SOUTH COAST HOMEOWNERS ASSOCIATION

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PET BILL SIGNED BY GOVERNOR DAVIS

Provisions Effective January 1, 2001

On September 18th, Governor Davis signed AB 860 (Thomson) into law, effective January 1, 2001. The following is the verbatim text of the new law – California Civil Code 1360.5:

(a) No governing documents shall prohibit the **owner** of a separate interest within the common interest development from keeping at least one pet within the common interest development, subject to reasonable rules and regulations of the association. This section may not be construed to affect any other rights provided by law to an owner of a separate interest to keep a pet within the development.
(b) For purposes of this section, "pet" means **any domesticated bird, cat, dog, aquatic animal kept within an aquarium,** or other animal as agreed to between the association and the homeowner.
(c) None
(d) If the association implements a rule or regulation restricting the number of pets an owner may keep, the new rule or regulation shall not apply to prohibit an owner from continuing to keep any pet that the owner currently keeps in his or her separate interest if the pet otherwise conforms with the previous rules or regulations relating to pets.
(e) For purposes of this section, "governing documents" shall include, but are not limited to, the conditions, covenants, and restrictions (CC&Rs), and the bylaws, **rules and regulations** of the association.
(f) This section shall become operative on January 1, 2001 and shall apply to governing documents entered into, amended or otherwise modified on or after that date.

I have been in contact in recent weeks with numerous CID attorneys on this issue, trying to

gain their insights on this bill. At CAI's Ventura Trade Faire, the attorney panel did not want to address the question. This new law has a significant effect on the rights of members to regulate themselves. This is a first step towards raising pet ownership to a fundamental right in California. The legislation affects only common interest developments (condos, planned developments, etc.) and mobile home parks. It does not affect apartments for rentals.

Fortunately, **Karen Mehl**, a SCHOA member attorney from Santa Maria, and **Beth Grimm**, an attorney and frequent contributor and speaker for us from the East Bay area, have offered some insights into the new legislation. Here is a summary of their responses in a question and answer format.

Q: Under section (a) of the bill, can an association prohibit tenants/renters from having pets if owners are allowed to have them?

A. The Civil Code was recently amended to prohibit discriminatory provisions in governing documents. For example, pool rules, which favor adults over children, would be considered discriminatory in nature and not permitted. Rules that favor owners over tenants with respect to pet ownership would probably be considered discriminatory since two classes of residents would be created (owners and tenants). Thus, tenants would be governed under the same set of rules as owners with regards to pet ownership. An individual owner, however, could still prohibit his tenant from keeping a pet.

Q. Under section (b), can an association allow certain kinds of pets (fish/birds) but exclude other kinds of pets (cats/dogs)?

A. The attorneys believe that no animal listed in section (b) can be excluded. Some of us have had discussions with the bill's proponents and legislators regarding section (b) who indicated that as long as a pet was allowed, other kinds of pets could be excluded. Unfortunately, the bill is not written that way. Frankly, organizations such as the Doris Day Animal League would not have contributed the resources that they did to ensure passage of this bill if you could get around it by simply allowing fish and birds and excluding dogs and cats. The definition of pet was added to the bill after there were complaints that owners would be able to bring in snakes and other animals. The intent of the Legislature was to leave the choice of pets to the resident, and not to the association. Associations that allow cats but not dogs are now going to have to permit dogs when they change their documents.

Q. What are reasonable rules and regulations?

A. Who knows? Reasonable is defined by the courts. Some associations have regulated pets based on size (weighs less than a certain amount). Certainly, you should be able to regulate quantity since the law provides for a pet. As long as you allow one dog or cat, you have met the law's requirements. A big issue is noise. The County of Santa Barbara recently re-adopted a pet nuisance ordinance that had been repealed in 1992. Complaints can be directed to Animal Control for follow-up and response.

Q. In what document should pet regulations be placed?

A. It would be best if pet regulations that conform to the new laws be placed in amended CC&Rs. This is especially true if your rules limit the number and size of pets more

restrictively than any city or county ordinance that might apply to your association. The Legislature has not changed the general standards under which courts will review CC&Rs and rules of associations. According to the California Supreme Court, courts are supposed to defer to the wisdom of the board of directors and the members of the association and uphold their decisions unless the rules violate public policy or are otherwise totally unreasonable. Under this standard, the courts will enforce rules and regulations based upon size and behavior of pets, so long as they are reasonable.

Q. Would you recommend that associations update their governing documents prior to December 31, 2000 to hold off on the implementation of the new law?

A. While associations tend not to change their CC&Rs and bylaws frequently, associations rules and regulations tend to change more frequently since they only require a vote by the board of directors and they help to further clarify provisions of the CC&Rs. It is unlikely that an association could go for an extended period without revising pool rules, parking regulations, etc. Any documents, including rules and regulations, amended after December 31, 2000 must incorporate the new law into its documents.

BUDGET TIPS FOR YOUR 2001 BUDGET

Many associations are currently developing their 2001 budgets. Approximately 70-75% of homeowner associations have calendar year-ends that makes early fall "budget season". As part of your budget process, you should consider the following items:

Natural Gas: Natural gas prices have been rising monthly during the year. Southern California Gas "baseline" rate, the lowest rate charged for gas has risen from 54 cents per therm in January to over 72 cents per therm in September, an increase of 25%. Last year's rates went from 45-54 cents per therm. Associations that use gas will use it for pool heat, hot water heating, and perhaps for some shared appliances such as ornamental fireplaces. Generally, most associations use much less gas in the summer than in the winter. If your association uses gas for pool heating, you may want to consider shutting off the gas during the winter to reduce costs. For example, some associations have stopped heating the pool in January and February. You might want to consider a longer period, say December 15th to March 15th. Don't budget last year's costs plus 3% on this category. It will not be nearly enough.

Water: The City of Santa Barbara raised water rates 2.8% in July. Goleta last raised its rates (3.6%) in January 1999. Other water districts have raised rates recently to meet their state water costs. Review a current bill with one from a year ago to determine what changes have occurred in rates. You can call your water district office for any pending rate changes. Associations and their members have gotten out of the conservation mode with the advent of state water. Water districts want to sell you as much as you want at the current high rates. Many associations used more water in 1999 and 2000 than in 1998 as a result of the El Nino/La Nina phenomenon. To budget accurately, it is a good idea to maintain usage and rate schedules for all utilities. Unusual usage patterns may emerge that can be investigated and if solvable, association costs can be reduced.

Electricity: Are you ready for deregulated electric bills? I have been trying to get a handle on future electric rates with little success to date. The California Public Utilities Commission, who oversees the deregulatory process, was of little help. I have a request pending with Senator O'Connell's office to attempt to get clearer information. By April 1, 2002, electric rates are to be fully deregulated in California. That means we pay market rates for electricity, whatever that is. Rates are currently frozen until that date. San Diego has deregulated electric rates and in some cases, people are paying double what they had been paying for electricity. The California Legislature created this mess several years ago. Somehow, they were to try to come up with a legislative solution to the problem this past year but to my knowledge, nothing came of it.

If you look at your electric bill, there are a number of different charges on the bill that compose your total electric rate. One of these charges is called the "CTC Charge" (Competition Transition Charge) which allow utilities to recover historic investment costs associated with power plants, etc. This charge ends on March 31, 2002.

If you look at a current electric bill, you will note that the CTC charge is actually a credit to balance the bill. The actual electric costs have gone sky high under this new system. For example, an 18-unit association I work with has an electric bill averaging $ 90 per month. A recent bill showed a CTC credit of $ 87.95 to bring the cost down to $89. If that credit goes away in April 2002, the bill would be $ 177. This would require an increase of $5 per month in assessments just to cover the electric bill.

Insurance: Some, but not all, insurance companies have re-rated portions of Santa Barbara County as a higher risk for earthquake, resulting in a corresponding increase in premiums. Budget time is a good time to determine that you have all of the coverages that you believe that you have. Recently, during a financial statement review, I determined that an association's earthquake insurance policy had lapsed without the current board's knowledge. They had been without earthquake insurance for over four months. Fortunately, the association was able to reinstate its coverage.

Contract Services: Be sure to evaluate current costs for monthly or other recurring services such as gardening, management and other services. Changes in costs during the year or scope of services provided will have an impact on next year's budget.

Remember, for calendar year associations, your budget must be sent to your members by November 16th. For fiscal year associations, the budget is due 45-60 days prior to the start of your new fiscal year. See the article following for a summary of additional disclosures that is required to be sent with the operating budget.

Reserve Funding: Be sure to review your reserve study and note any changes that need to be made. Many reserve studies contain an inflation adjustment that requires a change in funding each year. Reserve studies are required to be done every three years by the Civil Code.

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

SUMMARY OF DISCLOSURES TO BE SENT WITH YOUR 2001 BUDGET

Over the past several years, many additional requirements have been added to the Civil Code for associations to disclose to their members. Some of these disclosures are mandated to be sent out to members in the same time frame as distributing the budget. For other disclosures, the budget mailing is a convenient time to provide them to members. Here is a checklist of disclosures to be sent to members with the budget:

_____ **Minutes** - Notification of the right of members to receive copies of board meeting minutes. Disclosure includes when minutes (draft or approved) will be available (within 30 days), how and where a member can obtain minutes and any reimbursement necessary to the association for reproduction costs.

_____ **Assessment Increase** – Members must be notified within 30-60 days of any increase in the regular assessment.

_____ **Special Assessment Notice** – If the board anticipates that a special assessment will be necessary in the future to meet projected expenses, then that finding must be disclosed

_____ **Assessment Collection Policy** – Within 60 days before the beginning of the fiscal year, members must be provided with the association's collection policy and procedures used to collect assessments. The policy should disclose the assessment due date, delinquency date (at least 15 days after the due date), late fees, interest and other collection costs and policies relating to the recording and foreclosure of assessment liens.

_____ **Reserve Study Summary** – Disclosure is required for the current estimated replacement cost, estimated useful life (when new) and estimated life remaining of each major component; a current estimate of the amount necessary to repair or replace the major components; the amount of cash actually set aside in reserve accounts for this purpose and the reserve funding percentage. A statement is also to be included disclosing how the association derived the reserve information.

_____ **Settlement Funds** – If the association has received a legal settlement (construction defects, etc.) then disclosure of the amount of the funds and the expenditure of the funds must be disclosed. Usually, an association that has settlement funds will be required to have its financial statements audited or reviewed by a CPA and the disclosure can be made as part of the financial statement distribution process.

_____ **Alternate Dispute Resolution** – Members must be advised of their rights and responsibilities under Civil Code Section 1354 to encourage the use of mediation or arbitration to enforce the governing documents or to provide for injunctive or declaratory relief without damages or damages up to $5,000. A summary of the code section is to be provided that includes the following language: "Failure by any member of the association to comply with the prefiling requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents".

_____ **Insurance** – Within 60 days before the start of the fiscal year, the association must distribute a summary of the association's property, general liability, earthquake and flood policies. The summary includes the name of the insurer, the type of insurance, the policy limits (coverage amounts), the amount of the deductible (percentage or dollar amount). If the policy declaration page includes all of this information, then it can be distributed in lieu of the summary. A disclosure, which is spelled out in Civil Code Section 1365 (e) (4), is required to be included with the summary or declaration pages that discloses the availability of the complete policy and that certain member property may not be covered by the association's insurance.

_____ **Monetary Penalty Schedule** – If the association has a fine schedule for violations of the association's governing documents (including rules and regulations) then it must be distributed to members whenever it is changed. It is recommended at a minimum, to distribute it annually with the budget.

SOUTH COAST INVOICE AND QUESTIONNAIRE MAILINGS

Invoices – You should have received your invoices in early October for the 2001 year. Dues remain at $45 for the year with a $10 prompt payment discount (net cost $35) if paid by November 15. We plan to distribute the 2001 Condominium Bluebook and the DRE's Reserve Study Guidelines as part of your 2001 subscription. We hope to distribute another book that we know is currently being edited.

Questionnaire – You will soon receive our 2000 Member Questionnaire that inquires about your association operations in a wide variety of areas including rules enforcement, insurance, legal issues and finances. Please take the time to complete it so that we can get as accurate a snapshot of local association operations as possible. We intend to distribute the results as a part of the 2001 Membership Directory. This means that responses need to be completed as of November 30th.

UPCOMING MEETINGS

November 4 – Community Association Institute, Mid-California Chapter ABCs Class in Santa Maria 8:30 AM. Registration fee - $ 60. This is the same class we did in Goleta in 1998-1999 that nearly 80 of you attended. See the enclosed flyer for additional information. For additional information, call 544-9114 ext. 26.

PUBLICATIONS AVAILABLE FROM SOUTH COAST HOA

Operating Cost Manual for Homeowners Associations – a useful guide when developing your association budget, published by the California Department of Real Estate - $ 6.00 postpaid.

Extra Copies of the South Coast Newsletter – Can be added to an existing membership for only $10 per year. This would allow an extra copy to be sent to another address within the association. Copies of the Bluebook or other publications distributed by South Coast are not included in this subscription.

IMPLEMENTING A SPECIAL ASSESSMENT

At one time or another, it is not uncommon for an association to have to consider imposing a special assessment on its members. Many times, a special assessment is a result of inadequate reserve funds, a major expense that occurs sooner than expected or is substantially more expensive than budgeted or an operating expense that increases beyond that anticipated in the budget. The imposition of a special assessment is usually covered in the association's governing documents and is also laid out in California Civil Code section 1366.

MEMBER VOTE REQUIRED

Normally, a vote of the members is required to approve a special assessment. There are exceptions, to be discussed later. In order to impose a special assessment, a majority of the owners (more than 50%) of a quorum (also more than 50%) permitted to vote under the California Corporations Code. For example, in a 100-unit association, if 65 members voted (over 50%), then it would take 33 yes votes (more than 50% of the 65 voting) to impose the assessment. Your association's attorney should be consulted to ensure that the vote is handled properly. Proxies may be used for voting.

Just like regular assessments, at least 30 days notice must be given to impose the assessment, once the assessment is approved by the members. Also like regular assessments, the special assessment is delinquent 15 days after its due date. Late fees, interest and collection costs can be added to delinquent special assessments. Again like regular assessments, a lien can be filed if the special assessment remains unpaid, subject to Civil Code Section 1367.

EXCEPTIONS TO MEMBER VOTE

As noted earlier, the board can impose a special assessment without a vote of the members in two situations. First, the board may impose a special assessment of up to 5% (or multiple special assessments that total up to 5%) of the budgeted gross expenses of the association for that fiscal year. This law, Civil Code section 1366(b), restricts a special assessment the board can impose without a vote of the members to a fairly low amount. For example, a board of a 40-unit association with budgeted gross expenses of $100,000 could impose

special assessments under this section totaling up to $5,000 during the fiscal year. Divided by 40 units, the maximum assessment per unit would be $125. These types of assessments are used most commonly to make up a shortfall in the operating account that may have occurred due to a utility rate increase, change in insurance coverage or unanticipated minor maintenance. If your association assessments are variable or partially variable (different members pay different assessments based upon square footage of unit, number of bedrooms or some other criteria), then be sure to consult with your governing documents to determine how the special assessment is to be assessed to the members. It may not be the same as how regular assessments are assessed.

A second exception provides that the board can impose a special assessment without a vote in certain “emergency situations”. There is no dollar limit on the amount that can be assessed under this section. If you are planning to use the emergency situation exception to impose an assessment, be sure to get your attorney’s opinion. Different people (and attorneys!) will have different opinions about what constitutes an emergency. As provided in Civil Code Section 1366(b), an emergency situation is any one of the following:

1) An extraordinary expense required by an order of the court. (e.g. Le Parc, previous)

2) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible where a threat to personal safety is discovered.

3) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the pro forma operating budget under Section 1365. However, prior to the imposition or collection of an assessment under this subdivision, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

For example, if the association needs to re-roof and has not set aside any reserve funds, it would be hard-pressed to use exception 3 to impose an assessment without a member vote. The board should know what its reserve obligations are through its reserve study. However, exception 3 might be available to a board that finds that it is required to replace a “40-year” roof in 15 years as a result of “El Nino” and improper installation of the original roof. An example of exception 2 might be the repaving of your parking lot after an inspection by your insurance agent who indicates that your coverage might be cancelled due to the unsafe conditions found during the inspection.

IMPLEMENTING THE SPECIAL ASSESSMENT

When soliciting a vote on special assessments, some members will simply “vote their checkbook”. If they have to write a (large) check, they will simply vote “no”. For larger assessments, offering to accept installment payments or a discount for a lump-sum payment may facilitate approval by some members who may not have the means (or desire) to make a

large payment up front. Making a payment option available will necessitate more work for your treasurer or property manager to track the payments but it could spell the difference between passage and failure.

A number of years ago, a client association needed to make a special assessment. An option was provided to pay the entire assessment of $412 or allow members to make 12 payments of $36 per month ($432). Approval was received by membership vote and exactly 50% of the members paid the entire amount up front and 50% of the members elected to pay in monthly installments. Collections were accelerated when a member paying in installments, sold his unit. Your property manager, CPA or attorney should be able to assist you in setting up an installment payment program.

OTHER FUNDING OPTIONS

Civil Code Section 1366 also allows an association board to increase its regular assessment by 20% without a members' vote as part of the budget process. Depending upon what the association needs the funds for and how soon funds are required, the association can build a line item into its pro forma operating budget to generate additional funding. While beyond the scope of this article, an association may be able to obtain a loan to meet a major maintenance obligation that can be repaid from increased operating assessments over several years. An article appeared in our October 1998 newsletter on Borrowing for Major Repairs, which described the process of obtaining a loan to meet major Association obligations.

AFRICANIZED BEE NOTICE

By: Barbara Perrier, Vice President
Green's Entomological Service, Inc.
Ventura, CA 800-541-1606

Ventura County is now declared to be a "Colonized African Bee County" by the County Agriculture Department. We recently had two calls for bee eradication that turned out to be Africanized Bees. One swarm was 85% Africanized; the other was 59%. Bees tend to swarm and become active in early spring. Our concern is that these swarms are break off groups from large Africanized bee colonies somewhere within the Port Hueneme and Ventura areas.

BACKGROUND – There was an experimental African Bee project in South America and some queens were released accidentally. The reason for the experiment was that the beekeepers were looking for a bee that would be comfortable in the heat, produce more honey and be less susceptible to mites and other diseases. The African bee fits the bill. It produces more honey than the European Bee, the larva hatch faster, is smaller and therefore the overall hive space would be utilized less for the bees themselves making more room for the honey. Because of its aggressive behavior, there is not much that can be done to stop the African bee from taking over the European colonies as it moves north and it will eventually become the dominant strain of bees.

It is almost impossible for the average person to distinguish the African bee from the European bee. The fact that it is slightly smaller is not that big a deal when comparing the

two bees. We could be looking at a colony of European bees that simply did not have an adequate supply of pollen and therefore, did not grow as large. Whenever we treat bees that we suspect to be Africanized, we submit a large number of them to the County Agriculture Department for positive identification.

The African bees will usually nest in lower areas than the European bee. For instance, bees nesting in a ground level water meter is not normal for European bees and will most likely be Africanized bees. The Africanized bees have much more aggressive behavior. So, if you get a call that bees are being very aggressive and low to the ground, they will most likely be Africanized HoneyBees.

In compliance with Senate Bill 250, “All persons controlling bees (Africanized or European) for hire must hold the proper Structural Pest Control License and be registered as Certified. The hive must be removed unless the owner signs a specific waiver. An exception exists for persons engaged in the live capture of bees without pesticides. Insurance requirements must be met. They may not use smoke or even soapy water to control the bees. Also under this new law, the pest control operator is required to open the wall and remove the hive and honey from the wall voids. This is not to be a simple pick it up and dispose of it removal. Rather, it requires opening and scraping the walls and wood studs, possibly doing wood removal, which may be very expensive. So if you have bees on the interior of buildings, you will either have to have the hive removed or sign a carefully written waiver and be aware that the honey may melt and stain walls, rodents and various insect pests may be attracted to the honey and honeycomb. Also, bees will be attracted to the honey, leading to a likelihood of reinfestation. In addition, the honey would be contaminated either by pesticides or insecticidal soap. Failure to remove a hive could leave the association vulnerable in the event of injury.

We recommend caution to anyone using leaf blowers or other loud machinery, especially if you notice a number of bees around. If you have a call regarding bees, we recommend you caution people/children to stay clear of the area. Even dead bees can sting, when stepped upon or mishandled.

Not every pest control company is certified to treat African bees. Costs to eradicate are based upon the size and location of the hives and the number of bees involved.