



## South Coast Homeowners Association

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Volume 33 – Number 1 – January 2021

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## **32nd ANNIVERSARY MEETING AND ANNUAL LAW AND LEGISLATIVE UPDATE**

**Date – Wednesday, January 27, 2021**

**Meeting – 7:00-9:00 PM**

**Via Zoom – Send email request to [gartzke@silcom.com](mailto:gartzke@silcom.com) to be added to the meeting list – a link will be emailed to you several days before the meeting**

**Speakers – James H. Smith, Rogers, Sheffield and Campbell and David Loewenthal, Loewenthal, Hillshafer and Carter**

**Cost – none – There may be a limit on the number of guests we can accommodate so please have each attendee submit their email address.**

The Legislature has been up to their usual modifications to the Davis Stirling Act including passing a significant law (AB 3182) dealing with allowable rental restrictions. For associations on our email list, we sent periodic updates as this bill went through the Legislature during 2020. This will be a topic of discussion along with several other new state laws and the court cases decided in 2020. This program is always quite popular and informative.

## California Business and Professions Code Section 11018.1

**Editor's Note:** This disclosure is required to be made to buyers in a new development by the developer. It briefly explains the concept of a homeowners' association to a new buyer. This law has been on the books for many years. In going through a raft of old records that I have, I found the version of this disclosure that I drafted for the association I lived in back in 1986, 35 years ago! You might consider using a similar disclosure with all the documents that are provided to a buyer in your association.

### **11018.1.**

(c) At the same time that a public report is required to be given by the owner, subdivider, or agent pursuant to subdivision (a) with respect to a common interest development, as defined, in Section 4100 of the Civil Code, the owner, subdivider, or agent shall give the prospective purchaser a copy of the following statement:

#### **Common Interest Development General Information**

The project described in the attached Subdivision Public Report is known as a common-interest development. Read the public report carefully for more information about the type of development. The development includes common areas and facilities which will be owned or operated by an owners' association. Purchase of a lot or unit automatically entitles and obligates you as a member of the association and, in most cases, includes a beneficial interest in the areas and facilities. Since membership in the association is mandatory, you should be aware of the following information before you purchase:

Your ownership in this development and your rights and remedies as a member of its association will be controlled by governing instruments which generally include a Declaration of Restrictions (also known as CC&Rs), Articles of Incorporation (or association), and bylaws. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law. Study these documents carefully before entering into a contract to purchase a subdivision interest.

In order to provide funds for operation and maintenance of the common facilities, the association will levy assessments against your lot or unit. If you are delinquent in the payment of assessments, the association may enforce payment through court proceedings or your lot or unit may be liened and sold through the exercise of a power of sale. The anticipated income and expenses of the association, including the amount that you may expect to pay through assessments, are outlined in the proposed budget. Ask to see a copy of the budget if the subdivider has not already made it available for your examination.

A homeowner association provides a vehicle for the ownership and use of recreational and other common facilities which were designed to attract you to buy in this development. The association also provides a means to accomplish architectural control and to provide a base for homeowner interaction on a variety of issues. The purchaser of an interest in a common-interest development should contemplate active participation in the affairs of the association. He or she should be willing to serve on the board of directors or on committees created by the board. In short, "they" in a common interest development is "you." Unless you serve as a

member of the governing board or on a committee appointed by the board, your control of the operation of the common areas and facilities is limited to your vote as a member of the association. There are actions that can be taken by the governing body without a vote of the members of the association which can have a significant impact upon the quality of life for association members.

Until there is a sufficient number of purchasers of lots or units in a common interest development to elect a majority of the governing body, it is likely that the subdivider will effectively control the affairs of the association. It is frequently necessary and equitable that the subdivider do so during the early stages of development. It is vitally important to the owners of individual subdivision interests that the transition from subdivider to resident-owner control be accomplished in an orderly manner and in a spirit of cooperation.

When contemplating the purchase of a dwelling in a common interest development, you should consider factors beyond the attractiveness of the dwelling units themselves. Study the governing instruments and give careful thought to whether you will be able to exist happily in an atmosphere of cooperative living where the interests of the group must be taken into account as well as the interests of the individual. Remember that managing a common interest development is very much like governing a small community ... the management can serve you well, but you will have to work for its success.”

## **A 28-YEAR HISTORY OF RESERVE FUNDING AND EXPENDITURES OF AN ASSOCIATION**

By: Michael J. Gartzke, CPA

I have a mid-size association client where the reserve funding data since year 1 (1992) showing reserve assessments and expenditures is available. The association funded its reserves for the first four years from the developer’s budget and then had reserve studies done every three years since then in accordance with the California Civil Code. Funding has been done based upon the reserve analyst’s recommendation.

During the first four years, no reserve expenses were incurred. Funds and interest accumulated totaling \$96,000 after four years. The first major expenditures occurred in year seven where painting was done and rain gutters were installed. For this association, painting is required every 10 years and is due again in four years. Some street maintenance and repair soon followed. Major asphalt replacement is expected in the next 2-3 years. In year 15, wood fence repairs were done and major fence replacements are currently ongoing. Landscape repairs and improvements started in year 10 and have been ongoing. Also, in year 15, the units were fumigated and fumigation is expected again in the next 2-5 years. Over the next four years, major expenditures of \$480,000 are anticipated, nearly half of what was spent in the first 28 years as shown below.

The following is the 28-year income and expense report for the association:

Reserve Assessments	\$1,100,000 (no special assessments)
Interest Earned	<u>119,000</u> (only \$7,000 in the past 6 years)
Total Income	<u>\$1,219,000</u>
Expenditures:	
Roofing	\$ 381,000
Painting	158,000
Fences	137,000
Pool and Recreation Area	79,000
Landscape/Irrigation	67,000
Streets	54,000 (\$118,000 due in 2-3 years)
Fumigation	24,000 (due again in the next 2-3 years)
All Other Major Replacement Categories	<u>110,000</u>
Total Expenditures	<u>\$1,010,000</u>
Ending Cash	<u>\$ 209,000</u>

Reserve funding started at \$22,700 in 1992 and is budgeted for \$69,000 in 2021 and scheduled to increase 3% annually after that. It is anticipated that the reserve fund will be drawn down to \$65,000 in four years to meet immediate repairs before the fund starts to build again for future repairs and replacements.

As associations age, a greater percentage of the regular monthly assessment goes towards these major repair and replacement costs. In a database of 80 mid-to-larger associations in our area that I maintain, the allocation between operating and reserve assessments in the past eight years has gone from 72% operating/28% reserve to 68% operating/32% reserve. A very significant change (which will be a topic for a future article!).

The analysis over each year shows the increase in the reserve fund which hit \$516,000 in year 25 which was followed by the \$381,000 in roof replacements. No special assessment was required. It may be difficult for some members to understand why the association is accumulating funds and for some it seems to be a high amount. The high-water mark of accumulated reserve funds achieved here probably represented less than 2% of the fair market value per owner of a unit.

## **EXEMPT ORGANIZATION REVOCATION BY THE FRANCHISE TAX BOARD**

In the fall of 2019, I was made aware of two associations that had their tax-exempt status revoked by the Franchise Tax Board. This was due to the failure to timely file the Secretary of State's Statement of Information and Common Interest Development which are required every two years. I've written about the importance of filing these statements and the problems incurred if you don't, most recently in January 2014 (archived on the newsletter tab of the website). The revocation occurred within six months of the due date – very quick in my opinion. The revocation required the association to complete a new application (FTB 3500)

and submit several years' financial information, all governing documents and complete a several page questionnaire. It took over a year for the associations to be informed that their tax-exempt status had been restored. These forms are due to the Secretary of State in the month that the association was incorporated and in the even or odd year that the association was incorporated. For example, associations incorporated in January 1987 have their forms due at the end of January 2021. Information on how to file can be obtained at [www.sos.ca.gov](http://www.sos.ca.gov).

## EMAIL AND SNAIL MAIL ISSUES

By: Michael J. Gartzke, CPA

The United States Postal Service (USPS) has had some real issues in recent months. For me, it seemed to start with the appointment of the new Postmaster General in June who stated that he needed to cut losses and bring costs under control. It is beyond the scope of this brief article to detail the cost issues that USPS has.

For several weeks in July, the Patterson Avenue post office where I go had its hours cut back. No explanation was given and the hours were restored after several weeks. That was soon followed by the very bad optics of the USPS removing the outside blue mailbox in front of the Patterson Avenue office. Staff indicated that there had been thefts from these boxes. When the USPS PR department weighed in on the issue from Sacramento, they informed the local press that boxes are removed when they are seldom used. Anyone who drives by the Patterson post office will usually see someone depositing mail in the box; sometimes there's a line out into the street with people waiting. Recently I went inside the lobby to tell a clerk that the box was full and could they send someone out to empty it (they did). Several days later, a new blue mailbox was installed that is more tamper resistant and there's even a second blue box there now. Those boxes are heavily used by the public.

For the past several years, local mail now takes two days to deliver. No next day local delivery unless you send Priority or Express Mail at considerable cost. In a different era, local postmasters and supervisors lost their jobs if they did not meet next day delivery standards. The Postal Service even sent test letters to see if standards were being met. In August, I had several letters with Santa Barbara postmarks take 5-7 days to deliver to me. Then a client emailed me to say that her check was returned by the post office as undeliverable (I have been in the same building since 1993). She sent me the address that she used – even the word “suite” was spelled out. It was perfectly addressed.

In late September, a client mailed me a check from Palm Springs before he was leaving for the East Coast. It did not come. He eventually mailed a replacement check from back east as the first one never showed. In mid-November, he was in Santa Barbara and stopped by the office to pick up some paperwork and a mail truck came through the parking lot. We joked that the carrier was delivering his first check. Believe it or not, there came his first check. From the multiple postmarks, it went to Georgia and rattled around there for 2 months before it finally made it here.

I've used the absentee mail-in ballot for years and sent it in a few days before the election. With all the chaos generated by national postal issues, I voted earlier and used one of the county election drop boxes to place my ballot.

So if your owners and vendors say they mailed it to you, that may be right. Watch the postmarks (if mail gets a postmark) for evidence.

It has been suggested that electronic payments are the answer. Have you read one of those agreements between you and the bank? I looked at one recently and I felt quite uncomfortable with it. 99+% of the time normal systems work. Maintaining multiple payment and collection systems takes more time.

Indeed, my clients and I have made more use of email, file attachments and portals where I can access files. There are so many methods that my clients use that I have trouble keeping up with them and then they can change systems from one year to the next.

In mid-year, I also ran into issues with my email. Apparently, Microsoft decided that my email account or domain generated spam and would not allow it to pass through their system to those who had outlook, msn, Hotmail accounts, etc. (my wife has a Hotmail account), even if I was replying to someone's email. Initially, I was told that the issue would clear in a couple days. It took a couple months. Another business acquaintance had his email blacklisted several years ago where his email wasn't getting through to his contacts. I think the issue is clear for now but I tell my clients to look in their junk mail filter and add me as an approved sender. So electronic processes are not the cure-all, either.

## ADDITIONAL INFORMATION ABOUT IRS 1099-NEC

In the December 2020 edition of the newsletter, it was mentioned that the IRS has a new form for payments to independent contractors. Previously, the payments were reported on Form 1099-MISC along with several other types of payments reported. There is now a standalone form for independent contractor payments, the 1099-NEC.

When payments were reported on the 1099-MISC to IRS, the IRS would forward that payment information to the California Franchise Tax Board (FTB). For reasons unknown to me, the IRS will continue to forward 1099-MISC and other 1099 forms to the Franchise Tax Board **but** do not plan to forward 1099-NEC information to the states. As a result, a separate filing will need to be done to the FTB for 1099-NEC.

If you use a service to prepare and submit forms electronically, make sure that the service will also submit your returns to the FTB. If they do not, then you will need to submit state copies of the returns directly to the FTB via paper or electronically. If submitting paper copies, they are mailed by February 28 to:

Franchise Tax Board  
P. O. Box 942840  
Sacramento, CA 94240-6090

## 2021 INVOICE MAILING

Your 2021 annual dues invoice is on its way if you haven't yet received it already. Please review it as soon as possible and notify us of any contact changes, address and email updates. Given that we had no meetings in 2020 due to COVID-19 and everyone scrambling to keep up with all the moving guidelines, we did not spend all our dues money in 2020. All who contribute to South Coast HOA are volunteers. As a result, **all renewing members for 2021 will pay no dues** to remain a member for 2021 and you will receive the *2021 Condominium Bluebook* when it is published in January. In order to know how many books to order, we need your renewal response as soon as possible. After receiving your invoice and making any necessary changes, please do one of the following:

- Mail it back to P. O. Box 1052, Goleta, CA 93116
- Fax it back to 805-967-9654
- Scan and email to [gartzke@silcom.com](mailto:gartzke@silcom.com) – subject line “SCHOA Renewal”
- If unable to scan, send an email with the Association or Business name and the invoice number if possible. It helps to update the list as we have a lot of members. Subject line – “SCHOA Renewal”
- Manager members – if you would like to add new association members, download the membership application at [https://www.southcoasthoa.org/documents/scha\\_membership.pdf](https://www.southcoasthoa.org/documents/scha_membership.pdf)
- If you wish extra Bluebooks beyond the one included with your membership, submit payment for \$20 each along with your renewal by mail

## The Six Stages of a Project

Wild Enthusiasm

Disillusionment

Total Confusion

Search for the Guilty

Punishment of the Innocent

Promotion of the Non-Participants

## **SOUTH COAST NEWSLETTER PROFESSIONAL SPONSORS**

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## **RESERVE STUDIES**

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805-681-1575  
[SmartReserveStudy.com](http://SmartReserveStudy.com)

**Reserve Studies, Inc.**  
17315 Studebaker Rd #213  
Cerritos, CA 90703  
800-485-8056  
[reservestudiesinc.com](http://reservestudiesinc.com)

## **INSURANCE**

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12400 Wilshire Blvd. Suite 200  
Los Angeles, CA 90025  
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**Richard Martinez**  
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**Baxter Insurance Services**  
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## **ELECTIONS**

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## **JANITORIAL SERVICES**

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**Whitestone Industries**  
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[echo-ca.org](http://echo-ca.org)