



South Coast Homeowners Association

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ANNUAL LAW AND LEGISLATIVE UPDATE

It is that time of year again we when start planning for one of our biggest events-the annual legal update with David Loewenthal and James Smith. We thank them both for volunteering their time and expertise to ease us all into the new (legal) year

This year will see South Coast HOA in its 28th year of volunteering to educate, inform and inspire you volunteers and vendors that work so hard.

We are planning a special event at the Frog Bar and Grill starting at 6:30 pm on Tuesday, January 17, 2017 (405 N. Glen Annie Rd – Goleta) with a Welcome to you all, door prize give a ways and great food. The program will start promptly at 7:00 pm so as not to miss a thing!

Due to seating space, we are limited to up to **two** Board Members from each HOA that is a Member. There is no charge to attend, however, **reservations are necessary and please RSVP to Sandie only at sfoehl@msn.com or 805-968-3435** by January 10, 2017. **Do not reply to this email.** A waiting list will also be kept in case we get cancellations. Please only use this email or phone number for your Reservations or questions. Thank you.

For professional vendors that would like to sponsor some of the food tables or soft drinks you can also contact Sandie and set this up. We are looking into a slider table, cheese and fruit and other finger foods. You will be named in the Program as well as the official Notice and at the tables. If you would like to purchase a table to display your information and meet and greet, the cost will be \$175.00 each and we have 1 remaining. If you would like to donate door prizes, please also let us know.

Thank you all and we are looking forward to seeing you! Don't forget to use the listed email and phone number for your reservation and questions.

1099-MISC FILING DATE CHANGE FOR JANUARY 2017 FILINGS **Now January 31**

By: Michael J. Gartzke, CPA

IRS recently announced a change in the due date for submitting W2s and 1099-Misc to the IRS. **All 1099-Misc forms which contain amounts in Box 7 – Nonemployee Compensation must now be mailed or e-filed with IRS no later than January 31, 2017. Penalties can be imposed for late filing.**

In the past, the due date to the IRS for 1099s was February 28 although they were to be sent to the recipients by January 31. The theory was that if there were any errors in the 1099 that were noticed by the recipients, that the payer could be notified and the 1099 corrected prior to being submitted to IRS. That extra time for review has been practically eliminated.

Personally, I receive a lot of 1099s from business clients and have received a number of them after January 31. For me, it did not affect my preparation of my own taxes since I also receive fees from nonbusiness clients and the total income is in my accounting program. So I really didn't care when the 1099 came in.

Accountants, bookkeepers and property managers already have substantial compliance burdens with calendar year-end processing. This change will add another one. For those who issue other kinds of 1099 forms, the due date has not changed. It remains at the end of February for IRS submission, although the recipients must still receive them by January 31.

The reason for moving up the dates for the submission of the 1099 forms has to do with the increasing issues related to identity theft and fraudulent tax returns being submitted to IRS. The IRS plans to hold refunds for some personal returns claiming certain tax credits until after mid-February in an attempt to intercept fraudulent returns with having more 1099 forms in hand.

The new law imposes penalties for late filing of 1099s. If filed with IRS in February, the penalty is \$50 per 1099. If filed between March and July, the penalty is \$100 per 1099. If filed after July, the penalty is \$260 per return.

For associations, 1099s are required to be issued to someone you paid \$600 or more during the calendar year for services. These can include your gardener, maintenance providers and professional services. Payments to corporations are exempt (except for attorneys). Payments to LLCs are exempt if they file tax returns as corporations (many do not file as corporations) so you should probably send them to all LLCs as well.

If your association has management or bookkeeping services, they should be preparing 1099s for you already. For others, you can order 1099 forms through irs.gov (search for 1099 order form). Some tax preparers order a supply of blank 1099s. The local IRS office may not have them. You must use an original IRS form rather than a copy because the one sent to IRS is printed in red for their processing needs. Your tax preparer may also be able to prepare them for you. Just remember that you need to submit the information (name,

address, social security number or tax ID # and amount paid well in advance of the January 31 filing deadline.

E-FILING REQUIREMENTS FOR BUSINESS RETURNS BY CALIFORNIA

By: Michael J. Gartzke, CPA

Homeowner associations in California file three tax returns annually. For Federal (IRS), Form 1120 or 1120-H is filed. Note that homeowner associations are not exempt under 501(c) of the Internal Revenue Code. California has two forms to file – form 100 for taxable income (interest) and form 199 – Exempt Organization Information Return. Most associations have California tax-exempt status under Revenue & Taxation Code section 23701(t).

The California Legislature passed a law (and the Governor signed) in September 2014 to require all business returns (100-Corporations, 565-Partnerships, 199-Exempt Organizations series, etc.) to be electronically filed by preparers effective for years ending December 31, 2014 or later.

Apparently recognizing the short window for implementing this new filing requirement by tax software companies and tax preparers, the FTB established a webpage to request a waiver for the electronic filing requirement for 2015 and 2016. Homeowner Associations may represent 20-25% of all exempt organizations in California.

In my tax software, I prepare tax returns for homeowner associations in the Corporation system and not in the Tax-Exempt system. Forms Federal 1120-H and California 100 and 199 are included in the corporation program. Forms 1120H and 100 do not appear in the tax-exempt program. The Federal Form 1120-H, filed by a majority of associations in my practice, is a paper-filed form. At this time, it cannot be electronically filed.

In 2015, I filed for waivers for all my homeowner association clients as my software (and no other software that I am aware of) could not handle the e-filing of the two California forms. My tax software for 2016 added the capability to file both forms electronically. I have been told, however, that not all software companies (there are very few) added or will add that capability and that many state tax forms will continue to be paper filed by homeowner associations. Part of that legislation imposes penalties to the association if it does not electronically file its state tax returns.

For years beginning after January 1, 2017, penalties will be imposed as follows:

“A business entity required to electronically file a return pursuant to Section 18621.10 that files a return in a manner that fails to comply with Section 18621.10, shall be subject to a penalty in the amount of one hundred dollars (\$100) for an initial failure and a penalty in the amount of five hundred dollars (\$500) for each subsequent failure unless the failure is due to reasonable cause, and not willful neglect.” R&TC 19171(a).

So the question becomes whether the state will extend the deadline to e-file, sponsor legislation to change the mandate or start penalizing associations that do not e-file in 2018. Is reasonable cause that tax software can't handle e-filing? Sounds good to me.

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 35 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. 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 drives, 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 Governing Documents:- CC&Rs, Bylaws, Articles of Incorporation
 - Amended/Restated Governing 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 and 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 and Canceled Checks/Images
 - Paid Bills
 - Payroll Tax Returns
 - Employee 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 and 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.

If using electronic or cloud storage, be sure that it is safe and secure and can that access continues to be available after a change in board members or management.

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.

If using electronic media, remember that as time goes on, different media has been developed and older media is no longer used. Remember 3.5 and 5.25 inch floppy disks? Storage media can also fail. Windows and Mac operating systems change over time and some "legacy" files and programs can no longer be used. If using cloud storage, remember that storage fees need to be paid and kept up to date. If accounting data is being maintained on programs such as Quickbooks, Yardi or other programs, that hard copy reports/pdf documents should be generated as future boards may not have access to these programs to download their information.

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.

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