

SOUTH COAST HOMEOWNERS ASSOCIATION

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Newsletter Sponsors

UPCOMING SOUTH COAST HOA MEETING – OCTOBER 21

Our fall meeting will look at association finances, budgets, tax filing changes, and financial comparison updates. We also plan a “sneak peak” at new laws for 2011.

- 1) Budgets – What’s new for 2011; Using the new, state disclosure index to assemble your annual budget package
- 2) Internal Controls – What an association should consider to safeguard its assets
- 3) Tax Changes – New form filing requirements and ePayment requirements. New tax credits available to associations and its members.
- 4) Financial Comparisons – Inside the Numbers - Review of current trends in assessments and association expenses.
- 5) 2011 Legislation – What did the Governor sign this year – A brief overview
- 6) Your questions

Date – Thursday, October 21, 2010
Time – 7 PM

Place - Encina Royale Clubhouse - 250 Moreton Bay Lane, Goleta (Fairview exit North from 101)

Speaker – Michael J. Gartzke, CPA

PROTECTING YOUR COMMUNITY ASSOCIATION FROM FRAUD

**By: Ronald S. Stone, PhD, CPA, CFE
California State University, Northridge**

Editor's Note: Dr. Stone is a Professor of Accounting at CSU, Northridge and is a Certified Fraud Examiner (CFE). He has many years of experience in forensic accounting – the investigation of fraudulent activity. He has worked with many associations in Southern California, especially after the Northridge Earthquake in 1994 and is a frequent speaker at HOA educational forums. I am privileged to know Dr. Stone and am pleased to share his insights with South Coast HOA members.

A treasurer of a 24-unit homeowners association in Los Angeles embezzles funds designated for reserve expenditures; a community manager of a 225 single family home development in Thousand Oaks uses association money to pay off debts accrued by other associations; a community manager in Calabasas creates phony vendor invoices and falsifies bank statements on his way to pocketing over \$1.5 million – these incidents of fraud are just some of the many that are on the rise in community associations. Like many before them, the board members of these associations were too complacent, too timid, or just didn't understand the importance of operating the association like a business and the need for good internal accounting controls. Community associations must be aware of the warning signs fraud exhibits, and must initiate preventative measures to minimize the chances of fraud before they can occur.

What is fraud?: In general, fraud involves serious wrongdoing with malicious intent for the financial benefit of an individual. There are three essential elements in any fraud: 1) misrepresentation or concealment of significant information by the perpetrator (“the lie”); 2) the victim's reliance on the perpetrator's misrepresentations (“reliance”) and 3) the victim's loss of something valuable (“the loss”). Throw in a bit of greed, lack of ethics, and an oversized ego, and you have all the ingredients of fraud that can adversely affect any association and its owners.

Associations are Particularly Vulnerable to Fraud: In the booklet Preventing Fraud: How to Safeguard your Organization (2001, BoardSource), the authors suggest that nonprofit organizations are particularly vulnerable to embezzlement for various reasons, including the indifference of members and a higher level of trust than that found in most for-profit businesses. Board members who volunteer their time are very often reluctant to ask questions about the association's finances or don't realize that accountability and control of funds is critical to the association's ability to keep assessments from increasing over time. Most importantly, association managers, staff, and board members are often unfamiliar with the importance of strong accounting and financial controls – including the need for separation of financial duties, adequate documentation to substantiate payments for goods and services received, and independent audits on performance. When a combination of these factors is in place, the opportunity to defraud an association is high.

Recognizing Signs of Fraud: At the outset, fraud may not be obvious. However, there are usually “red flags” signaling suspicious transactions. Indicators of fraud appear in the accounting records. Missing bank statements and bank reconciliations, inaccurate general ledgers, missing documents, photocopies in place of originals, unexplained cash shortages, unauthorized credits to homeowners accounts, increased past due accounts, duplicate payments to vendors, unauthorized purchase transactions and payments for unspecified services are all tell-tale signs of fraudulent behavior.

Preventing Fraud: Aside from enforcing the rules, maintaining the common areas and fostering community cooperation, a community association manager and all board members – not just the treasurer – should understand the financial aspects of operating an association, safeguarding its assets, and making sure that no fraud takes place. Here are some suggestions to fulfill these responsibilities:

- 1) **Keep Association Records Up-to-Date.** These include cash receipts and disbursement journals, the general ledger, subsidiary ledgers such as member receivables for regular and special assessments, and payroll reports.
- 2) **Reserve accounts must be under board control.** Detailed records should be kept on reserve transactions. Transfers should be authorized in writing and approved in detailed board minutes.
- 3) **Review Monthly Financial Reports.** Financial statements should be prepared and reviewed on a monthly basis. This includes all balance sheets, statement of revenues and expenses (income statements) and comparisons of actual vs. budgeted expenditures with written explanations of significant variances.
- 4) **Update bank signature cards when an authorized signer leaves or resigns.** Require two signatures on all checks or transfers greater than a specific amount (generally \$500 or more)
- 5) **Review invoices and supporting documentation prior to signing checks.** Vendor invoices should be reviewed as to quantities, prices and clerical accuracy. Stamp invoices and supporting documentation as “paid” to avoid duplicate payment. Never make a check out to “cash” or sign blank checks in advance. Deface voided checks and keep them on file.
- 6) **Review bank statements and reconciliations on a monthly basis.** Question all reconciling items that do not clear on a timely basis. As part of the reconciliation process, review the paid checks that accompany the bank statement for authorized signatures and reasonable endorsements.
- 7) **Keep only a small amount of petty cash on hand and in a safe place.** The petty cash should be counted and reconciled periodically on a surprise basis by someone other than the person who has regular custody of the funds.
- 8) **Regularly review delinquent balances due from homeowners.** Credits to homeowner accounts and write-off of uncollectible accounts should be approved by the board of directors in executive session and noted in the meeting minutes.

- 9) **Obtain several bids for all major contracts and check references.** Compare bids based on the same set of specifications. Only use vendors that are licensed and insured. Avoid any conflicts of interest by not soliciting or accepting bids from board members, their friends or relatives.
- 10) **Purchase adequate fidelity insurance to cover managers and employees who handle funds.** Directors and Officers (D&O) insurance should also be purchased to cover claims against the board and management company for financial mismanagement.
- 11) **Hire a CPA who is familiar with accounting and auditing standards established by the American Institute of Certified Public Accountants.** The entire board should interview the CPA, not just the Treasurer or community manager. (Editor's Note: A reviewed financial statement by an independent CPA is required annually for all associations that have revenues (including assessments) greater than \$75,000 per year).
- 12) **Restrict advance amounts to a predetermined limit.** Verify that expense reimbursements are for legitimate association expenses and there are original receipts for back up. If credit cards/debit cards are issued in the name of the association or given to employees, maintain low limits.
- 13) **Make sure that adequate time records are maintained for all association employees.** Payroll registers and paychecks should be reviewed before they are distributed to employees. Pay rates should be reviewed on a regular basis and deductions properly calculated and authorized.

What can your association do to prevent fraud?

First, practice risk management to minimize the likelihood of fraud and reduce the potential for lost assets and bad publicity. Risk management is an operational strategy to strengthen an association's operations by anticipating losses and taking measures to prevent them from occurring.

Second, implement a good system of internal control to create an environment hostile to fraud, improve the trustworthiness of all individuals involved, and detect theft and losses before they undermine your operations and mission.

Finally, define acceptable and unacceptable activities in your association, including fully investigating suspected fraud and treating offenders in a consistent manner. Fraud prevention and detection is important to any community association's long time viability.

TAX FILING CHANGES AHEAD FOR HOMEOWNERS ASSOCIATIONS BE PREPARED

By: Michael J. Gartzke CPA

- New Franchise Tax Board Form 199-N for small associations
- Expanded 1099 filing requirement signed into law, effective in 2012
- IRS will no longer accept Federal Tax Deposit Coupons
- Some Federal Energy Credits may be passed through to members by associations
- Associations that pay health insurance premiums may qualify for Federal tax credit
- Associations with new employees may qualify for Federal payroll tax credit

California Franchise Tax Form 199-N for small associations starting January 2011

Starting January 1, 2011, California will require smaller tax-exempt organizations with gross receipts of \$25,000 or less to electronically file an information notice with the Franchise Tax Board (FTB). This notice will be similar to the “e-postcard notice” that small, tax-exempt organizations have filed with the Internal Revenue Service since 2007. The California version is called Form 199-N. Nearly all California HOAs have not been concerned about the Federal reporting requirement because HOAs are not usually tax-exempt for Federal income tax purposes. (A few associations have qualified under Federal 501(c)(4) or 501(c)(7) requirements but these requirements are difficult to meet and most associations cannot meet these requirements). However, nearly all associations are exempt under California Revenue & Taxation Code Section 23701(t). Until now, if an exempt association had less than \$100 of nonmembership income (e.g. interest) and had total gross receipts of \$25,000 or less annually, it had no California tax filing requirement with the FTB. That changes for tax years ending December 31, 2010 and later. These small associations must either file Form 199 (the form filed by associations with over \$25,000 in gross receipts) or file the new 199-N. Information needed to file 199-N over the internet. It cannot be filed on paper.

Legal name of corporation
Any other name the organization uses
Mailing Address
Website address, if it has one
Federal and California Tax ID Numbers
Name and address of a principal officer
Tax year beginning and ending dates
Contact person name and phone number
Whether or not the organization is still in business

This is due 4 ½ months after year-end. If no filings are done for three years, the corporation will lose its California tax-exempt status.

This is a big deal for many small California HOAs who may not have a CPA or professional tax preparer complete the annual tax returns with the FTB. If they only have had a filing requirement with the Secretary of State for their Statements of Information and CID, then the FTB may not have the correct address for the association. These associations will never become aware of the new filing requirement and three years from now, will lose their tax-exempt status. I know that some CPAs that I have talked to, they have prepared the 199 as part of the annual tax preparation process, even though it was not required in some cases. For all my small HOA tax clients from now on, I will be preparing the FTB 199, on paper, as part of my annual service and by doing so will eliminate the need for an association member

to go online and file the 199-N. All associations will be treated the same for income tax preparation requirements.

The Franchise Tax Board plans to do a mass mailing this fall detailing the new filing requirements and how to access their website when the 199-N “goes live”.

Expanded 1099 Filing Requirement Signed into Law What it may mean for Homeowner Associations

In early May of this year, a small headline about taxes caught my eye on the cnn.com website – “Health care law’s massive, hidden tax change”. Buried in the 2,000+ page health care bill is a provision that greatly expands the reporting of business transactions by businesses (including HOAs) on Form 1099 starting in 2012.

Currently, if your association contracts for services from an unincorporated business (e.g. landscape, maintenance, accounting, management, etc.) and pays \$600 or more during a calendar year, you are required to issue a 1099-Misc to each payee by January 31 of the following year to the recipient and send a copy to the IRS. Since many associations contract out for services as opposed to having employees, some 1099 reporting is already required. Corporate providers of services, or the purchase of products, utilities or insurance, are exempted from this reporting requirement.

Under the new law, all payments for services, products, utilities and insurance will be subject to the new reporting requirement, even incorporated businesses. This means that you would need to send 1099s to Edison, your insurance company, Home Depot, etc. each year if you spend more than \$600 with them. So, instead of sending out 4-5 1099s, your association may be required to send 20, 30 or more depending upon the number of vendors the association has. Just think about the number of 1099s Verizon would receive. In addition, you would have to obtain these businesses tax ID #s and proper mailing addresses for submitting 1099s which will be different than the addresses used to remit payments.

So why is this requirement in the law? According to the cnn.com article, a Senate Finance Committee aide said, “Information reporting improves tax compliance without raising taxes on small businesses. Health care reform includes more than \$35 billion in tax cuts for small businesses”. This is a paperwork disaster of immense proportions. Since then, many have weighed in on the subject, attempting to convince Congress of their folly and repeal Section 9006 of the health care bill. Congressman Dan Lungren of California introduced a bill to repeal the section. It has gotten nowhere because Section 9006 is considered to be a revenue raiser by some in Congress. By issuing more 1099s, more income will be reported and therefore, tax collections will increase. The Internal Revenue Service will be responsible for administering this new requirement and some at the Service aren’t thrilled at the prospect. National Taxpayer Advocate Nina Olson cited the new requirements as more of her main concerns stating that the burdens “may turn out to be disproportionate as compared with any resulting improvement in tax compliance”. There are financial penalties for failure to issue 1099s.

If you think that it should be simple to repeal or alter this misguided law, think again. In 2001, the Federal estate tax regime was changed to increase the exemption allowed for estates to avoid paying estate tax. The law increased the exemption to \$3.5 million through 2009,

repealed it entirely in 2010 and reinstated it to \$1 million in 2011. All the experts said that Congress would address this issue well before 2010 and would not allow the estate tax to repeal for one year. We are 75% through 2010 and Congressional gridlock prevails. Nothing has been done to change the estate tax rules. The scheme that was passed in 2001 remains in place today despite all the predictions from the experts.

Proposed Regulation would Require Electronic Payment of Federal Income Taxes for Associations Starting in 2011

The Internal Revenue Service has proposed a new regulation requiring all business taxpayers such as homeowners associations to pay their income taxes by electronic funds transfer (EFT). This would require taxpayers to register with the IRS for EFT payments online which of course requires usernames, passwords, bank account information, etc. While some associations have large income tax obligations, most have small or no federal income tax liabilities, especially with interest rates near zero. Associations with employees would also be required to deposit withheld taxes by EFT unless the amount due is \$2,500 or less. Then the tax can be paid with the quarterly payroll tax report. Under the proposed regulation, there is no minimum amount that could be paid with the income tax return when filed. Even a \$1 payment would have to be made electronically.

A hearing was to be held in late September on this regulation. It is expected to be approved and in place by the end of 2010. The form 8109 coupons to make payments through your bank or the Federal Reserve Financial Agent (if done by mail) would no longer be used. All payments would be made electronically. I am suffering from username and password overload. I am afraid to write these down because of the risk of loss. I can't use the same username or passwords on all sites because each site has different requirements as to what the unique username can be and how many characters the password can be and whether they are "case-sensitive". Can't the IRS just cash a check and be done with it?

This is a burden on your managers and financial professionals who provide services to you. Many associations are self-managed and handle these tasks themselves. How do you handle the EFT account when there is a change in responsible officers?

Federal Energy Tax Credits

For 2010, some Federal energy tax credits may be available to owners for improvements made by the association. According to the instructions for the Federal Energy Property Credit (Form 5695), members of a condominium management association for a condominium you own are treated as having paid your proportionate share of any costs of such association. This credit is available to owners who use the condominium as their main home and the energy property includes, insulation, exterior windows and doors, some forms of roofing and some heating and water heating systems. The total cost is limited to \$5,000 and the credit is 30%. Maximum credit is \$1,500. If the association has installed some solar, wind or geothermal electric/water heating systems, a 30% credit is also available. See the instructions for Form 5695 at www.irs.gov for specific information.

Small Business Health Care Tax Credit

If your association has employees and provides health insurance to them, this credit may be available to you. In order to qualify for the credit, the association must pay for at least 50% of the premium for the employees. The association must have less than 25 employees (full time equivalents - FTE) and average annual wages are less than \$50,000. The credit is 35% of the premium costs for 2010 although the credit phases out when the average wage is between \$25,000 and \$50,000 and the number of workers is between 10 and 25. The credit is not refundable but will carry forward to future years. Your tax preparer will need a lot of additional information from you to compute this credit but the credit can be substantial. It may wipe out some associations' Federal tax liability for years to come.

Qualified Employee Social Security Tax Credit

If the association hired new employees after February 3, 2010 and before January 1, 2011, it may qualify for a social security tax exemption for that employee's wages during that period. This credit is 6.2% of the wages subject to FICA withholding and is claimed on the quarterly payroll tax report form 941. A qualified employee is one who:

- 1) Worked less than 40 hours during the 60-day period prior to your hiring the employee. The new employee completes form W-11 to assert that claim.
- 2) Is not employed by you to replace another employee unless the other employee separated from employment voluntarily or for cause.
- 3) Is not related to you.

If you use a payroll preparation service, they should be able to provide specific information. Information is also available at www.irs.gov – Form 941 instructions.

FDIC Insurance Update and Bank Failure

As part of the new Federal banking law passed earlier this year, the FDIC insurance limit of \$250,000 per depositor per financial institution has been made permanent. When the increased limit was instituted in 2008, it was scheduled to expire at the end of 2009. Then it was extended until December 31, 2013. Now it is permanent. If an association has multiple accounts with the same bank totaling more than \$250,000, only \$250,000 is insured.

Many of you are aware that on August 20, 2010, Los Padres Bank of Solvang was closed by the FDIC and all deposits were assumed by Pacific Western Bank of Los Angeles. No losses were incurred by depositors, even those with accounts greater than \$250,000. Many associations bank with local, community banks. Los Padres Bank service area has a lot in common with our service area. As a result, many area associations placed deposits with Los Padres Bank.

Letters went out to depositors in late August detailing changes. Two items of note:

- 1) Existing CD Rates were reduced on September 1. For example, if you had purchased a 12-month CD last May at 1.5%, the rate changed to 0.45% on September 1. Since the CD rate was unilaterally changed by the new bank, you can now reduce or withdraw

your CD at any time prior to renewal without being charged an early withdrawal penalty. It may be in your association's best interest to review current rates offered by other banks and see how they compare with the new bank's rates.

- 2) You are required to "claim ownership of your deposits" within 18 months of the takeover. This can be done by making a deposit or withdrawal from the account, completing a new signature card or deposit agreement, sending in a change of address form or sending a letter to the bank asking to keep your account active.

Questions should be directed to bank staff and management.

Wildfires: Does your Association have Adequate Coverage for Trees, Lawns, Plants and Shrubs?

**By: Timothy Cline, CIRMS
Timothy Cline Insurance Agency, Santa Monica**

Editor's Note: Tim is considered one of the leading California experts on homeowner association insurance and has spoken to South Coast members several times over the years. He is a South Coast member and his contact information appears in the Newsletter Sponsor section at the end of the newsletter.

This past year, several, fast-moving wildfires raced through brush-adjacent neighborhoods in Southern California causing extensive damage to hundreds of homes. The efforts of the fire fighters to save residences was nothing short of heroic and relieved homeowners often returned to find their home intact, but their landscaping destroyed. Many condominium associations and planned unit developments have substantial common area landscaping improvements. And replacing damaged landscaping is not just expensive, it's absolutely essential to assure the appeal and marketability of the homes in the development as well as curbing the potential for soil erosion of any Association-maintained slopes.

Can trees, lawns, plants and shrubs be insured on the Association's master Policy? The answer is "yes" to a degree. The fact is most insurance carriers do provide a token amount of coverage for fire-damaged trees, lawns, plants and shrubs-but there are built-in limitations and the Association will need to rely on their insurance professional to make certain that the coverage has been appropriately tailored for their potential risks.

It's important to know that trees, lawns, plants and shrubs are items where coverage is typically limited to only very specific perils or causes of loss. Exactly how broad the coverage may be will vary from carrier to carrier, but typically you'll find coverage for four distinct types of loss: fire, lightning, explosion; and riot or civil commotion. More liberal policies might offer coverage for vehicular or aircraft damage as well as vandalism and theft, but don't count on it. Wind, probably the greatest threat to trees, is rarely covered. Fire, by contrast, is nearly always a covered loss.

**Condo Association
Carrier:**

Perils:

**Trees, Lawns, Plants & Shrubs
Basic Limits**

		(unless endorsed higher)
Philadelphia	F,L,E,RCC,A	\$25,000
Allied	F,L,E,A,VE,RCC,V,T	\$10,000
OneBeacon	F,L,E,RCC,A,VE	\$10,000 (subject to a \$500 limit for any one tree, shrub or plant)
State Farm	F,L,E,RCC,V&T	\$5,000
Travelers	Boarder “Covered Cause Of loss”	\$3,000 per Occurrence
Farmers	F,L,E,RCC,A	\$25,000 (subject to a \$500 limit for any one tree, shrub or plant)
Allstate	F,L,E,RCC,A	\$1,000 Each \$5,000 any one loss

F=Fire; L=Lightning, E=Explosion, RCC=Riot Civil Commotion; V=Vandalism, T=Theft, A=Aircraft, Ve=Vehicles which you do not own, operate or lease

After any fire loss the immediate focus is the limit of insurance provided. Some insurance carriers offer a token \$5,000 for trees, lawns, plants and shrubs coverage, while others may offer up to \$25,000. Sometimes collecting on these already low limits is further hampered by a “per tree, per shrub, per plant” limitation of \$500.

The ironic thing: Nearly every carrier offers higher limits – but higher limits are seldom requested.

One of the greatest challenges, of course, is determining how much coverage a project should have. Determining the correct insurable limit may prove difficult since the project’s developer bore the expense of the original landscaping many years ago. The current board may be unaware of how expensive it is to replace damaged trees and shrubs and even if they were able to ascertain the original costs, the trees within the project have grown significantly and so has their monetary value. As you can see, restoring the aesthetics of the community to their original condition at the time of loss may be both difficult and expensive.

And the cost to replace them with a similar-sized specimen tree may be shocking. Big Tree Nursery, an Escondido, CA-based nursery specialize in full-height specimen trees indicate that the basic specimen tree that’s only 10’-20’ tall could cost between \$2,040 and \$2,640 per tree.

So where do we start in determining a correct insurable value? The best starting point is to hire a landscape professional (and perhaps consulting an arborist) to identify and develop an inventory list of the current landscaping as well as their best estimate of the cost to replace. While you’re at it don’t overlook the irrigation equipment as much it (including most sprinklers

and drip systems) may be manufactured from polyvinyl chloride (PVC)-based components which are very prone to damage as a result of a wildfire's tremendous heat.

Once you've developed a realistic replacement cost for your landscaping, the final step is to contact your insurance professional and obtain the cost to increase your trees, lawns, plants and shrubs coverage to the appropriate level. At that point the Board will be in a position to evaluate whether or not to transfer this exposure over to an insurance carrier – or to retain the exposure and hope that Mother Nature spares them the next the Santa Ana winds blow.

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