



South Coast Homeowners Association

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IN THIS ISSUE

- **32nd Anniversary Meeting - Annual Law and Legislative Update** •
 - **2021 Invoice Mailing** •
 - **Tax Changes for 2020** •
 - **Some National Statistics about HOAs** •
 - **Are our HOA funds insured?** •
- **Management Company Disclosures Under the Civil Code** •
 - **Checklist of Association Records Transfer** •
 - **Additional HOA Resources** •
 - **Newsletter Professional Sponsors** •

32nd ANNIVERSARY MEETING AND ANNUAL LAW AND LEGISLATIVE UPDATE

Date – Wednesday, January 27, 2021

Meeting – 7:00-9:00 PM

Via Zoom – Send email request to gartzke@silcom.com to be added to the meeting list – a link will be emailed to you several days before the meeting

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

Cost – none – There may be a limit on the number of guests we can accommodate so please have each attendee submit their email address.

The Legislature has been up to their usual modifications to the Davis Stirling Act including passing a significant law (AB 3182) dealing with allowable rental restrictions. For associations on our email list, we sent periodic updates as this bill went through the Legislature during 2020 This will be a topic of discussion along with several other new state laws and the court cases decided in 2020. This program is always quite popular and informative.

2021 INVOICE MAILING

Your 2021 annual dues invoice is on its way if you haven't yet received it already. Please review it as soon as possible and notify us of any contact changes, address and email updates. Given that we had no meetings in 2020 due to COVID-19 and everyone scrambling to keep up with all the moving guidelines, we did not spend all our dues money in 2020. All who contribute to South Coast HOA are volunteers. As a result, **all renewing members for 2021 will pay no dues** to remain a member for 2021 and you will receive the *2021 Condominium Bluebook* when it is published in January. In order to know how many books to order, we need your renewal response as soon as possible. After receiving your invoice and making any necessary changes, please do one of the following:

- Mail it back to P. O. Box 1052, Goleta, CA 93116
- Fax it back to 805-967-9654
- Scan and email to gartzke@silcom.com – subject line “SCHOA Renewal”
- If unable to scan, send an email with the Association or Business name and the invoice number if possible. It helps to update the list as we have a lot of members. Subject line – “SCHOA Renewal”
- Manager members – if you would like to add new association members, download the membership application at https://www.southcoasthoa.org/documents/scha_membership.pdf
Until December 31, 2020, new association members will pay the usual renewal price of \$30 instead of \$60.
- If you wish extra Bluebooks, submit payment for \$20 each along with your renewal by mail
- Please send by December 31, 2020 (Tax season is coming!)

TAX FILING CHANGES FOR 2020

By: Michael J. Gartzke, CPA

There are a couple tax filing changes for 2020. Although they are modest, they will affect many associations and their bookkeepers and managers.

IRS: IRS has created a new 1099 form for 2020 – the **1099-NEC** (Non-employee compensation). Previously, non-employee compensation was reported on the 1099-MISC for vendors who are not corporations for payments of \$600 or more during the calendar year. The Misc forms includes a number of other types of payments. IRS created a separate form this year for nonemployee compensation because it has a due date of January 31 while other

payment forms are not due until February 28. Hopefully, the software vendors have updated their programs for you to process the new form.

Franchise Tax Board: Associations (and other tax-exempt organizations) file a Form 199 or a form 199N in some cases with the Franchise Tax Board. For associations with revenues (including assessments) greater than \$50,000, a \$10 filing fee was also required. Effective for fiscal years ending December 31, 2020 and later, the \$10 filing fee is no longer being assessed. I believe the \$10 filing fee has been in place since the 1980s and was assessed at the \$25,000 level and was increased to \$50,000 about eight years ago. I suspect it was an annoyance for the FTB to collect and process such a small fee. It was too for the associations to have to pay it. Also changing is that organizations who file for exempt status with the FTB so they don't have to pay the \$800 minimum state tax each year will no longer have to pay the \$25 processing fee to submit their application.

SOME NATIONAL STATISTICS ABOUT HOAS with comparisons to some local numbers

By: Michael J. Gartzke, CPA

According to the Community Associations Institute (CAI), there were approximately 351,000 community associations in the United States with up to 55,000 of them in California. According to CAI, approximately 60% are planned developments, 37% are condominiums and 3% are cooperatives. Some selected data published in their Community Association Factbook 2019:

<u>Year</u>	<u>HOAs</u>	<u>Increase</u>	<u>Housing Units</u>	<u>Residents</u>
1970	10,000		0.7 million	2.1 million
1980	36,000	26,000	3.6	9.6
1990	130,000	94,000	11.6	29.6
2000	222,500	92,500	17.8	45.2
2010	311,600	89,100	24.8	62.0
2019	351,000	39,400	27.2	73.9

The 1980s, 1990s and 2000s saw the creation of most associations. In the 2010s, the number of new associations declined by more than half. The average number of units in associations nationally is 77.5. I think Santa Barbara is lower. In a database I have of 136 local associations ranging from 3-360 units, the average is 49 units. The median (half-above and half-below is less) is probably somewhere in the 20s as we have many small associations here. Nationally, only 10% of the associations were built by 1980 (40 years ago). I didn't realize that when I bought my 1973 condo in 1980, that I was so cutting-edge! In my database referenced earlier, 57 of the 136 associations were built 40+ years ago, 42%.

ARE OUR HOA FUNDS INSURED?

By: Michael J. Gartzke, CPA

When Association funds are placed in a bank, they are insured by the Federal Deposit Insurance Corporation up to \$250,000 per depositor (your association). If your association has multiple accounts in the same bank which exceed \$250,000 in total (checking, money market, certificate of deposit, etc.), only \$250,000 carries FDIC insurance. Some funds placed in brokerage money market accounts may not carry FDIC insurance. You will need to check the fund prospectus to see if that particular fund is an FDIC-Insured fund or not.

Some associations set up brokerage accounts (e.g., Schwab, Fidelity) to purchase certificates of deposit from multiple banks under one master account to keep all funds federally insured. That way, the Association only has to deal with one signature card and one monthly statement. Years ago, many banks teamed up and set up an account called CDARs in which each participating bank would offer fixed-term CDs at the same rate and the CDARs platform would then place the funds in a participating FDIC-insured bank anywhere in the country. One monthly statement is generated and interest is either added to the CD or paid to an Association bank account. Back when the insurance amount was only \$100,000, one of my client associations collected a large special assessment for exterior renovations. The CDARs account worked well. The CDs were spread out over time and as one came due, it was evaluated to determine whether the funds could be rolled over or used for the project.

Funds that are placed in stocks, mutual funds and even bonds are not insured by the FDIC. Treasury notes are issued by the Federal governments and bonds are issued by municipal governments and private companies. Stocks and bonds can fluctuate in value based upon the current market yields for interest. If you want to know why you can't get much interest on CDs today, the current 5-year Treasury interest rate is 0.38% and the 10-year rate is 0.88%.

A new approach (at least to me), is for the bank to carry private insurance on accounts that have more than \$250,000 in them. Known as a "Blanket Depositor Bond for FDIC Insured Accounts", this surety bond is in place in one major bank that handles association funds. This bond is shared by all HOA depositors at the bank. The bond is from an insurance company most people have heard of. What is not known is whether the bond is sufficient to cover the accounts in the event of a major collapse and how quickly the insurance would be paid.

Not too many years ago, Indymac Bank based in Southern California failed. I had a client who had over the FDIC limit on deposit with them. The FDIC paid the limit right away but then had to work to place the remaining funds in another bank which took months. In the meantime, the funds were frozen. Many of us remember when Santa Barbara Bank & Trust nearly went under until Union Bank stepped in. No deposits were lost but many locals who owned stock in Santa Barbara Bank & Trust lost their investment. That takeover was complicated for area associations because First Bank & Trust, which handled a lot of association banking here, had been acquired by Union just before and caused more deposits to become uninsured.

For CPAs, generally accepted accounting standards (GAAP), require us to make numerous disclosures in the notes to the financial statements. One of those disclosures is whether the association has a material amount of funds not covered by FDIC insurance. A management company disputed my disclosure and said that the excess funds were insured. It took a while

but they finally received a one-page summary of the bond from the insurance company. I am revising my disclosure to indicate that the balances exceed FDIC coverage but evidence has been provided for the private insurance. I will make no representations as to whether is adequate. I don't make any representations about any other form of insurance in the financial statements, either.

MANAGEMENT COMPANY DISCLOSURES UNDER THE CIVIL CODE

The California Civil Code requires the following disclosures to be made by managers to their association clients. The following information is verbatim from the Civil Code.

11504.

On or before September 1, 2003, and annually thereafter, a person who either provides or contemplates providing the services of a common interest development manager to an association shall disclose to the board of directors of the association the following information:

- (a) Whether or not the common interest development manager has met the requirements of Section 11502 so he or she may be called a certified common interest development manager.
- (b) The name, address, and telephone number of the professional association that certified the common interest development manager, the date the manager was certified, and the status of the certification.
- (c) The location of his or her primary office.
- (d) Prior to entering into or renewing a contract with an association, the common interest development manager shall disclose to the board of directors of the association or common interest development whether the fidelity insurance of the common interest development manager or his or her employer covers the current year's operating and reserve funds of the association. This requirement shall not be construed to compel an association to require a common interest development manager to obtain or maintain fidelity insurance.
- (e) Whether the common interest development manager possesses an active real estate license.
- (f) A common interest development manager or common interest development management firm shall disclose information required in Section 5375 of the Civil Code.
- (g) Whether or not the common interest development manager receives a referral fee or other monetary benefit from a third-party provider distributing documents pursuant to Section 5300 of the Civil Code.
- (h) An affirmative written acknowledgment that the disclosure provided to a member or potential member pursuant to Sections 4528 and 5300 of the Civil Code, and all documents provided thereunder, are the property of the association and not its managing agent or the agent's managing firm.

(Amended by Stats. 2017, Ch. 127, Sec. 1. (AB 690) Effective January 1, 2018.)

CHECKLIST OF RECORDS TRANSFER

Reprinted from Davis-Stirling.com by ADAMS-Stirling PLC

Whenever the services of a management company have been terminated, the company has a [duty to transfer records](#) to the association upon demand. All records and association property must be released. This includes but is not limited to:

Governing Documents

1. Articles of Incorporation
2. Bylaws
3. CC&Rs
4. Condominium Plan
5. Rules & Regulations

Membership List

Current names, addresses, phone numbers

Minutes

1. Board meetings
2. Committee meetings
3. Membership meetings

Financial Records

1. Budget
2. Reserve studies
3. General ledger
4. Bank statements & check register
5. Bank signature cards
6. Delinquency list and liens
7. Paid invoices and accounts payable
8. Monthly financial statements
9. Year-end financial statement (audit)
10. Tax returns

Personnel Records

1. Employment contracts
2. Payroll documents

Insurance Files

1. All policies, past and present
2. Any open claims

Vendor Records

1. List of all vendors, addresses, & phone numbers
2. All contracts, past and present
3. All warranties

Architectural Records

1. Building plans
2. Landscaping plans
3. Owner architectural records

Litigation Files

1. Legal correspondence
2. Litigation records, past and present

Website

1. Domain name
2. pdf files
3. Html and asp pages

Keys

1. Common areas
2. Vehicles
3. Bulletin boards

Miscellaneous

1. Operations manuals
2. All records and property of any kind belonging to the association

Editor's Note: This checklist also serves as a reminder as to how many different kinds of records an association can have. For information about record retention (how long to keep), please see the article by my colleague Walt Grady in the January 2017 issue of the South Coast newsletter - <https://www.southcoasthoa.org/newsletters/scha0117.pdf>

ADDITIONAL HOA RESOURCES

A number of Community Association Attorneys and their firms have placed content on their websites to provide general information on many pandemic and other legal subjects. We provided these resources to our email contacts earlier this year.

South Coast members include:

David Loewenthal – Loewenthal, Hillshafer and Carter – www.lhclawyers.net

Jim Smith – Rogers, Sheffield and Campbell – www.rogerssheffield.com

Other firms who have supported South Coast HOA in the past include –

Tyler Berding – Berding & Weil – www.berding-weil.com

Sandra Gottlieb – Swedelson & Gottlieb – lawforhoas.com

Adrian Adams – Adams-Stirling – www.davis-stirling.com

Kelly Richardson – Richardson, Ober, Denicholo - www.rodllp.com

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Blue Horizon Management Co.

**Kevin Lehman, CCAM, CMCA,
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RESERVE STUDIES

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SmartReserveStudy.com

Reserve Studies, Inc.
17315 Studebaker Rd #213
Cerritos, CA 90703
800-485-8056
reservestudiesinc.com

INSURANCE

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Santa Barbara, CA 93110
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Santa Barbara Painting
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Mahendra Sami
445 S. Figueroa St, 10th Floor
Los Angeles, CA 90071
877-839-2947

ELECTIONS

Official HOA Elections
Will Morstad
133 E De La Guerra Street, Suite E
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JANITORIAL SERVICES

**Safe Grounds Janitorial and
Disinfecting Services**
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