South Coast Homeowners Association

P.O. Box 1052
Goleta, CA 93116
805.964.7806
www.southcoasthoa.org
gartzke@silcom.com

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FALL MEETING VIA ZOOM

It's budget, disclosure and annual mailing season. The last couple years have challenged associations with cost increases across most all the expenses that associations have.

Chris Andrews – Stone Mountain Corporation, Santa Barbara

Over 25 years' experience in the preparation of association reserve studies will discuss the inflationary trends and increasing costs of materials and labor and how that is impacting reserve funding and your monthly assessments.

Michael J. Gartzke, CPA

Has 40 years' experience with association financials, budgets and analysis. He will discuss trends in operating expenses along with financial data collected from area associations.

Date – Tuesday, September 20, 2022

Time – 7:00 – 8:30 PM

The zoom link will be emailed to you a week before the meeting once you have RSVP'd to Mike Gartzke – gartzke@silcom.com.

WHEN ENOUGH IS TOO MUCH: ENFORCEMENT AGAINST REPEAT OFFENDERS

By: James E. Perero
Myers, Widders, Gibson, Jones & Feingold, LLP
Ventura, CA

Editor's Note: James was our speaker at our June Zoom meeting. What follows is a brief summary of one of the topics that he covered at the meeting. We thank James for his presentation and support of South Coast HOA members. His contact information appears on the Sponsors page at the end of the newsletter and is also on our website.

Community association leaders are frequently challenged to reconcile what is fair or ideal with what is achievable. This is especially the case with strong personalities who persistently violate the governing documents or the norms of decency. Many times, unreasonable people get what they want because the cost of "winning" is too high. But the right combination of commitment and consistency can get results.

Inspired by True Events

Erik had been catching heat from the board for years. He was loud, abrasive, and colorful during quiet hours. Cigarette smoke constantly wafted from his unit into neighboring units. Parking, power tools, and automotive repair happened in a way that made sense to Erik, but not to anyone else. His temper had attracted law enforcement. Fines were imposed,but were always paid; they seemed like a recurring tax on a bad behavior. Erik had lived in the community for decades and was not going to change. Neighbors were exasperated and suggested they'd involve lawyers. The board was feeling out of options.

Then Erik's dog bit someone in the common area. Luckily, the injury was minor. But it strengthened the board's resolve. The board held a fine hearing. In doing so, they relied on provisions in the governing documents about nuisance and eviction. You see, Erik was a tenant. The governing documents stated that where a tenant was responsible for certain violations, the board could request an owner to evict. After the hearing, the board declined to make that request, but stated if Erik's conduct continued, eviction would be on the table.

Near that time, an animal control officer came to Erik's home. It set him off. He was convinced that a board member made the call. He confronted the board member in a threatening, bellicose manner. Neighbors who witnessed the incident were intimidated and distressed.

The board held another hearing and then followed through: it gave Erik's landlord a deadline to evict. Erik and his landlord retained counsel.

In preparing for mediation, the Board found records of Erik's violations going back decades. Enough was enough. The board committed to leveraging its governing documents to force Erik to find a new place to live. It knew that could mean a costly court battle, but the status quo was intolerable.

In the end, the board wrestled with whether to litigate or pay Erik to relocate. The decision was difficult. Paying Erik could be seen as a reward for bad behavior. But the board embraced its unique role as the only actor that could efficiently bring peace to the community. It struck a deal that resulted in Erik's permanent departure.

There was a time when the board would have thought a good outcome was impossible. But in this case, the board was rewarded for its strategic use of the governing documents and a commitment to enforcement.

CERTIFICATES OF DEPOSIT (CDs) FOR YOUR RESERVE FUNDS AN UPDATE

By: Michael J. Gartzke, CPA

Interest rates available on some FDIC-Insured CDs have increased more during the past three months. In our May newsletter, I noted that rates for CDs had increased while 'money market" rates have remained flat. In the past couple years, rates on CDs have been pitifully low. In some cases, they were as low as "money market" accounts. Some money market accounts have been paying 0.01% - $10 per year on $100,000 on deposit. Increases in the Federal Reserve funds rate since spring have compelled some banks (but not all I've learned) to increase rates paid to their depositors (customers).

An area stockbroker sends me a rate sheet with rates on new FDIC-Insured CDs that can be purchased within their brokerage account. A number of associations already have brokerage accounts through Schwab, Fidelity, Edward Jones and others. In many cases, all that is invested in these accounts now are funds in those ultra-low money market accounts. I checked with a couple of our local banks about their CD rates in mid-August and did not see much upward movement. One local bank was advertising 2.5% on a 5-month CD .

Term	Rate 5/22	Rate 8/22	Interest per $100,000
3-month	0.65%	2.40%	$2,400.00
6-month	1.10%	2.70%	2,700.00
12-month	1.90%	2.85%	2,850.00
24-month	2.85%	3.30%	3,300.00

The rates for 3 and 6 month CDs have increased dramatically since May. Even the 12-month rate has increased by 50%.

In my database of 80 area associations that I review financial statements for (which I have referenced in previous articles), I track some data regarding interest income and rates of return on funds. The average rate of return is currently 0.3% over all associations. Half of the associations have rates of return of 0.11% or less. Only 7 of the 80 associations had

rates of return greater than 1%. If the association had enough interest or other nonmember income (e.g. rental income), it can pay income tax on the net nonmember income. Only 21 or the 80 associations paid income tax last year.

You could consider "laddering" CDs in the account where you put 25% each into 3,6,9,12-month CDs. When the 3-month matures, you can make that one a 1-year CD since the 6-month one now only has 3 months to maturity. Eventually, all the CDs would be one-year accounts maturing every three months. Currently, the rates max out at 3.30% for a 2-year CD.

One area association recently instituted laddered CDs and expects to earn $25,000 in a year on $1 million of reserves. A member questioned whether it was worth doing because of all the taxes that would be owed. The tax return is being prepared and filed anyway and the net after taxes will yield $18,000 to $19,000 towards reserve projects.

An advantage to having a brokerage account for CDs is that you can have multiple CDs from different banks in just one account with one signature card. Signature cards, whether it's a money market, CD or brokerage account must be updated for changes in directors/signers. Managing agents are not allowed to be signers on reserve accounts per the California Civil Code. FDIC insurance is limited to $250,000 per association per financial institution. If you have accounts in the same bank totaling more than $250,000, only $250,000 will be insured by the FDIC.

PENDING LEGISLATION – AB 1410 (AN UPDATE)

We have been following this legislation since it was introduced in the California Assembly last year. It has been amended six times at this writing. At one point, ethics training and harassment prevention was to be required of board members and management personnel. That has been dropped from the current version. From the Legislature's website, here is the current summary of the bill (not yet passed):

"Existing law, the Davis-Stirling Common Interest Development Act, regulates common interest developments and associations, as defined. Existing law also regulates governing documents, as defined, and protects certain uses of a homeowner's separate property. That law, among other things, prohibits an association from restricting specified rights of a homeowner. These rights include the right to peacefully assemble, to invite public officials or other speakers to discuss matters of public interest, to distribute literature related to common interest development living, and to rent or lease a separate interest unless the governing document or amendment that restricts a homeowner's right to rent or lease their separate interest existed prior to the homeowner acquiring title to the separate interest.

"This bill would prohibit the governing documents from prohibiting a member or resident of a common interest development from using social media or other online resources to discuss specified issues even if the content is critical of the association or its governance, including, among other issues, development living and association elections. The bill would additionally prohibit an association from retaliating against a member or a resident for exercising certain rights, including the right to peacefully assemble or to use social media or other online resources to discuss certain issues.

"Under this bill, an owner of a separate interest in a common interest development would not be subject to a provision in a governing document that prohibits the rental or leasing of a portion of the owner-occupied separate interest for more than 30 days, without regard to whether such restriction existed at the time the homeowner acquired title to the separate interest.
"Existing law authorizes associations to establish penalties for violation of the governing documents, and regulates how an association may enforce such penalties.

"This bill would prohibit an association from taking any enforcement actions for the violation of governing documents during a declared emergency, as specified, except those actions relating to the homeowner's nonpayment of assessments, if the emergency makes it unsafe or impossible for the homeowner to either prevent or fix the violation"

Editor's Note: What constitutes 'discussion' of critical issues? Does the exercise of free speech rights allow for harassment, name calling, etc. of board members, management or other owners? Finding willing, qualified board members and management is hard enough? I don't see how this will help.

SECRETARY OF STATE'S NEW WEBSITE FOR FILING STATEMENT OF INFORMATION AND RESEARCHING YOUR COPORATION STATUS

It seems like forever but I believe I first wrote about the importance of maintaining your corporate status with the Secretary of State and the Franchise Tax Board over 20 years ago. I found a January 2001 article on our website with a brief discussion of the Secretary of State's Statement of Information and corporate suspension. It has become even more important today for several reasons. A brief discussion follows:

In April, the Secretary of State (SOS) changed their website for access to corporate filings. Go to www.bizfileOnline.sos.ca.gov to get started. To look up information about your association, click of the Free Business Search link to access the screen. You can do a key word or account number search to find your filings. The last two statements of information and CID can be found there. If you are completing the current statements (filed every two years), these previous forms can be useful. For many associations you can find your Articles of Incorporation. Although many articles are generic in nature, they are considered a governing document like your CC&Rs and Bylaws. What has been added to the site is a history of corporation suspension and revivor from both the Secretary of State and the Franchise Tax Board (FTB). For the Secretary of State, suspension occurs when the Statements of Information are not filed timely. For the FTB, suspension occurs when tax returns are not filed, tax payments, penalties are not paid.

Corporate suspension causes problems for association's doing business. As noted on the FTB website, a suspended corporation:cannot:
:

- Legally do business
- File with an automatic extension
- File a claim for refund

- Start or continue a protest
- Legally close or dissolve your business
- Bring an action or defend your business in court
- Maintain the right to use your business name
    - Secretary of State (SOS) will deny your revivor request if the entity name is no longer available.
        - SOS will require your business to choose a new name
- Retain tax-exempt status.
    - We revoke an organization's tax-exempt status as of the suspension date.

The immediate tax-exempt revocation is a relatively new concept. In order to revive the corporation, a new exemption application (form 3500) must be filed. Acceptance can take months. The time and effort to revive is substantial so it is important to file the SOS statements on time (due in the month of in corporation and whether it was formed in an odd or even year – those formed in an even year are filing their forms in 2022). The incorporation date can be found on the SOS website. Since these forms are filed every two years, there are 24 possible due dates.

With the expanded access to these historical records, banks are now pulling these forms when you set up accounts or change signers. The forms must agree with the designated signers, usually through a corporate resolution. While there is a $20 fee for original form filing, there is no fee to update. You can also update for change in address and change in agent for service of process. Fill-in forms are available on the SOS website noted earlier.

The FTB collects delinquent filing penalties for the SOS.so sometimes the first indication that an association is delinquent in filing SOS forms is a penalty notice from the FTB assessing $50/$100 penalties. This will tip you off that you have a filing issue and need to research to come into compliance before your association is suspended and exempt status is revoked.

You can also use the website to check on the corporate (or LLC) status of your vendors. Years ago, an association was embarking on a major building renovation project and found that the contractor's corporation has been suspended. There was a delay in starting the project until the corporation was revived. If your association is suspended, you cannot enter into contracts either.

I was made aware recently that a management company's corporation had been suspended. If a management company is suspended, how can you contract with them? What powers do they have to enforce your governing documents or contract on your behalf? I had not considered that possibility before.

The Secretary of State will send out a postcard to its last known address (from the last SOS filing) 90 days before the forms are due. The postcard has instructions as to how to access the website and how to complete the forms.

SOUTH COAST NEWSLETTER PROFESSIONAL SPONSORS

ACCOUNTANTS

Michael J. Gartzke, CPA
5669 Calle Real #A
Goleta, CA 93117
805-964-7806

Gary Vogel, CPA
gvogelcpa@gmail.com
818-357-5535

Mark Jackson – Walpole & Co. CPAs
70 Santa Felicia Dr
Goleta, CA 93117
805-569-9864

Jimenez & Company CPAs
Joyce Jimenez
PO Box 756
Camarillo, CA 93011
805-491-2126

Bryzek CPA
Ian Bryzek, CPA
731 South Lincoln Street
Santa Maria, CA 93458
510-538-6014

BOOKKEEPING SERVICES

The Bottom Line
Nancy D'Amato
PO Box 91809
Santa Barbara, CA 93190
805-683-3186

Laura McFarland, CPA
McFarland Financial
7127 Hollister Ave #109
Goleta, CA 93117
805-562-8482
mcfarlandfinancial.com

Debbie Quigley – Accounting Services
P. O. Box 62157
Santa Barbara, CA 93160
805-967-8117
Debbie@debbiequigley.com

Oasis Bookkeeping
Patti Karr
P. O. Box 132
Carpinteria, CA 93014
805-684-7461

Blue Horizon Management Co.
Kevin Lehman, CCAM, CMCA, AMS, PCAM
2020 Alameda Padre Serra 220
Santa Barbara, CA 93103
805-586-2583
bluehorizonmanagement.com

ATTORNEYS

James H. Smith
Rogers, Sheffield, and Campbell
152 East Carrillo
Santa Barbara, CA 93101
805-963-9721

David A. Loewenthal
Loewenthal, Hillshafer & Carter, LLP
21 E. Carrillo #230
Santa Barbara, CA 93101
866-474-5529

Myers, Widders, Gibson, Jones & Feingold, LLP
James E. Perero
5425 Everglades Street
Ventura, CA 93003
805-644-7188

Price, Postel & Parma
Christopher Haskell/Shareef Moharram
200 East Carrillo, Ste. 400
Santa Barbara, CA 93101
805-962-0011

ASSOCIATION MANAGEMENT

Coast Community Property Management
Sandra G. Foehl, CCAM
P. O. Box 8152
Goleta, CA 93118
805-968-3435

St. John & Associates
Kristin St. John CCAM
5266 Hollister Ave, #108
Santa Barbara, CA 93111
805-683-1793

Team HOA
Geoff McFarland
7127 Hollister Ave #109
Goleta, CA 93117
805-562-8482
teamhoa.com

Goetz Manderly
The Management Trust
Gordon Goetz
5383 Hollister Ave #230
Santa Barbara, CA 93111
805-348-4080

Kennedy Accounting Systems
Alan Fray
1805 E. Cabrillo #F
Santa Barbara, CA 93108
805-962-1626

Blue Horizon Management Co.
Kevin Lehman, CCAM, CMCA, AMS, PCAM
26 W. Mission Street, Suite 3
Santa Barbara, CA 93101
805-586-2583
bluehorizonmanagement.com

Old Coast Property Management
Arnie Gonzalez
5266 Hollister Ave #121
Santa Barbara, CA 93111
805-563-1234
oldcoastmanagement.com

Ferguson Management Group Inc.
Joseph Ferguson | President
CCAM, CAFM, CMCA, AMS, PCAM
27 W. Anapamu St, Suite 170
Santa Barbara, CA 93101
805-455-8911
fmgsb.com

RESERVE STUDIES

Stone Mountain Corporation
Chris Andrews
P. O. Box 1369
Goleta, CA 93116
805-681-1575
SmartReserveStudy.com

Reserve Studies, Inc.
17315 Studebaker Rd #213
Cerritos, CA 90703
800-485-8056
reservestudiesinc.com

INSURANCE

Cline Agency Insurance Brokers
Tim Cline, CIRMS
12400 Wilshire Blvd. Suite 200
Los Angeles, CA 90025
805-299-0899

Omnia Insurance and Risk Solutions
Richard Martinez
4213 State St #205
Santa Barbara, CA 93110
805-563-0400

Baxter Insurance Services
Dan Baxter
1033 Santa Barbara St.
Santa Barbara, CA 93101
805-963-4048

Steve Reich Insurance Agency
Joe Smigiel, President
280 N. Westlake Blvd #200
Westlake Village, CA 91362
805-379-5159

CONTRACTORS

Santa Barbara Painting
Gustavo Dabos
5874 Hollister Ave
Goleta, CA 93117
805-685-3548

Interstate Restoration LLC
1830 Lockwood St. #107
Oxnard, CA 93036
805-988-1040

Blake Fuentes Painting
79 S. Kellogg Ave
Goleta, CA 93117
805-962-6101

ELECTIONS

Official HOA Elections, LLC
Will Morstad
133 E De La Guerra Street, Suite E
Santa Barbara, CA 93101
805-214-8018

JANITORIAL SERVICES

Safe Grounds Janitorial and Disinfecting Services
Barbara Sanchez
P. O. Box 91660
Santa Barbara, CA 93190
805-321-SAFE

ORGANIZATIONS

Community Associations Institute (CAI) Channel Islands Chapter
PO Box 3575
Ventura, CA 93006
805-658-1438
cai-channelislands.org

Educational Community for Homeowners - ECHO
5669 Snell Ave #249
San Jose, CA 95123
408-297-3246
echo-ca.org