion issue.

### **What To Do When You Get The Call?**

An association will probably not receive a call with a demand to fix a water leak in an association that consists of single family residences. This is because the owners are generally responsible for everything, including the roofs, walls, exteriors, windows and foundations. These are the places where water enters. Without any obligation on the part of the association, especially when it is clear to the owners, the board or manager will probably avoid getting a call demanding some kind of recourse. One could, however, get a call related to drainage issues (possibly coming from the common area) and the analysis and handling advice applies similarly with that of a telephone call relating to a planned development or townhouse, or condominium association, where the Association likely has some maintenance responsibilities. In any of those events, the board needs to make a determination as to whether the association should get involved. The association should get involved if:

- *Common area is or may be the source of the problem, may be involved or threatened (such as in a condominium association where the water leak is coming through the roof, through the walls, windows, or the foundation).*
- *An association obligation may be involved (such as a planned development where the association has responsibility for roofs or the exteriors).*

In any situation involving common area, of course the association has to know what is going on, even if it believes the ultimate responsibility belongs to an owner (such as for a break in a washing machine hose or refrigerator tubing or toilet overflow). In any situation involving a single family home situation, or a townhouse or unit in a planned development, the association should get involved if the leak is possibly coming from something that is the obligation of the association, such as repair of roofs or repair of siding or drainage from common areas. In many planned developments, the windows and window replacements are the owners' responsibility, as are the floors and foundations, so if water is believed to be coming through those areas, the association may be able to decline any responsibility or involvement. However, in any given situation, I believe the association is at an advantage if it sends one of its own experts in to investigate any water intrusion situation. This benefits the association because:

- *The association has more information relating to the cause, which may not be ascertainable after work is done in the particular areas.*
- *The association may be able to rule out responsibility on the part of the association, but gather evidence to enforce or demand upon a homeowner to fix.*
- *The association will need to know the extent of the damage and how much of a threat the situation is to the association, and will be able to better assess it with full information.*
- *The association will be able to document its records more sufficiently, if it investigates.*

In any given situation where the water is coming to the slab through the floor, the question often arises as to whether the association has responsibility and to what extent. In a planned development, unless the CC&Rs obligate the association, the owner would likely have responsibility for any leaks coming up through the slab or the floors. However, in a condominium development, the association generally has responsibility for the foundation. Still, issues come up over hardwood floors because they are expensive to replace. Of course, every question about responsibility for replacement of flooring depends heavily on what the CC&Rs or the governing documents for the association say, what Civil Code Section 1364 says, what authority was given for installation of the floors (if any), and past practice of the association. Architectural approval may enter into things. In a condominium situation, if an owner has installed hardwood flooring without association authorization or approval that indicated the association would have responsibility thereafter, and the hardwood flooring needs to be removed to fix the problem, arguably, if the association has taken steps to protect itself (such as amended the CC&Rs to attribute water damage to the individual owners, or otherwise), the association may be able to avoid responsibility for replacement of the hardwood floors. On the other hand, if the association has reinstalled hardwood floors in the past, failed to notify the owners that they are installing these upgrades at their own risks, and failed to take steps to protect the association, the association may have to pay the price of replacing hardwood floors when slab crack and other water intrusion areas are fixed. All of the factors mentioned above and below need to be considered in considering responsibility, and each association should depend on what its legal counsel advises, (not this newsletter-please view this as information, not the definitive answer to any particular dispute over responsibilities).

### **What To Do If Common Area Is Involved Or Threatened, Or An Association Obligation Is Involved**

The next section suggests some simple steps if the association has determined that the matter is an owner responsibility. Those steps are:

- *Investigate the situation.*
- *Make a proper demand on the homeowner to fix or make arrangements to fix the problem.*
- *Follow through and make sure the work gets done!!!*

The questions in the next area of inquiry are as follows:

- *Do the governing documents for the association require the board to fix the problem?*
- *Is there negligence to consider?*
- *How does the Civil Code factor into the analysis?*

If the governing documents of the association (especially the CC&Rs) are clear, they will specify whether or not the association is responsible to fix the particular area in question. More often than not, however, the documents are not clear, and the board must look elsewhere for guidance.

Civil Code Section 1364 generally attributes responsibility as follows:

- *If the Declaration (CC&Rs) provides responsibility, the CC&Rs control.*
- *If the CC&Rs do not otherwise provide, in a condominium development, the Association is responsible to maintain an all common area, excluding exclusive use common area.*
- *In a planned development, unless otherwise specified in the Declaration, the owners are generally responsible for repairs to their units/lot.*

What Civil Code Section 1364 does not say is that one has to look to see if specific components are addressed anywhere in the Declaration. For example, while Civil Code Section 1364 might imply that a homeowner is responsible for an exclusive use area deck, there may be responsibility in the governing documents stating that the Association is responsible for the structural aspects of the building, which might include decks, especially if they are cantilever style. Documents can be confusing on this, so legal counsel is needed in determining responsibility for specific areas, in most cases. This is critically important with regard to water leaks that have a potential to lead to mold claims.

Beside the documents and Civil Code Section 1364, I generally recommend that the Association give me information relating to past practice. For example, if the Association has fixed all decks and floors in the past, but declines in this particular situation to take responsibility, that can lead to an “*inconsistent treatment*” claim (involving breach of fiduciary duty for failure to treat all owners the same). Inconsistent enforcement of the CC&Rs is the leading culprit in Directors and Officers claims, according to Chubb Insurance Group in studies/surveys that have been performed. So, past practices are certainly important.

### **How Are Things Different Now?**

In the “*olden days*,” associations would generally simply make a demand to a homeowner, if the Board felt it was the homeowner’s responsibility to repair water leaks. If the association’s insurance company was involved, associations would often simply turn over the proceeds from the insurance company to the homeowner and ask them to fix the problem. In the “*olden days*,” associations often made little effort to follow through to make sure the water leak was fixed, trusting the homeowners (I guess). However, in this day and age, associations cannot afford to take such as a “*laid back*” or “*trusting*” attitude about water leaks. Follow-through is critical. Using the insurance proceeds, if there are any, to fix the leak (as opposed to a vacation), is critical.

### **How Can The Association Protect Itself?**

There are several important aspects to protecting the Association with regard to water leaks. Many of them involve possible document amendments, changes and disclosures to the homeowners, and information to the community that explains the “*shift*,” so that every homeowner has an opportunity to adequately protect themselves.

The important considerations for follow-through and the necessary protections are:

### **Is The Water Leak Fixed? (Gain Entry To Find Out!)**

With regard to making sure the water leak is fixed, boards of directors need to be concerned with rights of entry, including inspection, the right to fix areas that the homeowners refuse to fix, and getting clearance after work is done. The CC&Rs for the association may or may not allow right of entry. If they do not, it is important to consider amending the governing documents to provide a board with the right of entry it needs not only to inspect for water leaks or problems, but to make sure that they can get in to fix the problem if the owner doesn't fix it. Concurrent with this is the importance of being able to recover the costs if the association has to expend funds either to have the work done, or to force the owner to do it. This would come through a reimbursement assessment, and all CC&Rs should provide for one.

### **Did The Owner Fail To Report The Leak In Time For The Association To Take Responsible Measures To Fix?**

If an owner fails to report a leak, and it is allowed to continue for a number of years, that can lead to exacerbation of damages, and can even lead to mold claims. If the association's CC&Rs impose an obligation upon owners to report roof leaks when they are discovered, and also provide the consequence that owners could be held responsible for extra damages if they failed to report, then owners would be more apt to let the board know when there is a potential problem. Again, the CC&Rs should provide for a reimbursement assessment to cover extra costs if an owner or residence fails to report a water leak. The reporting issue also goes to negligence. In situations where documents require owners to repair water damage to the interior of their units, the association generally would not be responsible for those, unless there was negligence. An owner's failure to report a leak to the board could foil a negligence claim against the board. The board is not negligent until a duty arises that needs to be performed, and the Board fails in that duty. If the association does not know about a leak, it cannot fix it. CC&R amendments may be needed to deal with the reporting issue, and the extra costs involved if an owner fails to report a problem. Without document amendments, the association can still use these arguments in court, but they are stronger if the documents reflect the obligation.

### **Are Owners Responsible For Interior Damage?**

Generally, in a condominium, or a planned development, the documents for the association make the owners responsible for repair of interior damages. In the case of *Franklin v. Marie Antoinette Condominium Owners Association, Inc.*, 19 Cal. App. 4th 824, 23 Cal. Rptr. 2d 744 (1993), the association actually had a provision in their CC&Rs that required owners to be responsible for repairs for interior damage from water leaks. An owner who suffered from interior water damage sued the board and tried to get the board to pay for the damage. The court recognized that the clause making the owner responsible for the interior water damage could be upheld, so long as the association was not negligent. It recognized that no negligence was found on the part of the board. The court did make it clear that the association could not escape a negligence claim by so stating in the governing documents. However, it could escape responsibility for interior damages for water leaks, no matter what

the source, since the CC&Rs provided for that, and since there was no negligence found. Perhaps your association wants to consider amending the CC&Rs to hold owners responsible for interior damages for water leaks. That is a big step toward protecting the Association with regard to water intrusion and mold claims.

## **Part II - The Insurance Angle (next newsletter)**

### **RECORD RETENTION**

**By: Walter G. Grady, CPA  
Alameda, California**

**Editor's Note:** Walt has provided accounting services to homeowners associations in the Bay Area for over 20 years. He has been active in the Executive Council of Homeowners (ECHO), a northern California HOA organization and has served as chair of their Accountants Resource Panel. He is a frequent contributor to the CPA Education Foundation's *Common Interest Realty Associations Accounting Conference*, a seminar held each fall in San Francisco and Los Angeles. The issue of record retention comes up frequently and we thank Walt for allowing us to reprint his article.

Record retention is a difficult issue for most Associations. It is often compounded by the lack of professional guidance as to what records need to be retained. The Association may have a closet full of records, but if they are disorganized and no one can find anything when needed, then it is time to review and organize the records.

Record retention is especially important because of frequent turnover of the Board of Directors. It is also futile if former Board members are retaining Association records, but no one knows about it. Each Board needs to establish and follow a record retention policy.

### **WHAT RECORDS?**

All documents need to be considered. This includes legal, financial, insurance and maintenance records as well as general correspondence. Written documents, computer disks and tapes, equipment specification and instruction books and even pictures all need to be addressed.

### **WHY KEEP RECORDS?**

There are legal requirements for keeping certain records such as board minutes and tax returns. Board minutes are permanent records and need to be retained indefinitely. Tax returns can be audited up to three years from when they are filed. Since they are not filed until after the year is over, supporting documentation needs to be retained for four years.

Other records need to be retained for their informational value. For example, on the last roof replacement - what were the specifications, date of replacement, cost and warranty information? Maintenance history and repair records can help to determine when components should be replaced.

Still other records need to be retained due to possible future Board or legal action, such as a history of repeated rules violation which may lead to future Board action, or history of water intrusion problems which may lead to a construction defects legal action.

Architectural Control records are particularly important. The Board needs to be able to identify each architectural change that has ever been approved and, conversely, each change that has been denied, as well as maintaining a history of violation notices.

## **TOO MANY RECORDS**

Often too many records are retained. Each Board member does not have to keep a copy of minutes of meetings as long as the original is properly filed and is available. Detailed monthly financial statements do not have to be retained once annual financial statements have been issued by the CPA. One copy of anything is enough!

## **ORGANIZATION**

There is no right or wrong method of organization. I recommend separating the records by category:

- Legal Records
- Financial Records
- Maintenance/Facilities Records
- Correspondence
- Other

Within each category, records should be grouped into:

- Permanent Records
- Retain for 4 years
- Retain till superseded
- Often Superseded records in turn should be retained for 4 years
- Retain one year

## **PERMANENT RECORDS**

- Legal:
  - Board Minutes and Notices of Meetings
  - Executive Session Meeting Minutes
  - Membership Meeting Minutes and Notices of Meetings
  - Committee Meeting Minutes
  - Original Enabling Documents:
    - CC&R's
    - Bylaws
    - Articles of Incorporation
  - Amended Enabling Documents
  - Legal Settlement Agreements
  - "Client/Attorney Privileged Information" file
  - Developer Disclosure Statements
  - Deeds
  - Title Insurance Policies

- Financial:
  - Annual Corporate Tax Returns
  - Letters granting tax exempt status
  - Issuance of tax ID number
  - Annual CPA Prepared Financial Statements
  - Annual general ledgers
- Maintenance:
  - Blue Prints
  - Building Drawings and details of Additions or Modifications
  - Major Component Listings, Specifications and Measurements
- Other:
  - Documents requesting Architectural Changes
  - Approvals and denials of Architectural Change Requests
  - Notice of violations of Architectural Controls

**RETAIN FOR 4 YEARS**

- Legal:
  - Membership Meeting Ballots, Proxies and Check in Sheets
- Financial:
  - Bank Statements & Canceled Checks
  - Paid Bills
  - Payroll Tax Returns
  - Time Cards
  - Monthly General Ledgers
  - Accounts Receivable Listings
  - Deposit slips
  - Dues billing and collection documents
- Correspondence:
  - "Serious" Correspondence
  - Newsletters
- Other:
  - Insurance Claims History

**RETAIN TILL SUPERSEDED:**

("\*" denotes transferring superseded document to the 'four more years' category)

- Legal Records:
  - \* Contracts:
    - Management



Vendor Services

- \* Loan Documents
  - \* Listing of Rules
  - \* Interpretations of Rules under specific circumstances
- Non-Architectural Enforcement Matters  
(ex: Parking Violations. Discard when owner sells unit)

● **Maintenance/Facilities Records:**

- \* Warranties and Guarantees
- \* Reserve Studies
- \* Funding Studies
- Equipment Specifications
- Complete details of last replacement of all major components

● **Other Records:**

- \* Original Insurance Policies
- \* Employment Contracts
- \* Personnel Files

**RETAIN ONE YEAR**

Meeting Agendas  
Monthly Financial Statements  
"Light" Correspondence, especially if situation has now been resolved or action completed

**WHERE SHOULD RECORDS BE KEPT**

Records should be stored together in a safe, dry area, preferably in a storage closet on site or with the management company. Permanent records such as Board Minutes should be kept in a fire proof cabinet. It is not uncommon for the management company to retain most of the permanent records and the current records.

**HOW SHOULD RECORDS BE KEPT**

Records should be stored in uniform size record storage boxes. If records are to be destroyed after a certain date, write on the box the destruction date. Number the boxes so that they can be kept in order. Keep a separate listing of the contents of each box. It is much easier to look through a ten page listing and find a reference to a box number than it is to physically look through ten boxes.

**ANNUAL CHORES**

At the end of the fiscal year, gather up the current year records. Always take the time to index the boxes prior to adding them to the storage site. At the same time, review the stored record listing sheets for records that have expired and destroy them. Make notations on the listing that the records were destroyed and the date destroyed.

## A FINAL WORD

Use common sense in determining what records to keep or destroy. If in doubt contact your professionals - Attorney, CPA, Professional Manager, Insurance Agent, Banker, or Reserve Specialist.

### The CPA's "TOP 10" TIPS TO DEVELOP A SOUND OPERATING BUDGET

By: Michael J. Gartzke, CPA  
Goleta, CA

**Editor's Note:** I was invited by CAI-Channel Islands to participate in a budget forum at their August luncheon meeting along with a reserve study preparer and an association manager. Each of us were asked to provide 10 tips to help develop a budget. With apologies to David Letterman (I'm asleep when his show comes on!), here are my "Top 10".

- 10) **Keep the assessment the same for next year??? (Sure!) –** a 'noble' goal on the surface. It's easier to sell the budget if there is no dues increase. No arguments from the members. You won't be "picking the owners pocket". "What do you do with all the money, anyway?" While it is prudent to evaluate the service requirements of the association and the costs associated with each of the services, there are not many associations with "fat" operating budgets. Don't bind yourself with such a restriction. In fact, if you pinch the penny too tightly, maintenance and reserve funding usually suffers.
- 9) **Arrange the expense items in the budget in some logical order –** There is nothing more frustrating than trying to find a budget item when there is no logic to how the information is presented. Two methods to arrange the budget items are:
  - **Alphabetical –** Members can see the order in an alphabetical presentation
  - **By type of expense –** Nearly all association budgeted expenses can be placed in the following five major categories:
    - Utilities – electric, gas, trash, water, etc.
    - Common Area Maintenance – landscape, minor repairs, pool
    - Insurance –
    - Management and Administration – includes taxes
    - Reserve Funding

Subtotals can be entered for each major category. Information such as costs per unit per month can also be entered so that members know what portion of their monthly assessment goes to a particular expense.
- 8) **Let's just increase everything by 3% inflation and be done with it.** That might work for some expenses were there is a service contract with built-in inflation adjustments or for some minor administrative expenses. Utility and insurance expenses do not have a set inflation adjustment each year. It's more important to evaluate each expense category on an individual basis and make the necessary upward or downward adjustment based upon historical as well as projected rates and information.

- 7) **Talk with your contractors** – If landscaping is a major part of your budget, talk with your contractor regarding future rates at the next contract renewal. Get their input on the cost trends. Does it make sense? Are you getting the level of service that you expect? Talk with any contractor (maintenance/professional) whose services are a material part of the budget.
- 6) **Watch out for insurance** – Between increased claims, reduced investment income and the post 9/11 world, insurance premiums are going up across the board, a lot. Check with your agent to find out what you can expect at your next renewal. It could be a 20% - 50% increase in premium.
- 5) **Utilities** – If utilities are a major part of your budget, review current rates and usages. Electric rates increased an average of 46% in June 2001. Natural gas went way up and came back down during 2000-2001. Trash haulers are paying more to dispose of your trash in landfills. For example, the City of Santa Barbara raised trash rates nearly 30% last year. Check with your water/sewer district about future rates. If major capital projects are pending, your costs may go up. Usage may fluctuate if it is a “wet” or “dry” year.
- 4) **Uncollectible Assessments** – Consider budgeting an amount for uncollectible assessments. Very few associations have had truly uncollectible assessments for the past 5 years with surging real estate prices. Members did not want to jeopardize their equity and would either refinance or sell if they were unable to pay otherwise. Should real estate prices peak and decline as they did in the early-mid 1990s, some who have purchased recently may find their home to be worth less than the mortgage and simply walk away from their debt, including unpaid association fees.
- 3) **Reserve Study Recommendations and Funding** – You paid good money for the study. If you don’t understand the funding recommendations, talk with the preparer to see if the underlying assumptions make sense. Further, the reserve funding amount is not a contingency fund if the operating budget falls short. If you say that you will fund \$30,000 a year into the reserve fund, then you must fund \$30,000 per year. Your members expect and deserve it. If operating expenses exceed the budget, consider a special assessment in accordance with California law.
- 2) **Use Graphs to help explain the budget** – Many members don’t process numbers well but may be able to understand graphic representations of the budget. A pie chart showing the allocation of the assessment by major category can be useful. A comparative bar graph showing the last 4 years of expenses by major category can help define trends and explain why assessments change. A schedule showing reserve assessments, income and expenditures can remind members of major maintenance projects completed in recent years.
- 1) **Review and Analyze during the year** – Review actual vs. budget information during the year to evaluate financial performance. Why are some expenses considerably over budget and some under? Can a “controllable” expense like landscape improvements be deferred to cover an “uncontrollable” expense like water usage in a dry year? Your community association CPA is a resource. Ask us questions, solicit our guidance. We can help you!

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