SOUTH COAST HOMEOWNERS ASSOCIATION

P. O. BOX 1052, GOLETA, CALIFORNIA 93116
(805) 964-7806
gartzke@silcom.com

Volume 17, Number 6 **December 2004**

Michael J. Gartzke, CPA, Editor

IN THIS ISSUE

UPCOMING SOUTH COAST MEETINGS

ANNUAL LAW AND LEGISLATIVE UPDATE

It's the new year and time to be brought up to date on the 2004 Legislative law changes for associations and what they mean to you. While there are brief summaries of the new laws later in this newsletter, the update programs allow you to gain a better understanding (hopefully!) about what the changes mean. This year **James Smith,** of Grokenberger, Smith & Courtney, and **David Loewenthal**, of Loewenthal, Hillshafer & Rosen, will provide the updates. After the updates, our popular, moderated, question and answer session will follow to take your questions on the legal topics of interest to you. There is no charge for board members to attend.

Santa Barbara/Goleta:

DATE – Thursday, January 27, 2005
TIME – 7 PM
PLACE – Holiday Inn, 5650 Calle Real, Goleta

We are also planning a similar session in Santa Maria. We expect the meeting to be in February but the date has not yet been confirmed. We will let you know in a separate mailing when we have the meeting date confirmed.

GOVERNOR VETOES ASSESSMENT COLLECTION/FORECLOSURE BILL

Governor Schwarzenegger vetoed Assembly Bill (AB 2598) that had passed the California Legislature in the 2004 session. The bill affected several sections of the Davis-Stirling Act including allowing members to post signs and banners in exclusive use common area and a more expansive definition of association records subject to inspection by members.

The bill would have required the return of increased assessments to the members if the association did not comply with the disclosure and notice requirements in distributing budgets. A prior version of this bill would have limited assessment increases to the California Consumers Price Index.

For liens filed after January 1, 2005, foreclosure would not have been a collection option until the unpaid balance of the assessment (not counting late fees and penalties) exceeded $2,500 no matter what size the association. The Governor's veto message indicated that some change in the foreclosure procedures should be made to remove the possibility of foreclosing homes for small amounts of unpaid assessments.

Watch for new legislation to be introduced on collections and foreclosures in 2005.

BILLS SIGNED INTO LAW – EFFECTIVE JANUARY 1, 2005

The following bills were signed and will become effective as of January 1, 2005. Details will be available at our January law update meeting and future newsletters.

AB 1836 – Dispute Resolution – This law revises the dispute resolution statutes in the Davis-Stirling Act to clarify that any governing document or legal dispute (not just CC&R violations) would be subject to these procedures. The law encourages associations to use local dispute resolution programs. The law also specifies what a "fair, reasonable and expeditious" dispute resolution procedure is.

AB 2376 – Architectural Review – This law adds to the rulemaking provisions enacted last year "any procedures for reviewing and approving or disapproving a proposed physical change to a member's separate interest or to the common area." That means that these provisions must be placed in your governing documents or rules. The procedure shall provide for prompt deadlines and state the maximum time for response to an application or a request for reconsideration from the board of directors. The board's decision shall be made in writing. If disapproved, the decision shall disclose the reasons why.

AB 2718 – Reserve Studies / Association Disclosures – The law makes a number of changes to how reserve studies are prepared including:

1) Disclose how the association will fund reserves (regular assessments, special assessments, borrowing, deferral of repairs, etc.)

2) Reserve calculations using straight-line method or "an alternate, but generally accepted, method of calculation" must be used to determine how much is needed in reserves (depreciation-to-date). However the code does not require a specific method (straight-line or cash flow) to calculate the reserve funding plan going forward.

3) Interest rate on investments limited to 2% above the discount rate published by the Federal Reserve Bank of San Francisco.

Extends the period of time to distribute the operating budget from the 45-60 day window prior to the beginning of the year currently in effect to 30-90 days prior. For December 31 fiscal year-end associations, this period is from October 3rd to December 1st.

Proscribes a specific form to be used called an "*Assessment And Reserve Funding Disclosure Summary"* to be provided to the members.

Disclose whether the currently projected reserve account balances will be sufficient at the end of each of the next 30 years to meet the association's obligation to repair or replace major components.

If current reserve balances are insufficient, a disclosure is required as to when additional assessments would be required and how much would be required per unit per month.

Disclose what major reserve components that the association is responsible for that are not being provided for in the current reserve funding.

Disclose the current reserve balance, and based upon either the straight-line or alternative method of funding, the "required" amount in the reserve fund.

BE CAUTIOUS WHEN DEALING WITH PETS

When dealing with pet issues in your association, use caution when setting policies, enforcing CC&Rs and reacting to problem pets and their owners. Three recent cases shed light on what can go right… and go wrong.

The California Supreme Court recently ruled in *Villa de las Palmas vs. Terifaj* that amended CC&Rs are binding on all owners, including those who purchased prior to the amendment. Ten years ago, the California Supreme Court ruled that pet restrictions were a reasonable use restriction. Subsequent to that ruling, the California Legislature limited pet restrictions for associations that amend or restate their CC&Rs. Under Civil Code 1360.5, if you amend your CC&Rs, you must allow one pet (bird, cat, dog, etc.). The amendment in question occurred prior to the passage of CC 1360.5. Prior to that time, the no pet clause was an operating rule and not in the CC&Rs. The court sided with the association and stated that CC 1355(b) applies CC&R amendments to all owners, future as well as current.

In a second case, the California Court of Appeal in Sacramento sided with owners who kept a dog in defiance of the association's "no-dog" rule. In this case, the pet owners claimed that the dog alleviated depression and therefore qualified as a "therapeutic, companion animal". When we first reported this case in our July 2002 issue, the California Fair Employment and

Housing Commission had imposed an $18,000 fine against the association. A trial court ruling set aside the fine but the Appeals Court reinstated it. It is not clear how to define a disability that would allow for a service animal. Were the owners "clinically depressed"? According to the Court of Appeals, "it was the innate qualities of the dog, in particular a dog's friendliness and ability to interact with humans, that make it therapeutic here." So it appears from the court's ruling that an owner wouldn't have to prove a medical disability or that the dog has special training. If a dog is a problem, you can still look to leash laws, nuisance and barking issues or threatening behavior.

The third case comes from Indio and is technically a small claims case. Over a two-week period in late September, the local paper ran a series of articles on this matter. To look at the amount of space taken by the articles, this was the biggest thing happening in the Coachella Valley at that time.

The first article stated that a married, blind couple in a CID filed a small claims suit against the association's former President, for harassment and prohibiting their guide dogs from defecating in the street – the method for which the dogs had been trained. The couple was trying to get the association to amend its CC&Rs to accommodate their guide dogs behavior. A concern was the ability to clean up after the dogs. One neighbor said that the couple made an effort to clean up after the dogs and occasionally missed droppings (after all, they are blind) and they would hose down the gutters, etc. The association said that they had received complaints. Several animal training and care groups weighed in on the matter saying they had not heard of such a case before.

Article II ran a week later indicating that the Association prevailed in the small claims case. The former President was quoted "I would like people to know that although they are handicapped…they are not immune from homeowner restrictions which relate to health and safety."

The owners responded, "If it were up to me, I'd find a house without an association. We're paying $130 in association fees every month to an association that isn't doing us any good."

Article III ran the next day. The association offered to have its landscapers pick up after the dogs on a daily basis. The owners declined the offer. "The gardener is not that reliable". What if the board changes or landscapers change and the agreement is not upheld? The owners want the CC&Rs amended to protect guide dog owners.

Then the paper's editorial board weighed in two days later. The association "has really stepped in it this time….HOA boards already have a bad rap for being perceived as heavy-handed control freaks; playing God to the vulnerable residents who didn't read the fine print in their two-inch thick CC&Rs before purchasing their homes."

The editorial continued: "Geez, how insensitive can you get? Cut these folks some slack. They are unable to see. It's unbelievably appalling that a situation, which could have very well been averted with some common sense and sensitivity, has deteriorated into a public spectacle… If the gardeners miss a day, then what happens? The owners are back to square one".

Two days later, the paper devoted all of its letters to the editor to this issue. All 14 letter-writers blasted the association. The association won the small claims case but was losing the war big time in the media. And the media loves an HOA story, especially when members are perceived to be harassed by a dictatorial board. If there is a dispute, try to work out a solution. Things will not always be black or white.

THE SALE OF A UNIT – "THE DISCLOSURE MAZE"

by Michael Gartzke, CPA

What is the association required to do?
To whom are the disclosures made?
When must the disclosures be provided?
What can be charged to provide the disclosures?

The California Civil Code requires numerous disclosures when a member sells his unit to a new buyer. Obviously, larger associations deal with sales more frequently than small associations. In an average year, perhaps 10-15% of your units will change hands and a number of them will be refinanced, depending upon the changes in interest rates and the current level of appreciation of your association's units. We have seen substantial appreciation in members' units, throughout Santa Barbara County and statewide. As a result, these disclosures have become an integral part in today's real estate transactions.

PLAYERS INVOLVED: Here is a list of the various players that may be involved in the disclosure process.

- Owner of the separate interest (unit) – Seller
- Seller's real estate agent and/or other professional consultant
- Prospective purchaser – Buyer
- Buyer's agent
- Escrow Officer
- Lender (Underwriter, loan processor, loan agent, loan broker)
- Appraiser
- Insurance Agent
- Association (Board, manager, accountant, attorney)

WHAT ARE YOU (THE ASSOCIATION) REQUIRED TO DO?: California Civil Code Section 1368 governs the disclosures that are to be provided to prospective purchasers. Under 1368(a), the **seller** shall, as soon as practicable before the transfer of title to the separate interest (unit), provide the following to the prospective purchaser (**buyer):**

- Copies of Governing Documents (CC&Rs, Bylaws, Articles of Incorporation and Rules and Regulations).

- If the association has an age restriction, then a statement must be made that the restriction is enforceable only to the extent allowed by Civil Code Section 51.3.

- Copies of financial documents as required by Civil Code Section

1365. Nearly all these documents are required to be distributed annually between 30-90 days prior to the start of the association's fiscal year. The accountant's review or audit is due 120 days after the end of the fiscal year:

- Operating budget for the current fiscal year
- Summary of reserve study disclosures
- Statement provided by the board of directors as to whether the board anticipates that a special assessment will be required in the future to meet its obligations under the governing documents
- Procedures used by the board to establish its reserve disclosures and funding
- Reviewed or audited financial statement prepared by the association's CPA if the association's revenues exceed $ 75,000 annually
- The association's policies and practices in enforcing lien rights or other legal remedies for default in payments of its assessments including Civil Code statutory language.
- A summary of the association's property, general liability, fidelity bond, earthquake and/or flood insurance policies
- The **seller** is to obtain a statement from an authorized representative of the **association** as to the rate of the current monthly assessment and fees and any special assessments currently due or assessments levied against the seller's unit. The association is to provide a statement as to what assessments, late changes, interest and collection costs are unpaid on the date the statement is prepared.
- If the association is evaluating construction defect issues and has provided a notice of preliminary list of defects under Civil Code Section 1375 to its members, then a copy must be provided from the seller to the buyer.
- If the association has entered into a settlement agreement or other resolution of construction defects, then the seller shall provide the buyer with the settlement agreement disclosures mandated by Section 1375.1 of the Civil Code
- Any change in the association's current regular and special assessments and fees which have been approved by the board of directors, but have not yet become due and payable as of the date of disclosure.

With the exception of the disclosure regarding unpaid assessments or fees, the law imposes the obligation for these disclosures on the **seller**. How is the seller to know what his

disclosure obligations are? While most associations provide these disclosures to their members on an annual basis, many members do not maintain these records in a manner that would facilitate direct disclosure to a prospective buyer. In some cases, a member may be unsure that the information that he has is the most current or accurate available. The law recognizes this fact of life and provides **upon written request,** (not over the phone) that an association shall **within 10 days** (not now, not tomorrow, not the end of the week) of the receipt of the request, provide the **owner** (not the buyer, not the lender, not the escrow officer) with a copy of all the documents and disclosures. The association, or management company on behalf of the association, may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items. The association cannot charge a fee to transfer title except for the actual costs to change its records. If anyone or any entity fails to comply with the provisions of Civil Code Section 1368 outlined above, it can be subject to a civil penalty of up to $500.

You might consider adding a statement to the various documents that you distribute to your members to "Retain for future reference" or "Required document for transfer in a sale". In other words, some language that would convince an owner to hold on to the document for future use. You could indicate that the document costs associated with the transfer will be lower and that by providing the information to the buyer directly, the seller can reduce his costs.

In reality, you seldom receive a written request from the seller or his agent. Usually, the first request comes from the lender. Usually, the lender is in a hurry and can't wait 10 days for a reply because they have waited way too long to get in touch with you. The lender says that they can get the documents from escrow. But, escrow hasn't asked for them. They just need this small, 4-page questionnaire completed. Some of the questions that appear on such a questionnaire are:

- Are 70% of the units sold to individuals as their primary year-round residences or second homes? (Do you know how all your members use their property?)

- How many units are principal residences; how many are second-homes; how many are investor/rental units? (Do children of owners living in units qualify as owner occupied? How often do you calculate an occupancy ratio? It can change at any time)

- At the start of the current fiscal year, how many owners are more than thirty days delinquent in their assessments? Total amount of outstanding assessments?

- Is the amount in the reserve account adequate for the replacement of major components? (My favorite, a highly speculative, judgmental question. Is there ever enough money in the reserve fund?)

- What are the terms of the manager's contract? What is the penalty for early termination?

- Does the project conform to existing zoning regulations?

- Must 67% or more of owners vote for any change in the CC&Rs?

The lender would like this information faxed to them as soon as possible. While some of this information does not change, much of the information, especially the financial and occupancy information changes constantly. While rare, we have seen lenders question information provided in the questionnaire. One underwriter called me on a questionnaire that I had completed questioning the owner occupancy percentage. Some lenders will not lend unless the association has a minimum of 60-70% owner occupancy. I had relied on the board President to provide the information and she gave me a complete schedule, by unit, as to whether they were owner-occupied, second homes or rentals. The underwriter accused me of lying by inflating the occupancy percentage. It turns out that she had used the assessor's records that are updated annually. The association had several recent sales and nearly all had converted from rentals to owner-occupied. She didn't believe me and as a result, that financial institution did not make the loan. On the other hand, we have heard of loan processors/agents asking that the owner-occupancy be raised so that they can obtain the loan. The ethics in both of these situations are unacceptable.

Then you hear from the escrow officer. They usually have a standard form requesting the documents required under Section 1368 plus the last 12 months' minutes from the association's board meetings. This is a disclosure that the California Association of Realtors recommends to its members. When copying these minutes, be sure to exclude your executive session minutes, as some associations will file them with their regular minutes (not a good idea, keep them separate). Sometimes, escrow will contact you early and then re-contact to confirm assessment payments at the end. Other times, the documents will be overlooked until only a few days remain and then you get the panic call. I have yet to understand how a real estate transaction can progress that far without any association disclosures. So your 10-day window for providing disclosures has evaporated once again.

Then the seller's agent calls. He sent you the pest control report last week. Why hasn't the work been done? Pest control requirements are set forth under Civil Code Section 1364. A commitment by the association that it will meet its obligations is generally sufficient to close escrow.

Managers may be responsible for 10 or more associations and each association's information is different. Frankly, it takes a while to complete these questionnaires and pull all the required documents. Each of these transfers requires numerous phone conversations and documents completed. The association or its manager must be compensated for the time spent assembling the document packages, preparing the disclosures, completing the questionnaires and responding to phone calls and other requests for information and action. It is recommended that the association or manager obtain a signed agreement that its cost will be paid by a responsible party. Not every escrow is closed or every refinance completed. Yet, you will incur the same costs on every request. Some associations will charge a flat fee for these services. $150-$200 is a commonly charged amount. Others will charge based upon the exact services requested and provide a price list to the responsible party that they can order the documents and services they need and pay accordingly. Some will add an additional charge for rush processing.

Be sure to tell escrow to contact you several days before closing to get an update on assessment payment status. Recently, a 120-day escrow closed without the escrow officer following up to determine whether payments were current. One month's assessments were

not paid and the escrow company had to pay them from their company account and not from buyer and seller funds. Also ask them to provide you with the name(s) of the new owner and a mailing address if not the property address.

Then after compiling all the required information, what percentage of the prospective buyers actually read any of it? One manager related a story about a new owner calling on his cell phone as he was travelling with his dog from his old home to his new one that he just closed escrow on. Unfortunately, his new association prohibited dogs and it was clearly stated in the CC&Rs as well as the rules and regulations booklet. He had signed off as having received the documents but no one had **told** him that he couldn't have a dog.

Some associations have adopted a policy of not providing information over the telephone but only responding in writing to a written request. The law does not require you to respond to verbal requests. In some situations, liability might arise for the board or its manager if verbal responses were misunderstood or misinterpreted.

So while the law provides for 10 days notice to provide disclosures to the seller, seldom does the seller make the request and seldom will 10 days meet the needs of the requestor. Be aware of the various disclosures and documents required and educate your members about the need to contact the association early, if they plan to sell or refinance their property.

ANNUAL DUES NOTICES

Annual dues notices were mailed in early October to the same address as the newsletter is mailed to. If you haven't renewed for 2005 or haven't forwarded the billing to your Treasurer or Property Manager, please do so today. The *2005 Condominium Bluebooks* are expected in early January and will be mailed to all that have renewed upon receipt of your payment.

I will add one email address from each association into a South Coast group for emailing newsletters, meeting reminders and other occasional items of interest. For example, the email group received notification of the Governor's veto of AB 2598 the day after it happened in early October. The email contact can then email the newsletter and other notices to other board members, allowing for broader distribution of the information.

Business and Professional Members: At the end of each newsletter, a listing of our business and professional advertisers appears. If you don't have a listing and would like to start one for 2005, please remit $75 in addition to your dues payment for a listing for all of 2005. Those businesses that are shown with "('04)" after their name need to renew your ads for 2005 in order to be included in the next newsletter.

Thanks to all who have contributed during 2004. Thanks to our newsletter writers and those who make presentations at our meetings. Thanks also to all who attend the meetings and offer their insights on the issues being discussed. Thanks to all who read the newsletter and follow and implement the information presented. The ultimate success of your organization depends upon volunteer boards having access to information in order to discharge your duties more effectively. On behalf of South Coast HOA, I congratulate all the volunteer board members who contribute their time and talent to the operation and management of their association. While it can be a thankless job, there are rewards when major tasks are completed. Your work is important and we at South Coast HOA recognize your contributions.

SOUTH COAST NEWSLETTER SPONSORS

ACCOUNTANTS

Cagianut and Company, CPAs ('05)
Gayle Cagianut, CPA
P. O. Box 1047
Oak View, CA 93022
805-649-4630

Michael J. Gartzke, CPA ('05)
5669 Calle Real #A
Goleta, CA 93117
805-964-7806

Denise LeBlanc, CPA ('05)
P. O. Box 2040
Santa Maria, CA 93457
805-598-6737

ATTORNEYS

Allen & Kimbell, LLP ('05)
Steven K. McGuire
317 E. Carrillo St.
Santa Barbara, CA 93101
805-963-8611

Beth A. Grimm ('05)
www.californiacondoguru.com
3478 Buskirk #1000
Pleasant Hill, CA 94523
925-746-7177

James H. Smith ('05)
Grokenberger, Smith & Courtney
1004 Santa Barbara St.
Santa Barbara, CA 93101
805-965-7746

David A. Loewenthal ('05)
Loewenthal, Hillshafer & Rosen
15260 Ventura Blvd #1400
Sherman Oaks, CA 91403
866-474-5529

FINANCIAL SERVICES

First Bank & Trust ('04)
Diane Doria, CMCA, AMS, CCAM
2797 Agoura Rd.
Westlake Village, CA 91361
888-539-9616

Goleta National Bank ('05)
Andy Clark
5827 Hollister Avenue
Goleta, CA 93117
805-683-4944

Ken Partch & Company ('04)
Investment Management
3433 State Street, Suite C
Santa Barbara, CA 93105
805-563-7699

ASSOCIATION MANAGEMENT

Sandra G. Foehl, CCAM ('04)
P. O. Box 8152
Goleta, CA 93116
805-968-3435

Santa Barbara Resources, Inc. ('05)
Phyllis Ventura
P. O. Box 6646
Santa Barbara, CA 93160
805-964-1409

Spectrum Property Services ('05)
Cheri Conti
1259 Callens Rd #A
Ventura, CA 93003
805-642-6160

Town'n Country Property Management '05
Connie Burns
5669 Calle Real
Goleta, CA 93117
805-967-4741

Management Services (Cont)

Goetz & Associates ('05)
Manderley Property Services
North Santa Barbara/SLO Counties
Gordon Goetz, CCAM
805-937-7278

RESERVE STUDIES

Stone Mountain Corporation ('05)
Chris Andrews
P. O. Box 1369
Goleta, CA 93116
805-681-1575 www.stonemountaincorp.com

The Helsing Group ('05)
Roy Helsing
2000 Crow Canyon Place, Suite 420
San Ramon, CA 94583
800-443-5746

INSURANCE

State Farm Insurance ('05)
Buzz Faull
1236-G Coast Village Circle
Santa Barbara, CA 93108
805-969-5838

State Farm Insurance ('05)
Ed Attlesey
160 N. Fairview #3
Goleta, CA 93117
805-964-9988

Allstate Insurance ('05)
Nina Corman
830 E. Ocean Ave.
Lompoc, CA 93436
805-736-8944

LANDSCAPE MANAGEMENT

Kitson Landscape Management, Inc.
Sarah Kitson ('04)
5787 Thornwood Drive
Goleta, CA 93117
805-681-7010

PAVING CONTRACTOR

Smith Patterson Paving ('05)
David/Jim Smith
1880 N. Ventura Ave.
Ventura, CA 93001
805-653-1220

CONSTRUCTION MANAGEMENT

Stonemark Construction Mgmt ('05)
Bart Mendel
5775-A Dawson
Goleta, CA 93117
805-964-9810

HOMEOWNER ASSOCIATION ORGANIZATIONS

Community Associations Institute –
Channel Islands Chapter
P. O. Box 3575
Ventura, CA 93006
805-658-1438
www.cai-channelislands.org

Executive Council of Homeowners
ECHO
1602 The Alameda #101
San Jose, CA 95126
408-297-3246
www.echo-ca.org

.

ADVERTISING INFORMATION
805-964-7806