

# **SOUTH COAST HOMEOWNERS ASSOCIATION**

## **ANNUAL LEGISLATIVE FORUM**

January 23, 2025



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

### I. CORPORATE TRANSPARENCY ACT

#### SUSPENDED NATIONWIDE

House of Representative Bill # 6395 / 31 US Code § 5336

A. **Purpose:** The purpose of the Corporate Transparency Act is to create a federal database providing law enforcement with information allowing for the detection, prevention and punishment of terrorism, and money laundering through business entities (“Reporting Companies”).

- (1) **Reporting Companies Subject to the Act:** HOA’s fall within the scope of the Act. With few exceptions, all companies formed under Federal or State Law are subject to the Act (e.g., Corporations, Partnerships, Limited Partnerships, Limited Liability Companies, Trusts, and foreign companies registered to do business in the US).
- (2) **The Act Requires “Beneficial Ownership Information” to be Reported:** A “Beneficial Owner” is any individual who directly or indirectly exercises substantial control over a Reporting Company. For HOA’s this would include Board members.
- (3) **What information Must be Reported by Board Members?** Full legal name, date of birth, residential or business street address and identification verification number from a passport, drivers license or other government issued identification number.
- (4) **Penalties for Failure to Report:** For each violation; Fine \$500 to \$10,000 and imprisonment for up to 2 years.
- (5) **When to Report? Unknown.**
  - a. **Reporting Date #1;** HOA’s formed prior to Jan. 1, 2024, reporting date was Jan. 1, 2025.
  - b. **Reporting Date #2:** On Dec. 3, 2024, the Eastern Dist. Court issued a nationwide injunction, in the case of *Texas Top Cop Shop et. al. v. Garland et. al. 4:24-cv-478 (E.D. Tex)*. The injunction stayed the filing deadline until that case is decided. The *Cop Shop* case challenged the constitutionality of the Act.

**c. Reporting Date #3:** On Dec. 23, 2024, the 5<sup>th</sup> Circuit Court of Appeals reinstated the Jan.1, 2025 deadline.

**d. Reporting Date #4:** On Dec. 24, 2025, the Federal Financial Crimes Enforcement Network, extended the filing date to Jan. 13, 2025.

**e. Reporting Date #5:** On Dec. 26, 2024, the 5<sup>th</sup> Circuit Court of Appeals reversed itself. The Court stated there is no requirement to report until a full hearing on the preliminary injunction.

**B. What follows next is uncertain:** The now pending hearing on the preliminary injunction may stay any requirement to comply with the Act as the case makes its way to trial on the issue of enforceability; Or the Federal Government may appeal the now pending injunction; Or the Act may be amended to minimize the risk of a constitutional challenge; Or the Act may be scuttled altogether.

**C. Recommended Action:** If you have already filed, no problem. If you have not filed; (1) File a BOI report or; (2) Watch for upcoming court rulings. If the Act is ruled enforceable, or the injunction lifted, be prepared to file.

## **II. INSPECTION OF EXTERIOR ELAVATED ELEMENTS MUST BE COMPLETED**

Senate Bill 326 / Civil Code § 5551

A. Condominium Exterior Elevated Elements, their railings and associated waterproofing, must be inspected every 9 years with the first inspection completed by Jan. 1, 2025.

B. Written report of findings must have been completed prior to January 1, 2025.

## **III. Those Qualified to Inspect Exterior Elevated Elements Now Includes Civil Engineers**

AB 2114 / Civil Code § 5551(b) (1)

A. Prior to July 15, 2024 the Exterior Elevated Element inspection was required to be conducted by a licensed structural engineer or architect.

B. Effective July 15, 2024, a licensed civil engineer may also conduct the inspection.

#### **IV. Association's Obligation to Restore Gas, Water and Electrical Service**

SB 900 / Civil Code § 4775

- A. Associations are responsible for repair of interrupted gas, heat, water and electrical services that begin in the Common Area, even where they extend into a Unit or Exclusive Common Area, except as follows:
  - 1. Restoring service is the responsibility of the utility provider; or
  - 2. The Association's CC&R's otherwise state.
- B. Repairs must be commenced within 14 days of the service interruption.
- C. If there are insufficient funds for the repairs, Associations may obtain a loan without a vote of the Owners. Written Findings are required to establish why the Reserves do not cover the expense.

#### **V. Gas, Water and Electrical Services Are Deemed Major Components**

SB 900 / Civil Code § 5550 (c)

- A. For purposes of Reserve Studies, "Major Components" include gas, water and electrical lines and services to the extent the Association is responsible for repair and/or replacement of those items.
- B. When, gas, water and electrical components are deemed to have a remaining useful life of 30 years or less, they must be included in the Association's Reserve Study and included in the Reserve funding calculation.

#### **VI. Elections by Electronic Ballot - Duties of the Association**

AB 2159 / Civil Code § 5105 (i)

- A. If allowed by an Association's Election Rules, elections may be conducted by electronic secret ballot.
- B. If an Association determines electronic voting will be allowed, the Rules for electronic voting must provide for the following:

1. **Voting will be via electronic ballots**, with Owners being given an option to opt out in favor of a written ballot **OR** the Rules must state that **voting will be via written ballot** with Owners given an option to opt out in favor of an electronic ballot.
  2. The Rules must allow an Owner to change their preferred method of voting, from electronic ballot to written ballot, or written ballot to electronic ballot, not later than 90 days before the election.
  3. The Rules must state that the electronic ballots and written ballots will contain the same list of items being voted on.
  4. Where an Owner may opt out of voting by electronic ballot, the Rules must require the Association to mail a written ballot to an Owner who has opted out, as well as mail a written ballot to an Owner for whom the Association does not have an e-mail address for.
  5. Where an Owner may opt into voting by electronic ballot, the Rules must require the Association to send an electronic ballot to an Owner who has opted into voting by electronic ballot.
  6. The Rules must require Owners voting by electronic ballot to provide a valid e-mail address to the Association.
  7. In the Rules, it must be stated that the Association is required to maintain a voting list identifying those Owners who will vote electronically and those who will vote by written ballot.
  8. The Rules must state that the procedure for opting into, or opting out of, voting by electronic ballot will be set forth in the *Association's Annual Policy Statement* provided annually to Owners as required by Civil Code § 5310.
  9. If an Association allows voting by electronic ballot, the Rules must prohibit nomination of candidates from the floor of membership meetings.
- C. Electronic ballots must be distributed to the Owners 30 days before the election together with the following information:
1. How to access the internet-based voting system and;

2. How to vote by electronic ballot.
- D. Where Owners may opt out of voting by electronic ballots, at least 30 days before the deadline to opt out of voting by electronic ballot, such Owners must be informed of the following:
1. Their current voting method.
  2. The e-mail address to which the electronic ballot will be sent.
  3. An explanation that the Owner is required to opt out of voting by electronic ballot if they desire to vote by written ballot.
  4. An explanation of how an Owner may opt out of voting by electronic ballot.
- E. Electronic ballots must be transmitted to the Inspector of Elections.

## **VII. Elections by Electronic Ballot - Duties of the Inspector of Elections**

AB 2159 / Civil Code § 5110 (c) (4)

- A. Where voting by electronic ballot is allowed, in addition to the other responsibilities the Inspector of Elections has under Civil Code § 5110, the Inspector must ensure compliance with the following:
1. Confirm that each Owner voting by electronic ballot has been provided with the following:
    - (i) A method to authenticate the Owner's identity to the internet based voting system.
    - (ii) A method to transmit an electronic secret ballot to the internet based voting system that ensures the secrecy and integrity of each ballot.
    - (iii) A method to confirm, at least 30 days before the voting deadline, that the Owner's electronic device can successfully communicate with the internet based voting system.

- B. Any internet based voting system that is utilized shall have the ability to accomplish all of the following:
1. Authenticate the Owner's identity.
  2. Authenticate the validity of each electronic ballot to ensure that the electronic ballot is not altered in transit.
  3. Transmit a receipt from the internet based voting system to each Owner who casts an electronic ballot.
  4. Permanently separate any authenticating or identifying information from the electronic ballot, rendering it impossible to connect an electronic ballot to a specific Owner.
  5. Keep electronic ballots accessible to election officials or their authorized representatives for recount, inspection, and review purposes.

### **VIII. Power of Directors to Reduce Quorum Requirements**

#### AB 2159 / Civil Code § 5115 (b)

- A. CC § 5115 has required, at least 30 days before ballots are distributed for the election of Directors, notice of the date, time and location where ballots are to be returned, date time when ballots will be counted and a list of candidates who will be on the ballot. There must now also be included in that notice the following:
1. If a quorum is required for the election of Directors, a statement that the Board may call a subsequent meeting, at least 20 days after the scheduled election, if the required quorum is not reached.
  2. At the recalled meeting, the quorum to elect Directors will be 20% of the Associations Owners voting in person, proxy or by secret ballot.
- B. Where a quorum is required and has not been met for the election of Directors, the Association may adjourn the meeting to a date that is at least 20 days after the adjourned meeting, at which time the quorum is reduced to 20% of the Associations voting members present in person, proxy or by secret ballot.

- C. Notice of a recalled meeting, at which a lower quorum requirement is allowed, must be provided to the Owners no less than 15 days prior to the date of the meeting. The notice must include the following:
1. Date, time and location of the meeting.
  2. List of all candidates.
  3. A statement that 20% of the Association present in person, proxy or secret ballot will satisfy the quorum requirements and the ballots will be counted if a quorum is reached.

**COURT DECISION**

***Morris v. West Hayden Estates (2019) 382 F. Supp 3d 1093***  
**The HOA Grinch that Stole Christmas**

- A. Even when it ruins a great Christmas celebration, CC&R's must be enforced.
- B. Other than I can see each persons side of the argument, the true value of this case is entertainment. It stands for the proposition that we are in a challenging business.
- C. For our sanity, let's keep a sense of humor as we move into 2025.

Wishing You all the Best in the New Year,  
**James H. Smith**