

SOUTH COAST HOMEOWNERS ASSOCIATION

31ST ANNUAL LEGISLATIVE FORUM

January 24, 2024



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.

JAMES H. SMITH
Attorney at Law
427 East Carrillo Street
Santa Barbara, CA 93101
Telephone: (805) 963-9721
Fax: (805) 845-2356
Email: james@rogerssheffield.com
Website: www.rogerssheffield.com

New Legislation

I. CORPORATE TRANSPARENCY ACT, REQUIRED INFORMATION TO BE REPORTED BY DIRECTORS & OFFICERS

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

- A. **Purpose:** The purpose of the Corporate Transparency Act (the “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”).
- B. **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).
- C. **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.
- D. **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, divers license or other government issued identification number.
- E. **How to Report?** Reports are to be filed electronically through a “Secure Filing System” via the Finical Crimes Enforcement Network, U. S. Dept. of Treasury’s Web site: www.fincen.gov/boi.
- F. **When to Report?** HOA’s, created prior to Jan. 1, 2024, must report by Jan. 1, 2025.
- G. **Penalties for Failure to Report:** For each violation; Fine \$500 to \$10,000 and imprisonment for up to 2 years.

II. MEMBER MEETINGS & BOARD MEETINGS
MAY BE CONDUCTED ENTIRELY BY TELECONFERENCE

Assembly Bill 648 / Civil Code § 4926

- A. Associations may conduct Member and Board Meeting entirely by teleconference / Zoom **IF**:
1. The Notice of Meeting gives clear instructions on how connect;
 2. The Notice of Meeting provides a phone number and email address of a person who can provide technical assistance before and during the meeting.
 3. The Notice reminds Members that they may request Individual Delivery of meeting notices with instructions on how to do so. (CC Section 4040)
 4. All persons attending must be able to hear all others speaking.
 5. Director votes must be by roll call vote.
 6. Participation by telephone must be allowed.
- B. This Section is not allowed at a Member of Board meeting where secret ballots are counted and tabulated.

III. TERMED OUT DIRECTORS, AND / OR DIRECTORS
WHO CEASE TO BE MEMBERS, MUST RESIGN

Assembly Bill 1764 / Civil Code § 5105 (b)

- A. If term limits are in an Associations governing document, an incumbent Director must resign when termed out. Such Director is not eligible to be a candidate in the next successive election after terming out.
- B. A Director who ceases to be a member of the Association is disqualified from continuing to serve on the Board.

IV. QUORUM REDUCTION FOR ELECTION OF DIRECTORS

Assembly Bill 1458 / Civil Code § 5115

- A. Addition information must be provided in the Notice of Board meetings to elect or recall Board members as follows:
1. “[A] quorum will be determined, if the association’s governing documents require a quorum, at which time the ballots will be counted.”
 2. If the Association’s governing documents require a quorum for election of directors, a statement that; *“The board of directors may call a subsequent meeting at least 20 days after a scheduled election if the required quorum is not reached, at which time, the quorum of the membership to elect directors will be 20 percent of the association’s members voting in person, by proxy, or secret ballot.”*
- B. No less than 15 days prior to a continued election as allowed above, the Association must provide general notice of the next meeting as follows:
1. The date, time, and location of the next meeting;
 2. The list of candidates and;
 3. A statement that; *“20 percent of the Association present or voting by proxy or secret ballot will satisfy the quorum requirements for the election of directors and that the ballots will be counted if a quorum is reached if the association’s governing documents require a quorum.”*

V. POTABLE WATER CANNOT BE USED FOR IRRIGATING NONFUNCTIONAL TURF

Assembly Bill 1572 / Water Code § 10608.14

- A. Effective Jan. 1, 2029, Associations may not irrigate nonfunctional turf with potable water.
- B. Turf is deemed nonfunctional if fencing or other barriers preclude human access for recreation or assembly.

- C. Starting June 30, 2031, and every 3 years thereafter, Associations with over 5,000 square feet irrigated common area must file a certificate with the Water Resource Control Board that they are compliant with Water Code Section 10608.14.

VI. ASSESSMENT LIMITATION FOR AFFORDABLE UNITS

Assembly Bill 572 / Civil Code § 5605

- A. Starting with Associations that have their original Declarations recorded on after Jan. 1, 2025, Assessments increases on Affordable Units are restricted.
- B. Boards may not impose a regular Assessment increase, against Owners of Affordable Units, that exceed 5% plus annual change in the California Consumer Price Index, with a maximum cap of 10%.
- C. Boards may impose Assessments against Owners of Affordable Units that are lower than imposed against non-affordable Unit Owners with the same proportional ownership interest.
- D. This Section does not apply if:
 - 1. The number of Affordable Units exceeds that required by applicable zoning ordinance or;
 - 2. The number of Affordable Units in a complex, located a city or county without a requirement for Affordable Units, exceeds 10% of the total Units in the Complex or;
 - 3. A Complex has 20 or fewer Units.

VII. REQUIRED INSPECTION OF EXTERIOR ELAVATED ELEMENTS

Senate Bill 326 / Civil Code § 5551

- A. Exterior Elevated Elements, their railings and associated waterproofing must be inspected.
- B. Inspection must be conducted by a licensed structural engineer or architect.
- C. Written report of findings must be submitted prior to January 1, 2025.

COURT DECISIONS

Guy Takiguchi v. Venetian Condominium Maintenance Corporation 90 Cal. App. 5th 880 (2023)

Courts have authority to order HOA's to conduct elections and order ballots counted.

- A. Owner and son owned 18 units and controlled 3-person Board for 12 years.
- B. They prevented Board elections by claiming lack of a quorum, claiming a quorum could only be established by the number of ballots cast.
- C. They asserted Owners in attendance, who did not cast ballots, could not be counted for quorum requirements.
- D. To further complicate efforts to obtain a quorum, the Owner and his son did not submit their ballots.
- E. The court stated that in determining the existence of a quorum, there are 3 factors that must be considered:
 - 1. Number of ballots submitted;
 - 2. Number of owners in attendance, who have not submitted ballots and;
 - 3. Number of owners online, who have not submitted ballots.
- F. Once a court determines a quorum exists, it can order the ballots opened and counted.

LNSU #1 v. Alta Del Mar (2023)

Certified for publication. Under review for depublication

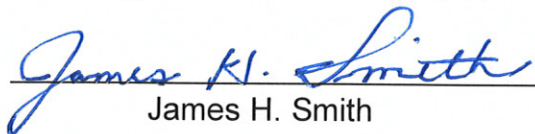
Email communications between Board members, outside of a meeting on items to be voted on, is not a violation of the Open Meeting Act.

- A. The court found that a HOA Board meeting is congregation of a Board quorum at the same place and time **to take action on** an item of Association business.
- B. The court noted a significant distinction between the *Open Meeting Act* and the *Brown Act*.

1. The *Brown Act*, applicable to public agencies, prohibits discussion, outside a meeting, on any item of business.
2. The *Open Meeting Act*, applicable to HOA's, does prohibit HOA Board members from discussing, outside of a Board meeting, Association business including items that may come before the Board for a vote.

Wishing You all the Best in 2024

By:


James H. Smith