



## South Coast Homeowners Association

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Volume 31 – Number 3 – December 2018

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## 30th ANNIVERSARY CELEBRATION AND ANNUAL LAW AND LEGISLATIVE UPDATE

Date – Wednesday, January 16, 2019

Reception – 5:30 PM – Hot and Cold Appetizers and beverages

Meeting – 7:00-9:00 PM

Place – Four Seasons Biltmore Santa Barbara – 1260 Channel Drive  
La Marina Room (inside the hotel lobby)

Speakers – James H. Smith, Rogers, Sheffield and Campbell and David Loewenthal, Loewenthal, Hillshafer and Carter

Cost – none – limited to 2 board members per association/vendor (see below)

The legislature has been busy (as usual) in 2018 and several new laws were signed effective January 2019. Also, several significant court cases were decided which affect the law as well. This program is always quite popular and informative.

**IMPORTANT:** In order to attend this event, you **MUST** RSVP in advance. We have a limit on number of attendees, so no walk-ins can be accommodated. You may RSVP by phone or email (information above) to Mike Gartzke. I will need the name of the association/vendor and the names of the attendees. If emailing, please include RSVP in the subject line. Your membership must be renewed for 2019 to be confirmed. (invoices were sent on November 5). Deadline for RSVPs is January 9 unless it's oversubscribed sooner.

**Parking** – Valet Parking is available. Self- parking is available on Hill Drive adjacent to the north side of the hotel grounds

**Sponsors** – Professional/vendor members may help by sponsoring the food. You will be listed on the program, introduced to all attendees AND at the food stations. You must be a current member of South Coast with a renewed membership for 2019. Email Sandie Foehl at [sfoehl@msn.com](mailto:sfoehl@msn.com) for more information about how to sponsor. Thanks to all who have already pledged.

## **DID YOU KNOW?**

### **California AB 2912 Signed! | Drastic Changes to HOA Financial Review and Insurance Requirements**

By: Richard Martinez, CIC Bill Terry Insurance Agency

Editor's Note: This new law, effective January 1, 2019 has two main sections. Mr. Martinez's article deals primarily with the new fidelity insurance requirements while Mike Gartzke's article, which follows, deals with the new financial document review in more detail. This new law will be included in our annual law and legislative update, scheduled for January 16, 2019. Richard's contact information is at the end of the newsletter.

In an effort to resolve and prevent fraudulent activities of an HOA's finances AB 2912 works to:

- Improve the system of financial review by the board of directors
- Increase limitations on transferable funds, both paper and electronic
- Provide coverage for the management company.

All associations must be compliant with the new regulations on or before the first of the new year.

For financial review requirements:

- The members of the board must meet on a monthly basis to review the financial statements; e.g. the check register, general ledger, and accounts receivable reports.
- The exception for the HOA boards that only meet quarterly, declares terms can also be met when the treasurer and at least one individual from the board meet independently to analyze the financial statements and the conclusion of that interaction is ratified at the next board meeting.

For restraints on transferable funds:

- It is required that any transfer greater than \$10,000 (or 5% if total funds are less than \$200,000) must have two signatures of approval from directors or one officer and one director, where neither role overlap.

- There must be insurance coverage against computer fraud and electronic transfer fraud in regards to the HOA and the management company.

The final requirement via the new legislation is the coverage for management companies and their employees, in addition to the theft coverage by officers and directors.

- The amount of coverage required is three months of assessments plus reserves. (So for example, if the association's annual assessments are \$20,000 per month and the association has \$250,000 cash in operating and reserves, then the amount of fidelity coverage would be \$20,000 times 3 months = \$60,000 plus \$250,000 cash equals \$310,000.

If all of the terms are met, then the HOA will be in compliance with the new California legislation and are actively protecting the monies of the association. For further assistance, HOA boards should collaborate with their managing agents to ensure adherence to the legal requirements regarding funds transfer and monthly reviews, as well as, with insurance professionals to guarantee compliance through fidelity bond coverage or crime coverage.

Most insurance carriers are aware of the changes and are working to satisfy the requirements. There will be no charge for the change but there may be a charge for the increase in policy coverage, in order to conform to California legislation.

## **AB 2912 – NEW LAW EXPANDS THE FINANCIAL REVIEW RESPONSIBILITIES OF THE BOARD OF DIRECTORS – EFFECTIVE JANUARY 1, 2019**

By: Michael J. Gartzke, CPA

Note: Mr. Martinez's article listed the summary requirements of the expansion of the financial review by the board of directors. This article expands on those provisions and includes a checklist template for your use.

Assembly Bill 2912 was chaptered in September 2018 and is effective in January 2019. Several significant modifications to the financial oversight obligations of the board including the maintenance of fidelity bond coverage, written approval by the board of cash transfers by the managing agent and the now monthly (was quarterly) review of financial statements, schedules and documents. This article deals with the monthly review reports required of all associations.

This law was authored by Assembly member Irwin of Thousand Oaks who became aware of a large fraud perpetrated by an HOA property manager in her district. Articles appeared on this fraud in the November 2015 and September 2016 issues of our newsletter (available on our website). It was felt that quarterly review was not often enough and that oversight should occur more frequently. The list of reports and statements was also expanded. These now include:

- Account Statements from financial institutions where funds are held
- Account Reconciliations prepared by management, bookkeeper, treasurer, etc.

- Monthly income and expense statements for the operating and reserve accounts
- Monthly review of operating income and expenses compared to the budget
- Monthly check register
- Monthly general ledger
- Delinquent accounts receivable reports

I would add two additional documents. One would be a balance sheet since that would summarize all the association's assets and liabilities. The second would be credit card statements. Due to the difficulties in placing controls on credit cards, I don't recommend them for associations. For those that do have them, it is important to review the transactions monthly as a check register will only show a payment to the credit card company. The general ledger should show the detail scattered throughout the expense section. The statement will show all in one place. An association I worked on in my early years was a victim of credit card charge fraud. An employee was charging cash advances to the casino and clothing to department stores. No one on the board reviewed the statements until one month when something didn't appear right to a board member.

The question comes up as to what happens if a board does not meet monthly. Under Civil Code Section 5501, the review requirements can be met "when every individual member of the board (like at a board meeting), or a subcommittee of the board consisting of the treasurer and at least one other board member, reviews the documents and statements described in Section 5500 independent of a board meeting, so long as the review is ratified at the board meeting subsequent to the review and that ratification is reflected in the minutes of that meeting."

A checklist follows on page 5 which may be useful to help meet your expanded obligations:

### **SECRETARY OF STATE STATEMENT OF INFORMATION FILING UPDATE**

Over the years, we have written about the importance of timely filing of the two forms with the Secretary of State – the Statements of Information and Common Interest Development. A more detailed article appeared in our January 2013 newsletter (available at [www.southcoasthoa.org](http://www.southcoasthoa.org) newsletters tab. Some items to note since that time:

- Processing times have substantially improved, now within 2 weeks as opposed to several months.
- Copies of the last two statements of information filed and the last CID form are available at [www.businesssearch.sos.ca.gov](http://www.businesssearch.sos.ca.gov) (useful to see if it's been more than 2 years since the last filing and whether the form needs updating for new directors and/or management companies)
- Banks are asking for this form to be updated for changes when opening accounts. If updating more than 5 months before it's normally due, there is no charge.
- Updating does not change the due date of the regular filing. It's still the month of incorporation every two years based upon whether incorporation occurred in an even or odd year.
- Solicitations such as the Corporate Compliance Center Annual Minutes notice asking for \$150 or more do not meet the filing requirement. NEVER send them any money.

## MONTHLY FINANCIAL REVIEW CHECKLIST

TO: BOARD OF DIRECTORS - \_\_\_\_\_

FROM - \_\_\_\_\_

Please find attached the financial reports and account statements for the operating and reserve accounts for the month ended \_\_\_\_\_.

California Civil Code (CC) Section 5500 requires the board of directors to review the following financial information at least monthly:

**OPERATING ACCOUNTS (CC 5500(a)(d)):**

The bank statements and account reconciliations for the operating accounts –

<u>BANK</u>	<u>BALANCE</u>
_____	\$ _____
_____	\$ _____

Operating Income and Expense Statement for the period ended \_\_\_\_\_ **(CC5500(e))**

Budget vs Actual Income and Expense Statement – same period \_\_\_\_\_ **(CC5500(c))**

**RESERVE ACCOUNTS (CC5500(b)(d)):**

The bank statements and account reconciliations for the reserve accounts –

<u>BANK</u>	<u>STATEMENT DATE</u>	<u>TYPE</u>	<u>INTEREST RATE</u>	<u>BALANCE</u>
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____

Reserve Income and Expense Statement for the period ended \_\_\_\_\_ **(CC5500(e))**

Check Register **(CC5500(f))**

Monthly General Ledger **(CC5500(f))**

Delinquent Assessment Receivable Report **(CC5500(f))**

Balance sheet (recommended but not included in CC 5500)

The board of directors/finance committee reviewed the attached financial information at its meeting on

\_\_\_\_\_. Ratification is reflected in the board meeting minutes of \_\_\_\_\_.

By \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

## "Buyer of A Condominium or Townhome in an HOA - Beware!"

By: Beth A. Grimm, Attorney at Law

Editor's Note: See Beth's note after 30 years providing legal services to common interest developments. She is retiring at the end of the year. Her most recent article follows. South Coast HOA thanks Beth for her many contributions to our success!

I just did a blog on this ([condolawguru.com](http://condolawguru.com)) but wanted to go a little deeper about what a person might do who is facing nuisance problems that affect the quality of life and the ability to sell their unit. I have talked to many who feel they are in a terrible living situation they never thought they would get into. Noise, parking, pets, racist and harassing behaviors, crazies, etc. And because they own instead of rent, they feel trapped, without options.

One of the most recurrent problems is noise between units. Many people have ended up in intolerable situations because of hard surface flooring and/or discourteous neighbors. One of my recent clients who is living with a very difficult noise situation told me that when he looked at his condominium to buy which is in an exclusive high-rise building, the realtor always made appointments to see it at 9:30 in the morning. He has figured out at this point, which is about a year later, that there was a reason for that. He's living below a big family that makes a lot of noise. Nobody was ever home at 9:30 in the morning. Everyone was out for the day so it was very quiet. This same thing can happen with parking. Everyone is gone during the day but at night some streets and parking areas fill up to past capacity and it creates all kinds of stress around being able to park your car near your home.

In this case my client had spent a lot of money on attorneys to try and get some satisfaction from the realtor and former owner who failed to make proper disclosures about the noise. He really just wanted to get the problem solved. The upstairs neighbor had blown him off when he went upstairs to ask for some cooperation about the noise. So, during the consultation, we talked about how "strong incentives" might be presented to important parties to this dilemma that would induce action. The Board needed to be prodded to enforce the nuisance provisions on the governing documents and the upstairs neighbors needed some "inducement" to put some rugs and padding down.

Yes, one can threaten, cajole, or get a lawyer to write an offensive demand letter. It might work. But in my experience, when I write an attorney letter on behalf of an owner to make "demands", as opposed to laying out solutions, the board or owner will immediately engage an attorney and then it becomes a battle between attorneys. If my client is lucky, the attorney on the other side is also solution oriented, but often times, attorneys have a hard time discussing solutions - they would rather keep the "upper" hand by discussing threats. Thus, the conversation becomes a series of forays between the attorneys and the clients are left out of it. A lot of attorney fees and costs accrue to both parties because of that when it could be spent on a solution such as nice rugs, nice padding, nice mats in traffic areas and/or carpeting. The residents who are causing the noise could take their shoes off at the door, wear slippers or soft shoes, walk with consideration, try to keep reasonable hours, and if they have kids, try to find activities that are quieter like board games, etc. In many cases, it would be better if the parents engaged with the children anyway, rather than encouraging or allowing loud, boisterous, obnoxious behavior in the home.

The most difficult situations occur when one of the parties has children and the party that lives below them works at home, and has difficulty with distractions or worse, the person below is a night worker and day sleeper. In these situations, it is critical to consider these things if you are considering buying a condominium in a stacked unit building that is not on the top floor. However, even being on the top floor doesn't guarantee quiet because if the people in the unit below put in hard surface flooring and the insulation is not good, everyone gets to "enjoy" the noise is much as the people who live in the unit making the noise. If they have kids, they won't even hear it. Another problem - people walking around in hard soled shoes or especially high heels. The clacking noise has been known to drive the residents underneath a little bit crazy. Dog toenails on hardwood floors are another particular problem to people that have hypersensitivities. Upstairs noise with a hypersensitive downstairs neighbor is a mixture "experientially" known to carry a propensity to blow up.

People who come to me often say they just want to sue the neighbor and get it fixed. If you think that will work, talk to the litigation attorney. They might be anxious to take on your case, but if you asked them exactly what positive outcomes have come from homeowner association (HOA) cases, they might not be able to recite anything offhand. Even in situations where one or the other party is successful enough to obtain a judgment in court, they often are out thousands or hundreds of thousands of dollars in attorneys' fees that were not recovered. It's kind of like being a rock star. The percentage of HOAs or owners that are successful in court in California AND recover all of their attorneys' fees in homeowner Association disputes over noise and nuisance is minimal compared to those who try litigation. I'm no expert on statistics, but I have done time in court, have talked to other attorneys who have, have attended many seminars and heard the horror stories, and know how much it costs to enter into that realm. I also know how hard it is for party to get out once they get in and realize it could cause them to go broke.

I know it is kind of Pollyanna-ish to recommend people take the high road, but if every attorney, board member, manager, and homeowner in California who are affiliated with homeowner associations looked at every problem with a view toward what the party REALLY wants, what it will REALLY TAKE to resolve the issues on the table, they would see that there are many better choices than being tied up in litigation. If every party put aside their differences for a moment, and conferred face to face (such as could occur in an IDR or meet and confer with the board and/or the neighbors involved), or went to mediation with a good mediator and a desire to talk real options to settle the matter, it is very likely the percentage of satisfaction in the end would be much higher. Expecting to find satisfaction after spending days, weeks, or months in court is really just a pipe dream for many. If you don't come away with a full "win" in court, you may be out a lot of money, A LOT OF MONEY. If you don't come away with a full "win" in negotiation or mediation, you may feel a little disappointed, but in reality the solution will feel better than being pummeled for days in court, with no opportunity to really tell your side of the story, no opportunity to discuss practical solutions, lost time at work, emotional drain, stress, and all of those things that come with fighting.

As for solutions, I can't address them all in this article. But I can say that I have written on many of them and there are publications available on my website that could be really helpful. If my client had read my book, *The Condo Owner's Answer Book*, (on Amazon and South Coast HOA has a few copies) he might have asked more questions before buying the condominium, namely, like when he could see it in the evening. When people fall in love with a condominium and want to put an offer in, they don't want to hear anything negative, but it's smart to ask some questions and get some clarity on some things that may become very

important later on. It's like marriage. In the beginning there is lust and love and over-the-top emotional attachment that tends to wane over time when people find out about the difficult habits of the partners. It's good to be diligent in your search for the right partner or condominium. Additionally, if you want a long relationship you need to work at it, and so does your partner.

It is good to be informed about choosing a home in a common interest development, as well as about how to solve problems that by their nature involve neighbors and the Board in an HOA.

### **\*\*BIG NEWS!!!**

I have a great big announcement to make. I am retiring after 30 years of providing legal advice to California homeowner associations and homeowners who live in them. I have served in leadership roles on legislative committees and resource panels throughout the state and been featured in seminars and programs for the 30 years. I have written hundreds of blogs, hundreds (yes, more than 200) of informative newsletters, hundreds of articles, FYIs, and FAQs and brought information to the public for those 30 years. I started as a paralegal before becoming an attorney in 1988 and studied everything I could and took all the CAI and other workshops and classes I could before getting my JD so I could be informed, not just on the law but on the nuts and bolts of things. I wanted to be a good advisor, counselor and problem solver. And it has been a good ride. A most satisfying career. As of January 1, and before for matters I cannot finish by then, I will be introducing all clients and potential clients to a trusted attorney here in the Bay Area. I will not be providing legal services to clients after December 31, 2018. I will be taking some selected requests prior to that but no long term projects.

BUT I AM NOT GOING OFF THE GRID. I have been the californiacondoguru (.com) for 30 years providing the information I speak of and that part will not be retired. The website and the blog condolawguru.com will remain active resource sites. And I will continue to provide meaningful, affordable publications, as I have been doing for many years (see the publications link on the guru website!).

I value Q and A and invite you to send questions to [califcondoguru@aol.com](mailto:califcondoguru@aol.com) that are short, generic in form, and that if answered will help others as well. I do not give legal advice in answer to questions sent to me or read or save long emails detailing all the problems a writer might send to me. However, as time permits, I do answer questions that apply generally enough to help others, so have at it! Send me an email. Also check out the E-news archives, articles and publications to see if there is something there to help you.

### **A FINANCIAL ANALYTIC YOU CAN SHARE WITH YOUR MEMBERS**

Have you ever computed your annual assessment as a percentage of the fair market value (FMV) of your association? Over the years, I've shared this with client associations and it is always of interest. Here's an example. A 50-unit association with an average FMV of \$500,000 per unit would have a total value of \$25 million. At \$400 per month assessment, the total annual assessment is \$240,000 and divided into \$25 Million equals 0.96% (just under 1%). You receive a lot for 1% of the unit value each year.



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