



## South Coast Homeowners Association

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## ANNUAL LAW AND LEGISLATIVE UPDATE MEETING

It's time for our 35<sup>th</sup> anniversary meeting with our law and legislative update.

**Date – Wednesday, January 24, 2024**

**Time – 6:30 P.M. (Waiting room opens at 6:20)**

**Via Zoom – South Coast Members Only**

Time: Jan 24, 2024 06:20 PM Pacific Time (US and Canada)

<https://us02web.zoom.us/j/81255844167?pwd=TEpwSVhSMDhXekVNK0laQWZGK3NwQT09>

Meeting ID: 812 5584 4167

Passcode: 085676

One tap mobile

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**Cost – none**

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

**NEW LAWS AND CASES TO BE DISCUSSED AT THE  
JANUARY 24 MEETING**

California Assembly Bill (AB) 572- 2025 assessments limits – new affordable housing units

AB 648 – board or member meetings via teleconference

AB 976 – owner occupancy requirements and ADUs

AB 1033 – creation of ADUs as separate units or condominiums

AB 1458 – Quorum reduction – member meetings

AB 1572 – Potable water – nonfunctional turf

AB 1764 – Numerous housing issues

Senate Bill 71 – Small Claims Limits

Federal HR 4465, 8304, 3777 -The HR Bills generally deal with Condo assistance, disaster and financial relief issues.

Brief update on new Fannie Mae/Freddie Mac condominium guidelines.

Lake Lindero HOA v. Barone – Validity of a Recall Election and seating a new board

North Coast Village HOA v. Phillips. – Workplace Restraining Order – Employee vs Resident

Manrodt v. Albelo – Harassing conduct from one resident to another

Lachtman v Ocean Terrace Condos. – One resident attacked another

Gorenberg v. Emerson Maintenance Association. – Board members must comply with court judgements

Mascaro v. Brown.- Attorney Fees – View Obstructed by Trees

Noel v. Collier-Key – Defamation – Social Media Posts and emails between board members

Takiguchi v. Venetian Condominiums Maintenance Corporation – Holding a meeting to count ballots

LNSU #1 LLC v. Alta Del Mar Console Collection Community – Does an email exchange between board members constitute a meeting under the Civil Code?

Federal Corporate Transparency Act. – Effective during 2024 – May require HOAs to file a report with the Financial Crime Reporting Network.

## 2024 Renewal Invoices in the Mail

You should have received your annual renewal notice in the mail recently. The discount period has been extended until January 10. The 2024 Condominium Bluebooks will be ordered soon for shipment later in January. Your renewal will insure that you receive your copy along with periodic newsletters and emails from us.

## NEW FORM FOR FILING WITH THE CALIFORNIA SECRETARY OF STATE

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

As many of you know, I have written and talked about the filings that are required to be made with the Secretary of State's (SOS) office every two years for a long time. These forms were the Statement of Information – SI 100 and the Statement of Common Interest Development – SI-CID. They are filed by the end of the month that the association was originally incorporated and in the odd or even year depending upon whether the association was incorporated in an odd or even year. There are 24 possible due dates which are not tied to income tax filing deadlines. For example, an association incorporated January 10, 1986 would have its forms due January 31, 2024. Failure to file the forms on a timely basis can result in the association having its corporate powers suspended (can't legally function) and its tax-exempt status revoked (requiring a re-application for tax-exempt status) and making them subject to the \$800 minimum corporate tax.

It's a real pain to reactivate suspended corporations. I helped with a number of these – no fun! A number of years ago, I created a list of my HOA clients with the name, address, etc. of my contact and the month and year of incorporation. I then create a reminder letter that is sent 30 days before the forms are due and send it to the association. The SOS office is supposed to send a postcard or email reminder 90 days before but addresses and contacts can change in the two years since the last form was filed. Numerous clients have told me they never received the reminder card even if there had been no changes.

The SOS encourages associations to file these forms online. Given the error rate on paper filings, the online version has a series of screens to complete and if there is a problem with one of the entries, it will direct you back to the screen where information is incorrect or incomplete. Once complete, the form can be submitted with a credit card payment and it is instantly posted to the SOS Business Filings portal.

**NEW THIS YEAR:** In November, the SOS rolled out a new combo form – NP-CID. Only one form is filed now with the information included on both forms previously. The filing fee is \$35 for the new form, the same as the total fees for the previous two forms. There was some duplication on the two form filing which is now eliminated. Online filings are done through the Business Filings portal on the SOS website – [www.sos.ca.gov](http://www.sos.ca.gov). If you prefer the paper form version, you can access it at [https://bpd.cdn.sos.ca.gov/corp/pdf/so/corpua\\_cid.pdf](https://bpd.cdn.sos.ca.gov/corp/pdf/so/corpua_cid.pdf).

## **CERTIFICATE OF DEPOSIT RATES REMAIN HIGH**

In previous newsletters and emails over the past 18 months, we have alerted you to increased yields on FDIC-Insured certificates of deposit (CDs) and Treasury Bills for your association reserve funds. For a number of years previously, the rates for CDs and money market accounts were nearly the same.  $\frac{1}{4}$  of 1% at most. This changed when the Federal Reserve started to increase their rates in an attempt to stem inflationary pressures on the economy in early 2022. Rates continued to rise into the fall of 2023 with CDs available through brokerage accounts (Schwab, Fidelity, Edward Jones, Stifel, etc.) reaching 5.5% for a one-year CD. In recent weeks, rates have started to retreat somewhat but are still around 4.75% at the end of 2023.

Bank-issued CDs are insured up to \$250,000 per financial institution assuming you don't have any other funds at the same bank. These funds continue to be insured even if you have them in a brokerage account. One advantage of using a brokerage account as opposed to individual banks is that only one signature card is required and you will receive account statements monthly.

In an extreme case, an association had a CD with a local bank. At each renewal, it simply rolled over without any action taken by the association. If a bank account has no activity, then it becomes "dormant". Banks will send out notices asking the account holder to confirm the account if there is no activity so that it doesn't become classified as dormant. After a period of time in the dormant state, if there continues to be no activity, the funds are transferred to the state of California unclaimed funds division. Once there, it takes a fair amount of paperwork to retrieve the funds from the State. It can get more complicated when the signers/board members have changed over the years. It took this association several years to satisfy the state that those funds were theirs.

On a brighter note, a local association had its reserve funds in a "money market" account with a local bank. If you have money market funds, take a look at your most recent account statement. Many continue to pay  $\frac{1}{4}$ % interest and even less. You would be fortunate to receive 1% on local bank money market funds. A local fiscal year association made arrangements to place a large portion of their reserve funds into several CDs with varying maturities. In the year ending mid-2022, the money market account paid them \$250. In fiscal year 2023, the association received \$10,000 in interest income. Even after paying the income tax on the increased interest, the association gained over \$7,000 in reserve funds.

One brokerage that I am familiar with allows you to buy a CD with only \$1,000. In another example, an association has \$500,000 spread over several CDs with maturity dates over the next year. The average interest rate is 5% so the CDs will earn \$25,000 during 2024. Compare that to money market rates of  $\frac{1}{4}$ % (\$1,250) or 1% (\$5,000). CDs are generally available for up to 5 years, if desired.

## **SOME UPDATED ASSESSMENT AND EXPENSE TRENDS FOR AREA ASSOCIATIONS**

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

I last provided some statistical information via the newsletters in the January and February 2022 issues of the South Coast HOA newsletter. These and previous issues can be accessed and downloaded from our website at <https://www.southcoasthoa.org/newsletter.html>. I hope to have more extensive information developed in the coming weeks before tax season kicks into high gear.

You may know that I have maintained a database of financial information from the area associations that I provide reviewed financial statements for. I now have 15 years' worth of data. As you know with your individual association, you have seen costs and resulting assessments increasing at a much higher rate in recent years. I am here to tell you that your association is not the only one seeing substantial cost increases. You have lots of company.

My database of reviewed associations in Santa Barbara County (most in south county) reached 80 associations at the end of 2021. Since then, I have made an effort to work a bit less and it is currently at 66 associations. When I removed the associations that I no longer provided service to, the median numbers changed very little, so I am confident that the data and trends are valid.

From 2009 – 2021, the median assessment increased from \$377 per month to \$452, an increase of 20% over the twelve-year period. The median is where half of the amounts are higher and half are lower. The “2021” data is actually the calendar year 2020 and fiscal year ending in 2021 assessment amounts. Most of the increase was attributed to reserve funding, \$52 of the \$75 increase.

Here are the median monthly assessment amounts for the most recent years:

2021	- \$452
2022	461
2023	490
2024	534

So in three years, the median assessment has increased 18%, nearly as much as in the previous 12 years. One of the data points I collect is “next year’s assessment” When I did the 2022 and fiscal 2022-23 reviews, I received a copy of the 2023 or fiscal 2023-24 budget which shows the changed assessment. I know that 2024 budgets are showing continued increases as well. This time, it’s operating costs that are driving the increased assessment. Of the \$38 increase from 2021 to 2023, only \$11 came from reserves.

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It's not a surprise that insurance expense is driving increased operating costs for many associations. Area associations have seen canceled policies, lowered coverages, substantially increased premiums. The median insurance expense per unit per month is:

2009 - \$ 60  
2018 - 62  
2020 - 68  
2021 - 72  
2022 - 78  
2023 - 87  
2024 – not available

For reference the median insurance expense from 2009 to 2018 only increased \$2. From 2021-2023, it increased \$15. The other major operating expense categories (utilities, common area maintenance and administrative costs only increased a combined \$6 from 2021-2023.

**Cash** balances are relatively stable. In addition to the median cash per unit amount, I also have the average cash per unit amount.

	<u>Median</u>	<u>Average</u>
2021	\$ 7,435	\$ 8,284
2022	7,757	8,501
2023	7,385	8,410

Another way to look at the median cash on deposit is to take the 2023 median cash per unit amount of \$7,385 and divide it by the median 2023 assessment of \$490 and that equals 15 months' assessments on deposit for operating and reserve expenses.

**Assessments Receivable** – There was concern that at the onset of the pandemic in March 2020, many (or some) people would have difficulty making their monthly assessment payments. In south Santa Barbara County, that fear appears to be unfounded. The following is the median amount of assessments receivable (delinquent) at year-end expressed as balance due per unit (example – a 40 unit association with a \$2,000 delinquency balance would show a balance of \$50 - \$2,000 divided by 40).

2021 - \$ 28  
2022 - 19  
2023 - 18

In fact, nothing was charged to bad debt expense (uncollectible assessments) in the past two reporting years.

## **FLORIDA EMBEZZLEMENT CASE CONTINUES TO UNFOLD**

A year ago, I wrote about a large association (6,500 homes) in South Florida where the board members were arrested for embezzling over \$2 million in association funds. (See the December 2022 newsletter). At that time, a receiver was appointed by the court to operate the association and determine what had occurred. This case made the local TV and newspapers in Miami, especially given the size of the community. His work is ongoing one year later. Here's some of what has transpired in the past year.

2016 – An accounts receivable clerk and accounts payable clerk from the same association were arrested and charged with stealing \$150,000 by setting up a company with a similar name to this association and funneling payments to the fake company. The issues currently being dealt with started shortly after this situation.

April 2023 – A new board was elected to work with the receiver to help get the association back on its feet.

The association carried a \$2 million directors and officers insurance policy and the insurance company paid the association the full amount of the policy

August 2023 – The receiver had spent \$2.03 million in the first 8 months of the process. His initial total budget was \$750,000. According to the receiver, he is investigating at least 55 bank accounts that the previous board had used to pay themselves. He is also trying to recover funds paid for no-show maintenance work and legal fees paid to lawyers defending the previous board members. Some new board members are concerned that the receiver is spending too much money on the process.

October 2023 – The association received a \$300,000 payment from the malpractice insurance company for the lawyers of the former board for advice they provided (that was apparently wrong). That was the full amount of that policy.

December 2023 - the former president's cousin was arrested for being a participant in the embezzlement scheme.

As I wrote last year, according to articles written at that time, the association had not had an independent CPA review or audit their financial statements. It wasn't disclosed whether tax returns had been filed.

A number of times over the years, I've heard the comment – “well if the whole board resigns, we will just have a receiver appointed to do things”. My guess is the receiver will charge a higher hourly rate than the board, management company, accounting personnel, etc.

## **SOUTH COAST NEWSLETTER PROFESSIONAL SPONSORS**

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