

SOUTH COAST HOMEOWNERS ASSOCIATION

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2000 BLUEBOOKS ARE IN THE MAIL

Your 2000 Condominium Bluebooks are going into the mail the week of January 3rd. Those who ordered extra copies may see a delay as a portion of our order has yet to be shipped. When we receive the balance of our order, additional copies of the Bluebook will be available for \$14 each, postpaid.

PAPERWORK DISASTER LOOMS FOR CALIFORNIA BUSINESS NEW LAW REQUIRES CONSTANT REPORTING OF YOUR ASSOCIATION'S RETENTION OF INDEPENDENT CONTRACTORS TO THE STATE OF CALIFORNIA

**By: Michael J. Gartzke, CPA
Goleta, California**

Thousands of CPAs and tax preparers have discovered a new law that will have a significant negative impact on California businesses (including homeowners associations). This one-page provision was included in the 72-page AB 196 (the Deadbeat Dad bill) that was co-authored by Santa Barbara's Assemblywoman Hannah-Beth Jackson. This bill is now law, signed by Governor Davis in October 1999. This provision is not effective until January 2001 (as amended by SB 542). Read on to see how this bill will negatively impact your homeowners association, your business, your landlord activities, your church, your

nonprofit organization, your local and state government entity. In short, any entity conducting business in the state of California except the Federal Government is required to meet the reporting requirement of this statute. After reading this article, I recommend that you contact Assemblywoman Jackson or your legislator and request that legislation be introduced to repeal Section 1088.8 of the Unemployment Insurance Code by February 25 (the deadline for legislation to be introduced for the 2000 legislative session).

First, some background. California businesses (including homeowner associations and all the entities listed above) are required to file IRS Form 1099s every January for payments made to noncorporate providers of services to their businesses if the payments during the calendar year exceed \$600. Most commonly, these payments are made to lawyers, accountants, handymen, gardeners, painters, contractors, computer consultants and any other person who is not an employee of the business. Information regarding the service-provider's name, business name, address and social security number or tax identification number is collected by the service-recipient. After the close of the business year, payments are tallied and if the payments exceed \$600, then a 1099 is issued and sent to the service-provider and copies are also sent to the IRS who forwards the information to the Franchise Tax Board. Reporting is done once a year. Reporting is done annually to increase compliance with tax laws by self-employed individuals.

For employees, California business report wages and tax withholding four times per year after the end of each calendar quarter. After the end of the calendar year, W2s are issued to employees and this data is sent to the Social Security Administration who then forwards it to the IRS, etc. Withholding and reporting is done annually to increase compliance with tax laws by employees.

Several years ago, the State of California enacted a requirement that it be notified within 20 days by an employer whenever a new employee is hired. The purpose of this notification is to alert the Franchise Tax Board (FTB) of the whereabouts of employees who change jobs in the event that the FTB may be owed back taxes or if there are outstanding debts for traffic fines or other obligations to the state. These obligations now include outstanding child support. The FTB can now collect obligations other than tax obligations and those of the state of California.

For larger businesses that use payroll services that submit all data via computers, it's another one-time filing to be done with the state. For businesses that do payroll by hand or internally, it's easy to forget that this filing must be done within 20 days of hiring.

AB 196, as co-authored by Assemblywoman Jackson, now extends this reporting to independent contractors by California businesses "within 20 days of the earlier of first making payments that in the aggregate equal or exceed \$600 in any year to a service-provider, or entering into a contract or contracts with a service-provider providing for payments that in the aggregate equal or exceed \$600 in any year." UIC Section 1088.8(c).

How could anyone be against collecting child support from deadbeat dads? When you enlist nearly every taxpayer in the state of California to provide information about their business activities on a daily basis to the state, that's how. And how much do you really expect to collect contrasted against the costs incurred by California businesses to provide

it and California state government to administrate it? In addition to the information gathered for the annual 1099 purposes noted above, California business will be required to disclose the date the contract is executed, or if no contract, the date that payments first exceed \$600, the total amount of the contract and the contract expiration date. "Information obtained by the department (California Employment Development Department) pursuant to this section may be released only for purposes of establishing, modifying or enforcing child support obligations...and for child support collection purposes.." UIC Section 1088.8(e). This reporting has nothing to do with income tax obligations. California business has no business being involved in the business of collecting child support at this level.

Here are some examples of how this will adversely affect California businesses.

- 1) I probably receive 30-40 1099 forms from clients each year for services that my solo accounting practice provides to nonindividual accounting clients. According to this bill, my client would have to send information to the Employment Development Department within 20 days of signing my engagement letter. If I do more than one engagement for a client during the year, they would have to resubmit.
- 2) If I have a client who I do \$100 per month work for, she would have to submit this information within 20 days after she has paid me \$600.
- 3) One local property management business estimates that they would have to report several hundred times during the year for all their residential and commercial property owners who have work done on their properties. He estimates that compliance will cost him about \$20 per submission, costs that he will have to pass along to his clients. Staff time is limited and this reporting takes away from other services that his staff could be providing.
- 4) How about the thousands of organizations in this state that are operated by volunteers who scramble to meet the annual reporting requirements? Yes, they meet the standard of service-recipient under this law. How can they handle reporting within 20 days anytime they fall under the requirements of this new law? Who is going to tell them of the requirements? How will they react when their accountant informs them of the requirement? Are they going to pay me extra when I tell them that I have to prepare a special form for them to report my fees to the state of California so that they can collect child support?
- 5) How is the accounting department of a larger business going to know when a contract is executed. Many times, they don't find out until a check request is presented.
- 6) Will the EDD use this to go after businesses that use independent contractors and intimidate them by auditing the business to determine if any of the contractors should be employees?

Think about the millions of reports that the EDD would receive. This reporting falls outside the scope of automated payroll tax processing. Will accounting programs such as Quickbooks be modified to support his California requirement? Does the legislature have

a clue as to the enormity of this filing requirement for California business and for the EDD? After all these filings, the parent who needs the child support will still have to do all of the things that are currently required: work with an attorney, work with the district attorney to enforce child support orders, and the court system. None of that goes away or gets any easier.

What price, compliance? Requests for a 15 minutes meeting with Assemblywoman Jackson via fax and by telephone have gone unanswered. It is not California business' responsibility to collect child support. Contact your legislator today and request repeal of Unemployment Insurance Code Section 1088.8. You may find a copy of this law on the California law website www.leginfo.ca.gov.

BOARD OF DIRECTORS MEETINGS WHEN? WHY? HOW? OH, AND WHAT ABOUT THE MINUTES?

By Karen A. Mehl, Esq.

The meeting is scheduled for the Board of Directors. They have the duty of managing the affairs of the community association. Do the members have to be notified about the meeting? Are the members allowed to attend? Do you have to let them speak? As a general rule, the answer to these questions is yes. There are three places where a Board of Directors should look to determine the answers to those questions. First, everyone should always check the Association's governing documents (CC&Rs and bylaws) for any requirements that they may have concerning meetings of the Board of Directors. Second, the California Corporations Code provides some requirements for holding Board of Directors meetings. Third and most importantly, the Common Interest Development Open Meetings Act provides the basic requirements for holding Board of Directors meetings for community associations.

The Association's governing documents often contain important information about meetings of the Board of Directors. These requirements are usually found in the Bylaws and will govern the Board's actions unless the requirements of California law are more strict. For example, many associations' bylaws require that the Board of Directors meet at least quarterly. The bylaws usually state how many Directors must be present to constitute a quorum. Some bylaws state where the meeting must be held. Some bylaws actually state the dates and times when regular meetings of the Board must be held. The Board of Directors has an obligation to follow these requirements unless California law is more strict.

California Corporations Code Section 7211 also provides important information about Board of Directors meetings. It discusses giving notice to the Directors about meetings, Boards taking action without a meeting, who can call a meeting of the Board of Directors and other important information. However, Boards should be careful about

relying on Section 7211 because many of its provisions are more liberal than the Open Meeting Act. If the Open Meeting Act is more strict than the Corporation Code, then the terms of the Open Meeting Act apply.

The Common Interest Development Open Meetings Act is the primary law governing meetings of Boards of Directors of community associations. It defines a meeting of the Board as, “[A]ny congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the board, except those matters that may be discussed in executive session.” Therefore, any time that a majority of the board meets for the purpose of discussing association business, that meeting is subject to the Open Meeting Act. Some people have used the language of this section to argue that if the Board meets to discuss association business but does not prepare an agenda, then the Board is not required to allow the members to attend the meeting. I disagree. The intent of the law is to require Boards to permit members of the association to attend Board meetings if association business is to be discussed, unless the topic of the meeting is one where the Board may meet in executive session.

The Open Meeting Act states that members of the association are entitled to attend meetings of the Board of Directors unless the Board is meeting in executive session. A Board may only meet in executive session to discuss four things: litigation, contracts with third parties, member discipline, and personnel matters. If the Board is going to discuss disciplining a member, that member has the right to be present at the meeting.

Members of the Association are entitled to at least 4 days’ notice of Board of Directors meetings, unless the Directors are holding an emergency meeting, according to the Open Meeting Act. The meeting notice must include the date, time and place of the meeting. You can give members of the association notice by publishing it in the newsletter, by displaying the notice in a prominent place at the common area, by mailing the notice or by hand delivering the notice to each home in the association. The Open Meeting Act does not require the Board to mail notices of meetings to owners who do not live in the development if the Board is providing notice by posting it in the common area or by delivering a notice to each home in the development. There are different notice requirements for Directors, which are contained in Corporations Code Section 7211.

The Open Meeting Act defines an emergency as, “[C]ircumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide the notice required by this section.” There are two parts to this test. One, that the situation could not have been reasonably foreseen; and Two, that the situation requires immediate action by the Board. Whenever possible, the members should receive as much notice about Board meetings as possible. If the Board is meeting in emergency session, it should give the membership some sort of notice of the meeting, even if it is less than the four days’ notice required by statute.

Members must be permitted to speak at meetings of the Board of Directors, unless the Board is meeting in executive session. The Board must allocate a reasonable period of time for the members to address the Board of Directors at their meetings. Most Boards

of Directors hold a public comment period either before or after the other items on the Board's agenda. This provision of the Open Meeting Act does not mean that members can enter into discussion or debate along with the Directors on each item of the Directors' agenda. The Board of Directors may want to permit this activity, but it is not required to do so. Rather, the Open Meeting Act simply requires the Board to set aside time to listen to the members.

Minutes should be taken at each meeting of the Board of Directors. Minutes of executive sessions of the Board should be stored in a separate place from minutes of open meetings of the Board. However, the Board meeting minute book should note the date, time and place of any executive sessions as well as the general subject discussed. The minutes should note who attended the meeting. The meeting minutes should simply be a summary of actions taken by the Board of Directors. They should include at least summaries of reports from officers and committees. The minutes should contain the exact wording of any motions made and note whether or not the motion passed. If a director or the meeting chair requests a roll call vote, the directors who voted in favor and against the motion should be noted. Minutes of Board meetings should never contain any of the debate or discussion that takes place during the meeting. At best, summaries of debate can perpetuate hard feelings. At worst, they can form the basis of libel and slander suits. The Open Meeting Act requires that draft minutes of all meetings, except executive session meetings, be made available to the members within 30 days of the meeting.

One of the biggest complaints that I hear from members of associations is that the Board of Directors acts in secret. Members wonder whether their interests are being protected when they cannot obtain information about Board actions. Most Directors work hard for their associations and make every effort to act in the best interest of all of the members. Following the rules established in the Common Interest Development Open Meeting Act will assist your members in seeing that this is true.

Karen Mehl is an attorney in private practice in Santa Maria, California. Karen can be reached at 1110 E. Clark Ave #3 in Santa Maria or call 934-9624

SB 1148 – NEW DISCLOSURE REQUIRED ON YOUR CC&Rs

SB 1148 became law on January 1. It provides for the removal of discriminatory provisions in association CC&Rs. One provision of this bill requires an association to attach the following disclosure, in **20-point boldface red type**, on top of any CC&Rs that it provides:

“If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal

fair housing laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive covenant pursuant to subdivision (c) of Section 12956.1 of the Government Code”. (this is 20-point bold type)

This law also applies to the county recorder, title companies, real estate brokers and agents – anyone who provides copies of CC&Rs.

We have ordered a supply of these disclosures, printed in red and 20-point bold type, and will make them available to South Coast members. We will send you five at no cost but you must send us a self-addressed stamp envelope (legal size) with 33 cents postage to return them to you.

WEBSITES WITH ASSOCIATION INFORMATION

www.caionline.org – From Community Association’s Institute National Office. Contains articles from their newsletters and magazines, federal legislative and regulatory initiatives, etc. Some sections are for members only but there is a lot of information in the “free” area.

www.echo-ca.org – From the Executive Council of Homeowners – a new site with California HOA info.

www.leginfo.ca.gov – The State of California law website – contains information about current bills, text of bills and laws. If you know what you’re looking for, this is a useful resource.

www.tsra.org – The Sea Ranch Association’s website, a Northern California association – copies of their governing documents, rules, financial statements and other information can be accessed.

www.rgenesis.net – Articles on a wide variety of HOA topics

www.cidnetwork.com – More articles and information

If you have a favorite website with association information, please let us know.

Remember, you may e-mail South Coast HOA at gartzke@silcom.com. We don’t have a website, yet.

UPCOMING MEETINGS

January 31 – Law Panel – See enclosed meeting notice and reservation form for details. Four attorneys who work with associations on a daily basis will provide updates of the 1999 law changes and new cases. A panel discussion will follow from questions that the audience provides. Reservations are a must as space will be limited.

**Holiday Inn – Goleta
5650 Calle Real
7 – 9 PM**

February 28 – Law and Case Update – Will be provided by Karen A. Mehl, a Santa Maria attorney. These annual updates are most useful for board members and contain an occasional surprise.

**Quail Meadows West Association Clubhouse
866 Whippoorwill, Santa Maria
7 PM**

May 4 – 6 – Community Association Institute semiannual National Convention will be held at the Anaheim Hilton. Details will be forthcoming. Information is available on CAI's website – www.caionline.org.

June 2-3 – Executive Council of Homeowners (ECHO) conducts its annual two-day educational seminar at the Santa Clara Convention Center in San Jose. Call Mike Gartzke for additional information – 964-7806.

PUBLICATIONS AVAILABLE FROM SOUTH COAST HOA

2000 Condominium Bluebook – A compilation of laws and other useful information to assist in association administration. \$14.00 postpaid

Operating Cost Manual for Homeowners Associations – a useful guide when developing your association budget, published by the California Department of Real Estate - \$ 5.00 postpaid.

Extra Copies of the South Coast Newsletter – Can be added to an existing membership for only \$10 per year. This would allow an extra copy to be sent to another address within the association. Copies of the Bluebook or other publications distributed by South Coast are not included in this subscription.

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