# *SOUTH COAST HOMEOWNERS ASSOCIATION*

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**Volume 16, Number 4** **August 2003**
**Michael J. Gartzke, CPA, Editor**

IN THIS ISSUE



## NEXT SOUTH COAST MEETING – ASSOCIATION FINANCES DISCLOSE, DISCLOSE, DISCLOSE!

It's been a while since we had one of our meetings devoted to association finances. Discussion topics will include Civil Code requirements for disclosing association finances to the members as well as the board, budget basics, interpreting financial information (how to read financial statements), reserve study questions including calculation methods, percent funded and the integration of reserve information into your annual budget. As always we will set aside time for your questions.

**DATE – Tuesday, September 23, 2003**
**TIME – 7 – 9 PM**

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

**SPEAKERS – Chris Andrews, Stone Mountain Corporation**
**Michael Gartzke, CPA**

**COST - None**

## NEXT MONTH – SPECIAL BUDGET/FINANCE ISSUE

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

# BOARD BASICS - ANNUAL AND SPECIAL MEMBERSHIP MEETINGS

**By: William S. Dunlevy, Esq.**
**Law Offices of William S. Dunlevy**

Editor's Note: Mr. Dunlevy is an experienced community association law attorney whose practice is in Camarillo. He is the current President of the Channel Islands chapter of the Community Association Institute (CAI) and has served the organization in many ways including magazine editor for *Channels of Communications*. This article appeared in the January 2003 issue of the chapter magazine and is reprinted here with his permission. Questions can be directed to him at 383-6200 or DunlevyLaw@aol.com.

California community associations are typically required to hold at least one membership meeting per year. Associations may also be confronted, from time to time, with the need to hold special membership meetings to address specific topics.

What are the requirements for these meetings? What happens if an annual meeting is not held when it is supposed to be? Who can call a special meeting of the membership? These and other questions related to annual and special membership meetings will be covered in this article.

## ANNUAL MEMBERSHIP MEETINGS

California Corporations Code Section 7510(b) provides that a "regular meeting of members" shall be held on a date and time, and with the frequency stated in or fixed in accordance with a corporation's bylaws. For most community associations, this requirement means that the association will be holding one annual membership meeting at a date and time fixed by the association's bylaws. Some bylaws are quite specific as to the date and time for the annual meeting (*e.g.* "the first Tuesday in October of each year at 7 p.m. unless that day is a holiday and the meeting shall then take place on the next business day"). Other association bylaws are less specific and establish a time frame within which the annual meeting must be held (*e.g.* "during the month of May each year at a date and time set by the board of directors, which shall not be a legal holiday").

In light of Corporations Code Section 7510(b), the first place to look in setting the annual membership meeting will be the association's bylaws. If the bylaws do not set a specific date or range of dates for the annual meeting, the association should look to its past practice in setting the date for the annual meeting. For example, some associations, as provided in their bylaws, originally set their annual meetings within a certain number of days following the close of escrow on the first lot or condominium unit. These associations should attempt to set their annual meetings as close as practical to the preceding year's annual meeting.

## FAILURE TO HOLD ANNUAL MEETINGS

What happens if the association fails to hold its annual meeting in accordance with its bylaws or past practice? In that case, the Corporations Code allows a grace period for the meeting to be held. This grace period, found at Corporations Code Section 7510(c), provides that the association may hold its annual meeting within sixty (60) days after the date designated in the bylaws or, if no date has been designated, within fifteen (15) months after the formation of the

association or after its last annual meeting.

But, what happens if the association fails to hold its annual meeting within the applicable grace period? In that case, the local Superior Court has the authority to order the meeting to be held upon the application of any member, after notice to the association giving it an opportunity to be heard. Therefore, any member desiring to see the annual meeting held would file a petition/application with the local Superior Court and give written notice to the association. The court would then hold a hearing and determine if it should order the annual meeting to be held and under what circumstances.

**SPECIAL MEMBERSHIP MEETINGS**

Who has the authority to call special membership meetings? What are the rules and procedures involved in holding special membership meetings?

Corporations Code Section 7510(e) provides that special meetings of members for any lawful purpose may be called by the board, the chairman of the board, the president, or such other persons if any, as are specified in the bylaws. Most association bylaws specify one or more officers who may be entitled to call special membership meetings on their own authority. Further, many association bylaws also specify that a designated number of board members (*e.g.* two, three, etc.) may call a special membership meeting.

In addition to the board and officers, Corporations Code Section 7510(e) states that special membership meetings for any lawful purpose may be called by five percent (5%) or more of the members. This provision is not tied to the association's bylaws and, therefore, any higher percentage of owners required in the association's bylaws is null and void. Many older associations, particularly those incorporated before 1980, contain higher percentage requirements for special membership meetings called by the members (*e.g.* 20% or 25%). Associations with these higher percentages in their bylaws should be aware that the five percent (5%) of Corporations Code Section 7510(e) overrules and replaces the higher percentages in such bylaws.

Are there specific procedures required for the scheduling of special membership meetings? Yes, the special procedures are found at Corporations Code Section 7511(c). This code section provides that upon written request to the chairman of the board, president, vice president, or secretary by any person (other than the board) entitled to call a special meeting of members, the officer shall cause notice of the special membership meeting to be given at a time and date fixed by the board. The board has a window period of not less than 35 nor more than 90 days after the receipt of the written request in which to set the special meeting. If notice of the special meeting is not given within 20 days after receipt of the written request, the persons who submitted the request may then schedule the meeting and give proper notice to the owners. Alternatively, the local Superior Court may order the notice to be given upon application from any member, after notice to the corporation giving it an opportunity to be heard.

# COMMON QUESTIONS & ANSWERS ABOUT RESERVE STUDIES – Part II

***By: Chris Andrews – Stone Mountain Corporation***

Editor's Note: Chris has been preparing reserve studies for over 10 years and is a frequent contributor to our newsletter and has given numerous programs for us as well. Chris can be reached at 681-1575 or at smc@west.net

In the prior issue of the SCHA Newsletter, we discussed some common questions and answers about reserve studies. In this issue, we address some less common reserve study questions and suggest some possible solutions.

1. ***Most reserve studies include costs for future roofing, paving, pool, etc. in their calculation for future reserve funding. Can our reserve study have a line item for miscellaneous unforeseen reserve expenses, like a "contingency?"***

In the eyes of the IRS, most mutual benefit non-profit corporations such as homeowners associations should not be in the business of generating a profit. To uphold the non-profit status of your association, the association's reserve account funds are ultimately to be used only for reserve expenses. The IRS doesn't want associations to be accumulating excess capital beyond that needed for future reserve expenses.

In order to adhere to the IRS's rules, there should be a correlation between the amount of funds held in your reserve account and the future reserve expenses for which they are intended. So if in addition to accumulating funds for "legitimate" reserve expense categories (such as roofing, paving, and fence replacement), your association is accumulating funds for a vague category that the IRS suspects is a catch-all category for "excess revenues" or profits, they may call your non-profit status into question.

In order to justify saving some extra funds in reserves for expenses that are perhaps unknowable at the time of the reserve study, some tax professionals recommend setting up a reserve item called "Unscheduled Replacement." In the reserve study, the description for the Unscheduled Replacement item can enumerate possible future reserve expenses that might fall in this category and establish an aggregate estimated cost for them. In this way, at least an effort has been made to satisfy the IRS's expectation that it is your association's intent to operate in a non-profit manner.

If these contingency expenses are handled in this way, your association would also be essentially compliant with respect to California Civil Code § 1365(c)(1) which requires that the use of reserve funds must be for reserve expenditures "for which the fund was established." In other words, a reserve expense item must be first listed in the reserve study before reserve funds can actually be expended for that item. If such reserve expense items were listed in the reserve study as "unscheduled replacement" items and an attempt was made to enumerate what those expense items might be, then one would assume that your association can legitimately claim that reserve funds were established in the reserve study to pay for those items.

Editor's Note: You should consult with your CPA or tax preparer to see if the foregoing is applicable to you. Many smaller associations that file IRS form 1120H (as opposed to Form 1120) are not concerned about IRS classification of reserves.

2. ***If the association encounters an expense that technically should be a reserve expense, but was not listed as such in the reserve study, can the association simply go ahead and pay for that expense using reserve funds anyway?***

Per California Civil Code § 1365(c)(1) as described above, your association is not allowed to use reserve funds to pay for expenses that haven't been designated as reserve items in the reserve study. When you encounter a surprise expense that should be a reserve expense, you have two choices:

- Per California Civil Code § 1365(c)(2), your board can authorize a temporary transfer of funds from your reserve account to the operating account to pay for the new "reserve expense." To do so, you have to provide a written justification for the transfer in your minutes and indicate how and when the funds will be repaid to the reserve account. These funds must generally be repaid to the reserve account within one year of the date of the initial transfer of funds.
- Preferably, you should have your reserve study redone so that it incorporates the newly-encountered expenses that should be funded via reserve funds. Once the revised reserve study has been approved by the board, those items become, by definition, scheduled reserve expenditures. If it a reserve expense now, it will be a reserve expense when it needs to be done again in the future.

***3. How can an association adequately reserve for dry-rot, water intrusion, and internal building structural repairs which can be enormous in an older building but which may or may not occur? Are there reserve expenses that cannot be reserved for?***

Civil Code 1365 requires that reserve studies include items that have a useful life of less than 30 years. In a new association, whether or not dry-rot, water intrusion, and internal building structure repairs will occur in the next 30 years is essentially unknowable. Some buildings are constructed such that these types of problems don't occur for many years, if at all. But in other buildings, it becomes apparent sooner or later that these problems exist and may get worse.

Before these problems do manifest themselves, the repair costs can be extremely difficult to predict. For example, if you discover a water-intrusion problem, you might initially think you simply need to correct the water intrusion problem and repair a few structural members in the wall. However while doing the repairs, your contractor says you also have a festering mold colony that will require costly mold abatement remedies. When most homeowners associations encounter such problems, they readily agree that there is no way they could have foreseen that such expenses were going to occur.

Likewise in a reserve study, there are future events that are essentially unknowable, so your reserve study is a projection of likely events, but it is not a prediction.

How can you budget for these unpredictable events? Although you certainly cannot predict accurately how much a future unknown problem is going to cost to fix, you can make an approximate estimate of how much reserve funds to allocate for the unknown future events in your reserve budget if you wish to be conservative. However, in practice, most boards cave in to resistance to member fee increases and opt to fund such unpredictable events via special assessments and then simply hope for the best.

Are there reserve expenses that cannot be reserved for? Any legitimate reserve expense can be reserved for. The question is how much is reasonable and in what time frame.

For example, if one can assume that a wood-framed stucco building may last 90-100 years or more, should we budget reserves for the eventual replacement of the entire building now? If we interpret California Civil Code 1365.5 word-for-word, we are not required to fund extremely long-term items such as complete building replacement because the 90-100 year life of most structures in contemporary associations exceeds the 30-year look-ahead period required by the State.

However as your buildings come within 30 years of the need for a complete rebuild, The Civil Code would require you to start reserving funds for that major project. There is a difference between what is "required" and what is "prudent." Since a major rebuild is going to be a large expense, being prudent might mean starting to fund the rebuild efforts 40 years before the actual event in order to defray the large cost over more years and ease the burden upon those homeowners who will be living there in the last 30 years. However, that would be something the board (and perhaps the membership) would have to agree to do. Since it is not required by law, it may be difficult to garner support from anyone to chip in now for a rebuild event 40 years from now.

### *4. Is it reasonable for an association to budget in the reserve study a line item for an amount equivalent to the earthquake insurance policy deductible?*

The building replacement portion of most association insurance policies usually provides for the rebuilding of your residences and common structures (e.g. clubhouse) in the event of a catastrophic destructive event such as earthquake. There is usually a 10% or 20% deductible, so for example, if it costs $200,000 to rebuild your association's clubhouse which was destroyed by earthquake, and your association's insurance policy has a 20% deductible for building replacement, your association would have to come up with $40,000 to satisfy the deductible and then the insurance company would pay the remaining $160,000 to reconstruct the clubhouse.

The question is whether or not the association should try to build up $40,000 in reserve for a hypothetical catastrophic event such as earthquake or fire. Most associations don't include a provision for a deductible as a line item in their reserve study because the statistical likelihood of catastrophic destruction is so low that it is nearly negligible. Consider, for example, of the more than 30,000 homeowners associations in the State of California, how many associations have been completely destroyed by earthquake in the past 40 years? Not many.

That's not to say that there may be some very concerned homeowners associations who insist on having a line item in their reserve study to fund their catastrophic destruction deductible, but they also must be willing to accept significant fee increases in order to implement that policy and the funds may never be used.

If you opt to fund the deductible amount (e.g. $40,000 in the above example) in your reserve analysis calculations, you are implicitly declaring that you fully expect a catastrophic event to occur in the next 30 year period that would trigger the need for the insurance deductible. While it may be rational to project that a 30-year roof will last 30 years and budget accordingly, some of your members may disagree on the statistical likelihood of a catastrophic event occurring within the next 30 years. They may not be willing to pay higher fees in order to save funds for that hypothetical catastrophic event. Rather, they typically indicate preference for a special assessment in the event a catastrophic event occurs. Many owners can get a "loss assessment" rider on their own insurance policy to cover a portion of such a special assessment.

5. ***How can members of the association be ensured that a future board will maintain the integrity of the reserve fund and not use these funds to reduce assessments or do elective projects that are not in the scope of the reserve study?***

There is no foolproof way to ensure that future boards will maintain the integrity of the reserve fund and that they will follow the long-range reserve budget that you may have painstakingly developed.

However, there are some measures you can take to ensure a high degree of fiscal responsibility by future boards:

- ✓ Make sure two signatures are required for all checks drawn on the reserve account. This is required by California Civil Code § 1365.5(b).

- ✓ Make sure future boards review the association's financials on a quarterly basis per Civil Code 1365. This includes recent reserve account bank statements, reserve bank account reconciliations, and reserve income & expenses.

- ✓ Establish a finance committee to oversee the actions of the board.

- ✓ Draft a transition policy requiring certain financial guidelines to be explained to incoming board members by outgoing board members each year. The guidelines should enumerate reserve account policies and reserve funding plans. They should educate incoming board members about the distinction between the operating budget and the reserve budget. They should also be informed that a reserve study is required every 3 years with annual reviews or updates in interim years.

  Outgoing board members should also explain the reserve study to incoming members, including how the reserve study determines the annual reserve funding, whether or not there is an assumed cost-of-living increase in next year's reserve budget that they will need to implement, what reserve expenses are forthcoming, and what are the assumptions in the reserve study (e.g. in your association, perhaps fumigation and

balcony deck surfaces are considered to be the responsibility of the owners and are therefore not a part of the reserve budget).

- ✓ If you are no longer a board member, attend board meetings regularly to ensure that the current board is following the guidelines you have set up.

6. ***Should associations invest funds in stocks and mutual funds?***

Fortunately, most board members are not asking this question as often as they did prior to Year 2000 when just about anyone could have randomly picked stocks that would have yielded hefty returns. Now, in the wake of a brutal 3-year decline in U.S. stock markets, it has become apparent to many associations that investing their precious reserve funds in stocks or mutual funds carries great risks and is not advisable.

Board members need to consider that they may be held responsible for poor investment decisions if they opt to place association funds in a stock or mutual fund that loses money. Granted, there is a certain degree of protection afforded individual board members who volunteer their services as board members, but they may have to defend themselves in the process if there are members who become disgruntled about poor management of funds, so it is best not to expose yourself or your association to such risks.

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## CALIFORNIA LEGISLATIVE UPDATE

As usual, a number of bills were introduced at the beginning of the legislative session that if signed, will impact your homeowners association. Even though the Legislature has been "distracted" by the lack of a budget and the pending recall election of the Governor, several bills are making their way through the legislative process. August is usually a month of high activity in the Legislature as the session is scheduled to end in early September. Some bills may be carried over to next year.

### SIGNED INTO LAW – EFFECTIVE NOW

**AB 1423 – Common Interest Manager Requirements – Urgency statute**

This bill would "clean up" the manager's certification bill that was passed last year. Enacted as an "emergency" statute, this bill is effective now. In order to be called a "certified common interest development manager", the manager (not the management company) must have done one of the following:

1) Prior to July 1, 2003 have passed an examination given by an organization of common interest development managers or have been granted a certification by such an organization and within five years prior to July 1, 2004, received instruction in California law pertaining to common interest developments.

2) After July 1, 2003, have successfully completed 30 hours of coursework in common interest development law and management and passed an examination on these areas.

On an annual basis, starting no later than September 1, 2003, a person (not the company) who provides services as a common interest development manager must disclose the following to the board of directors:

a) Whether the manager has met the requirements of Business and Professions Code Section 11502 so he or she may be called a certified common interest development manager.

b) The name, address and telephone number of the professional organization that certified the manager, the date the manager was certified and the status of the certification.

c) The location of his or her primary office

d) Prior to entering into or renewing a contract with the community association, the manager shall disclose to the board of directors whether the fidelity insurance of the manager or his employer covers the operating and reserve funds of the association.

e) Whether the manager has an active real estate license (agent, broker, etc.)

## PASSED ASSEMBLY – IN THE SENATE

### AB 1525 – Common Interest Developments: Signs

This bill, sponsored by the American Civil Liberties Union, would restrict the association's ability to regulate noncommercial signs in the common interest development. If passed, your association's governing documents could not prohibit the posting or displaying of noncommercial signs, posters, flags and banners on or in an owner's separate interest, except as required for the protection of public health or safety or if the posting or display would violate a local, state or federal law.

A noncommercial sign may be made of paper, cardboard, cloth, plastic or fabric, and may be posted or displayed from the yard, window, door, balcony or outside wall of the separate interest, but may not be made of lights, roofing, siding, paving materials, flora or balooons or any other similar building, landscaping or decorative materials or include the painting of architectural surfaces.

An association may prohibit noncommercial signs and posters that are more than nine square feet in size (e.g. 36 inches x 36 inches) and noncommercial flags and banners that are more than 15 square feet in sizes (e.g. 3 ft x 5 ft).

### AB 104 – Common Interest Developments – Account Books

This bill would require an association to make the accounting books and records, and the minutes of proceedings of the association available for inspection and copying by a member of the association, or the member's designated representative at the business office within the development or a place where the association and mermber agree upon. The bill would permit the association to satisfy these requirements in some cases of the requested records

by mail. The association may bill the member the actual reasonable costs of copying and mailing the documents. The bill would allow the association to withhold information from the accounting books and records and minutes when the release of the information is likely to lead to identity theft, fraud in connection with the association, or is privileged by law with the specified exceptions regarding employee compensation and vendor and contractor compensation. A civil penalty of up to $500 can be imposed for each violation.

According to Assemblyman Lowenthal, the bill's author, there is no remedy for homeowners who face obstructive boards other than to continue to request access to the association records. Homeowners should not have to face gamesmanship from boards that claim that the records are with the management company, located possibly hundreds of miles away. The bill does not define accounting books and records but it would appear to be more detailed (invoices, cancelled checks, etc.) than is what is commonly defined as accounting books (general ledgers, bank statements). This bill is supported by the Congress of California Seniors and Gray Panthers California.

The California Association of Community Managers (CACM), CAI and ECHO have all come out in opposition to this bill due to the divulgence of the exact amount of employee compensation. Professional managers object strongly to the release of their personal financial information. According to CACM, to mandate that personal financial information be revealed runs counters to the :Legislature's repeated stated intent to protect people's financial privacy when the revelation of such information serves no public policy purpose. In addition, CACM is concerned that divulging specific amounts paid to vendors and contractors will place the Association in a disadvantageous situation next time they bid such a contract.

The Assembly version of the bill passed 73-1 earlier this year.

**AB 512 – Common Interest Developments – Rule making procedures**

This bill, which is the first recommendation from the California Law Revision Commission that has been reviewing the Davis-Stirling Act for the past 2 years, would add provisions concerning procedural fairness in decision-making and rulemaking by associations. The bill would add requirements regarding operating rules relating to the use of the common area, the use of a separate interest, member discipline, standards for delinquent payment assessment payment plans and the resolution of assessment disputes. Criteria would be established for a valid operating rule, require that a member have notice of rule proposals, and provide an optional emergency rulemaking procedure. The bill would also define how documents can be delivers (e.g. personal delivery, first-class mail, email, newsletter, TV programming, etc.)

In certain circumstances, this bill would allow a special meeting of the members be called by 5% of the members to reverse a rule change if the notice is received by the Association President or Secretary within 30 days after receiving notification of the rule change. The rule change could be reversed by a majority of votes at that meeting (assuming a quorum is achieved).

# MANDATORY RECYCLING PROGRAMS FOR UNINCORPORATED AREAS

## EXCERPTED FROM MEMORANDUM – COUNTY OF SANTA BARBARA PUBLIC WORKS DEPARTMENT – SOLID WASTE AND UTILITIES DIVISION

Editor's Note: By including "multi-family dwellings" in this program, it would appear that associations that include trash service in their assessments will be subject to this program if they are not located within the city limits of any city in Santa Barbara County.

Effective, September 1, 2003, the County of Santa Barbara will be implementing a mandatory commercial recycling program for businesses and **multi-family dwellings** in the unincorporated areas of Santa Barbara County (e.g. Orcutt, area between Santa Barbara and Goleta, etc.). Under this program, materials currently accepted under the residential recycling program (excluding green waste) will be prohibited from being disposed in the trash. By actively participating in the program, businesses and multi-family complexes have the opportunity to decrease or maintain their existing trash costs.

After assessing the available space for recycling containers, the business owner (association) should arrange a meeting with the franchised waste hauler that provides trash service to the owners' buildings. During this meeting, a determination will be made regarding the type of recycling containers that will be needed, their placement, and the frequency of service.

Waste haulers will conduct random checks of each business's trash containers during the grace period ending February 29, 2004. Periodic checks will be conducted after the end of the grace period. If a business owner refuses to recycle or has unacceptable high levels of of contamination in his recycling container, a non-compliance fee of 20% of the trash service rate will be imposed. An unacceptable level of contamination will be considered to be 25% or more of the commingled recyclables collected. The trash hauler's drivers and/or County staff will determine the level of contamination.

The county, is conjunction with the waste haulers, will be conducting extensive public education and outreach efforts prior to and during the implementation of the program. A letter briefly explaining the purpose of the mandatory commercial recycling program and the resources available to help business owners start a recycling program will accompany a brochure that will be mailed to each business owner.

In addition, flyers that describe the purpose of the program and list the types of materials that can be recycled will be provided to business owners for distribution to their employees. Business owners will also be provided with posters containing the same information as the flyers for display on their premises.

If you have any questions, please contact Alan Nakashima, Program Specialist for the County of Santa Barbara Public Works Department, Solid Waste and Utilities Division, at 805-882-3616 or by email – anakash@co.santa-barbara.ca.us.

# HOA'S ARE ESPECIALLY VULNERABLE TO LAWSUITS REGARDING MOLD CONDITIONS

By: Tony Vassalo, President, Las Canchas Owners Association, Carpinteria

Editor's Note: Mold issues and remedies continue to cause some associations problems. Consider involving your legal counsel in any process or procedure that you use in dealing with mold issues in your association. Tony can be reached at P. O. Box 50254, Santa Barbara, CA 93150 or call 805-684-0097 for cost and additional information.

Mold is a naturally occurring part of our environment and is everywhere including the air we breathe. **Insurance companies are no longer covering mold related claims**; HOA's are especially vulnerable to lawsuits over claims made by unit owners and tenants that mold conditions made them sick. Because mold **lawsuits are escalating** (since 2000), the insurance industry's message to HOA's is "you're on your own if someone sues you over mold."

I am keen on insuring that my association is ahead of the curve on the mold issue. I have prepared and copyrighted a new *Moisture and Water Intrusion Policy* which not only provides a systematic process for dealing with moisture and mold matters as they arise, but also helps HOA's curb lawsuits from unit occupants' claims of mold related illness.

Prevention is the primary key to insuring success in dealing with moisture problems. HOA's can do this by annually reviewing and testing the condition of their facilities interior plumbing systems and exterior rain and storm drainage systems. HOA's can also insist that more rigorous analysis be accomplished when performing Reserve Studies, documenting the life expectancy and replacement cost of any facility infrastructure that moves water. Funding should be planned and systems replaced before they fail.

Should any plumbing leak, moisture or water intrusion arise in a facility, the policy provides for quick **categorization** of the scope of problem AND the appropriate **response** to be taken by management and other professionals. The responsibilities of the HOA unit owners, future buyers and owners' tenants or other occupants are clearly delineated. What makes the policy unique is the provision of a series of "hold harmless" waivers that contain limitation of liability and indemnification obligation clauses intended to **protect the HOA from lawsuits over mold and moisture related problems.**

**THREE CRITICAL PROVISIONS:** The first requires new buyers (as a condition of purchase) to execute a *Mold Disclosure and Limitation of Liability* waiver before the close of escrow and prior to occupancy. The second requires unit owners to execute and file a similar waiver when their current tenant's lease expires, if the tenant intends to hold over. The third requires unit owners to execute and file a waiver with management when they lease to any new tenants. New tenants must sign the waiver and the unit owner must file it with management prior to occupancy. This documentation has the legal strength necessary to help protect your association from the serious and real threat of mold related lawsuits.

These are in a ready to adopt form by simply adding the name of your association. Revisions may be made for the exclusive use of your association by your association's legal counsel.

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