

SOUTH COAST HOMEOWNERS ASSOCIATION

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UPCOMING SOUTH COAST HOA MEETING– February 4

Annual Law and Legislative Update

It's time for our annual law and legislative update for the New Year. Our attorney panelists, James H. Smith (Grokenberger & Smith – Santa Barbara) and David A. Loewenthal (Loewenthal, Hillshafer & Carter – main office Sherman Oaks) are planning to discuss numerous topics including:

- *New Legislation effective January 2013 -*
- *AB 2273 Notice to Association of Foreclosure;*
- *SB 880 Electric Vehicle Charging Station clean- up bill;*
- *AB 1720: Private Investigation process service in gated communities;*
- *AB 1838: Association document disclosure, fees and cancellation*
- *AB 805, 806 – Davis-Stirling Revision – effective 2014*

- *California Court Cases including -*
- *Pinnacle Museum Tower v Pinnacle Market Development – Defects arbitration*
- *Glen OAKS Estates v Re Max – Slope failure damage*
- *Girardi v San Rafael HOA – Burglary security*
- *Dinh Ton That v Alders Maintenance Association – Election challenge*

Date – Monday, February 4, 2013

Time – 7 PM – Light Refreshments at 6:45

Place - Encina Royale Clubhouse - 250 Moreton Bay Lane, Goleta (Fairview exit North from 101)

MEETING MINUTES PART 1: DO YOU NEED THEM OR NOT?

By: Sharon Brimer

Editor's Note: Ms. Brimer is a member of a large common interest development in Orange County. Follow-up articles are planned for future newsletter issues.

To answer the question, what type of meeting requires minutes, Section 8320 of the California Corporation Code requires meeting minutes of the proceedings of a corporation's members (normally the Annual Meeting of the Membership), the board of directors (general and executive sessions) and committees of the board (typically, Finance, Architectural, Landscape). The question regarding minutes for committee meetings is put to rest. If you are acting on behalf of the corporation, and most homeowners associations are, in fact, corporations, and there is a quorum be it a board meeting or committee meeting - then meeting minutes are required.

What do you want your meeting minutes to say about your HOA? Keep in mind, all homeowners' associations are businesses; they are incorporated through their Articles of Incorporation. Some of the homeowners' associations have million dollar budgets. Some have smaller budgets. The size of the budget doesn't determine how the meetings are run. Each is important because the Board is spending its members' money. Even if the Board functions on the homey, down to earth level, the corporation is a business and should be run like a business. When minutes are "informal" --- John said this or Mary said that; motion by John, seconded by Mary..... they aren't a professional reflection of the association. Meeting minutes tell the story of how the association is managed and how the board spends the members/owners money. They are permanent records and as such, can be subpoenaed in a lawsuit.

I have been taking meeting minutes for homeowners' associations, public utilities and nonprofit groups for 25 years and have seen the good, the bad and the ugly. There is no class on how to take meeting minutes, and normally, the function is passed from one person to the next without any training – just "Here, you do the minutes now." Granted, the process doesn't take a lot of training, but my goal with this series of articles is to provide a guide that will help form a basic foundation for the creation of meeting minutes.

Watch future newsletters for additional guidance on preparing meeting minutes.

2013 CONDOMINIUM BLUEBOOKS HAVE ARRIVED

For those who renewed their South Coast HOA memberships for 2013 by mid-December, you should have received your 2013 Condominium Bluebook in the mail. We have some additional copies and they are available for \$18/each, postpaid. Send your check to our address on page 1 of this Newsletter and we will get the books out to you as soon as practical.

CONSUMER WARNING: UNDERFUNDED HOMEOWNERS ASSOCIATIONS

**By: Joseph Aiu (Statewide Subdivisions Compliance)
California Department of Real Estate**

The California Department of Real Estate (DRE) has issued this warning as a result of the growing number of homeowners associations (HOAs) that do not have sufficient funds or reserves to adequately maintain the common areas in the housing developments for which the HOA is responsible.

This warning will explain the negative effects and impacts of an underfunded HOA, offer suggestions on how to gauge the financial health of an HOA, and discuss some typical causes of an underfunded HOA.

Negative Effects of an Underfunded HOA:

An underfunded budget may cause unexpected expenses for the owners living in a CID and/or have a deleterious affect on the value or condition of an owner's property. If the HOA cannot properly maintain the common areas due to budget constraints, roads, pools, exterior paint, and roofs may fall into disrepair. Moreover, underfunded HOA budgets may create pitfalls for homebuyers who do not investigate the financial health of the HOA prior to buying into a CID. HOAs facing severely underfunded budgets often must resort to levying special assessments on the owners living within the CID in order to pay for needed repairs or maintenance. Special assessments can run into the tens of thousands of dollars so owners and buyers would be wise to look into the financial health of the HOA to ensure they aren't exposing themselves to unexpected expenditures and financial problems.

How to know if the HOA is Financially Healthy:

HOAs are required to produce a yearly budget and to furnish it to the owners in the association. In addition, at least once every three years, the HOA is required to review the major components of the CID that the association is obligated to repair, replace, restore, or maintain, as part of a study of the reserve account requirements, to ensure sufficient funds are, or will be, available to adequately maintain the common areas. Included in the budget documents, the HOA is required to provide a summary of its reserves and whether the reserves are adequate to maintain all the major components of the CID. This summary disclosure document is an excellent tool to determine the long term financial health of any HOA.

In addition, the law affords a potential buyer or an owner in an association the opportunity to review the HOA's financial documents. For the potential buyer, the financial documents may be requested from the seller. For an owner in the association, the financials should be received from the HOA at least annually.

Typical Causes of HOA Underfunding:

Foreclosures are a significant cause of underfunded HOA budgets. Homeowners in foreclosure often do not make their assessment payments. Due to the length of the foreclosure process, the non-payment of assessments may cover a period of 90 days to a few years. Although HOAs have the ability to place a lien against a homeowner's property for non-payment of assessments, HOA liens are often extinguished at the foreclosure sale because the value of the property is insufficient to pay off all the liens against the property. This is

especially true in cases where the value of the property is less than the mortgage. The end result is the HOA ends up with less than the projected assessment income, which leads to an underfunded budget.

Inadequate planning on behalf of an HOA board can also lead to an underfunded budget. In instances where a CID or HOA is facing dire economic conditions, an HOA board may succumb to the pressure of its association members and not increase assessments or even reduce assessments and forego on-going maintenance. These types of bad decisions inevitably result in the HOA levying special assessments against the owners to address health and safety issues that arise from neglect. In addition, reduced care and upkeep of a CID's common areas result in the inability to sell or secure financing because of the dilapidated condition of the property.

HOAs that rely on inadequate assessment collection procedures usually suffer from insufficient funding to satisfy their financial obligations. For example, homeowners who are not in foreclosure but refuse to pay their assessments may rely on the association's poor collection process as a way to delay making their assessment payments. This may result in a "domino effect" where other members stop paying their assessments under the rationale that since others are not paying, why should they.

What to be Aware of when a CID has an Underfunded Budget:

Special assessments: Inevitably, underfunded budgets lead to special assessments as mentioned above. This is the common method HOAs use to satisfy financial obligations. While an HOA is limited on how much it can increase assessments - typically 5% per year - a special assessment can be assessed in order to resolve a health and safety issue. This means the entire cost to make a repair can be levied against all its members, or members who are paying assessments. Special assessments can be tens of thousands of dollars.

Inability to sell or declining property values: It can be very difficult to sell a home if the HOA's assets are inadequate to satisfy its financial obligations. Buyers will be leery of special assessments and/or increased monthly assessments. Moreover, property values may depreciate dramatically because of deferred maintenance and inadequate funds to satisfy financial obligations.

Inability to secure financing: Lenders (subject to underwriting guidelines from Fannie Mae or Freddie Mac) may deny funding loans whenever an association funds less than 10% of its operating funds into its reserves. In addition, lenders are reluctant to fund loans when an association cannot meet its financial obligations.

Quick Tips for Evaluating the Financial Health of an HOA:

If you are a buyer, demand that the seller provide you with copies of the most current financials for your review.

If you are an owner, make sure that you are given annual financial reports, especially the delinquency report and those pertaining to the adequacy of the reserve account.

If you are a buyer, do a physical review of the property and observe how the common areas are maintained. For example, assess the condition of exterior paint, amenities, roads, roofs, drives, fencing, etc.

If you are an owner, be involved with the board and its decisions, especially when you see deferred maintenance of common areas or are subject to special assessments.

Conclusion:

The issues raised in this warning, along with the suggested steps to take to avoid potential financial problems, are not all inclusive. Each project in California may have unique issues that can only be addressed by you, as either the buyer or owner, performing your due diligence.

However, what appears to be a common thread in today's real estate economic climate is that many projects are falling victim to hard times and the result is the underfunding of HOA budgets.

Please refer to DRE's web site, www.dre.ca.gov for additional information on Common Interest Subdivisions, including the brochure Living in a Common Interest Development.

YOUR DAY JOB IS DIFFERENT THAN YOUR “NIGHT JOB”
By: Kelly G. Richardson

Editor's Note: Mr. Richardson was our December meeting speaker. He is the co-founder and senior partner in Richardson Harman Ober PC, a 12-attorney law firm headquartered in Pasadena. He is a current member of the board of trustees of the Community Associations Institute (CAI) and is the author of the newspaper column, HOA Homefront, which appears in newspapers throughout California including the Sunday Real Estate section of the Santa Barbara News-Press.

Serving as a volunteer director is hard enough, but it often is made more difficult by the directors themselves. The problem is not a lack of good will, good thinking or hard work, but a misunderstanding about the basic nature of volunteer board service.

In one's career, whether in business, government service or elsewhere, one learns to deal with the chain of command. In one's job, one learns to exercise authority, and to respond to authority above. In the normal corporate setting, the officer has authority to unilaterally make decisions. The president particularly is not only empowered, but expected, to make important decisions about almost all major management issues. The competent executive rarely if ever needs to meet with the corporate board of directors to make decisions.

Many competent, diligent and honorable people find themselves continually frustrated with volunteer service on their common interest development (aka "HOA") board, and often are surprised to find themselves in conflict with other homeowners regarding their work for the association. This is often not because of bad intent or mismanagement, but because the volunteer officer does not fully appreciate that the non-profit mutual benefit corporation is a very different organization from that person's "day job" employer or business.

While a business corporate president has broad and sometimes comprehensive authority to run the business, the HOA president has very little authority. Where the business president controls the corporation and is ultimately held to answer for its success or failure, the HOA

president controls very little and (if in the proper role) normally cannot be held personally responsible for anything. The business president runs things, while the HOA president is a coalition builder working to obtain consensus of the board.

The HOA president normally serves at the pleasure of the board. Just as any officer position, the president can be replaced any time the majority of the board determines some other director would better serve the corporation. The HOA president has only one vote, and has to obtain the votes of other directors before a decision is made. In fact, the typical president mainly has the power to set the agendas, call meetings, and chair them. Everything else is normally a decision made by at least a majority of the directors.

There is no doubt that having to wait for your board colleagues is less efficient than the management of a business. However, in the business the officer is paid and in return is also held accountable for the officer's decisions and actions. In the HOA, the officer is not compensated, and if following proper board process (as opposed to individual actions) is not held personally accountable (i.e., liable) for board decisions.

The association president who "takes things into their own hands" may find that such decisions are much quicker and more efficient. However, that president may be exposed to avoidable liability, since the non-profit corporation acts through its board of directors, not one officer.

If a board in open session grants authority to an officer on a subject, that should be documented in the minutes. When circumstances do not permit the board to convene before the officer makes a decision, that officer should make sure the decision is ratified in a board meeting as soon as possible, to document the decision was a corporate action. Understand how your "night job" is different, and it might just become easier.

TEMPORARY FULL FDIC INSURANCE COVERAGE FOR NONINTEREST BEARING ACCOUNTS EXPIRES DECEMBER 31, 2012

When the financial markets collapsed in late 2008, the Federal Deposit Insurance Corporation allowed that any noninterest bearing account would have full FDIC deposit insurance and not count towards the \$250,000 insurance limit per depositor. As of January 1, 2013, this provision is scheduled to expire and noninterest bearing funds will no longer receive unlimited deposit insurance coverage but will count towards the \$250,000 maximum insurance coverage per depositor per financial institution. For some larger associations with checking, savings, money market and certificates of deposit exceeding \$250,000, you may have uninsured funds after that date if more than \$250,000 is on deposit at one financial institution.

Please also note that certain money market funds in large brokerage accounts such as Fidelity, Schwab and other funds may not be insured by the FDIC. In the past 2-3 years, the yields on these types of funds have dropped to 0.01% - next to nothing.

UPDATE – ASSOCIATION FILINGS WITH THE CALIFORNIA SECRETARY OF STATE

By: Michael J. Gartzke, CPA

Over the years, I have written about the importance of maintaining your corporate status with the California Secretary of State. The most recent article (due for an update) was in the November 2007 issue of our newsletter which can be accessed from the www.southcoasthoa.org website under the “Prior Year Newsletters” tab.

Here are some updates to that article which you should be aware of when completing the Secretary of State (SOS) forms:

All corporations must file a Statement of Information with the California Secretary of State every two years on the anniversary month of the incorporation. For example, if your association was incorporated on March 12, 1983, your next filing would be due on March 31, 2013. Corporations formed in odd numbered years file their statements in odd numbered years. Corporations filed in even numbered years file their statements in even numbered years. In addition to the Statement of Information, A Statement of Common Interest Development (CID) must be filed with the Secretary of State. The Statement of Information can be filed online and paid via credit card. The CID statement cannot so most associations file the forms on paper and submit together with payment, \$20 for the Information statement and \$15 for the CID statement.

Failure to file these statements with the Secretary of State can result in monetary penalties and eventual suspension of the corporation’s powers by the Secretary of State. Here’s what you need to know.

Use the most current forms: The Secretary of State’s office will periodically update the forms to be filed. A number of Associations have had their forms returned because they were not filed on the most current form. You will need to go on their website www.sos.ca.gov to access the current forms. They can be completed from your computer, printed and mailed. Fortunately, recent revisions have simplified some of the information to be submitted but it is important to review the instructions to complete them properly. For example, there are restrictions on the use of PO Boxes on some addresses. These forms will be returned even if one piece of information is incorrectly submitted.

Forms no longer mailed by the Secretary of State: The Secretary of State no longer mails the forms to you. You must go online to access the current forms. The association should receive a postcard in the mail about 90 days before the forms are due with instructions on how to access the forms. Do not ignore the postcard. If you are unsure about what to do, contact your manager, accountant or attorney for help.

Processing delays: I receive numerous calls from clients concerned that forms that had been submitted 3-4 months earlier had not been processed and checks had not cleared. This has been a bone of contention for several years with these filings. Processing times are posted on the Secretary of State’s website. Currently, they are processing forms received 9 weeks ago which is an improvement from the previous 3-4 months backlog. Your checks won’t be cashed until the forms are processed and your checks will be returned with the forms if they are not

completed correctly.

Penalty Notices: The first indication that your forms have not been submitted timely is that you will receive a penalty notice from the Franchise Tax Board for \$50 or \$100 for an “SOS filing penalty”. The Franchise Tax Board handles penalty collection for the Secretary of State. So even though the penalty notice is coming from the Franchise Tax Board, it has nothing to do with your income tax filings. Let your tax preparer know immediately if you get any notice of a balance due of penalty from the Franchise Tax Board (or IRS for that matter). The penalty will need to be paid and SOS filing statements must be submitted immediately to the Secretary of State. Paying the penalties does not absolve the association from filing the forms. Recently, one of my clients mistakenly thought that the forms did not need to be filed if the association simply paid the penalties.

Corporate Suspension: If the SOS forms are not filed, the Secretary of State will send a notice threatening suspension of the corporation’s powers. Should the association become suspended, then a revivor process must be completed. The Franchise Tax Board can also suspend the corporation as well. Depending upon the length of the suspension, the revivor process can become involved. For example, a small corporation may have to file tax returns with the FTB that they had not been required to previously because of the amount of their revenues was below the filing requirement. The FTB will require evidence that revenue was below the filing requirement. Thus it is imperative that your HOA avoid suspension at all costs.

New for 2013: The Franchise Tax Board is going to start revoking the tax-exempt status of many tax-exempt organizations that are suspended. This is a similar process to what the IRS has done in recent years. For homeowner associations, it did not matter what the IRS was doing in the nonprofit arena because associations are not nonprofits from the IRS perspective. However, for California, associations are tax-exempt (not subject to the minimum franchise tax - \$800) if they have filed for tax-exempt status with the state. Should a suspended tax-exempt association have their tax-exempt status revoked by the FTB, then a new request (FTB Form 3500) for tax-exempt status will be necessary or the minimum tax will be imposed. There are many small associations in the state that have no idea that they are suspended. The Secretary of State maintains their corporation list on the website. The FTB now maintains a list of tax-exempt organizations that you can access showing names, section of the code that the organization is exempt under, fiscal year end and whether the corporation has been suspended by the FTB or the SOS. You can access that list at:

https://www.ftb.ca.gov/businesses/Exempt_organizations/Entity_list.shtml

SPRING 2013 SOUTH COAST HOA MEETING – MAY 18

Save the date – Saturday morning, May 18 will be our annual meeting with Attorney Beth Grimm. Meeting will be at the Encina Royale clubhouse at 10 AM. Some topics that we are considering include a further discussion of the 2014 Davis-Stirling Revision, Board of Directors ethics, conflicts of interest, abuse of email directed at board members and managers by owners and residents and a discussion of what your Bylaws contain – our Q&A sessions always have a lot of questions that can be answered by reading your bylaws

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