SOUTH COAST HOMEOWNERS ASSOCIATION

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UPCOMING SOUTH COAST HOA MEETING – JANUARY 26

It's time for our annual law and legislative update for the New Year. Our attorney panelists, James H. Smith (Grokenberger & Smith – Santa Barbara) and David A. Loewenthal (Loewenthal, Hillshafer & Rosen – main office Sherman Oaks) are planning to discuss numerous topics including:

- Senate Bill (SB) 150 – Applicability of Rental Restrictions
- SB 209 – Electric Vehicle Charging Stations
- SB 563 – Open Meeting Act, email, executive sessions, actions without a meeting
- Assembly Bill (AB) 771 – Documents to be provided to a buyer
- Numerous New California Court Cases affecting HOA Operations such as Architectural Guidelines, Maintenance Responsibilities, etc.

Compared to the past two years, there have been significant changes made to the Davis-Stirling Act and the Civil Code which govern your association. Mark your calendars now.

Date – Thursday, January 26, 2012
Time – 7-9 PM (Refreshments 6:45!)
Place – Encina Royale Clubhouse - 250 Moreton Bay Lane, Goleta

(Fairview exit off 101 - north 2 blocks to Encina Road, right one block to Moreton Bay Lane - left into Encina Royale - clubhouse on the right just inside the entrance)

NEWSFLASH – OWNERS DON'T LIKE UNPLEASANT SURPRISES DROPPED LIKE A BOMB!

By Beth A. Grimm. Attorney, Pleasant Hill, CA

Note from Author: *I spoke on this topic April 30 before the South Coast Homeowners Association. I have written a couple of articles on the subject and point you to my website www.californiacondoguru.com for a longer article, and possibly upcoming trade journals like the ECHO Journal. It is important to get the word out that associations cannot take owners for granted!*

Beth Grimm is an attorney with clients all over California, both associations and owners, and is a frequent contributor of articles for various HOA and Condo trade journals. She has a website with free FAQs for owners, board members, managers and realtors; free articles and client FYIs, free E-Newsletters and two blogs on hot topics in homeowner associations.

How can a board avoid "sideswiping" the membership and ending up with a revolt, a whopping legal bill, or worse, a recall! Building trust is the place to start. You may think the members aren't listening and don't care. But blast them with bad news and owners come "out of the woodwork" and stir up trouble.

What Are the Most Controversial Topics in an HOA? The kinds of things I see spiral out of control without a plan or any "damage control", tend to be related to a festering dissatisfaction with management, a big rehabilitation project costing a lot of money where a loan and/or special assessment will be needed, a governing document update project where an unhappy owner or owners is just chomping at the bit to find something to criticize the board about, presentation of a ballot on a controversial subject like a lease limitation restriction, or an emotional issue like changing the paint colors, filling in the pool, or removing the spa or some trees, reassigning parking spaces, and changing pet rules. Boards, you may have the best reasons for considering these things, but without the trust of the membership, you may well lack the support to carry them through to fruition.

Consider These Projects: "Projects" like special assessments, bank loans, lease limitation restrictions, updating governing documents, board or management crises, and even responding to a recall petition require planning. Yes, I call them ***projects*** because if you look at each as a ***project*** instead of an ***event***, you are likely to be more inclined to think about an approach. You are more likely to adopt a plan, identify where you can benefit from the guidance of others, and involve the membership - especially if a vote is needed - which is often the case.

Even with the "emotional" subjects, if you think in terms of a ***project*** instead of ***an action***, you are more likely to do important investigation and planning before a decision is made. For these subjects, you need to ***involve (and prepare) the membership***! If you think otherwise, talk to a board that didn't. You definitely need to seek member feedback before undertaking any action that is even likely to stir emotions. And keep in mind that the directors may not even be able to identify an emotional component, so surveying members may be critical when you are considering a change in the physical or aesthetic architecture, are planning drastic changes in the landscaping like removing trees, or **are thinking of messing with people's parking spaces or pets** for heaven's sake!

What Does It Take To Get The Owners On Board?

It takes basically one thing – ***TRUST*** – to get the confidence of enough owners to prevent a revolt. The perfect combination of trust-building skills would be patience, understanding, compassion, people skills, consensus-building skills, organizational skills, knowledge, leadership qualities, honesty, fortuity, ethics, a strong backbone, and competence. Do your directors have *all* of these qualities? My guess is they don't. Do they have some, individually or collectively? If your Board is lacking any of these skills, then you need to seek out the right resources to help you prepare to avoid, or respond to, the controversy before you. **How do you do that?** Start right here.

Where Do You Start?

Investigation - Information Gathering - Knowledge is Power. Any board that raises controversial matters to the membership without sufficient information to garner the trust of members is asking for trouble. Boards that discuss serious HOA problems in a void risk revolt when the big news comes out.

"***Be Prepared***" – weren't you a Boy Scouts or Girl Scout as a child?

Start the Information Flow – Don't Wait For Someone Else To Do It. If a Board broadsides owners with any big issue and has failed to prepare the owners for coming bad news - all it will get is extra stress – you can be sure the problems will multiply – probably exponentially. Such a Board may succeed by accident if the owners remain in an apathetic stupor but its better not to risk it. It is a lot harder to calm members after they have lost trust or been misinformed by

the rumor mill than to prepare them on the front end. Certainly, there are times when a board skates by, but in my experience certain subject matter seems to consistently draw seriously negative reactions by members. And if the board lets the information chain get started from or gets the wrong kind of attention from just one vocal member without responding, the problem can easily multiply.

Put Yourselves in Their Shoes - One of the most important things boards overlook is how action likely to have a big impact will be received. Another is a failure to identify subject matter that is likely to have an emotional content. Why is this so hard for the average director? Because, (1) they usually have more information and a different perspective than owners; (2) they don't see the kinds of things that can erupt every day (where an attorney who does what I do has the advantage of more experience facing or handling the difficult items); and (3) what may seem like business as usual to the board may trigger a very emotional reaction from an owner or owners whose interest is singular. Boards don't see the result of failure to communicate until it's too late. They don't imagine what a drastic effect loss of trust has on the potential success of any particularly important big decision. And some boards, like most teenagers, think they are invincible.

Here are some quick tips on this subject for Boards:

Investigate Options – Reach beyond your collective board members to the internet, articles, and experts. Knowledge and information open the doors to successful plans and communications. Go to seminars, get on the web, brainstorm with others, do your research. Find options to replace something if you are taking something away. Find ways to assist owners to cope with some big expense. Research loans options, association and individual, consider various options like "up front" payers vs. those that can only live with installments. Put together a good plan.

Break Owners in Slowly to Prepare Them For Bad News Or Big Changes - From your research and investigation, prepare meaningful information for the board and for the membership, and distribute it at various stages! Use board meetings, newsletters, town hall meetings, association websites, statistics, cost comparison analyses, best and worst case scenarios, Q and A documents, surveys, comment queries, committees, and things like ***useful*** paint samplings (on the side of a building, not on a half inch by half inch paint chip or Xerox copy page).

Consult With and Use Experts – Who knows more than you do? Try anyone who has been through the same thing before, one time or many times. Where do you get help? From experts who have helped others through the same things or who know more than you do. How do you effect damage control if needed? Ask those who have helped HOAs in just the same types of crises. Don't ask a litigator whose focus and strong suit is how to win in court when you get there. Join industry groups and read the articles presented. Go to tradeshows and ask the exhibitors and speakers. Ask an attorney, manager, experienced contractor, CPA, or other

professional how you prepare, or after the fact quiet the restless natives at home on any given subject of their expertise. Those with experience tend to know how best to build back the trust of those restless natives or how to diffuse or shut down the troublemakers.

FREE MEDIATIONS OFFERED THROUGH THE SANTA BARBARA COUNTY SUPERIOR COURT CMADRESS PROGRAM

By: Christopher E. Haskell, Esq.
Price, Postel & Parma, Santa Barbara

Editor's Note: At our October meeting, the subjects of mediation and view ordinances were discussed. Mr. Haskell, who was in attendance at the meeting, offered to provide some additional information and clarifications on these topics for the newsletter. Mr. Haskell is a partner at Price Postel & Parma LLP, one of the oldest firms in the Western United States, tracing its Santa Barbara roots to 1852. Mr. Haskell's practice focuses on real estate and construction. He has represented numerous Homeowners Associations in the Santa Barbara Area. Mr. Haskell's firm is a South Coast member and contact information appears at the end of the newsletter.

Once a lawsuit has been filed in Santa Barbara County Superior Court, the judge can assign the matter to its Court Alternative Dispute Resolution Department (CADRE) for a free mediation, known as a Case Management Alternative Dispute Resolution Early Settlement Session (CMADRESS). CADRE will assign a mediator acceptable to the parties to shepherd the CMADRESS mediation and the first three hours of that mediation are free, paid for by the court system (your tax dollars at work).

The mediation typically requires the attendance of the attorneys, parties, and their insurance adjusters. If the HOA is being sued, and its insurance carrier concludes there is a potential for coverage under the HOA's insurance policy, the carrier will assign defense counsel and an adjuster, both of whom should attend the mediation (out of state adjusters usually request permission from the mediator to attend telephonically). The CMADRESS mediation is to occur within 60 days of the assignment of the case to the mediator, however this depends on the mediator's schedule.

During the mediation, the mediator discusses the law and facts of the case in some detail, explores the possibility of an early settlement and, if settlement appears to be elusive at this early stage, various alternative dispute resolution options available to the parties will then be explored (i.e., further mediation sessions, arbitration, an early settlement conference with the judge, etc...). Often the parties and counsel will request the mediation be extended beyond the three hours if the parties believe it will be productive, and there is shared optimism that a settlement may soon be reached. The additional time is then provided by the mediator on a pay as you go basis, the fees being split evenly amongst the parties.

Upon conclusion of the mediation, the mediator reports back to the court indicating who was in attendance, the progress made, and whether the matter has settled. The report is provided by the mediator acting as a special master, and any negotiations or offers made during the mediation maintain their confidentiality.
Even if settlement is not achieved, these pre-emptive CMADRESS mediations often provide a solid foundation and framework for future settlement negotiations between the parties. Needless to say, it is far cheaper to reach a global resolution of a dispute via mediation even if it takes 2 - 3 sessions than by litigation and trial, which can often takes more than a year to conclude.

SANTA BARBARA CITY TREE AND VIEW ORDINANCE PROTECTION

Many property owners in the City of Santa Barbara are unaware that a City permit is often required for tree pruning or removal, and topping of trees is strongly disapproved of by the City.

Santa Barbara has two ordinances which regulate the planting, pruning, and removal of trees on City as well as private residential property (Municipal Code Sections 15.20 and 15.24). One of the purposes of these ordinances is to serve the public welfare by protecting trees from destructive pruning and unwarranted removal. The ordinances also define how a city tree or privately owned tree can be given special protection by the designation of Historic or Specimen tree.

If you have any questions about pruning or possibly removing a mature tree, you can call the City Arborist at (805) 564-5433, or retain the services of a local certified arborist who is knowledgeable of local laws relating to the care and maintenance of trees.

In January 2002 the City of Santa Barbara also adopted a view ordinance which protects views in certain situations (Municipal Code Section 22.76).

The City's view ordinance was designed to establish a detailed step by step private process for neighbors to resolve disputes regarding blockage of private views by trees or other vegetation. The ordinance recognizes the right of property owners to a private view, but stipulates that a private view may not necessarily be restored to an unobstructed panorama. The process encourages neighbors to seek assistance from certified arborists, mediators, and arbitrators to identify a solution satisfactory to all parties. (A brochure on the view dispute resolution process is available from both the Community Development and the Parks & Recreation departments.)

When a view dispute develops among residential neighbors located within the City boundaries, both the City's tree preservation ordinances and view ordinance need to be reviewed. Both may have an impact on the eventual resolution of the dispute.

Finally, although there is no statewide legislation protecting views per se, in certain limited circumstances a view can be restored if there is a showing that the obstruction (which must exceed 10 feet in height) has been erected or maintained as a spite fence, i.e., for the purpose of annoying the owner or occupant of an adjacent property. Spite fences can include a row of trees or a tall hedge (see Civil Code Section 841.4).

All City of Santa Barbara ordinances can be found on the City's website at http://www.santabarbaraca.gov/Government/Ordinances

WHY MOST HOA'S DO NOT NEED TO BE 100% FUNDED

The First Mathematical Proof

By: Chris Andrews, Reserve Specialist
Stone Mountain Corporation, Goleta, CA

Editor's Note: Chris Andrews is Reserve Specialist who has been doing reserve studies for 20 years for community associations throughout California and he is a frequent contributor to this SCHA Newsletter. Contact information appears at the end of the newsletter.

Many association board members – and even some reserve specialists – will tell you with bravado that it is an "ideal" goal for your association to be 100% funded for depreciation-to-date. To say so is often incorrect and misleading.

Other people will tell you that your association doesn't need to be 100% funded, but they cannot explain why – they just have a gut feeling that *"you don't need to have that amount of money sitting around…"*

Until now, it appears no one has offered a mathematical analysis to actually prove why most associations do not need to be 100% funded for depreciation-to-date – yet can still fund anticipated reserve expenses over time.

The following analysis uses quantitative examples to illustrate which associations do not need to be 100% funded. This realization should hopefully steer Board members away from an inordinate focus on being 100% funded as the "gold standard" of financial strength. And various State legislators would do well to understand the math involved when drafting Civil Code applicable to community associations.

In addition, a new concept will be introduced that acknowledges that each association has a unique pattern of capital expenses over time – thus we can define the "Maximum Percent Funded Estimate" that each association can expect over the next 30 years. That number is different for each association and is usually less than 100%.

Overview

- What is the ***Percent-Funded Estimate***?
- Why most HOA's do NOT need to be 100% funded for depreciation**.**
- Is it acceptable to be at or near *0% funded*? (Usually not, but there are some cases…)
- *Mathematically customizing* the Percent-Funded measure for each Association.
- Should being 100% funded be "the gold standard" for reserve funding?

There's often a conflict between people's perception of how well funded their association is via the *Percent-Funded Estimate* and what the reserve study *actually* recommends (using the Cash Flow Funding method).

Some associations are over 100% funded for depreciation-to-date, yet the cash flow analysis says they need to *increase* reserve funding. Conversely, some HOA's are less than 100% funded yet their cash flow analysis suggests that the HOA can *decrease* reserve funding!

Wouldn't the foregoing lead one to conclude that the *Percent-Funded Estimate* is somewhat misleading as a measure of financial health?

No two associations are alike and each one has *different capital expense patterns* over time. Our analysis of numerous 30-year funding plans has demonstrated that many associations do not need to be 100% funded during the next 30 years.

Definition: The Percent-Funded Estimate

The **Percent-Funded Estimate** is a common measure of the financial strength of your association and is a required disclosure in the State of California per California Civil Code 1365. It is a ratio of how much cash in reserves your association has relative to the total depreciation-to-date on the association's capital assets.

$$\frac{\text{(Amount of money in Reserve Account)}}{\text{(Total depreciation to-date of the association's capital assets)}}$$

For example, if your association only has a $200,000 road to maintain and the road is 10 years old with a 20 year useful life, the depreciation-to-date would be $100,000 because half of the life of the road is "used up." If your association has only $50,000 in reserves in the

10th year, the "Percent-Funded Estimate" would be 50%. If the association has $100,000, it would be 100% funded for depreciation-to-date.

Being 100% Funded is only necessary for very few Associations

Upon analysis of reserve funding scenarios for many associations, here are the findings:

1. What determines whether an association needs to be 100% funded is the degree to which the association's capital expenses are "clustered" in any one year.

   a) Associations with all of their reserve expenses occurring in one year will need to be 100% funded in that year because they will be rendering all of their capital assets to a new/renovated condition in that year.

   b) Associations with more than one capital expense and if those expenses are spread out evenly over time usually never need to be 100% funded – except, of course, when the HOA was new.

2. An association with only ONE capital asset (reserve component) to maintain, would need to be 100% funded because it will need all the money required to replace that ONE capital asset in a future year. To fairly distribute the cost of depreciation of that asset over time for all owners, it would make sense to be 100% funded for that item during each year leading up to the replacement year.

In most reserve studies, if an association has more than a few capital expense line items in the cash flow analysis, the likelihood that all these expenses occurring in the same year is very low – very much like a rare line-up of the planets in the solar system.

Each association has a different *expense pattern* over time. Some associations have highly clustered expense patterns as in this example (note how all expenses "line up" in Year 2014):

RESERVE COMPONENTS	Useful Life	Remain Life	Cost to Replace	2011	2012	2013	2014	2015
ROOFING								
Comp Shingle Roof Replace	30	3	$195,000				$195,000	
Skylights - Replace	30	3	$22,500				$22,500	
PAINTING								
Stucco - Paint	15	3	$31,250				$31,250	
Paint Trim/Siding	6	3	$47,500				$47,500	
Paint Touch-Up	1	0	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500
Pool Wrought Iron - Paint	4	3	$1,900				$1,900	
PAVING								
Asphalt Sealcoat	3	0	$2800	$2800			$2800	
Asphalt Petromat Overlay	20	3	$28,750				$28,750	

SWIMMING POOL							
Pool Resurface	15	3	$10,500			$10,500	

And other associations have very sparse expense patterns (full 30 years not shown):

RESERVE COMPONENTS	Useful Life	Remain Life	Cost to Replace	2011	2012	2013	2014	2015
Roof - Home #1 (1981)	30	0	$10,000	$10,000				
Roof - Home #2 (1982)	30	1	$10,000		$10,000			
Roof - Home #3 (1983)	30	2	$10,000			$10,000		
Roof - Home #4 (1984)	30	3	$10,000				$10,000	
Roof - Home #5 (1985)	30	4	$10,000					$10,000
Roof - Home #6 (1986)	30	5	$10,000					
Roof - Home #7 (1987)	30	6	$10,000					
Roof - Home #8 (1988)	30	7	$10,000					
Roof - Home #9 (1989)	30	8	$10,000					
Roof - Home #10	30	9	$10,000					
~	~	~	~					
Roof - Home #30	30	29	$10,000					

As you can see from the above example, this HOA only needs to generate $10,000 per year. It does not need to be 100% funded in any of the years of the 30-year cost projection – as will be described later. In fact, the maximum percent funded amount in each of the 30 years is very low. Would you believe their percent funded estimate for each of the next 30 years is below 10%, yet their cash flow analysis funding plan works?

Being at or near 0% funded sometimes happens (And it may or may not be cause for concern)

When proper 30-Year Cash Flow Optimization techniques are employed, the resulting reserve funding plan will allow an association to fund the next 30 years of expenses without a reserve account deficit in the next 30 years. What this means is that *in one of the 30 years, the reserves might actually be spent down to zero or close to zero.* And then, with planned reserve contributions thereafter, reserve funds ramp up again.

Therefore, with an optimized 30-year reserve cash flow funding plan, it is possible for an association to be essentially 0% Funded at one point during the 30 years if the association spends all of its reserve funds to pay for large projects completed in that year. Yet this may not be cause for alarm if the contribution to reserves is healthy immediately thereafter and the cash flow funding plan shows that year is the “planned low point” of the 30-year reserve funding plan.

An association at the low point in its reserve funding cycle will appear poorly-funded to some of its homeowners as well as to new buyers and lending institutions who don’t understand how

the cash flow analysis works. This is an unfortunate side-effect of focusing on the *Percent Funded Estimate* as a measure of financial status.

NEW CONCEPT: "Maximum Percent Funded Estimate" Each Association has a *different* range of percent funded estimates for each year in their 30-year cash flow analysis. The maximum percent funded estimate in those 30-years is often less than 100%

For associations that have reserve component capital assets that do not all need replacement in the same year (e.g. do not need to be 100% funded as described above), the *percent funded estimate* for each of the next 30 years has a natural fluctuation, depending on future cycles of reserve expenses.

For these associations, the percent funded estimate may range from *at or near zero percent* in the lowest year to a number that is often less than 100% -- and sometimes *substantially* less than 100%.

The year in which the highest percent funded estimate occurs is usually in the year prior to large reserve expenses because the association has had to build reserve funds in anticipation of these expenses. The unique range of projected percent-funded estimates (min Percent Funded to max Percent Funded) for each association should be the yardstick by which an association measures its financial status, not how close is the HOA to being 100% funded for depreciation-to-date.

Extreme Example: A 6.4% Funded Estimate Scenario that works!

The next question one might ask is, *"What is the lowest possible maximum percent-funded estimate for an association during a 30-year cash flow projection."* And, *"What type of capital expense pattern would provide that scenario?"*

As it turns out, a 30-year optimized cash flow analysis with a *very sparse* expense pattern allows an association to successfully fund every reserve expense shown in the projection, yet the association will have astonishingly low percent funded estimates in each year. The ultimate sparse expense pattern is one in the association has *exactly* the same expense amount each year but it has many components.

For example, consider the prior example where we had 30 roofs, with only one $10,000 roof being replaced each year during the 30-year expense projection… (refer to the sparse expense pattern example spreadsheet above).

Next, let's calculate a *Straight-Line Depreciation* analysis for the same data (see below). Note that there is $155,000 of "depreciation-to-date." Therefore, if the HOA wanted to be 100% funded, *they would need to have $155,000 in reserves each year!* Yet the cash flow analysis shows that the HOA only needs to generate $10K of cash flow each year to fund 100% of reserve expenses going forward.

STRAIGHT-LINE DEPRECIATION ANALYSIS & PERCENT FUNDED ESTIMATE

RESERVE COMPONENT	Estimated Useful Life (years)	Estimated Remaining Life (years)	Estimated Current Cost to Replace	End Dec 2010 Depreciation to Date	Jan 1, 2011 Beginning Fund Balances	FY 2010 Annual Depreciation
Roof - Home #1 (1981)	30	0	$10,000	$10,000	$645	$333
Roof - Home #2 (1982)	30	1	$10,000	$9,667	$624	$333
Roof - Home #3 (1983)	30	2	$10,000	$9,333	$602	$333
Roof - Home #4 (1984)	30	3	$10,000	$9,000	$581	$333
Roof - Home #5	30	4	$10,000	$8,667	$559	$333
Roof - Home #6	30	5	$10,000	$8,333	$538	$333
Roof - Home #7	30	6	$10,000	$8,000	$516	$333
Roof - Home #8	30	7	$10,000	$7,667	$495	$333
Roof - Home #9	30	8	$10,000	$7,333	$473	$333
Roof - Home #10	30	9	$10,000	$7,000	$452	$333
Roof - Home #11	30	10	$10,000	$6,667	$430	$333
Roof - Home #12	30	11	$10,000	$6,333	$409	$333
Roof - Home #13	30	12	$10,000	$6,000	$387	$333
Roof - Home #14	30	13	$10,000	$5,667	$366	$333
Roof - Home #15	30	14	$10,000	$5,333	$344	$333
Roof - Home #16	30	15	$10,000	$5,000	$323	$333
Roof - Home #17	30	16	$10,000	$4,667	$301	$333
Roof - Home #18	30	17	$10,000	$4,333	$280	$333
Roof - Home #19	30	18	$10,000	$4,000	$258	$333
Roof - Home #20	30	19	$10,000	$3,667	$237	$333
Roof - Home #21	30	20	$10,000	$3,333	$215	$333
Roof - Home #22	30	21	$10,000	$3,000	$194	$333
Roof - Home #23	30	22	$10,000	$2,667	$172	$333
Roof - Home #24	30	23	$10,000	$2,333	$151	$333
Roof - Home #25	30	24	$10,000	$2,000	$129	$333
Roof - Home #26	30	25	$10,000	$1,667	$108	$333
Roof - Home #27	30	26	$10,000	$1,333	$86	$333
Roof - Home #28	30	27	$10,000	$1,000	$65	$333
Roof - Home #29	30	28	$10,000	$667	$43	$333
Roof - Home #30 (2010)	30	29	$10,000	$333	$22	$333
TOTALS			$300,000	$155,000	$10,000	$10,000
Reserve Account Balance, estimated (or projected) as of start of new fiscal year:						$10,000
Percent Funded Estimate (reserves / recommended fund balance):						6.45%
*Reserve Deficiency (100% Funded reserve balance minus actual reserve balance):						$145,000

Assuming this association follows the cash flow plan and only generates $10,000 each year, yet the depreciation-to-date is $155,000 each year (from the 5th column in the preceding table), the percent funded estimate is calculated as follows:

$$\frac{\$10{,}000 \text{ (Amount of money in Reserve Account)}}{\$155{,}000 \text{ (Total depreciation to-date of the association's capital assets)}}$$

The foregoing calculation yields a shockingly low 6.45% funded estimate! It doesn't matter if the roofing cost per home is $10,000 or $50,000 – the result is the same 6.45%.

Caution: This discussion is not intended to encourage HOA's to be satisfied with a low percent-funded estimate. The determination of whether a sub-100% percent-funded estimate is acceptable must be done in conjunction with a thorough understanding of each HOA's unique cash flow analysis.

A 30-Year Cash Flow Analysis Funds 100% of Future Expenses!

Suppose your Board of Directors was given supernatural power to precisely predict all future expenses for the next 30 years and they set the budget for each of the next 30 years as shown in their 30-Year Optimized Cash Flow Analysis… The Board would therefore be ensuring that 100% of the capital expenses in the next 30 years would be funded by regular monthly member assessments.

Isn't this essentially a 100% funding plan? Perhaps not 100% funded for depreciation-to-date, but indeed the Board would be funding 100% of forthcoming expenses. The question then becomes – is it more important to:

- Be 100% funded for depreciation-to-date when you don't need all that money?
- Or only have the right amount of money when needed in the 30-year cash flow analysis?

California Civil Code 1365.5 requires that the *percent-funded estimate* is disclosed to members. When condos are sold, real estate agents and lending institutions are now inquiring frequently about how well-funded associations are – on a "percent-funded" basis. Unfortunately, they're missing the point: The same Civil Code drafted by the state legislators does NOT require that associations are 100% funded for depreciation-to-date. It merely requires that associations disclose the percent funded estimate to members and *"estimate the annual contribution necessary to repair, replace, restore, or maintain the reserve components"* for the next 30 years and approve a funding plan to do so:

> **California Civil Code 1365.5(e)(4)** -- *An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (1) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.*
> **California Civil Code 1365.5(e)(5)** -- *A reserve funding plan that indicates how the association plans to fund the contribution identified in paragraph (4) to meet the*

association's obligation for the repair and replacement of all major components with an expected remaining life of 30 years or less

A 30-year cash flow analysis funding plan satisfies *Civil Code 1365.5(e)(4 and 5)* above by funding expenses for the next 30 years. Yet it in most cases, it will not ensure 100% funding for depreciation-to-date during those years, thus proving mathematically that being 100% funded isn't always necessary.

NEW CALIFORNIA LEGISLATION EFFECTIVE IN 2012

Below you will find legislative digests of four new laws that will be effective January 1, 2012. These were bills that were passed and signed by the Governor earlier this year. For more information, you can go to the Legislature's website http://www.leginfo.ca.gov/bilinfo.html and enter the bill number. You can view the actual bill, analyses, votes, etc.

SB 150 – Lease Limitation Restrictions

This bill would prohibit the owner of a separate interest in a common interest development from being subject to a provision in a governing document, or a provision in an amendment to a governing document, that prohibits the rental or leasing of all or any of the separate interests in that common interest development to a renter, lessee, or tenant unless that governing document, or amendment thereto, was effective prior to the date the owner acquired title to his or her separate interest. The bill would also authorize that owner to expressly consent to be subject to a governing document or amendment thereto with that specified prohibition.

This bill would, in addition, require the owner of a separate interest to provide a statement describing any provision in the governing documents that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant, and its applicability, if there is such a provision.

AB 771, Common interest developments: requests for documents: fees

This bill would require that the seller also provide a copy of specified minutes of the meetings of the association's board of directors, if requested by the prospective purchaser. This bill would also require an association to provide to the seller a written or electronic estimate of the fees that will be assessed to provide the specified documents. The bill would permit the association to collect a reasonable fee based on the association's actual cost for procuring, preparing, reproducing, and delivering the requested documents and would prohibit charging additional fees for electronic delivery of documents. The bill would permit the association to contract with any person or entity to provide the documents on behalf of the association. The bill would require the owner of a separate interest to also provide a form for billing disclosures, as specified, to a prospective purchaser, and would also require the association to provide this form to a recipient authorized by the owner of the separate interest.

SB 563, Common interest developments: meetings

This bill would require notice for a meeting that will be held solely in executive session to be given to members of the association at least 2 days prior to the meeting, except as specified. The bill would provide that, if a member consents, notice may be given to the member electronically, and would also delete provisions that generally allow the board of directors to

consider any proper matter at a meeting even if it has not been noticed as an action item for the meeting. This bill would permit meetings of the board of directors of a common interest development association to be conducted by teleconference, as specified, by revising the definition of a meeting for these purposes. The bill would require that a teleconference meeting be conducted in a manner that protects the rights of members of the association and otherwise complies with other requirements governing common interest developments. The bill would also require that the notice of a teleconference meeting identify at least one physical location so that members of the association may attend and would require that at least one member of the board of directors be present at that location. The bill would prohibit the board of directors from taking action on any item of business outside of a meeting. The bill would prohibit the board from conducting a meeting via a series of electronic transmissions, such as electronic mail, except to conduct an emergency meeting, as specified. The bill would establish a definition of an item of business.

2) Existing law requires an association to make available specified association records, but excludes from those requirements agendas for meetings of the board of directors that are held in executive session. This bill would delete this exclusion, and would therefore require an association to make available agendas for meetings held in executive session.

SB 209, Common interest developments: electric vehicle charging stations

This bill would provide that any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a common interest development, or any provision of the governing documents of a common interest development, that effectively prohibits or restricts the installation or use of an electrical vehicle charging station is void and unenforceable. The bill would authorize an association, as defined, to impose reasonable restrictions on those stations, as specified, and would impose requirements with respect to an association's approval process for those stations. If the station is to be placed in a common interest area or an exclusive use common area, the homeowner would be responsible for various costs associated with maintaining and repairing the station, as well as costs for damage to common areas and adjacent units resulting from installation and maintenance of the station. The bill would impose other responsibilities on the homeowner, including maintaining an umbrella liability coverage policy of $1,000,000 that names the common interest development as an additional insured. An association that violates the bill's provisions would be liable for damages and a civil penalty, as specified.

SOUTH COAST HOA WEBSITE

We maintain an archive of newsletters on our website www.southcoasthoa.org. In addition to the newsletters, we post information about our upcoming meetings and have a professional member sponsor page if you are looking for professional services for your association. We also have links to other HOA organizations and resources.

If no one on your association board is receiving the newsletter electronically, we will be happy to add one email address from your association to our email blast to receive newsletters, meeting reminders and other information electronically. The only qualifications are that your association is a South Coast member and that there isn't another board member already receiving the email. You may then distribute the email to your other board members.

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