

# SOUTH COAST HOMEOWNERS ASSOCIATION

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## UPCOMING SOUTH COAST MEETING

### ANNUAL SUMMER LEGAL FORUM WITH BETH GRIMM

Our popular summer legal forum with Beth Grimm will be held again this year. Beth is an HOA attorney from Pleasant Hill (East Bay Area) and is one of the leading legal experts in association law and legal matters. Topics that are anticipated to be covered include:

**Records Inspection and Classes of Records** – Venue for inspection, copies to be provided, classes of records for which a fee can be charged, penalties that can be imposed, redacting information to protect privacy

**New Rule Making Procedures** – What rules need to be circulated to members and which ones do not? Does the homeowner “comment” and ability to petition actually open up rules to homeowner voting?

**Is your annual meeting coming up?** – Issues pertaining to registration, voting by proxies, proxy battles, meeting notices, disruptions and other “hot button” issues.

**DATE** – Tuesday, July 27, 2004

**TIME** – 7 PM

**PLACE** – Holiday Inn, 5650 Calle Real, Goleta

**COST** – None to South Coast HOA members; \$ 20 per person, nonmembers

## SOUTH COAST OFFICE CLOSED FOR VACATION

The South Coast office will be closed for summer vacation from July 12 – July 20. Calls and emails will be returned after the 20<sup>th</sup>.

## SO, YOU THINK YOU DON'T NEED A CONSTRUCTION MANAGER ?

By Richard Tippett

**Editor's Note:** This article appeared in a recent issue of the ECHO Journal, published by the Executive Council of Homeowners and is reprinted here with their permission. Dick Tippett is the president of ERTECH, Inc. one of the original condominium construction management companies located in La Selva Beach, CA. He can be reached at 1-800-272-7474.

[For those of you in a hurry, here's a quick summary of the following article:

CONTRACTOR (n) from the Latin, **con**, in opposition to or in disagreement with, plus **Tractus**, to pull against.

Ergo, your relationship with any contractor that you hire will be a tug-of-war over pricing, change orders and scheduling with frequent disagreements. Contractors are in business to make a profit. The less you know about their field of expertise, the greater will be their profit on your project.]

**The construction industry has its own set of rules** and special areas of expertise, just like any other industry. These rules take time and effort to learn. The amount of expertise required in different branches of the industry in order to complete major projects successfully is more than any one person can master. Some of us have grown gray in this industry trying to do so.

In California and most of the West, there are four different sets of codes that attempt to codify and regulate only the basics:

- Uniform Building Code,
- Uniform Plumbing Code,
- Uniform Mechanical Code and
- National Electric Code.

These four codes fill over three thousand pages of text. They still don't cover the exact details of how to make a building waterproof, fireproof, reasonably rot-free, sweet-smelling, with toilets and tubs that drain freely and lights that don't dim when you turn on your computer while your spouse is ironing and the dishwasher is running.

General contractors know of these details. At least, their managers and supervisors do. They also have estimators on staff who are experienced enough to guess at the unknowns when asked to bid on your projects, and smart enough to hold the unknowns close until a contract is signed that requires extra payment of unspecified amounts for taking care of those "unknowns."

Homeowners don't know these things. All they may know is that the painting contractor found some dry rot in a wall.

The moment that an association signs a contract for replacement of that rot, the board begins to play in a game where the rules are against them and largely unknown to them. Many boards (and property managers) don't even know there are rules. And, it is a game they've never played before.

Contractors, on the other hand, know the rules. They know the game backwards and forwards; they've played it many times. The longer the contractor has been in business, the better he has become at the game.

What is the game? It is the game of extracting the largest payment possible for the least amount of labor and material.

Onto this testosterone-filled playing field every year a hundred and more boards of directors blithely walk, wallets open, certain that they are ready to play. Unfortunately, as in learning poker, they will all "pay to learn."

How does it work? Here are a few examples. In all instances, the names have been changed for the protection of all. In no instance was a construction manager retained to maintain even a semblance of control.

### **Case 1      Reconstruction after litigation "*The bad taste of poor workmanship...*".**

The Maison du Jour Association received a settlement from the developer that, after paying their attorney, wasn't adequate to do all of the stucco repair, window and door flashing and roof repair work required. Rather than do a special assessment to make up the difference, the association hired their expert's general contractor to do the work for the funds that were available.

The general contractor at first tried to get out of doing the work but was pressured into it by the board, their expert and their attorney.

The general contractor corrected the roof condensation problem but broke a lot of tile in the process. When told to replace the broken tile, the contractor refused, saying they were not responsible for the defective (???) tile. No claim had been made during the suit that the tile was defective. The homeowners replaced \$23,000 in broken tile at their own expense.

The contractor "solved" the stucco and flashing problems with a liberal application of caulking instead of removing stucco and installing flashing at window and door heads. Since his contract didn't specifically say he had to install metal flashings, the board couldn't force him to install the flashing instead of the caulk. A construction defect has now become a maintenance cost.

The complex was to be painted when the stucco work was completed. The painter that the contractor brought in applied one coat of paint and got overspray on several of the tile roofs. The painter claimed that the overspray wasn't his fault as the wind had come up suddenly. The association again had to replace tiles (they couldn't be cleaned) at their own expense.

## **Case 2      “*Doing it Twice*”**

SeaView Terraces is a 22 year-old contemporary California design with large timber walkways connecting building at all levels. Some of the siding is stucco integrated with the walkways and with balconies at individual units. The rest of the siding is diagonal tongue-and-groove wood sheathing.

Twelve years ago SeaView completed litigation against their developer, took the proceeds from the suit and hired a general contractor to eliminate all the rot. The general contractor completely rebuilt the walkways and balconies and replaced the diagonal siding. In the process he perfectly replicated almost every construction mistake made by the original builder.

How did this happen? The contractor didn't properly supervise his workers. *Because they didn't have any other guidance, they used the original construction details as the pattern to follow in the rebuilding!*

SeaView Terraces is now faced with a second complete round of reconstruction at a cost well into seven figures.

## **Case 3      “*A little excess profit*”**

Elk Mounds, a 180-unit association, replaced their wood shake roofs with 40 year composition shingles.

A regular, normal, everyday part of such a reroof is to install new plywood sheathing to properly support the new shingle roofing.

Nevertheless, the roofing contractor insisted that he had not included the cost of the new plywood sheathing in his bid. The contractor asked for, and got, a \$250,000 increase in his contract.

When we reviewed the job files, we found that the contractor really had included the cost of the plywood in his original bid. He simply saw an opportunity to make extra money—and took it!

## **Case 4      “*Doing it twice, redux*”**

Harmony Farms is a lovely 22-unit complex tucked in a grove of oaks in Palo Alto. It has, or had, pressed wood fiber shiplap siding.

After receiving a small settlement from the siding manufacturer, the board planned to do an additional assessment to replace all of the siding. One board member had the idea of painting all of the buildings with an elastomeric paint, and replacing only the most badly damaged siding instead. The board followed his lead, as his plan would cost almost the same as their settlement.

The painting contractors needed the work; no one told the board that elastomeric paint used on wood fiber trapped moisture within the siding and, in the shade of the trees, created an incubator for mold and fungus growth.

After only three years Harmony Farms has siding that is bowed, rotted and covered with fungus. They are now faced with replacing all of their siding, abating mold growth in five of the units and then repainting. And they don't have any money. The board hadn't increased the reserve assessment, counting on the settlement money/elastomeric coating instead.

#### **Case 5      *“We’re paying for it twice”***

Camino Real rebuilt and recoated all of their 120 balconies and several hundred feet of walking deck. The expense of the project emptied their reserve account but they gladly paid.

Less than two months after the work was completed, the association received lien notices from the coating subcontractor, who had not been given his last two payments by the general contractor. A week later the sheet metal supplier, who also hadn't received his final payment, liened the job as well.

What should have been a simple, straightforward project is now enmeshed in suits and countersuits. The board president resigned and moved away. Half of the rest of the board also resigned. Relationships between the remaining board members and the other owners are poisonous at best. Further, because of the liens, no one can sell their units, refinance or even take out second mortgages.

#### **Case 6      *“The job without end”***

The board at the Alders contracted with a general contractor for replacement of rotted balconies and outside stair cases, using the contractor's proposal form rather than spend the money to hire an attorney to draw up a proper contract in their favor. The board never asked for a schedule for the work or set a completion date.

The contractor began work almost one year ago. The project is roughly half finished. Work at a given unit is left untouched for days at a time.

The board believes that the contractor is understaffed and is working on another project besides theirs, but has no way to force him to complete their project.

In the meantime, the complex is cluttered with construction material, and residents' tempers are frayed.

#### **Case 7      *“Property Damage”***

The Willow Park board contracted to replace privacy fences. The contractor would not accept any responsibility for damage to walkways and landscaping. The board accepted the exclusion, although such damage is easily avoided.

The contractor's method of removing the old fence posts was to chain them to his truck bumper, then drag them out of the ground along with the concrete that they were set in. Damage to sidewalks, lawns, sprinklers and landscaping was extensive and unnecessary. Repairs and replanting added \$9,000 to Willow Park's cost for the project.

### **Case 8      “*But we put him in business*”**

Monterey Vistas, faced with extensive maintenance of balconies and walkways, advertised for a general handyman. They interviewed several and hired a semi-retired former general contractor. The board furnished him with a complete suite of power tools, a golf cart and two garage spaces as a shop. They also pay him a weekly salary.

The gentleman promptly renewed his license, spends half his time working for other clients and still receives his full salary. Projects assigned to him are sometimes left undone because he is making more money doing work for others, using the tools and the shop that Monterey Vistas bought and paid for!

These are just a few of the nightmare scenarios we have run across in doing construction management. They are far from being the worst.

*The worst are when unsupervised contractors go bankrupt in the middle of the project, leaving behind unpaid subcontractors and suppliers.*

### **Something to think about.**

We'd like to leave you with the following thought. It is based on typical contract management procedures followed by better general contractors, and is this:

1. For jobs under \$100,000, a foreman runs the project and a supervisor looks in occasionally and helps with change orders.
2. For jobs between \$100,000-300,000 the foreman becomes full time and may be non-working and the supervisor checks on the work daily.
3. For jobs between \$300,000-500,000 the supervisor is on site daily and a project manager in the office also checks the project schedule and costs a couple of times a week.
4. Jobs worth \$500,000-\$1,000,000 get at least a half-day attention from the supervisor and daily attention from the project manager who monitors schedule, staffing, change orders and payment.
5. Jobs worth more than a million dollars will probably have two non-working foremen and supervisor on site in addition to a project manager back in the office who oversees everything. A company officer will also monitor the project.

All of these staff people have one goal in common: protecting their employer and maximizing their employer's profit. They do this work full time. They are very experienced. Most are good at what they do. They are not working for you, even though they are working on your property.

You, a part-time member of a board of directors, cannot realistically compete with these full-time players on an even basis. Nor can your property manager, who must divide his/her time between several properties.

If you are planning any project of more than \$100,000 in value, you should consider hiring a construction manager.

A good construction manager can save you more than the cost of his fees just by controlling the size and scope of the inevitable change orders.

If he is competent to write specifications and/or prepare drawings for the work, he can smooth out your bidding process by obtaining apples-to-apples bids and setting unit prices for change orders and setting a standard of quality for the work.

He can also keep you from doing or paying for work twice, and ensure that things are done in a timely manner.

Last but not least, he can be the one who has to deal with the complaints from the rest of your membership that will not end until the job is complete. That, by itself, is worth something.

## **ROOF SHOPPING**

or

**(How to save five year's pay with 200 hours of work)**

**by: Greg Feet, Manager, Encina Royale**

**Editor's Note:** As noted in the following article, Greg's association recently completed a major reroofing project. Prior to letting the contract, Greg, his board and staff spent many hours researching and compiling information. He can be reached at 964-4797.

"Watch your pennies, and your dollars will take care of themselves," my dad always told me during root-beer binges where we discussed the ways of the world. So, as manager of a large association in Goleta, my staff and I spend a third of our time trying to save \$100 here, \$50 there. At year's end, all of our efforts might add up to \$20-\$40,000 if we're lucky.

Compare those savings to the 8 bids we received a year ago from highly qualified roofing contractors hailing from Santa Maria to San Diego. Our detailed Scope of Work asked contractors to submit bids for the installation of five roofing material systems deemed, after considerable research, suitable for our project. If I refer only to the roofing material finally selected for our project, the gap between the highest and lowest bid was just over \$500,000. Do the math, and this represents a generation of penny pinching.

This means that you absolutely must devote substantial research into a roofing project and the selection of a roofing installer. Unfortunately, roofing is a subjective science in many ways with each and every installer and material manufacturers citing apocalyptic anecdotes to support why they are the sole candidate who could possibly undertake your project. This ambiguity would seem to point the diligent manager or board member straight to the office of a certified roofing consultant.

Yes, it would seem to. Saint Luke told us that the truth will set you free, but I tell you that only the profitable truth ever escape the lips of the so-called independent consultants who I encountered during my 5-month roofing research. In each case, sooner or later I realized that these independent consultants were firmly predisposed to recommending products and/or installer that they had personal or financial links to.

With that caveat hopefully indelible, the following is the verbal flow chart that I followed—or would follow now—that resulted in the quality installation of 90 beautiful new roofs at a competitive and honest price with no cost overruns.

Our 18-year-old wood shakes on 90 residential buildings (360 condos) were falling apart, leaking, and preventing us from shopping fire insurance, so they had to go. Unfortunately, this realization arrived three years ahead of the reserve schedule for roof replacement. Fortunately, my association had for many years posted conservative replacement figures to their reserve studies, and so the project had a chance of being fully funded if we could just find a good deal. It became clear to me that I needed to totally immerse myself into the nether world of roofing. In an effort to review the industry as a whole, I decided to attend the Western Roofing annual trade show in Las Vegas (this year's was June 6-8; contact Western States Roofing Contractors Association, phone: (650) 548-0112 or (800) 725-0333 for a list of attendees). While I loathe Los Vegas, this convention was beneficial because it gave me the advantage of listening to and comparing the lies and exaggerations of all suppliers equally.

The convention had several productive results:

1. It let me take home dozens of roofing material samples to show my board and residents (if you obtain the convention attendance list and contact individual companies, they'll mail you roofing samples for the asking). Real samples, in available colors, are essential for reaching anything close to board consensus when finally selecting your next roof.
2. The convention exposed me to new technology in the roofing industry. For instance, had I not attended the show, I would not have known about the relatively new design of attic venting called ridge venting, which produces more and better venting.
3. It introduced me to the Roof Consultants Institute and their national directory of so-called roofing professionals, which ultimately provided us with several experts, all of whom spoke with forked tongue but at least kept us from disaster in selecting a roofing product and installer. Contact them at [www.rci-online.org](http://www.rci-online.org) or (919) 859-0742
4. It set me on the path of the independent construction product testing service called the International Conference of Building Officials, or ICBO. The ICBO is essential for verifying, through published independent product test reports, the always exaggerated claims made by roofing material sales reps. Knowing about the ICBO is essential, and the following question will command great respect and even fear when leveled at polished sales reps touting impossible claims of their products; "Do you have the ICBO report on your product?" If a product does not have an ICBO report, this probably means that either the product is very new, or that the company could not invest the testing fee, or that the product would not fare well under objective scrutiny. In either case, I suggest avoiding



any products that do not have an ICBO report. Also, make sure you actually read the report, as many of them indicate different (read inferior) results as compared to the manufacturer's claims. Search the Web for ICBO.

Whether or not you attend the Western Roofing Expo, you should order a few back issues of roofing trade publications such as Western Roofing Magazine, Metal Roof Magazine, or Replacement Contractors. These trade magazines provide great photos and articles on completed roofing projects. Such projects can be contacted in person by phone to determine how a specific product has fared months or years after actual installation. And actual results are the best indicator of product performance. It was through the contact of two such magazine article subjects that we began to feel secure in the performance of several roofing products.

### **How to assess your project:**

If you're simply replacing your roofing material with an identical product, all you have to do is determine (through trade show/magazines/conversations) which one of perhaps 10 to 20 generically equal products is best for you.

However, since most roofs being replaced are 20-30 years old, you may decide on broadening your research to include newer, and proven, products such as certain metals or polymers or thicker, more attractive (and heavier) composite or "asphalt" materials.

If you're going to research the feasibility of newer products, one of your first requirements will be to determine how much weight your roof under-structure can sustain without installing additional support. Wood shakes, no longer allowed by most city codes or insurance companies due to fire hazard, weigh about 300 pounds per square when dry. (A square is 100 square feet, and is a roofing term you'll need to understand and use as if you know what you're talking about). If you're replacing your roof with a product that weighs less than what you're tearing off, your consultation with a structural engineer will be minimal. However, red clay Spanish tiles can weigh 900 pps (pounds per square). Regular (thin) composite (asphalt) tiles weigh about 250pps, and the new thicker, more attractive composite tiles weigh about 450pps. Metal "shakes" are generally about 200pps.

One huge consideration in considering possible roofing materials is whether the tile material requires the installation of solid decking, or plywood, first. Most wood shakes do not have plywood beneath them, but have skip sheathing beneath them (1" x 6" strips of wood with spaces between). All composite (asphalt) tiles and also Spanish clay tiles require plywood supporting them. Many metal tiles do not require plywood underlayment, and you can ask the sales rep or consult the ICBO reports to determine if solid decking is recommended or required. In all cases, plywood adds over 100 pounds per square, but results in a stronger structure against earthquake shifts. If you already have plywood down, any roofing material can be installed over it, but remember that some or much of this old plywood underlay may need to be replaced due to dry rot or termites. Plywood costs have SOARED this year, and if you do not have plywood down, and the product you select requires it, factor in a hefty \$400 per square in additional costs. This fact alone can strongly encourage you to select roofing materials that do not require plywood underlay. This is very important: If you are laying plywood down onto a roof that never had it (ie going from wood shakes to composite (asphalt) shingles), you'd better consult a good engineer or independent (whatever that means) roofing expert to determine the affect that this new airtight "containment" will have on attic heat build up. Installing plywood without consideration for increased ventilation or attic

insulation (against the heat, not the cold) by an aggressive roof salesman can spell disaster for you when your units begin heating up like ovens.

A structural engineer can tell you how much your roof can support in weight. Once you have this information, you'll need to get a ballpark figure for installing different types of acceptable materials.

To do so, you'll need to draft a detailed Scope of Work or Specification Sheet (let's call it SOW, tongue in cheek, but this is not an industry term). Most large roofing material reps can supply you with a "free" SOW or spec sheet, claiming that it will save you \$10,000 in consultant fees. While such corporate provided SOWs do, I believe, provide useful information for your first SOW draft, they should be highly suspect as to their objective content. But collecting such information from three or four roofing material companies is a good start toward completing your final SOW. (Note: at this point in time, I would have no problem providing any South Coast Homeowners Association member with our final Scope of Work, which represents probably 100 hours of thought and revision by many individuals including our attorney). However, our SOW might not fit your project.

The SOW should include all conceivable details and contingencies of the roofing project, including labor, taxes, building permit costs and assignment, wood rot replacement when discovered, gutter considerations, type of underlay felt to be used beneath the tile, damage considerations, warranty by installer and by roofing material provider, payment schedule, and a dozen other vital issues. One piece of information that your SOW should not list is the number of squares to be re-roofed. While you will need to estimate this for purposes of initial discussions, actual squares is a subjective measure and depends on numerous factors, including tile waste and roof details. Instead of stating the squares in your SOW, better to leave that up to the installer and simply list the building addresses that will be re-roofed as part of the project. If a board member begins to insist that the precise squares should be determined by the association, ask her if she provides the square inches on her car before having it painted.

Once you have your Scope of Work or Spec Sheet—hopefully listing more than one roofing material suitable for your project—you'll need to send it out to qualified installers. In our case, we decided to establish this list of qualified installers by contacting the roofing material manufacturers themselves and having them recommend roofing installers who had successfully and properly installed their product on other large associations. Whichever way you decide to compile this list, it should be geographically diverse, as the "good ole boy" network is alive and well in the roofing industry, and limiting your mailing to only local installers could encourage smoke filled room discussions between local installers regarding the "proper and fair price" to bid your project. Note: I do not feel you should fear bids from distant installers, as roofing companies are very well suited to long distance projects, housing their workers in motels for the duration. Certainly it is better to ultimately hire a local firm, but this must be decided based on cost and convenience.

Our Scope of Work went out to 12 qualified roofing companies located between Santa Maria and San Diego. Four of these contractors declined the project, in most cases citing that their insurance did not cover HOA installation. The 8 bids we did receive needed to be reviewed in depth during several committee meetings, and then responded to with requested clarifications and additional information.

In compiling their bids, each of the contractors spent many hours measuring the size of our roofs, with results ultimately ranging between 4,200 and 5,000 squares (this proves why you don't want to state the number of squares in your SOW!)

Once the bids were in and all questions answered, it did not take us long to decide on who to award the bid to. We assigned one of our technically adept supervisors the task of reviewing each roof as it was completed, and I'm glad we did (if you don't have a techy in your pay roster, this is where you might consider hiring a roofing consultant). While the overall work quality was excellent, having our own "inspector" proved beneficial, and taught us the following fine points:

1. Don't expect the county or city building inspector to do any quality control. He's essentially there to justify the building permit fee, in my opinion. At times important building codes were, by accident of the contractor, missed, and never once did the inspector catch it or care.
2. Be aggressive right from the start in inspecting the quality of workmanship. This includes basic layout of the roof system, venting, valleys, and proper sealing of chimneys.
3. Be aggressive from the start in making known your expectations regarding worker safety—their workers, that is. In this irrational world of workmen's comp, anyone can ultimately pay for accidents.
4. Be very clear about how "bad" termite or dry rot damage needs to be for your contractor to replace it. That is, they may not decide to replace dry rot or termite damaged wood when in fact they, or you, should during the removal phase of the old roof. In the end, our own workers found and replaced 57,000 feet of damaged wood that was probably still structurally sound.

At this point in time, with our roofs looking like a million bucks, we're very happy with the material and contractor we chose for this one-year project. Good research and vigilance throughout the entire process is essential.

## **PENDING CALIFORNIA LEGISLATION**

**By: Michael J. Gartzke, CPA  
South Coast HOA Newsletter Editor**

The California Legislature has been busy this year on a number of fronts considering legislation that would have a major impact on the operation of your association. At this writing, all of the following bills have been passed out of their house of origin (Assembly or Senate) and have been sent to the other house for consideration. Of the six bills presented, five passed their house of origin unanimously, indicating widespread support in the legislature. They are now being considered in committee and can be modified further during this process. The legislative term ends on August 31 and the Governor then has 30 days to sign any legislation that was passed. Copies of all proposed bills, committee reports and votes are available on the state's web site [www.leginfo.ca.gov](http://www.leginfo.ca.gov). Unless deemed to be an emergency statute, new laws are effective January 1, 2005.

**AB 1836 – Dispute Resolution** – This law would revise the dispute resolution statutes in the Davis-Stirling Act to clarify that any governing document or legal dispute (not just CC&Rs violations) would be subject to these procedures. The bill encourages associations to use local dispute resolution programs. The bill also specifies what a “fair, reasonable and expeditious” dispute resolution procedure is.

**SB 1581 – Elections** – Elections pertaining to assessments, selection of association board members and amendments to the governing documents would be required to be held by secret ballot. Any instruction given in a proxy that directs the manner in which the proxy holder is to cast the vote shall be set forth in a separate page of the proxy that can be detached and given to the proxy holder to retain. The proxy holder shall cast the member’s vote by secret ballot. A person may not count votes in an election in which he/she is a candidate. Ballots are to be stored for at least one year after the election in a secure place.

Notification of an election shall be made to all eligible members by first class mail between 10 and 60 days prior to the election. If the election is done by mail, it will be done in accordance with Corp Code 7513, notwithstanding what your governing documents say. The written ballots, which the members signatures affixed, shall be timely mailed to an independent third party who shall verify the signature by comparing it to those signatures in records on file with the association. The independent third party shall validate, tabulate and certify the vote. A CPA is considered an independent third party for this purpose.

**AB 2376 – Architectural Review** – This bill would add to the rulemaking provisions enacted last year “any procedures for reviewing and approving or disapproving a proposed physical change to a member’s separate interest or to the common area.” That means that these provisions must be placed in your governing documents or rules. The procedure shall provide for prompt deadlines and state the maximum time for response to an application or a request for reconsideration from the board of directors. The board’s decision shall be made in writing. If disapproved, the decision shall disclose the reasons why.

**AB 2718 – Reserve Studies/ Association Disclosures** – The bill would make a number of changes to how reserve studies are prepared including:

- 1) Disclose how the association will fund reserves (regular assessments, special assessments, borrowing, deferral of repairs, etc.)
- 2) Reserve calculations using straight-line method
- 3) Interest rate on investments limited to 2% above the discount rate published by the Federal Reserve Bank of San Francisco.

Extends the period of time to distribute the operating budget from the 45-60 day window prior to the beginning of the year currently in effect to 30-90 days prior.

Proscribes a specific form to be used called an assessment and reserve funding disclosure summary to be provided to the members.

Disclose whether the currently projected reserve account balances will be sufficient at the end of each of the next 30 years to meet the association's obligation to repair or replace major components.

If the balances are insufficient, a disclosure is required as to when additional assessments would be required and how much would be required per unit per month.

Disclose what major components that the association is responsible for that are not being provided for in the current reserve funding.

Disclose the current reserve funded amount and based upon the "simplified" or alternative method of funding, the "required" amount in the reserve fund.

Estimates of the useful life or cost of replacement or repair of major components shall be obtained by a qualified person. A qualified person is one that is licensed as a general contractor or other licensed profession that would allow the person to install, construct, repair, restore or replace a major component on behalf of another.

Would require that all of the disclosures currently made under Section 1368 (during a sale) be maintained in electronic form and the requesting parties shall have the option of requesting them by electronic transmission or machine readable storage media.

These provisions would apply starting July 1, 2005.

This bill applies to all associations no matter what size. It would reduce the number of people eligible to do reserve studies or in some cases require the services of two professionals, one contractor and one financial, to provide the services. Providing documents in electronic form could be burdensome for some associations, especially those that are self-managed.

**SB 1682 – Nonjudicial Foreclosure** – This bill along with the following bill AB 2598 have created the most controversy among association professionals. This bill would provide that if an association of 25 units or more seeks to collect a delinquent assessment of \$2,500 or less (not counting late fees or interest, etc.), it would be prohibited from foreclosing to collect the debt. The association would have to file in small claims court or record a lien that it could not foreclose. If a lien is filed and the owner requests, binding arbitration would be required to establish the amount that the association is owed and what the lien could be recorded for. Should the balance exceed \$2,500, a decision to foreclose the lien would be required at an open meeting of the board of directors. Should the association pursue nonjudicial foreclosure, then an amount equal to the owner's homestead exemption would be protected from collection. A 90-day period of redemption would also be required. Only effective if AB 2598 also passes.

The notice provided to members regarding association collection policies would be revised to take these new procedures into account.

**AB 2598 – Signs, Records Inspection, Nonjudicial Foreclosure** - The bill would extend the new laws pertaining to the display of signs and banner in a member's separate interest to exclusive use common area.

The new records inspection law would be modified to allow court costs and attorney fees to be awarded to a member if it is deemed by the court that access to accounting records was unreasonably withheld. Would expand the definition of records to include all contracts to which the association is or has been a party along with invoices, receipts, check registers, cancelled checks, purchase orders, accounting books and records, internal accounting statements, bank statements and common area maintenance records.

The bill would permit the return of increased assessments to the members if the association did not comply with the disclosure and notice requirements in distributing budgets. A prior version of this bill would have limited assessment increases to the California Consumers Price Index. That provision is no longer in the current version of the bill.

For liens filed after January 1, 2005, nonjudicial foreclosure would no longer be an option to collect past due assessments.

The bills relating to foreclosure arose from some “war stories” about associations and their professionals who foreclosed on property where there was only a small debt owing. In the instant case, Thomas and Anita Radcliff owed \$120 to their rural Calaveras County association for the annual assessment. The association assessed late fees and five months later the owners paid \$156 to the association only to have the association return the check because they had already turned the assessment over to collection, and according to newspaper reports, the check was \$1.50 short, according to press reports. The property, worth an estimated \$279,000 was foreclosed upon and sold for \$70,000. According to SB 2598 author, Assemblyman Darrell Steinberg, that there is an old legal maxim that the punishment should fit the crime. There is another legal maxim too and that is that bad facts make bad law. No one that I have talked to can imagine that this collection activity could have occurred by responsible people. The proposed legislation would make it more difficult for all California associations to collect their assessments, especially in a down real estate market. Some members would use these proposed rules to delay paying assessments since the only other viable option would be to spend the time to go to small claims court, get a judgement and garnish wages, all of which costs precious time and money. Mr. Steinberg was quoted in an AP story that you could do exactly that and that would be an effective collection remedy for you.

What is interesting about these foreclosure laws is that ECHO (Executive Council of Homeowners) and CAI (Community Associations Institute) have taken different positions with respect to nonjudicial foreclosure. ECHO’s position is that nonjudicial (no court) foreclosures are not a viable option to collect assessments and that judicial (court) foreclosures are the only way to go. CAI strongly advocates keeping the nonjudicial foreclosure remedy available.

Many of these bills will be heard in committees during June before a scheduled July recess. You are encouraged to contact our state legislators, Assembly members Jackson and Maldonado and Senators McClintock and MacPherson and let them know your positions on these bills. Chances are that they have not heard from their constituents on these matters and as these bills come up for committee and final vote, your input may be helpful as it comes from sources other than the lobbyists and other usual suspects.

**California Law Revision Commission May Be Dissolved** – The California Law Revision Commission, which is a non-partisan organization that receives assignments from the

Legislature to propose changes in state law through careful study. Over the past 50 years, it has made 350 major recommendations to the legislature. 328 of these have been signed into law. For the past 2-½ years, it has been studying the Davis-Stirling Act and the rulemaking and architectural control changes in the law have been a result of their efforts. The Commission is also currently working on financial privacy laws, estate and probate issues and unfair competition laws. It has a staff of four people and a budget of \$550,000 per year.

The Governor has proposed eliminating all state commissions, including this one, to achieve General Fund savings, effective January 1, 2005. The commission says it has a nearly 5-year backlog of projects already in hand. Several, like the Davis-Stirling revisions, halfway done.

**State Withholding Tax May Be Required on all Payments Made to Independent Contractors** - From Spidell Publishing – June 3, 2004 – A state Senate budget subcommittee has proposed language to require withholding on resident independent contractors as a way to generate revenue. Independent contractor withholding would have to be approved by the Governor. The current proposal would be to withhold 2% on all payments made to independent contractors. Failure to withhold would make the payer liable for the withholding.

So that would mean that payments for which you provide a 1099 for, such as maintenance and professional services would be subject to a 2% withholding that you would have to remit to the Franchise Tax Board. For example, on a \$1,000 job, you would withhold \$20 and then pay it over to the Franchise Tax Board. If your contractor is paid \$200 per month, then you would withhold \$4 from each payment and forward it to the FTB

So, if all this legislation passes, will your job as a board member be easier or more difficult? Will your professionals be able to do their job faster (and for less money) or will it take them longer (and they have to charge more)? What level of compliance will be achieved by our self-managed associations or even professionally managed ones for that matter?

While I was tracking these bills since early this year, the potential impact of the magnitude of what is on the table was driven home when I attended the ECHO Annual Seminar last June 12 in Santa Clara. Presentations were made on several of these bills and attendees (mostly board members) were able to ask questions. ECHO's Annual Seminar may be one of the best attended conferences for homeowner association board members in the country. I was asked to substitute as the moderator (introduce the speaker, end the program on time, etc) for the basic legal class at 9 AM. There were 150 chairs in the room and I didn't think they would even come close to filling them since three other classes were given concurrently. 170+ people attended that opening session, nearly all board members like you. Over 100 vendors had trade show booths and were available to ask questions. Any industry that provided services to associations was represented in the Trade Show. I had the opportunity to speak to contractors about some new insurance exclusions they have on their liability policies when it comes to working with HOAs and I attended a session on risk management where information was provided about how certain insurance coverages work and how they are voided. Perhaps that's another article for another newsletter. Information about ECHO and CAI memberships appear at the end of this newsletter.

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**PROFESSIONAL MEMBERS**

If your ad no longer appears here, then we did not receive an ad renewal for 2004. If you would like your ad to start in the next issue and run for the balance of 2004, please remit \$75 to us at the address on the front of the newsletter. Approximately 200 newsletters are mailed each month and countless copies are emailed to association board members.

**CONDOMINIUM BLUEBOOKS**

Additional copies of the 2004 Condominium Bluebook are available for \$16 each postpaid. We have approximately 5 books left.

**ASSOCIATION MEETING CALENDAR**

**July 27** – South Coast HOA – Summer Legal Forum – Holiday Inn, Goleta 7 PM

**October 2** – CAI – Channel Islands Chapter Annual Expo and Conference – Oxnard/Ventura – 9 AM – 1 PM

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