

# SOUTH COAST HOMEOWNERS ASSOCIATION

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## UPCOMING MEETINGS

**Community Associations Institute Annual Trade Faire and Educational Sessions – Monday, October 29 - 5:00 – 9:00 PM – Radisson Hotel, Oxnard, CA**

This year’s Trade Faire is called, “Nightmare on Association Avenue” and follows a Halloween theme. Over 40 vendors will be available to discuss their services with you starting at 5PM while the educational programs start at 7PM. See the enclosed registration form with this newsletter. This is one of the best programs available to board members out there and is well worth an evening to attend. I plan to be there and hope to see you there.

## NEWSLETTER DELAYS

Please accept my apologies in the delay of issuance of this newsletter. This is the busiest summer I can remember for my practice and like you, I have many other responsibilities, obligations and volunteer activities. I have gotten seriously behind in meeting my obligations to South Coast members and will endeavor to become better organized and back up to speed. I welcome articles from board members as well as our other professional members. Please call if you have an idea for an article to share with the South Coast membership.

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

## **IRS ALLOWS ONLINE OPTION FOR PAYING FEDERAL TAXES**

IRS announced that it will now accept federal tax payments from businesses, including homeowner associations as well as businesses, through a website that it launched in early September. For the first time, the IRS will be able to accept tax payments through the Internet from taxpayers directly.

This secure website system is part of the Electronic Funds Transfer Payment System that IRS has used in the past for business taxpayers to make tax payments over the telephone. To enroll in the program, go to [www.eftps.gov](http://www.eftps.gov). You will need the association's taxpayer identification number, bank account number on the account that will be debited for the tax payment and the bank's routing number which appears on your checks before the account number. Check with your bank if you are not sure of its routing number. Within 2-4 weeks of enrolling, the association will receive a confirmation package that will include a unique personal identification number and directions on how to obtain a password for the system.

You then log on to the same website, [www.eftps.gov](http://www.eftps.gov) and follow the prompts for make a payment using the password and identification number. A menu allows you to select the federal tax that you wish to pay (1120 – corporate income taxes or 941 – federal withholding taxes, for example), the tax period for the payment (1<sup>st</sup> quarter, 2<sup>nd</sup> quarter, etc.) and the date that the payment will be transferred to the US Treasury. A EFT Acknowledgment Number confirming the transaction will be transmitted to you instantly via the Internet which you can print out as a receipt for the transaction.

Payments can be scheduled up to 4 months in advance for associations and businesses and up to one year for individuals. A great feature of this system will allow taxpayers that have signed up for this program to access their last 4 months' payment histories in the event that you are unsure about what was paid. Hopefully that history will expand to one year or more. I can't tell you how many people gave me incorrect estimated tax payment information last year when I did their personal tax returns which resulted in annoying correspondence from the IRS.

This online program began as a pilot program in 2000 and has been tested. \$2 billion in tax revenues have been collected this way. The telephone program has been in place for 5 years and \$6 trillion has been paid to the IRS through this method.

This program is useful for associations. It eliminates making a check payable to the bank for taxes, preparing a tax deposit coupon and taking it to the bank.

## **SECRETARY OF STATE – STATEMENT OF OFFICERS – DUE EVERY TWO YEARS - Corporations Code Section 8210 – amended by SB 284 – Effective – January 1, 2000**

The statement of officers and agent of service of process filing with the Secretary of State is now done every two years rather than annually. This form is the one where you list the

association's officers, agent for service of process (who gets the papers when the association gets sued) and the managing agent of the association if it has one.

Failure to file this form timely can result in a \$250 penalty imposed by the California Secretary of State via the Franchise Tax Board. Even worse, failure to file this form can result in the corporation's powers to be suspended.

Suspension of corporate powers will result in the association not being able to enforce contracts and collection actions or sue for defect remediation or any other cause.

Some commentators estimate that 10-20% of associations in California have been suspended by the Secretary of State. The author is working with a 5-unit association that was suspended in 1986 for failure to file Form 199. That was the last year that tax-exempt corporations had to file the form if their gross receipts were under \$25,000. Another association was suspended in 1984 for failure to file the Annual Corporate Statement, one year after it incorporated. Filing statements in subsequent years does not automatically reinstate the corporation. Revivor procedures must be followed.

Many believe that the biennial filing will result in more associations becoming suspended. Officers can change frequently in associations. Some associations change managers frequently as well. Mail is not forwarded to the new officers or manager. Since the filing is due based upon the month the association was incorporated, it is not part of the tax forms that we normally prepare for clients.

To determine what year the association is required to file its statement, you need to know when the association was incorporated. If you don't have a copy of the Articles of Incorporation, you can access this information through the California's Secretary of State's website – [www.ss.ca.gov](http://www.ss.ca.gov). Click on California Business Portal; Business Filings; California Business Search, Corporations and enter the name of the corporation. When the results are presented, click on your corporation (some have similar names). The corporate number, date of incorporation, agent of service of process and corporate status (active, suspended, dissolved, etc.) will appear.

If the association was incorporated in an odd-numbered month – January, March, May, July, September or November, then it files its statement in its incorporation month in the odd-numbered years – 2001, 2003, etc.

If the association was incorporated in an even-numbered month – February, April, June, August, October or December, then it files the corporate statement in its incorporation month in the even-numbered years 2000, 2002, etc.

Associations must also disclose on the statement its business office street address or physical location of the development (including 9-digit zip code, front street and nearest cross street) and the name and address of the managing agent, if any.

Note that corporations can file an amended statement at any time during the two-year period to update any of the information on the statement. There is no fee for filing an amended statement. You can download a blank copy of the form from the same web site.

For the past several years, there has been a company called the **California Compliance Center** based in Sacramento that will prepare the filing for a \$100 fee. You can prepare the form yourself for a \$20 fee. If the corporation has been suspended, their service will not revive the corporation. Paying the \$100 is simply a waste of money. The “minutes” that they will prepare are not applicable to a homeowners association and you have all the information needed to file the form.

## **BUDGET TIPS FOR 2002**

Approximately 70% of associations have December 31 year-ends, meaning that many of you are developing operating budgets for 2002 right now. Noted below are some categories that will have an impact on your budget development for 2002.

**Inflation Rate:** California has had a higher inflation rate than other parts of the US over the past year. For the year ended June 30, 2001, California’s statewide inflation rate was computed to be 5.3%. This is the rate that the California Franchise Tax Board used to adjust its tax brackets and exemptions. A lot of reserve study preparers have used 3 to 3.5% inflation in their calculations. Inflation rates could affect charges from service providers, such as landscape contractors, management professionals, maintenance services, etc.

**Electricity** – See our June 2001 newsletter for sample electric rate calculations. Each association’s change can vary. Your July and August bills are the first two months of the new rates which you can compare to the same periods last year to better estimate your costs. Do not use a percent increase on this year’s bills because the first month of change was June, there were 5+ months’ bills at the old rates.

**Natural Gas** – Natural gas prices are not regulated. We saw prices go from 54 cents per therm in January 2000 to 96 cents in April 2001. September’s rate is 45.5 cents. With the events unfolding on the East Coast and the unknown variables that remain to be seen, one can only speculate on costs. This is a low usage and demand time. When demand increases in November-December, will rates return to the levels of early 2001? It may be prudent to budget on the basis of this year’s costs and rates.

**Trash** – Check with your trash service provider. The City of Santa Barbara raised its rates in February by 22-24%. Unincorporated rates in Santa Barbara County increased its rates approximately 3% in August.

**Water** – Again, check with your service providers. Goleta Water District plans to increase its rates 5% or so in December. Rates include base fees, meter fees as well as water usage.

**Insurance** – Rates for fire and liability insurance have been increasing over the past two years. One of the effects of the East Coast bombings could be higher insurance rates for certain coverages.

**Income Taxes** – May be lower due to lower interest rates and returns on invested funds

## **MORE “GOLD” FROM THE NEWSPAPERS!**

Much of the information that members receive about homeowners associations does not come from the board or the management company. Rather, it comes from other people or the newspaper. Generic information that appears in the paper can cause problems for you to deal with because the underlying assumption by those who read it is that the reporter has done the research and that the information is accurate. Here are two cases in point.

In the September 16<sup>th</sup> *Santa Barbara News Press* Real Estate Section, there was a full-page story on “Homeowner Association’s-Managed Communities Becoming Home to More Americans” Quite a lot of generic information was presented. For example, there are approximately 231,000 homeowners associations in the US with 6,000 to 8,000 added annually. Since 1970, one in three residential units built has been in an association. In Santa Barbara County, that figure is much higher. Nearly one in six Americans lives in an association. Local and state governments like associations because they assume obligations such as parks and streets that they don’t have to pay for.

It turns out that a careful reading of the article shows that it was written for a newspaper in York County, Pennsylvania. The Pennsylvania Planned Community Act that was quoted has some different provisions than California’s Davis-Striling Act. One key area has to do with the increase in assessments. According to the article, “Boards have the authority to raise assessments without a full vote of the membership. However, members can call for an association-wide vote. In that scenario, 67 percent of the members present must vote yes before the increase is enacted.” This may be true in Pennsylvania but it is not true in California.

In California, the board of directors may increase the regular assessment of the association up to 20% without a vote of the membership. In order for the board to increase the assessment, however, certain disclosures have to be made to the members. These disclosures, which are outlined in Civil Code Section 1365(a), include the distribution of the operating budget, a summary of the association’s reserve based upon the most recent review, whether the board anticipates that a special assessment will be necessary in the future to replace or repair a major component and the procedures used to develop the reserve information. There is no referendum provision in California to overturn a board decision on assessments if the required disclosures have been made.

A second article that appeared earlier this summer in the *Los Angeles Times* was even more troubling. As many of you know, the LA paper has carried a “Condo Q&A” section in the real estate section every 3-4 weeks for many years. Written by Jan Hickenbottom, PCAM, the questions and her responses were a source of much useful information for board members and residents of homeowners associations. Ms. Hickenbottom is no longer writing the column. Instead, two attorneys are writing it. According to the paper, one “is a writer and an attorney in private practice specializing in corporate and business law.” The other “is a writer and arbitrator and manages commercial property”. Nothing indicates that these attorneys are expert in Community Association law. In one article, the writers indicated that dogs and cats could not be kept out of a community association. The new law, effective January 2001

requires the association to remove the prohibition when it amends its governing documents, but not until then. The writers further indicated that it was the intent of the legislature to lift these prohibitions for all associations on January 1, 2001. It doesn't take a rocket scientist or an attorney to read the law and see that the language is very specific as to when it is effective.

Another article entitled "Maybe Lawyer, Not Bylaws Needs Reform" dealt with the need to amend or restate old governing documents. One of the recurring issues for older associations is developing guidance for maintenance responsibilities. Some associations have amended their documents to make this clearer. The writers stated "trying to determine where the responsibility for maintenance lies is not as complex a problem as the attorney appears to be making it out to be". The writers' opinion was that "amending or updating your CC&Rs is not something an association must do and the expenses you are incurring to make those unnecessary changes are really a waste of association funds."

Cast a skeptical eye at information published in the local newspapers about homeowner associations. The information could range from not applicable to dangerous. Your association should have access to management, accounting, legal and maintenance professionals who can answer your questions and provide specific guidance for your association on the wide range of operational issues that affect you.

## **CALIFORNIA LEGISLATIVE UPDATE - 2001**

This appears to be one of the quietest years in memory for legislation impacting homeowner associations at the state level. While a number of bills were introduced in early 2001, most have been made as two-year bills, meaning that they won't be discussed again until January 2002. The legislature adjourned on September 12 and to my knowledge, not of these bills had been passed by both houses and sent to the Governor for signature.

**AB 555 – Community Association Manager Registration/Licensing Bill** – Would require that those who manage HOAs be required to register with the state of California Common Interest Development Manager Registration Council. In addition to registration/licensing, an education requirement would be imposed upon all who manage CIDs including in-house managers. Costs to managers and their employers to comply with the registration and education requirements are not known. This bill will probably be re-worked and re-introduced in 2002.

**SB 419 – Creation of a Common Interest Development Agency** – Would require the California Research Bureau to conduct a study to determine whether a new state agency be created to oversee the activities of Common Interest Developments in California. Two-year bill.

**Construction Defect Bills (several)** – Several bills have been introduced to create a home warranty program for builders (AB 600), Mediation of Construction Defect Litigation (SB 160/AB 739/AB 267), and overturning the Aas decision regarding construction defects (SB 355). The only bill that moved is AB 267 which would mandate mediation prior to a suit – the developer could not "opt-out" of the process. It passed the Assembly and the Senate but the Senate amendments will not be considered until January.

## MEMBERSHIP DIRECTORY SPONSORS

As a result of my delay in getting last fall's questionnaire results tabulated, the 2001 South Coast Membership Directory has not yet gone to press. (The results will appear in the directory). Since a number of professional members paid to place an ad in the directory, I am listing their names here and thank them for their support of South Coast HOA.

### ACCOUNTANTS

Cagianut and Company  
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### CONSTRUCTION MANAGEMENT

Santa Barbara Building Associates  
Bart Mendel  
1 N. Calle Cesar Chavez, Suite 230D  
Santa Barbara, CA 93103  
800-844-9240; 805-965-4241

### BANKING SERVICES

First Bank & Trust  
Diane Doria, CMCA, AMS, CCAM  
2797 Agoura Rd.  
Westlake Village, CA 91361  
888-539-9616

### INSURANCE

State Farm Insurance  
Ed Attlesey  
160 N. Fairview Avenue  
Goleta, CA 93117  
805-964-9988

### ROOFING

Tasman Roofing Products  
5940 Hilltop Road  
Simi Valley, CA 93063  
805-527-8696

### BANKING SERVICES

Goleta National Bank  
Andy Clark  
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### PROPERTY MANAGEMENT

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## **UPCOMING MEETING NOTICE**

### **Thursday, July 26, 2001 – Legal Seminar with Beth Grimm**

For the past 3 years, attorney Beth Grimm from Pleasant Hill, California has conducted a summer law forum for South Coast members.

This year is no exception. While we gave her enough topics to fill half a day or more, she has distilled the topics as follows:

#### ASSOCIATION GOVERNING DOCUMENTS:

- What are they?
- Why should they be enforced?
- Who is responsible for enforcing them?
- How can enforcement be done most efficiently and cost effectively? (with the least amount of pain)
- How about enforcement by owners (in what should be neighbor-to-neighbor disputes)
- How is enforcement of the governing documents affected by legislation

To the extent that time is available, we will explore other legal topics.

Beth's programs have always been informative and well attended. Beth is a Bay Area attorney with over 12 years or legal experience with common interest developments. She has written two books along with a bimonthly newsletter, California Homeowner Association Legal Digest. Her most recent effort has been to establish a web site for board members, homeowners, managers and realtors – [www.californiacondoguru.com](http://www.californiacondoguru.com). A guru is a guide to enlightenment and her site contains a wealth of information.

Reservations – email to [gartzke@silcom.com](mailto:gartzke@silcom.com).; fax to 805-967-9654 call 805-964-7806 (after 7/18/01) or call McKenna at Town'n Country Property Management 805-967-4741 (before 7/19/01)

**Thursday, July 26, 2001**  
Holiday Inn – Goleta/Santa Barbara  
5650 Calle Real, Goleta  
(between Patterson and Fairview)  
7:00 – 9:00 PM



