SOUTH COAST HOMEOWNERS ASSOCIATION

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IN THIS ISSUE

NEXT SOUTH COAST MEETING

ANNUAL LEGAL FORUM

Date – Wednesday, January 21
Time – 7:00 – 9:00 PM
Place – Holiday Inn, 5650 Calle Real, Goleta

Scheduled to Present – James H. Smith, Grokenberger, Smith and Courtney
- **David A. Loewenthal, Hillshafer, Loewenthal and Rosen**
- **Karen A. Mehl, Esq.**

It's time for our annual law forum. Our speakers will provide us an update on California legislative changes (which were numerous) as well as other legal topics of current interest. In addition, we will also have a moderated Question and Answer session where you can submit written questions to the panel for their consideration. There is no cost to attend.

2004 CONDOMINIUM BLUEBOOKS

At this writing, we have been advised that the 2004 edition of the Condominium Bluebook, a reference book of State laws and other useful information, will be shipped soon from the publisher. All members who have renewed their memberships for 2004 will receive a copy. Additional copies of the Bluebook will be available for $16 per copy, postpaid.

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

SOUTH COAST MEMBER SURVEY RESULTS – PART I

In September, all South Coast association members received a 2-page survey to ask for our members' input regarding current association financial and management information and in some cases, to be able to compare data from our previous surveys.

Sample Size: We received 95 responses, approximately 70% of our associations took the time to respond. This compares to the 74 responses that we received three years ago. 20 responses came from North Santa Barbara and San Luis Obispo Counties. 74 came from South Santa Barbara County while a single response came from outside this area.

Type/Age of Associations: 55% of the responses were from condominium associations, the same percentage as in 2000. However, 61% of the South County responses were from condominiums while only 35% of the North County responses were from condos. Overall, the median association (half older and half newer) was built in 1979 – 24 years ago. Again, geographic differences occur. The median North County association was built in 1984 while in the South County – 1975, 9 years difference.

Note: In many cases, I have used medians instead of averages in making comparisons. A median is defined as where half of the values are larger than the median and half are smaller. In some cases, averages can distort the data. For example, if you had a sample of 5, 10, 15, 20 and 100, the average would be 25 which is larger than 4 of the 5 numbers in the sample. 15 is the median where 2 items are smaller and 2 are larger.

Median Size of Associations: The median size association responding was 38 units, exactly the same as our 2000 survey. For condos, the North County median was 30 units while the South County median was only 20 units. For planned developments, the medians were nearly identical – 48 for the North County and 46 for the South County

Fair Market Value of Units: For the first time, we asked how much your homes are worth on today's market. For the North County, the median was $265,000, $237.500 for condos and $330,000 for planned developments. I don't think that anyone will be surprised that the South County median was more than double - $555,000. South County condos were at $525,000 while planned development units were at $625,000.

Reserve Funds: The following chart shows the reserve funding of our sample:

	North	South	Total
Median Reserve Funds on Deposit	$ **54,496**	**$ 57,000**	**$ 56,000**
Condominiums	NA	46,589	43,178
Planned Developments	58,991	78,000	65,500
Funds per Unit – Total	1,147	1,500	1,474
Funds per Unit – Condo (2003)	NA	2,329	2,056
Funds per Unit – Condo (2000)	NA	2,250	2,250
% Change from 2000		3.5%	-8.6%

	North	South	Total
Funds per Unit – PUD (2003)	$ 1,229	$ 1,696	$ 1,379
Funds per Unit – PUD (2000)	833	1,065	833
% Change from 2000	47.5%	59.2%	65.5%

There are generally overall increases in the reserve funds held by associations. In the case of our planned developments, the median increased 65.5% to $1,379 per unit while the total reserves decreased slightly for condos to $2,056 per unit.

Assessments: We asked you what your assessments were this year and last year in order to track changes.

	North	South	Total
Total All Assessments – Median	$ 146	$250	$ 225
Last Year's Assessments – All	140	230	215
% Change from last year	**4.3%**	**8.7%**	**4.7%**
Condominiums Only:			
Median Assessment – Current Year	$ 150	$254	$240
Last Year's Assessment	145	235	228
% Change from last year	**3.4%**	**8.1%**	**5.3%**
Planned Developments:			
Median Assessment – Current Year	$ 88	$230	$195
Last Year's Assessment	81	220	180
% Change from last year	**8.6%**	**4.5%**	**8.3%**

All of these percentages are significantly higher than the 2% CPI factors published by the government.

Primary Reason Why Assessment Changed:

	Number of Associations	North	South
Utilities	10	3	7
Insurance	34	5	29
Reserve Funding	16	1	15
Common Area Maintenance	19	1	18
Management/Admin	5	1	4

As a general rule, planned developments have less maintenance and insurance obligations than condominiums and these figures bear this out.

Balance of Survey in Next Issue

TOP TEN TIPS TO STAY OUT OF LEGAL (AND OTHER) TROUBLE PART II

By: Beth A. Grimm, Esq.

Beth is an attorney from the Bay Area and is a frequent contributor to South Coast HOA, both as a speaker at our annual summer law forums and as a writer. Beth wrote this article for her house publication, **California Homeowner Association Legal Digest** and is reprinted with her permission. Part II will run next issue. Information on Beth's publications can be had by calling 925-746-7177 or from the web at www.condoguru.com.

I recently gave a program on this topic to a group of about 50 board members and managers in Santa Barbara (The South Coast Owners Association). It went over so well I decided to share the tips with the *Digest* readers.

I am in a good position to see the mistakes made by boards, managers, and others in this industry because I am called in when there is a problem. And of course, hindsight is closer to 20/20 than foresight! Everyone can use a little help from someone who sees just what goes wrong in this business. Perhaps you readers can benefit from the experiences I have seen that commonly lead to disaster!

Tip #6: CONSULT THE RIGHT KIND OF EXPERTS

Invoke the Protections of CC1367.5 and Corp. Code 7231 & 7231.5

Board members can get some insulation from liability for consulting the right kinds of experts, and relying upon their advice. The codes recited above provide this insulation, so long as the association carries a reasonable amount of insurance as specified by the code (and *so "in good faith*" includes, as defined in the Corporations Code, consulting the right kinds of experts and relying on their advice. An association should consult a knowledgeable CID lawyer to get legal advice, not a manager. An association should consult an engineer to overcome a design problem, and not a handyman. An association should consult a CID insurance expert, and not someone who is new in the business and wants to get together a "portfolio."

Use Architects, Engineers and Construction Managers For Important Construction Projects

Many boards of directors find they can save money in pulling together an important contract that involves various contractors and subcontractors without using a construction manager. However, board members do not realize the amount of coordination that goes into an effort that involves replacement of siding and roofs (just one example) at the same time.

The average board member would not even know which had to come first, or where these two items tie in, or whether they need to be done at exactly the same time. Experience and special skills are critical.

Common interest development buildings often contain complicated integrated systems that might require specially designed fixes.

Most contractors that are not used to working in CIDs and most Board members would not tend to foresee the potential problems that arise with regard to owner notification, coordinating right of entry, handling of pet issues, etc., etc., etc., whereby a construction manager who works in this industry would have that specific knowledge.

Board members might not have a full understanding or comprehension of the amount of money that can be lost (or saved!) with regard to handling those aforementioned issues, and most importantly, proper coordination of the project. Losses to contractors means lost time, and often there are financial ramifications to that. Having any contractor come and do the work out of order might require reconstructing, to get things done right. If the board chooses a roofing contractor and the roofs are leaking in such a way as to indicate the existence of a design defect, the association might not get the benefit of having corrective measures such that the same problem does not recur, and the same $5,000 to $25,000 assessment does not become necessary a second time within a ten year period.

Tip #7: DON'T THINK BEHIND CLOSED DOORS IS THE ONLY WAY TO RESOLVE PROBLEMS THAT ARISE

Having a Homeowner Forum and Then Closing the Doors To Do Business Is Not a Proper Way To DO Business!

Some boards (I find this tends to be the case more in self-managed than professionally managed) think that the new laws allowing the homeowners to address the board at meetings allow for the a process whereby the homeowners come in and address the board, and then the board sends everyone home and does business. While this might be nice and simple, and would probably minimize interruptions, it is not the status of the law.

Matters that are subject to executive session (meetings without the homeowners presence) are those matters that deal with personnel issues, negotiation of contracts, disciplinary matters, pending or threatened litigation, or attorney/client privileged matters.

One board recently discussed the issue of pool closure in closed session, because it was delicate and touchy issue, and I guess they did not want the input of the members on it. However, the result was that the board of directors understood all of the problems with keeping the pool open, and probably made a reasonable decision, but that decision blindsided the members and did not serve the community well. Certainly, if the board is discussing disciplinary matters relating to someone's conduct in the pool, that is subject to a confidential proceeding, but just discussing whether or not the pool should be closed – that is a matter for open session.

Don't Be Afraid To Discuss Delicate Issues and Seek Input From The Community

Seeking input from the community is not a bad thing. It helps give the board more information upon which to act, or at least to consider, especially if the board is looking at some kind of drastic action.

"Delicate issues" are not one of the prescribed special items that are subject to executive session discussions. In keeping the owners in the loop, there may be some difficult questions

to answer or emotions to deal with, but at least the serious and often disastrous problem of the backlash of complete surprise is avoided.

Disclosure of Important and Serious Matters Can Be Beneficial

There is no question; there is a fine line between when the board of directors should actually disclose a potentially ***big*** issue that might result in a special assessment. Opening up the discussions to the members takes guts. When talking about a potential major rehabilitation project that could involve the possible depletion of the reserves or imposition of a large assessment, it sometimes becomes a matter of damage control and politics, rather than just good sense. The board often has a difficult task of trying to determine exactly what the problems are, and trying to estimate what the ultimate costs might be, without the benefit of firm bids. The investigation stage can last a long time. There is the question: at what point the owners should be given bad news information. The board does not want to create a panic, with everyone assuming there is going to be a huge assessment, if it is a matter that can resolved fairly swiftly and without spending a fortune. On the other hand, the board of directors does not want to disclose that it is considering problems that may cost in the neighborhood of $5-$10,000 (each unit) when in reality the problems could lead to a $30-$50,000 (each unit) assessment. Too much misinformation, just like a lack of any information, can lead to problems with regard to sales in the development. If a seller tries to be honest and disclose certain information with regard to a sale, and that information changes drastically (for the worse), that leaves the buyer with a bad taste in their mouth, and good reason to visit an attorney.

On the other hand, if the board of directors starts the discussions in open meetings about the problems that have been discovered, and goes through its methodical process of dealing with it, there will be entries in the minutes indicating that the board is looking at the issues. Those kinds of things present an important disclosure, even if they are not supported with an abundance of information (making sure of course to label the discussions “preliminary”). The board of directors can discuss bidding on contracts in executive session, and this is something that takes place as the board is developing its plan and moving forward if the problem can be fixed by contractors or service providers. Owners don’t need to be notified about all the discussions with the architect, roofer, or other contractor, but a notation in the minutes that the board held an executive session to consider or review contracts for the architectural services of a roofing contractor would be a good indicator of where the board is in the process, and might forestall demands to know more about what the real costs are going to be. If the board of directors does not make sufficient disclosures to enable an owner-seller to give sufficient information to the buyer, then when the buyer sues the seller because they didn’t know about the big special assessment, you can be pretty sure the seller might be looking for an outlet for that liability, and the association disclosures (or lack thereof) could be the first place to look.

Tip #8: REMEMBER – YOU ARE RUNNING A BUSINESS

Once again, do not take the job lightly. Get the right kind of help with business expertise. Do not forego or make important decisions because of emotion or bias. You are not running your neighborhood store. The board of directors is making decisions with regard to the spending of hard-earned money provided by each and every homeowner, of protecting important infrastructure, and of investing thousands of dollars. That homeowner has the expectation

that the money will be well spent, and that the Board will take reasonable steps to protect their property values and create a decent community to live in. The association board can't be filled with "slackers or immature bodies" who don't fully understand what it takes to run a business. If the board is not seated with business people who understand and comprehend the need to make good fiscal decisions then those people must seek help from the right kind of professionals or experts. Professional management becomes very important in this scenario, even if there needs to be an assessment to pay for it (of course, understanding that the members may be required or entitled to vote on the issue).

Tip #9: REMEMBER – YOU ARE RUNNING A COMMUNITY

The dichotomy of homeowner associations is that the board of directors is not just running a business, but is also running a community. For years, I heard attorney trainers at legal programs for common interest developments tell attorney trainees, managers, and boards of directors to run the association like a business, without regard to what the people in the association think about anything. I heard the analogy to "GM Corporation" so many times I couldn't count them. Homeowner associations are not GM Corporation, and when board members turn their back on any of the members, they provide a moving target, with little insulation.

Boards of directors must listen to the community. Even though they are elected officials, when the community gets in an uproar about any particular situation, damage control may be the name of the game. Decisions must be based on what is good for the community, not for each one of the board members. Making the job of a board director easier by keeping meetings and decisions a secret is certainly inviting, but it is not the one and only most important consideration. Engendering community spirit could help with recruiting people to serve on the board and committees and could also help minimize grievances. Seeking input, surveying, and giving the community the opportunity to respond before the issues reach gigantic proportions is often a good idea.

Tip #10: REMEMBER – YOU ARE AN ELECTED OFFICIAL, AND ARE SUBJECT TO RECALL

Many people have the misconception that a board of directors can terminate a Director (kick them off the Board, not the other) if they don't like what that board member is doing. That's not the case. There are exceptions, of course. If a Director commits a felony, he or she can be removed from the Board. If the Board receives a court order of incompetency, the same applies. If the Bylaws of an association provide power for the board to "vacate" a board member's position if they miss more than three meetings, then that board could by majority vote vacate the position for failing to be at three meetings. However, "removal" in that particular situation is different than removal by the body that elects the official, which would be recall. If the board vacates any director's position because they failed to come to meetings, or failed to meet other qualifications that are specified for board members in the Bylaws, then the board can appoint director(s) to fill the remaining term of that position. If the association members vote to recall a board member, then that position must be filled by election of the members.

Many people don't know that owners in a common interest development can petition the board for a recall meeting with only 5% of the members entitled to vote signing the particular

petition requesting the recall. However, California Corporations Code so provides. If the board receives a petition signed by 5% of the voting members (not husbands, wives, tenants, etc.), it needs to react, because the law requires that a meeting be called. It seems to say that if the Board fails to do so within prescribed timelines, owners can call their own recall meeting. I've seen it happen and it creates mass confusion and legal battles. So I always suggest that the Board call a structured and meaningful membership meeting to vote on the recall and that it propose a straightforward agenda so that both (or all) sides have a reasonable opportunity to present. I often think that this is a golden opportunity for an incumbent board to respectfully tout its successes - because I can guarantee based on actual experience that the recall meeting will get the biggest turnout of the century for that Association.

I hope these Ten Tips help. They are not quite like a "how to" list; they involve some thought. However, the thought can be worth it if it helps the Association and Board cope with the next big issue and avoid complicated legal, coupled with political, emotional, and horrendously painful processes.

CALIFORNIA LEGISLATIVE ACTION COMMITTEE

The California Legislative Action Committee is an advocacy organization who purpose is to promote and protect the common interest of community associations through legislative advocacy. The committee is part of CAI, Community Association Institute, the national organization representing associations for over 30 years.

Funds are not used for political donations. Rather, funds are used to support the statewide volunteers (such as South Coast members Karen Mehl and Beth Grimm) who serve on the committee and the consultant who is the Legislative Advocate and Administrator. The Advocate tracks all the association legislation, meets with legislators and their staff and attends and testifies at hearings where these bills are debated. For example, in 2003, CLAC help to modify legislation dealing with architectural controls, rule making and display of signs. CLAC provides email updates on current legislation. One of the challenges that CLAC faces is the turnover in the legislature caused by term limits. Every two years, at least ¼ of the legislature turns over.

South Coast has provided some modest support in recent years from your annual dues. CLAC can accept donations from associations and individuals to support their efforts. For further information on CLAC's activities, please visit their website – www.clac.org.

If your association would like to support CLAC's efforts in 2004, you may send a check to:

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