

SOUTH COAST HOMEOWNERS ASSOCIATION

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UPCOMING SOUTH COAST MEETING

ALTERNATIVE DISPUTE RESOLUTION MEETING

We are pleased to announce that we will have a special meeting on Alternative Dispute Resolution (ADR, mediation, arbitration, etc.). Civil Code encourages disputes between members, residents and/or the association to be handled via ADR prior to going to court. **James Lingl**, an experienced HOA attorney from Camarillo and President of the Ventura Center for Dispute Settlement will present a comprehensive explanation of ADR, how it works, how to implement it, etc. Mr. Lingl drafted the first version of the Davis-Stirling ADR Statute (Civil Code 1354) in 1991. He serves on mediation panels for Ventura County courts and the State Department of Insurance.

DATE – Wednesday, March 24, 2004

TIME – 7 PM

PLACE – Holiday Inn, 5650 Calle Real, Goleta

2004 CONDOMINIUM BLUEBOOKS

The Condominium Bluebooks arrived the first week on January and all members who have renewed their memberships for 2004 received a copy. Additional copies of the Bluebook are available for \$16 per copy, postpaid.

**PLEASE FEEL FREE TO MAKE COPIES FOR YOUR BOARD MEMBERS
SHARE THIS NEWSLETTER WITH YOUR ENTIRE BOARD OF DIRECTORS**

CONTROLLING THE SCOURGE OF GRAFFITI

By: Ed Graper

Editor's Note: Ed is a dedicated community volunteer who has spent countless hours removing graffiti in South Santa Barbara County. Within the past 2 months, Ed called me on three separate occasions to locate management or board members from different associations in the Goleta Valley to work to remove graffiti in their developments. Ed has generously offered to assist you if you have questions, need help or face a problem graffiti. He can be reached at 964-7117.

The scourge of graffiti seems part of the modern world. Why do these kids paint on our walls? What should we do? The reason they paint on your walls is just to be noticed. Teens want to be noticed. It's as simple as that. There are two basic classes of graffiti, personal tags and gang graffiti. The vast majority of graffiti in most communities is personal tags, the signature of a tagger wanting you to notice him. These can be small initials or a huge colorful rendition of the street name of the tagger. These tags often show a deft hand and some art skill. Taggers are very proud of their "art" and rarely consider tagging a crime. Serious taggers often work in teams (crews) and travel widely to find good tagging sites. There is a large tagger culture on the Internet and many advertisers are using tagger images, giving tagging legitimacy. Gang tags are usually simple scrawls, in a poor hand, of the gang name: VGP, GX3, RC, and are used to mark territory. Sometimes gang tags are threatening or profane. Most taggers are not gang members and most gang members are not taggers. Graffiti is basically no different than a dog peeing on a post.

What can be done about graffiti? It must be removed immediately. Experience has shown that if left, graffiti attracts more graffiti. Graffiti is not art, it is simply vandalism, and all property owners have a responsibility, often set by local ordinance, to remove it immediately. Real-estate property value studies have found that graffiti reduces the value of the effected property and of nearby property by 10-15%. In some communities it can be a seemingly endless job to control the graffiti but prompt removal has been shown to sharply reduce the amount of new graffiti. The retaining wall where the Maria Ignacia Bike Path in Goleta passes under US101 was once covered with graffiti. In the first months of keeping it clean there were 1-2 big new tags a week. Now we only have 1 or 2 tags a month to paint out. Sadly graffiti is often a very low priority for law enforcement. Patrol officers sometimes don't even recognize it as a crime. The law provides limited, but effective, tools to the prosecutor willing to use them.

What must be done about graffiti on or near our property? Take responsibility for it! We must each make it our responsibility to promptly report and remove graffiti. First, call the police or sheriff and report graffiti immediately. Always request a crime report or case number. Giving you this number requires a formal report and assures your report will be part of the crime statistics. If graffiti is not reported, law enforcement has no information on its extent and cost. Second, see that it's immediately removed. Remove graffiti or have it removed from your property. Remove it yourself from nearby public property. Most communities, Flood Control Districts and railroads have little or no graffiti removal capability. Cal Trans is, however, very good about removing graffiti from the freeways. Ask neighbors, until successful, to remove graffiti on their property. It may be necessary for you to occasionally remove graffiti from a neighbor's property. Do this if you can do a good enough

job that, without knowing the exact location, one can't tell the graffiti was there. Recently, when I came to work at 7:30 AM there was a 2 x 5 foot tag on the restaurant across the street. My off-white paint, courtesy of UCSB Community Toxic Waste Disposal (893-7250), was a near perfect match. Gone in 5 minutes! The tagger probably never saw his tag in daylight and it took me only 5 minutes. It rarely takes more than 10 minutes to remove a tag so, "I haven't time," is no excuse not to do it.

First and foremost when removing graffiti, **do no additional damage**. Exercise care not to damage surfaces and **never** paint out graffiti with poorly matching paint. Being careless will make your property look sloppy, anger other property owners and the nearby community. Graffiti removal is often

incorrectly referred to as “painting out” graffiti. Yes, large tags on walls are often painted out with matching paint, or if is a wall on the back side of a building, gray paint may be acceptable, but this is not the method of choice for removing most graffiti. If you encounter a problem removing a tag, get help. It’s much better to delay a few hours (but not days) and do a good job than to make a mess. Following are some specific suggestions from my experience for removing graffiti:

1) Tags on newspaper boxes, metal signs, metal boxes, transformers, signal boxes, truck bodies, metal posts and glass.

These tags can usually be quickly wiped off with **lacquer thinner**, available at your local paint store, on a paper towel. Wear plastic gloves to protect your hands. Before wiping off a tag, test the finish in an out-of-the-way place. Most boxes are OK but some signs (black type on white street signs and some STOP signs) are attacked by lacquer thinner. If a sign is attacked by lacquer thinner then clean it with **denatured alcohol**. This is slower but less damaging. Lacquer thinner will usually damage plastic surfaces. Do not use lacquer thinner on phone booths or the windows on newspaper boxes. Alcohol will usually work on these surfaces. Acetone (nail polish remover) is too aggressive a solvent for most graffiti removal and damages many surfaces. **NEVER** over paint these surfaces, even with exactly matching paint, unless the graffiti absolutely cannot be removed.

2) Tags on glossy painted wood surfaces and wood signs.

Alcohol will remove most tags from most glossy painted wood. Painted wood signs are more likely to be damaged so be very careful. Test the finish in an out-of-the-way place. Nothing will remove tags from flat painted surfaces without some damage but careful removal with lacquer thinner often works well. Combining removing graffiti where it will come off and over painting where it will not can be very successful.

3) Tags on painted walls.

These are the tags most often thought of as graffiti. They may be a 5 foot high gang tag or a colorful gothic representation of a tagger’s name. These tags are over painted with matching paint if the wall is visible. This may require custom mixed paint. Surprisingly, a common cream or pink shade, selected from available paint will give an excellent color match. **NEVER** over paint exposed walls or surfaces with generic gray paint. **NEVER** over paint graffiti on brick, block, wood or stone walls that have not been previously painted. These walls need to be sandblasted or pressure washed clean. If you are responsible for a large, frequently tagged, wall you can save a lot of time by never cleaning your paint roller or tray. Rollers, on the roll frame, will keep for several weeks between uses without drying out in a thick wall plastic bag closed with a twist tie. Paint trays lined with a disposable plastic liner never need to be cleaned. Just let the paint dry on them. It takes dozens of uses to build up enough paint to make the liner unusable.

4) Tags on exposed unpainted wood walls and fences.

These, in general, must be removed by sandblasting, pressure washing or sanding. Power sanding with extremely course grit (50 or coarser) is very effective for removing tags from unpainted wood fences. Lacquer thinner also often works well for small tags. Never over

paint unpainted walls, fences and wood without express permission from the owner.

5) Tags on bridge abutments, culverts and back walls.

Tags on hidden concrete surfaces, bridge abutments and culverts can be painted out with generic gray paint. Very exposed tags on these surfaces must be removed by sandblasting, pressure washing or painted with concrete gray paint so as not to create an eyesore. Never use random color left over paint, greens, bright colors, or blacks to paint out any graffiti.

6) Paper tags

Self stick stickers (HELLO stickers) can be peeled off slowly. Saturating the sticker with lacquer thinner will loosen old stickers. Glued on paper political tracts can be removed by saturating the paper with window cleaner, letting it soak 5-10 minutes and gently pulling or scraping it off. Do not over paint paper tags.

Beyond removing graffiti there is much one can do to minimize future graffiti. The most effective method of protecting a frequently tagged wall is to cover it with vines. CalTrans and many cities have used vines very successfully along major roads. Though they take some maintenance, plants also look much better than any bare wall. Improved lighting helps, particularly motion-activated lights. You can also do small things to discourage the vandals, like flood where they stand to paint. Taggers don't like to stand in a mud puddle. Having a dog can help too, beyond just barking. When you clean up after your dog, put the droppings where the vandals stand!

Do not attempt to remove or over paint graffiti on vehicles, or etched into windows. Get help with these. Special techniques are needed to clean them up and glass etching cannot be removed.

MEMBER ADVERTISEMENT

Ennisbrook is looking for a CARETAKER, on-site. Serious position for private, gated community. Secure club, policy enforcement, emergency response. After hours, weekends, some weekdays to be determined. Cottage available on site with rent reduction for services. Must qualify for moderate or upper moderate County affordable housing. Property maintenance helpful. Available 4/1/04 or sooner. Please submit a letter of interest or resume to FAX 805-969-9013.

AB 512 PROVIDES NEW RULEMAKING PROCEDURES FOR ASSOCIATIONS

(Civil Code Sections 1357.100 through 1357.130 and Civil Code Section 1350.7)

By: Karen A. Mehl, Attorney at law

Editor's Note: Karen presented this new law at our recent law forums in Goleta and Santa Maria. This new law continues the trend of making the management and operation of your association more complex rather than simplified. Karen is an attorney in private practice in Santa Maria and is a frequent contributor to our programs and newsletter. She is also Secretary for the California Legislative Action Committee, a part of the Community Associations Institute

A couple of years ago, the California legislature instructed the California Law Revision Commission to study the Davis-Stirling Act to determine how the law can be improved. AB 512 is the first bill introduced by the California Law Revision Commission. Its primary purpose is to provide a new mandatory procedure for adopting association operating rules. The law defines an operating rule, sets forth guidelines for when an operating rule is enforceable, and sets forth procedures for board's to use when adopting a rule and for members to use when repealing a rule. This law only applies to rule changes commenced after January 1, 2004.

An operating rule is valid and enforceable only if it meets all of the following standards:

1. The rule is in writing;
2. The rule is within the authority of the Board to adopt either:
 - a. conferred by law, or
 - b. conferred by CC&R's, Bylaws and Articles of Incorporation:
3. The rule is not inconsistent with the association's CC&R's Bylaws and Articles of incorporation, or with applicable law;
4. The rule is adopted, amended or repealed in good faith and in substantial compliance with these procedures; and
5. The rule is reasonable.

In order for the new procedures to apply, the operating rule must relate to one of the following subjects:

1. Use of the common area or exclusive use common area;
2. Use of the separate interest, including architectural standards;
3. Member discipline, including any schedule of monetary penalties and procedures for the discipline of members;
4. Standards for payment plans for delinquent assessments;
5. Procedures for the resolution of assessment disputes.

There are certain types of rules that are not covered by the rulemaking procedures of the law. They are the following.

1. Common area maintenance decisions;
2. Disciplinary decisions that are not meant to apply generally (enforcement activity against an individual owner);
3. The amount of regular and special assessments;
4. A rule change required by law, if the board has no discretion regarding the substance of the rule;

5. Issuance of a document that merely repeats existing law or the association's governing documents.

Under the basic rulemaking procedure, the board of directors must provide the membership with written notice of a rule before it is adopted. The board must consider any comments that it receives from members before adopting the rule. Finally the new rule must be distributed to the members. The law requires the association to provide written notice of the proposed rule to the members at least 30 days before making the rule change. The notice must contain the text of the proposed rule change and a description of the purpose and effect of the rule change. The Board must make a decision on the rule change at an official board meeting and after consideration of comments made by members. Because the law does not state that the members' comments must be in writing, I suggest that the board ask if members present at the board meeting have any comment on the proposed rule before voting on it. Within 15 days after adopting the proposed rule change the board shall deliver a notice of the rule change to all of the members.

The law does provide that the board can adopt emergency rules without considering member comments or permitting members to revoke the rules. In order for a rule to be an emergency rule, the board must make one of the following findings, which should be noted in the minutes of the meeting at which the emergency rule is adopted:

1. That the rule change is necessary to address an immediate threat to public health or safety; or
2. That there is an immanent risk of substantial economic loss to the association.

After one of those determinations is made and noted in the minutes, the board may adopt the rule immediately. After adopting the emergency rule, the board must send written notice to the members within 15 days. The notice must contain:

1. The text of rule;
2. A description of the purpose and effect of the rule; and
3. Date rule expires.

An Emergency rule must expire within 120 days of its adoption. During the 120-day period board may go through regular procedures to adopt the rule permanently.

The new rule making procedures provide the membership the opportunity to revoke newly adopted rules. In order to revoke the rules, the membership must follow the procedure in the new statute. 5% of the membership must sign the petition to request that the association hold a special membership meeting. The purpose of the meeting will be to hold a vote to determine whether or not the rule should be revoked. The law specifically states that the association must supply a membership list pursuant to Corp Code 8330 to a member who says they want to collect signatures to call a meeting to revoke a rule.

The meeting is called by delivering a written request, signed by the required number of members, to the President or Secretary of the association. The request for a special meeting must be delivered within 30 days after the members are notified of the rule change. The members receive notice of the new rule either by mailing of the notice of rule change or by enforcement of the new rule, whichever comes first.

The association must comply with Corporations Code 7511 in giving notice and conducting the special membership meeting. Notice of the special meeting must be given at least 10 days and not more than 90 days before the special meeting. The notice must state the date, time, place and subject of the meeting and that no other business will be transacted. The board must set the date for the special meeting not less than 35 days or more than 90 days after receiving the request for a special meeting. If the board does not send out a notice of special meeting within 20 days of receiving the request for a special meeting, then the members who signed the petition may send out a notice of special meeting. The rule change may be reversed by the affirmative vote of a majority of those present and voting at a meeting, in which a quorum is present, unless the governing documents require a higher number. If the rule change is reversed, the board may not adopt the same rule for 1 year after the meeting where the rule was reversed. The board may, however, adopt a different rule on the same subject. The board must provide notice of the results of the voting to the members within 15 days of the close of voting. Instead of holding a special meeting, the board may hold a vote without a meeting pursuant to Corp Code Section 7513.

The new law provides for special methods for giving the members' notice under the new rulemaking procedures. The California Law Revision Commission hopes that these new notice provisions will be used by other laws. It is acceptable to give members notice using one of the following methods:

1. Personal delivery,
2. First class mail, addressed to the last address shown on the books and records of the association, notice is deemed delivered upon deposit in the mail,
3. Inclusion in a periodical that is circulated primarily to the membership,
4. If the association broadcasts television programming for the purpose of distributing information on association business to the members by inclusion in the programming, or
5. A method of delivery contained in the CC&R's.

If a member agrees, the association may use one of these methods of delivering notices regarding the rulemaking activities of the association.

1. E-mail,
2. Facsimile, or
3. Other electronic means.

When using one of these methods, delivery is deemed complete upon transmission.

Documents may be included in billing statements or newsletters provided that they are delivered by one of the methods contained in this section.

ADDITIONAL NEW LEGISLATION EFFECTIVE IN 2004

**By: James H. Smith, Esq.
Grokenberger, Smith & Courtney, Attorneys at Law**

Editor's Note: Jim's outline was also part of our January legal forum in Goleta where over 60 of you attended, the best turnout we have had in our 15 years of providing information to area board members. Additional information can also be found in the *2004 Condominium Bluebook*, distributed earlier this year.

ASSEMBLY BILL 1525, CALIFORNIA CIVIL CODE SECTION 1353.6

SIGNS, POSTERS, FLAGS and BANNERS MAY BE DISPLAYED

- A. An Association may not prohibit the posting of non-commercial signs, posters, flags and banners.
- B. Signs, posters, flags and banners may be displayed from the yard, window, door, balcony or outside wall of a unit.
- C. Signs and posters cannot exceed 9 square feet.(e.g. 3 ft. x 3 ft.)
- D. Flags and banners may not exceed 15 square feet. (e.g. 3 ft. x 5 ft.)
- E. Signs, posters, flags and banners must be constructed of paper, cardboard, cloth, plastic or fabric.
- F. Signs, posters, flags and banners may not be constructed from lights, building material, landscaping or painting on architectural surfaces.

ASSEMBLY BILL 104, CALIFORNIA CIVIL CODE SECTION 1365.2

OWNERS' RECORDS INSPECTION RIGHTS

- A. Upon an Owner's written request, the Association shall make available for inspection and copying accounting books, records and minutes.
- B. The inspection shall take place at the business office of the Association within the common area. If no office is maintained on the common area, the inspection shall take place at a location which the Association and Owner mutually agreed upon.
- C. If no agreement is reached for the location of the inspection within 10 days of the request to inspect, the Association shall mail copies of the documents requested to the Owner. The Association may bill the member for the cost of copying and mailing.
- D. The Association may redact (black out) the following information from the records produced:
 - i. Information which would lead to identity theft.
 - ii. Information which would lead to fraud.
 - iii. Information privileged under the law.

E. The Association may not redact information concerning the compensation paid to employees, vendors or contractors. However, employee compensation may be disclosed by job classification, rather than by employee name.

F. Information requested may only be used for purposes reasonably related to an Owner's interest as a member of the Association.

G. The Association may be fined up to \$500 for each violation of this section including an award of attorney fees incurred by the demanding party.

ASSEMBLY BILL 1423, BUSINESS AND PROFESSION CODE SECTION 11500

EDUCATIONAL DISCLOSURE REQUIREMENTS FOR CERTIFIED COMMON INTEREST DEVELOPMENT MANAGERS

A. To use the designation of a certified common interest development manager, the individual manager must;

i. Within 5 years prior to July 1, 2003, have passed a knowledge, skills and aptitude examination; or,

ii. Within 5 years prior to July 1, 2003, have been granted a certification or designation by a professional association for common interest development managers and have passed within 5 years prior to July 1, 2004, instruction in California law pursuant to Section 11500 of the Business and Profession Code; or

iii. After July 1, 2003, have completed 30 hours of study in common interest development law and management and have passed an examination that tests competency and common interest development and management.

B. Annually, managers of common interest developments must disclose;

i. Whether they have met the educational requirements of Business and Profession Code Section 11502;

ii. The identity of the professional association that certified the manager;

iii. Location of the manager's office;

iv. Whether the manager has fidelity insurance covering the association's reserve and operating budget; and

v. Whether the individual managing holds a real estate license.

C. Managers must also comply with the disclosures required by California Civil Code Section 1363.1.

ANNUAL FINANCIAL REPORT REQUIREMENT FOR SMALLER ASSOCIATIONS

The California Corporations Code (Sections 8320-25) require corporations (including your homeowners association) to keep adequate and correct books and records of account. The corporation must advise each member annually of his right to receive a financial report if the gross revenues of the corporation (including member assessments) exceed \$10,000 per year. This annual report will contain a balance sheet at the end of the corporation's fiscal year and an income statement (profit and loss) for the fiscal year then ended.

This provision may also be found in the association's governing documents as well (CC&Rs and bylaws). The annual report requirement is separate and distinct from the requirement that an association governed under the Davis-Stirling Act have their financial statements reviewed by a CPA when annual revenues exceed \$75,000 per year. (Civil Code Section 1365(b).

Thus, financial information must be made available for any association whose revenues exceed \$10,000 per year. For example, a 5-unit association with assessments of \$200 per month will have revenues of \$12,000. This annual report does not have to be done by a CPA unless your governing documents require it. You must disclose who prepared the annual report (Accountant, bookkeeper, treasurer, manager, etc.). Most association, however, will engage a CPA or tax professional at year-end because Federal income tax returns are required for all associations and most boards and management companies do not want to prepare tax returns.

Further, the Davis-Stirling Act requires association boards of directors to review an income and expense statement for the association's operating and reserve accounts on at least a quarterly basis. (Civil Code Section 1365.5(a)(5)). A small association should be able to use the same financial statements reviewed by the board to satisfy the Corporation Code requirements for the annual financial report. These financial statements can also be used to satisfy requests from escrow for association financial information.

Since the annual financial report requirement must be disclosed annually, make it part of your budget disclosures that the annual financial report is available to members or simply automatically provide the report after year-end.

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Thank you to all our professional member advertisers for their support during 2004.

ASSOCIATION MEETING CALENDAR

HOMEOWNER ASSOCIATION ORGANIZATIONS

June 11 – 12 ECHO – Executive Council of Homeowners – Annual Seminar – Santa Clara Convention Center, Santa Clara

**Community Associations Institute –
Channel Islands Chapter
P. O. Box 3575
Ventura, CA 93006
805-658-1438
www.cai-channelislands.org**

October 2 – CAI – Channel Islands Chapter Annual Expo and Conference – Oxnard/Ventura

**Executive Council of Homeowners
ECHO
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www.echo-ca.org**

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