

SOUTH COAST HOMEOWNERS ASSOCIATION

ANNUAL LEGISLATIVE FORUM

January 17, 2017



The statements set forth below are provided to assist participants in following the program. They should not be interpreted as absolute statements of law. The actual application of any statute or court decision is dependent upon the facts and circumstances presented in each case.

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NEW LEGISLATION

New Disclosure, Unit Owner Information

SB 918; Civil Code section 4041

A. Annually, Unit Owners must provide the following information to their Homeowners Association:

1. Address which notices from the Association are to be delivered;
2. Secondary address, if any, to which notices from the Association are to be delivered;
3. Name and address of Owner's legal representative, if any, including any person with Power of Attorney who can be contacted in the event of the Owner's unavailability; and
4. Whether their Unit is owner-occupied, rented or vacant.

B. Each year an Association must solicit the above information from each Owner not less than 30 days prior to the distribution of the Annual Budget Report.

C. If an Owner fails to provide the requested information, the address of the Owner's Unit shall be deemed the address to which notices are to be delivered.

D. A copy of the *Owner Contact Information* form, which can be used to solicit the required information, is attached.

Annual Budget Report Must Now Include

FHA & VA Certification Disclosures

AB 596; Civil Code section 5300 (b) (10) & (11)

A. Effective July 1, 2016, the *Annual Budget Report* must also include a statement, in the form prescribed by Section 5300, indicating whether the Association is or is not certified by the *Federal Housing Administration*.

B. Effective July 1, 2016, the *Annual Budget Report* must also include a statement, in the form prescribed by Section 5300, indicating whether the Association is or is not certified by the *Department of Veteran Affairs*.

C. A copy of the revised *Annual Budget Report* form is attached.

**Effective Jan. 1, 2017, the Law Governing Owner & Association
Maintenance, Repair and Replacement Obligations Has Been Revised**
AB 968 (2014); Civil Code section 4775

A. Unless otherwise provided in an Association's CC&R's, maintenance, repair and replacement responsibilities are as follows:

1. Associations are responsible for maintenance, repair and replacement of the Common Area.
2. **Owners are responsible for maintenance, repair and replacement of their Units.**
3. **Associations are responsible for repair and replacement of the Exclusive Use Common Area.**
4. Owners are responsible for maintenance of the Exclusive Use Common Area.

B. Directors should review the revisions to Civil Code section 4775 to determine how the change in the law impacts the maintenance, repair and replacement obligations of their Association. If there are concerns, an amendment to the Association's CC&R's may be advisable.

**Associations Have a Responsibility to Protect Occupants
From Third Party Discrimination**
24 Code of Regulations section 100.7 (a) (1) (iii)

A. Effective October 14, 2016, the Fair Housing Act has been clarified to establish that Associations have a responsibility to protect occupants from third party harassment amounting to discriminatory housing practices.

B. Discrimination in violation of the Act occurs when one is harassed because of their race, color, religion, sex, national origin, or disability.

C. Under the following circumstances, an Association is required to take action to protect an occupant against a discriminatory housing practice by a third party.

1. The Association has the power under its Governing Documents to abate the discriminatory harassment; and
2. The Association or its Manager knows or should know that an occupant is being harassed because of their race, color, religion, sex, national origin or disability.

**Dealing with Short Term Rentals / Rentals for
Less than 30 Days**

A. Many Associations have and/or will be faced with Short Term Rentals. Short Term Rentals are generally defined as rentals for less than 30 days, otherwise known as Vacation Rentals.

B. The City of Santa Barbara & Carpinteria have adopted *Short Term Rental Zones* where Vacation Rentals are allowed.

C. For those Associations that desire to exclude Short Term Rentals, generally an amendment to your CC&R's is not necessary. There are already provisions within your CC&R's that prevent Short Term Rentals.

NEW CASES

***Palm Springs Villas II Homeowners Assn. v. Parth*
(2016) 248 Cal.App.4th 268**

A. Where a Director is accused of wrongdoing, to be deserving of the protection provided to Directors under the Business Judgment Rule, the conduct of a Director must establish that the Director met the following standards:

1. The Director acted in good faith;
2. The Director believed the action taken was in the best interests of the Association;
3. The Director acted with such care, including reasonable inquiry, as an ordinarily prudent person in like position would use under similar circumstances.

B. Where a Director makes decisions in accordance with the Business Judgment Rule, even where that decision proves to be incorrect, liability may not be imposed upon a Director.

C. The Business Judgment Rule (Corporations Code section 7231) does not shield a Director from liability where a Director, even if they believe they are acting in good faith and in the best interest of the Association, fails to make reasonable inquiry as an ordinarily prudent person in like position would use under similar circumstances.

D. Reasonable inquiry requires Directors to ascertain the scope of their authority to act under the Association's Governing Documents.

OWNER CONTACT INFORMATION

California Civil Code section 4041 requires that each Homeowners Association, not less than 30 days prior to making the annual disclosure required under California Civil Code section 5300, solicit from each Owner of a Unit in the Development the following information:

1. Please state the address of your Unit: _____

2. Please state the full and complete name of the owner of the above noted Unit:

3. Please state the address or addresses to which notices from the Association are to be delivered: _____

4. Please state the secondary address, if any, to which notices from the Association are to be delivered: _____

5. Please state the name and address of your legal representative, if any, including any person with power of attorney or other person who can be contacted in the event of your extended absence from your Unit: _____

6. Please note whether the Unit is owner occupied, rented or vacant: _____

7. Please provide your phone number and email address: _____

After you have filled out the above information, please return this form to:

Please Note: (1) If you fail to provide the information requested in paragraphs 1 and 2 above to the Association, the address of your Unit will be the address to which notices from the Association will be delivered. (2) Please fill out one form for each Unit you own.

“Caution”

This form is provided as a courtesy by James H Smith, Esq. of the law firm of Grokenberger and Smith. Telephone: (805) 965- 7746. Email: jhs@grokenberger.com. Your Association’s Governing Documents and/or changes in the law may require this form to be modified.

ANNUAL BUDGET REPORT

Unless the Governing Documents of the Association impose more rigid standards, within 30 to 90 days before the end of the Association’s fiscal year, California Civil Code section 5300(a) requires the Association to distribute an *Annual Budget Report* to the Members containing the information specified in California Civil Code section 5300(b)(1) – (9).

Pursuant to California Civil Code section 5320(a)(2), all Members of the Association are hereby notified that wherever in this *Annual Budget Report* there is reference to a “summary” of a report or document, any Member may request a complete copy of the summarized report or document by contacting the Association’s Manager as follows:

The *Annual Budget Report* for the Association follows:

I
Pro Forma Budget

Pursuant to California Civil Code section 5300(b)(1), the Association’s *Pro Forma Budget*, showing the estimated revenue and expenses on an accrual basis must be provided. A copy of the *Pro Forma Budget* is attached hereto.

II
Summary of Reserves

Pursuant to California Civil Code section 5300 (b)(2), a summary of the Association’s reserves, prepared pursuant to California Civil Code section 5565, must be provided to the Members. A summary of the Association’s reserves, prepared in the format required by California Civil Code section 5570(a), is attached hereto entitled *Assessment and Reserve Funding Disclosure Summary*.

California Civil Code section 5565(a) also requires there be provided an inventory of the major components the Association is responsible for maintaining and/or replacing together with the current estimated replacement cost, estimated remaining life and estimated useful life of such components. Attached hereto you will find the Association’s *Inventory of Major Components* as required by section 5565(a).

III
Reserve Funding Plan

Pursuant to California Civil Code section 5300(b)(3), a summary of the reserve funding plan adopted by the Board, as described in subparagraph (5) of subdivision (b) of California Civil Code section 5550, must be provided to the Members of the Association. A summary of the Association's reserve funding plan prepared in the format required by 5570(a) is attached hereto entitled *Assessment and Reserve Funding Disclosure Summary*. A copy of the complete Reserve Study and Funding Plan may be obtained by contacting the Association's Manager or Board.

IV
Deferral of Repairs and/or Replacement

Pursuant to California Civil Code section 5300(b)(4), a statement as to whether the Board has determined to defer or not undertake repairs and/or replacement of any major components with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement, must be provided to the Members of the Association.

The Association has / has not elected to defer repairs and/or replacement.

Circle One

If the Association has elected to defer repairs and/or replacement of major components with a remaining life of 30 years or less, the components which the Association has elected not to repair and/or replace are as follows:

1. _____
2. _____
3. _____

The reason (s) the Board has elected not to repair and/or replace the identified items is as follows:

V
Need for Special Assessments

Pursuant to California Civil Code section 5300 (b)(5), a statement as to whether the Board, consistent with the reserve funding plan adopted pursuant to section 5560, has determined or anticipates the need for the levy of one or more special assessments must be provided to the Members. Said statement, prepared according to the format required

by California Civil Code section 5570(a), is found in paragraphs 3 and 4 of the attached *Assessment and Reserve Funding Disclosure Summary*.

VI Funding of Reserves

Pursuant to California Civil Code section 5300(b)(6), a statement as to the mechanism or mechanisms by which the Board will fund reserves, including assessments, borrowing, use of other assets, deferral of selected replacements or repairs, or alternative mechanisms must be provided to the Members of the Association. The Board will fund reserves consistent with that set forth in this *Annual Budget Report* as well as the *Assessment and Reserve Funding Disclosure Summary* attached hereto and the Reserve Study and Funding Plan adopted by the Board pursuant to California Civil Code sections 5550 and 5560. A copy of the complete Reserve Study and Funding Plan may be obtained by contacting the Association's Manager or Board.

VII Procedure Used for Calculation and Establishment of Reserves

Pursuant to California Civil Code section 5300(b)(7), a statement addressing the procedure used for the calculation and establishment of reserves to defray the future repair, replacement, or additions to those major components that the Association is obligated to maintain must be provided to the Members of the Association.

Calculation of Reserves: As provided in California Civil Code section 5570(b)(4), the reserve fund amounts required to be disclosed per California Civil Code sections 5565, 5570(a)(6) and 5570(a)(7) were calculated by computing the current cost of replacement or repair of each reserve component multiplied by the number of years each component has been in service, divided by the useful life of each component. These amounts were then totaled to yield the net depreciation as of the date of the reserve study for all listed reserve components the Association is obligated to maintain. The resulting total is listed as the "amount required in the reserve fund" per California Civil Code section 5570(a)(7) and shown in the attached *Assessment and Reserve Funding Disclosure Summary*. (Note, however, that California Civil Code section 5570(b)(4) also states: "This shall not be construed to require the board to fund reserves in accordance with this calculation.") The percent-funded estimates as shown in the *Assessment and Reserve Funding Disclosure Summary* are then calculated by dividing the Association's total reserve funds by the total depreciation to date of all reserve components as calculated above.

Establishment of Reserves: The procedure used for the establishment of reserves was determined by either of the following calculations:

1) As provided in California Civil Code section 5570(b)(4), determine annual depreciation per reserve component and thereafter fund reserves annually at a rate

corresponding to the annual depreciation for all reserve components, including funding prior shortfalls in reserve funding; or

2) Use a traditional funding method, such as cash flow analysis, to establish a proper reserve funding plan to pay for projected reserve component expenses during the required 30-year period.

Refer to the Association's actual reserve funding plan and most recent reserve study to determine which reserve funding method was utilized.

Pursuant to California Civil Code section 5300(b)(7), the rate of return on the cash reserves was computed at a sum not in excess of 2% above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

VIII
Disclosure of Outstanding Loans

Pursuant to California Civil Code section 5300(b)(7), the Association must disclose any outstanding loans it has with an original term of more than one year, including identification of the payee, interest rate, amount outstanding, annual payment and when the loan is scheduled to be retired. The outstanding loans which the Association has, falling within the scope of California Civil Code section 5300(b)(7), are:

1. _____
2. _____

IX
Summary of Association's Insurance Policies

Pursuant to California Civil Code section 5300(b)(7), the Association must disclose to its Members a summary of the Association's property, general liability, earthquake, flood, and fidelity insurance policies. A summary of said policies is attached herewith entitled *Summary of Association's Insurance Policies*.

X
FHA Certification

Pursuant to California Civil Code section 5300(b)(10), when a Common Interest Development is a condominium project, the following statement must be provided describing the status of the Common Interest Development with respect to Federal Housing Administration Certification.

"Certification by the Federal Housing Administration may provide benefits to members of an association, including an improvement in an owner's ability to refinance

a mortgage or obtain secondary financing and an increase in the pool of potential buyers of the separate interest.

This common interest development [is / is not / (circle one)] a condominium project. The association of this common interest development [is / is not] certified by the Federal Housing Administration.”

The Association believes the above FHA Certification disclosure, when made, was accurate. However, you can check the current statuses of the Association’s FHA Certification yourself by contacting the US Department of Housing and Urban Development. Therefore, before relying on the above FHA Certification disclosure, you should check with U.S. Department of Housing and Urban Development to confirm the current statuses of the Association’s FHA Certification.

XI
VA Certification

Pursuant to California Civil Code section 5300(b) (11), when a Common Interest Development is a condominium project, the following statement must be provided describing the status of the Common Interest Development with respect to Department of Veterans Affairs Certification.

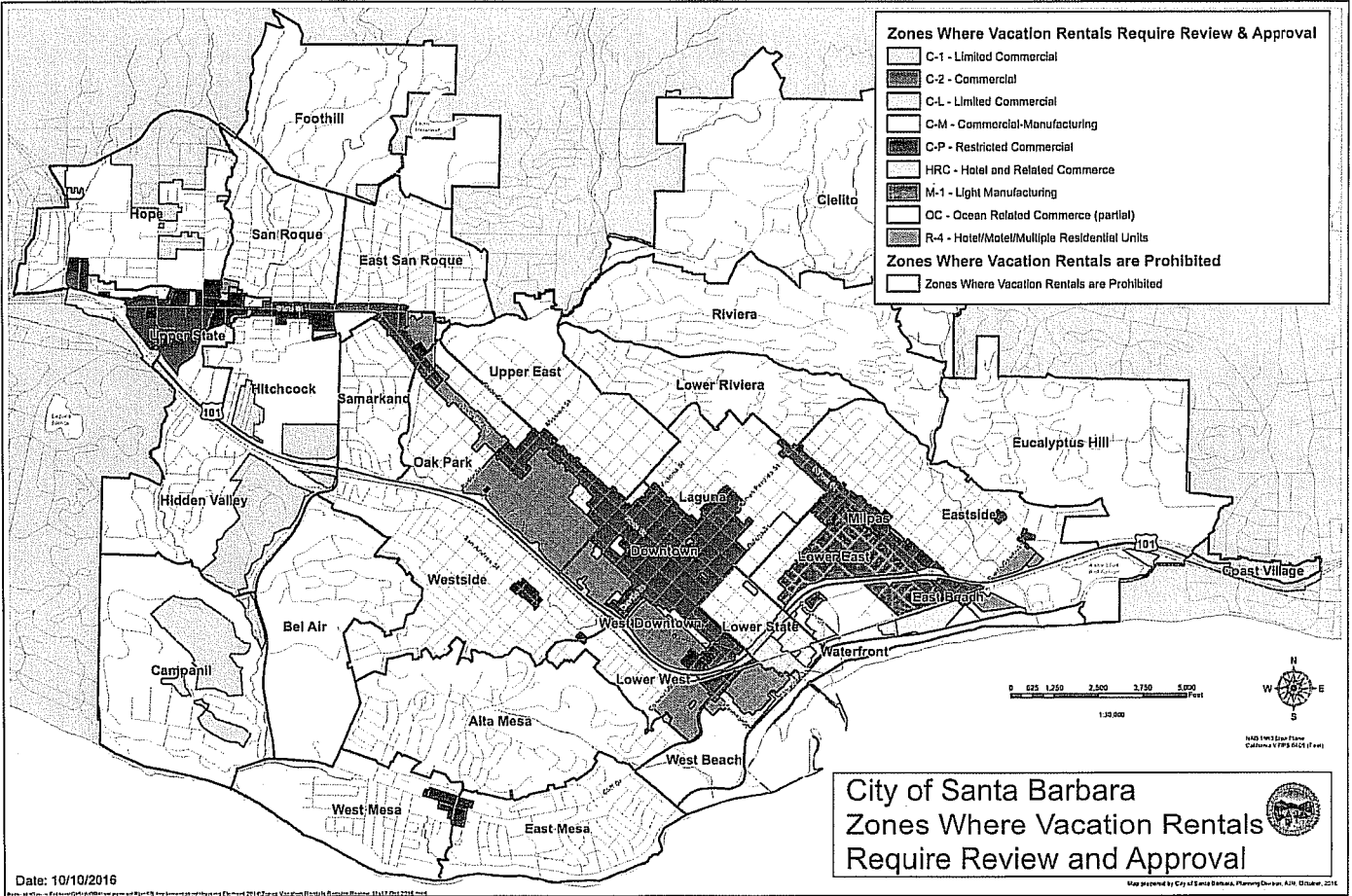
“Certification by the federal Department of Veteran Affairs may provide benefits to members of an association, including an improvement in an owner’s ability to refinance a mortgage or obtain secondary financing and an increase in the pool of potential buyers of the separate interest.

This common interest development [is / is not (circle one)] a condominium project. The association of this common interest development [is / is not (circle one)] certified by the federal Department of Veteran Affairs.”

The Association believes the above VA Certification disclosure, when made, was accurate. However, you can check the current statuses of the Association’s VA Certification yourself by contacting the US Department of Housing and Urban Development. Therefore, before relying on the above VA Certification disclosure, you should check with U.S. Department of Housing and Urban Development to confirm the current statuses of the Association’s VA Certification.

XII
Distribution of Annual Budget Report

Pursuant to California Civil Code section 5300(c), this *Annual Budget Report* is to be made available to the Members of the Association as required by California Civil Code section 5320. Section 5320 requires this Report to be individually delivered to the Members as required by California Civil Code section 4040.



Proposed Vacation Rental Overlay
 District Map
 City Council April 25, 2016

Sandyland Cove Rd

Avenue Del Mar

Sandyland Rd

Silver

Silver Sands Mhp

Silver Sands Mhp

Silver Sands Mhp

Silver Sands Mhp

Silver Sands Mhp

Silver Sands Mhp

Silver Sands Mhp

Silver Sands Mhp

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Legend

-  Area A
-  Area B
-  Area C
-  Area C

Ash Ave

Holly Ave

Elm Ave

Linden Ave

Ash Ave

Holly Ave

Seventh St

Eighth St

Holly Ave

Third St

Derrance Wy

Fifth St

Elm Ave

Sixth St

Total Units: 119
 Vacation Rentals: 16
 Cap 15%: 18

Total Units: 198
 Vacation Rentals: 22
 Cap 15%: 30

Total Units: 229
 Vacation Rentals: 95
 Cap 50%: 115

Total Units: 91
 Vacation Rentals: 49
 Cap 60%: 55

Trindale Ave