



South Coast Homeowners Association

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IN THIS ISSUE

- **Annual Law and Legislative Update** ▪
- **Tax Reporting and Filing Deadlines** ▪
 - **Berkeley Balcony Collapse** ▪
 - **2016 Legislation at a Glance** ▪
- **Why Hire a Registered Consulting Arborist?** ▪
- **Changes in US Postal Service Delivery Standards** ▪
 - **Newsletter Professional Sponsors** ▪

ANNUAL LAW AND LEGISLATIVE UPDATE

Our Annual Law and Legislative Update with David Loewenthal and Jim Smith has been scheduled for Tuesday night, January 26, 2016 at Encina Royale. This program will cover new law effective in 2016 along with cases decided in 2015 which impact association operations.

The new laws will cover topics as varied as artificial turf, clotheslines, pesticides and disclosure of FHAVA approvals. Cases will cover significant decisions from California courts decided during 2015.

Date: Tuesday, January 26, 2016

Time: 7 PM - 9 PM

Place: Encina Royale Clubhouse – 250 Moreton Bay Lane, Goleta (101 Fairview Exit – north)

TAX REPORTING AND FILING DEADLINES

By: Michael J. Gartzke, CPA

The start of the new year is here and that means it's tax time again. Here is a brief summary of the tax reporting and filing requirements for your association. For further information, contact your association's CPA or accounting professional.

1099s: Associations, like all other businesses, are required to file 1099 forms by January 31 for payments made during the previous calendar year. This is true even if the association has

a fiscal year end other than December 31. If you pay \$600 or more during the calendar year to a "non-corporate service provider", then you are required to issue a 1099-MISC to that service provider. Common service providers to associations include attorneys, managers, accountants, contractors, gardeners, pool service, handymen, etc. Corporate service providers other than attorneys are exempted from receiving 1099s. How can you tell? If the business has the words "Inc." or "corp." in its name, then it is a corporation. The word "co" (for company) does not specify a corporation. 1099s are required to be sent to most LLCs as well as incorporated law firms for legal services.

The 1099 form must show the service provider's name, address, and tax identification number (either social security or employer ID number) along with the amount paid during the calendar year. Copies are submitted to the service provider by January 31 and are due to the IRS by February 28 (the delay is to allow for corrections that may arise).

Independent Contractor Reporting: Years ago, California law was changed to require businesses that use individual independent contractors to report "*...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 [within 20 days of] entering into a contract or contracts with a service provider providing for payments that in the aggregate equal or exceed \$600 in any year*" to the California Employment Development Department (California Unemployment Insurance Code). This law is intended to locate "deadbeat parents" who are receiving payments other than wages to be able to garnish them quickly to meet child support obligations. You use many of your contractors on a continuous basis so January is a good time to report them to the California EDD. Reporting is done on form DE-542 (available at www.edd.ca.gov) and can be mailed or faxed to the EDD. What is troublesome about this law (yes, there are penalties for failure to file) is that reporting can be required at any time during the year, not just once a year or quarterly. For example, you hire a painter on May 15 and sign a contract for a \$5,000 job. Reporting would be required by June 4, even if no payments had yet been made. The reporting deadline is 20 days after signing the contract.

Employment Tax Returns: For those associations that hire employees, Federal form 941 and California form DE-9 are due 30 days after the end of each calendar quarter. Tax payments are due semi-weekly, monthly or at the filing date, depending upon the amount owed. Annual tax reports (Federal W2, 940; California DE-9C) are due January 31.

Federal Income Tax Returns: All associations, no matter how small, must file a Federal Income Tax Return 2 ½ months after the end of its fiscal year. For calendar year associations, the due date is March 15 although it can be extended for 6 months by filing an extension form. Associations may elect to file Form 1120H or the standard corporate form 1120.

California Income Tax Returns: California Form 100 is also due the same time as the Federal returns. While most associations have "tax-exempt" status with the State of California, non-membership income such as interest is taxable. If the association has more than \$100 in non-membership income, then a return is required. Failure to file Form 100 when required can result in significant penalties and interest if tax is owed and can also result in the suspension of the corporation by the State.

California Exempt Organization Return: Form 199 is required of all tax-exempt associations that receive \$50,000 or more in revenue from any source (assessments, etc.) It is due 4 ½ months after year-end but can also be extended. A \$10 filing fee is required

annually. Failure to file this form when required can result in an additional \$55 in penalties plus interest. Corporate powers can also be suspended for failure to file this form as well.

If the association has less than \$50,000 in revenues, it can file the 199 (no fee required) or file 199-N through the www.ftb.ca.gov website.

In 2015, California imposed an electronic filing mandate for all business returns, including Association returns. If the Association files on paper, it must request a waiver from the state explaining why it cannot e-file. Due to technology and software constraints, few associations e-filed in 2015. More Associations should be able to e-file in 2016. Under the current law, the state can impose penalties against the Association if returns are not e-filed starting in 2018.

If your tax preparer e-files during 2016, you may have a paper filed IRS return (1120H) to mail in and will have to return signed authorizations to the tax preparer after the returns are completed for him/her to e-file the California returns.

Estimated Tax Payments: If the association pays income taxes on its nonmember income, then it may be required to pay estimated taxes quarterly to avoid an estimated tax penalty. For Federal, estimated tax payments are required if taxes are \$500 or more. The state has no minimum. Federal tax deposits are made electronically through the EFPTS system (at www.efpts.gov) while state taxes are paid by check and mailed using form 100-ES. Estimated tax payments for calendar year associations are due April 15, June 15, September 15 and December 15.

Secretary of State Biennial Filings: The Nonprofit Corporation Statement of Information (SI-100) and the Statement of Common Interest Development (SI-CID) are required to be filed with the Secretary of State every two years. These are not tax forms, however, failure to file them with the Secretary of State can result in the suspension of corporate status. Filing fees are \$20 for the SI-100 and \$15 for the SI-CID. Since the forms are required only every two years, the due date is tied to the association's incorporation month, not its fiscal year, and since they are not tax forms, it is common for this filing to be overlooked if the association's mailing address has changed. The state does allow for interim forms updating information during the two-year period to be filed without the payment of an additional filing fee. Fill-in forms are available on line at www.sos.ca.gov. You can also find your incorporation month with the lookup function on the same website.

2016 BLUEBOOKS NOW AVAILABLE

2016 Bluebooks – The annual Condominium Bluebooks have arrived and have been shipped to all members who renewed their memberships as of December 28. Those who renew after that date will receive them later in January. If you would like additional copies for your board, they are \$20 each postpaid or for pickup at Mike Gartzke's office. We have about 25 copies remaining.

BERKELEY BALCONY COLLAPSE

By: Tyler Berding, Berding and Weil attorneys in Walnut Creek, CA

Editor's Note: Mr. Berding is a long-time HOA attorney and has written extensively on topics dealing with building construction, reserve funding and the viability of associations. In 2006, we ran a series of articles by Mr. Berding on the "Uncertain Future of Common Interest Developments" His law firm has several offices in Northern California and can be reached at www.berding-weil.com. We thank him for his generous permission to reprint this article.

In the early morning of June 16, 2015, in Berkeley, California, the lives of 6 young people were snuffed out because the balcony they were standing on collapsed. Building failures happen all the time, but the press and government largely ignore them because nobody died. With these six tragic deaths (and serious injury to seven others) the press is now all over it. We have daily reports of experts opining on the cause (rot caused by moisture intrusion into the wood beams supporting the balcony.) We have interviews with Berkeley city officials (there were numerous inspections of this 8-year old building but none of the waterproofing.) The opinions page trumpets that inspections must increase to prevent another tragic event. Yes, there should be more inspections by municipalities, and building owners, but it won't be enough.

For 40 years I have litigated cases involving design and construction errors. My firm has represented the owners of older buildings where rotted framing is commonplace but unknown until it gets so bad it threatens building components and human safety. We have represented the owners of new buildings like the one in Berkeley where water has seeped into wall cavities and induced rot and mold because the waterproofing was not installed properly, and many projects where the installation of waterproofing was defective but had not yet led to a catastrophic failure. The local municipality had specifically inspected none of these instances of failed waterproofing. Why? Because even if the inspector stood over the workmen 8 hours a day, 5 days a week and watched them put together every waterproof assembly, mistakes would still occur.

Probably the joint where the balcony surface abutted the wall of the building or the flashing intended to protect the wood beams from moisture allowed water to enter the assembly and rot the beams. The experts who examined the building plans have said that the architect likely provided proper waterproofing details, so the question is why did it fail?

A quick answer might be that the contractor or its employee were careless, and that could be. But more likely they were not adequately trained or incentivized to follow the drawings and build it correctly. Many years ago the building trades utilized an apprentice system whereby a master tradesman supervised the training of new recruits until they too were skilled at their craft. Craftsmanship was a source of personal pride and well-trained workers were valued and given the latitude to build a proper building.

But we are not training enough craftsmen. The enormous demand for housing in recent decades has outdistanced the supply of trained labor and the result is buildings that bristle with mistakes. Couple that with "value engineering" to reduce costs by employing materials that do not survive unless constructed in a very precise manner and you have a recipe for disaster. Lawyers and not building inspectors have become the quality control, unfortunately well after the fact.

The forensic inspections we conduct on clients' buildings frequently reveal instances of work done improperly and contrary to the designer's intentions. If we can find these defects, why can't the original builders? Carelessness could be one excuse, but a lack of training adequate to recognize poor quality construction, coupled with a willingness to accept cheap and expeditious materials and methods to meet demand and cost controls are more likely. Whatever it is, it has resulted in failures of building components some of which pose hazards to life and safety.

Designers are also not without fault. Choosing materials without regard to where the project will be located, failing to provide adequate details to guide the contractor, creating architectural interest at the expense of building performance, can all result in a failed building. Design errors can be caught before they are incorporated into a building but only if the contractor constructing it is trained and incentivized to recognize errors and bring them to the owner's attention.

This brings us back to the lack of skill and training. Foremen and crewmembers should have enough experience and understanding of fundamental building practices to avoid obvious errors. A joint or juncture of two materials or building components does not require exotic materials or methods to be built waterproof. This is Construction 101. When an assembly in an eight-year old building allows so much water to enter that it rots major framing members in less than ten years, someone didn't know what they were doing. If it turns out that the design was flawed, the contractor didn't know enough to bring that flaw to the owner's attention. There will be a lot of finger pointing and accusations back and forth over who committed the error, but the contractor or workman charged with creating a waterproof joint or transition should have been skilled enough to recognize that what they were building would not work.

Technical training in construction techniques can begin in high school or community college and we have an obligation to see it does once again. Trade unions have programs to train their members which should be encouraged and combined with public school education programs. There is a technology gap—more jobs than we have trained people to employ. That gap doesn't just occur in Silicon Valley. It also exists in the construction trades.

You won't find a skilled carpenter who can recognize serious errors by trolling by your local convenience store. Real craftsmen have pride in what they do, are properly compensated, and are trained in programs that teach construction fundamentals, how to read drawings and apply them correctly. If avoiding dangerous errors means spending more private and public funds on technical training, then it is logical that we do that. Quality construction will pay for itself in lower insurance (and legal) costs, less maintenance and repair expense, and greater safety for building occupants.

The tragedy in Berkeley did not have to happen, but a lot of potential tragedies are lurking in buildings that were constructed in haste or without a sufficiently skilled workforce. When the housing market is hot and you can sell anything that you can get to market, the incentive to cut corners and get labor wherever you can find it is always there. Builders, municipalities, and state legislatures now have the wakeup call it sadly took six deaths to provide. More inspections and testing of construction are absolutely called for in both new and old buildings. But without a properly trained workforce that can avoid defective construction and build quality buildings, this won't be the last tragedy we read about.

2016 LEGISLATION AT A GLANCE

From: www.leginfo.ca.gov

Editor's Note: These new laws will be discussed in more detail at our January 26, 2016 Legislative Update Meeting. You can find additional detail at www.leginfo.ca.gov.

AB 349 (cc 4735) – Artificial Turf

This bill would make void and unenforceable any provision of the governing documents or architectural or landscaping guidelines or policies that prohibits use of artificial turf or any other synthetic surface that resembles grass. This bill would also prohibit a requirement that an owner of a separate interest remove or reverse water-efficient landscaping measures, installed in response to a declaration of a state of emergency, upon the conclusion of the state of emergency.

AB 596 (CC 5300(b) – effective 7/1/16 – FHA/VA Disclosure

(10) When the common interest development is a condominium project, a statement describing the status of the common interest development as a Federal Housing Administration (FHA)-approved condominium project pursuant to FHA guidelines, including whether the common interest development is an FHA-approved condominium project. The statement shall be in at least 10-point font on a separate piece of paper and in the following form:

“Certification by the Federal Housing Administration may provide benefits to members of an association, including an improvement in an owner’s ability to refinance a mortgage or obtain secondary financing and an increase in the pool of potential buyers of the separate interest.

This common interest development [is/is not (circle one)] a condominium project. The association of this common interest development [is/is not (circle one)] certified by the Federal Housing Administration.”

(11) When the common interest development is a condominium project, a statement describing the status of the common interest development as a federal Department of Veterans Affairs (VA)-approved condominium project pursuant to VA guidelines, including whether the common interest development is a VA-approved condominium project. The statement shall be in at least 10-point font on a separate piece of paper and in the following form:

“Certification by the federal Department of Veterans Affairs may provide benefits to members of an association, including an improvement in an owner’s ability to refinance a mortgage or obtain secondary financing and an increase in the pool of potential buyers of the separate interest.

This common interest development [is/is not (circle one)] a condominium project. The association of this common interest development [is/is not (circle one)] certified by the federal Department of Veterans Affairs

In Santa Barbara County, I located 11 condominium projects certified by the FHA and 28 certified by the VA.

AB 786 (cc 4735) – Recycled Water Use

Existing law also prohibits an association, except an association that uses recycled water for landscape irrigation, from imposing a fine or assessment on separate interest owners for reducing or eliminating watering of vegetation or lawns during any period for which the Governor has declared a state of emergency or the local government has declared a local emergency due to drought.

This bill would revise that exception to instead authorize the imposition of a fine or assessment against the owner of a separate interest that receives recycled water from a retail water supplier, as defined, and fails to use that recycled water for landscaping irrigation.

AB 1448 (cc4750.10) - Clotheslines

This bill would make any provision of a governing document, as defined, void and unenforceable if it effectively prohibits or unreasonably restricts the use of a clothesline or a drying rack, as defined, in an owner's backyard, except that reasonable restrictions, as defined, would be enforceable. The bill would specify that these provisions would only apply to backyards that are designated for the exclusive use of the owner.

WHY HIRE A REGISTERED CONSULTING ARBORIST?

By: Kenneth A. Knight, Registered Consulting Arborist

Editor's Note: After years of drought, many area trees are diseased or distressed. Arborists are experts on trees. Ken's contact information appears on our sponsor page and at www.goletaarborists.com.

Many Homeowner Association Boards are not aware of how to write specifications for tree care services. Relying upon 'free' tree inspections and estimates could lead to an HOA not getting the tree care service they need or can afford. An independent Registered Consulting Arborist charges a fee for an impartial expert analysis, but these opinions are not affiliated with any tree care service. This independent approach could result in substantial overall tree care savings to an HOA by providing only necessary services at a competitive price.

What you know as tree care is known as arboriculture in the tree care industry. It includes the following services that you are probably familiar with — planting, pruning, removal, plant health care, diagnostics, pest ID, emergency care and preservation. But it also extends beyond that to the science behind trees. What is commonly thought of as tree care is just a small part of arboriculture.

An arborist is the person you think of as the tree care expert — the person you hire to prune or deadwood your trees or the person a city or other interest hires to care for trees in public places.

Consulting Arborists are often consulted by other arborists, businesses, legal and governmental entities, environmental organizations, communities and individuals as the voice of authority in complex cases. Our expertise goes beyond routine care to the science of arboriculture. From tree names, the flora and fauna that live in and around trees, to the most complete knowledge about disease, Consulting Arborists are the authoritative experts on the life and death of trees.

Every consulting arborist in the American Society of Consulting Arborists database is an ASCA member, which means they have at least five years of experience in arboriculture and a minimum of a four-year degree or the equivalent in arboriculture or a closely related field or a minimum of 240 continuing education units (CEUs). Those with the RCA after their names are Registered Consulting Arborists®, who have also completed the rigorous Consulting Academy. The Academy sharpens their consulting and communication skills, skills in developing effective written reports, increases their ability to carry out professional and legally defensible forensic investigations and enhances their professional roles in contentious situations. In order to maintain membership status, all ASCA members must be committed to continual education and earn 30 Continuing Education Units (CEUs) every two years.

In all cases, when you hire an ASCA Consulting Arborist, you know you have the very best. With years of comprehensive experience and the most analytical and up-to-date skills, you'll have the right tree expert for your job! Consulting Arborists are called upon to provide many services. If a tree has damaged property and there is a court case involved, we would be called in to investigate and testify. Or an insurance company might call us to determine the value of a damaged tree. Communities might want us to determine how a new development will impact the environment or someone might need advice on how to plan a park. Consulting Arborists are even called by homeowners and businesses owners to counsel them on long-term planning for existing trees or new plantings.

Whenever you need an authoritative expert, call on a Consulting Arborist. Whether a single consultant or as part of a team of professionals, we bring extensive knowledge. We're adept at handling complex and involved situations, such as legal issues, environmental impact studies, preservation and historic issues, appraisals, damage and causation, as well as counseling and educating others on planning, preservation and maintenance issues. The more complex the situation, the more you need a Consulting Arborist.

When hiring a Consulting Arborist, there are a few things you can look for. First, look at their education did they attend college or a program specializing in arboriculture? Are they a member of a professional organization? The association for Consulting Arborists is called ASCA. Are they a graduate of the ASCA Consulting Academy? Do they have a professional designation? The official designation is RCA, which stands for Registered Consulting Arborist. You don't have to find all of these credentials to find a good Consulting Arborist, but if you meet someone who can say all of these things, you know you're dealing with the best.

CHANGES IN US POSTAL SERVICE DELIVERY STANDARDS

By: Michael J. Gartzke, CPA

At the beginning of 2015, the Postal Service quietly changed its delivery standards for first class mail. Up until then, first class mail sent locally would be delivered the next day if posted

by the last mail pick up of the day. Historically, the Postal Service would run tests by placing sample letters in the mail stream and monitor the next day delivery percentages. Steps were taken if a particular geographic area had low on-time percentage. I seem to recall that the next day percentage had to be at least 90%.

Today, the percentage is zero. I first noted the issue in February 2015 when local mail was being delivered two days after the postmark date. At first, I chalked it up to the personnel delivering mail on my office route. Several years ago, the local office changed the configuration of the delivery routes and our area was designated an "auxiliary" route without a regular carrier. Each day, someone new delivers the mail. It appears that many of the new carriers have no experience or training. We frequently get mail for nearby businesses and in some cases, the carriers cannot find the mail slot on our building which has been there over 22 years. Despite meetings with the Postmaster and the carrier supervisor, little has changed.

Further inquiry showed that the two-day delivery standard was not my carrier's fault nor was it confined to the Santa Barbara Post Office. This is a national issue instituted to save money. It is one of several policies instituted to reduce staffing costs and service. For example, pick up times at blue boxes have been moved up to earlier in the day (or the box eliminated altogether). A box near my office which had a 5 PM pick up time has been changed to 3 PM. It could have changed months ago but the new label just went up last month. I'm still investigating that change. I understand that morning pick up times are more common, especially in rural areas, meaning the mail sits in the boxes overnight. Some members of Congress with large rural constituencies have lodged complaints. If I need to get mail out at the end of the work day, I will need to cross the 101 at rush hour to get to a late pick up box at the Patterson or Storke Road Post Offices. Our local traffic planners will love that.

Some have suggested that using the Postal Service is archaic and that everything can be done by email or text. While I certainly send out my share of email, there are people who don't have email or for those who do, don't check it regularly. Email fills with a lot of advertising and sometimes, the good stuff lands in the spam filter and not everyone checks that regularly. While more payments are being made electronically, we still have to get these transactions into our accounting systems. The creation of checks automatically posts into our accounting systems.

In our HOA world, certain things cannot be sent electronically to members. Election materials must be sent by first class mail. Ballots are returned using a double envelope system via mail or personal delivery. You have probably seen ballots arrive after the annual meeting. They were probably posted 2-3 days before and in prior years, would have been delivered on time. No longer. Mail that is misrouted by the Post Office or incorrectly addressed and returned to the sender can take weeks to arrive rather than a few days.

The takeaway here is that the use of the Postal Service requires more planning than simply dropping it in the box to have your mail delivered timely. Postmark dates may not be the date you dropped it in the box.

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