

# **SOUTH COAST HOMEOWNERS ASSOCIATION**

## **WELCOME TO THE SOUTH COAST 30<sup>TH</sup> ANNIVERSARY AND ANNUAL LEGAL UPDATE**

**Four Seasons Biltmore Santa Barbara-La Marina Room  
Rescheduled to January 30, 2019**

**Reception 5:30-6:50 pm      Program 7:00 pm-9:00 pm**

**Donations to be made to Direct Relief and the Santa Barbara Bucket Brigade**

### **GUEST SPEAKERS ARE:**

**DAVID A. LOEWENTHAL, ESQ.; Loewenthal, Hillshafer and Carter  
AND**

**JAMES H. SMITH, ESQ.; Rogers, Sheffield & Campbell, LLP**

**Thank You to all Vendors listed below that helped sponsor the  
Wonderful Appetizers and Cake!**

**ASR Property Restoration  
Blue Horizon Management Company  
Coast Community Property Management  
General Pavement Management  
Jane Spencer Management  
Michael J. Gartzke, CPA  
Pacific Western Bank  
Rogers, Sheffield & Campbell, LLP  
Santa Barbara Painting  
Steve Reich Insurance  
Stone Mountain Corporation  
St. John and Associates  
Team HOA  
The Management Trust  
Union Bank**

### ***Active Founding Members:***

**James H. Smith, Esq., Michael J. Gartzke, CPA, Sandra G. Foehl, CCAM**

# **SOUTH COAST HOMEOWNERS ASSOCIATION**

**P. O. BOX 1052  
GOLETA, CALIFORNIA 93116  
805-964-7806  
gartzke@silcom.com**

## **A BRIEF 30 YEAR HISTORY AND SUMMARY**

In late 1988, several association professionals met in Goleta to explore the feasibility of providing education to Association board members in the Santa Barbara community. Attorney Jim Smith drafted a letter to area homeowner associations, that we found from a mailing list purchased from the California Secretary of State, discussing current issues pertinent to the operations and management of associations in our community. A post card was included with the letter to be returned if the association's board was interested in attending a meeting. 38(!) post cards were returned and our first meeting was held January 26, 1989 at the Goleta Public Library with the VP of the Bank of Montecito discussing safe, hi-yielding, investments for association reserve funds. Remember 8% CD interest?

Since that time, the organization grew. Meetings were held 4-6 times per year in Goleta-Santa Barbara and occasionally in Santa Maria. Newsletters were published periodically. Shortly after our formation, the Goleta Water District imposed water rationing due to drought and increased rates (nothing changes). Associations were going to be charged a commercial rate of four times the rate of residential for their common area/landscape meters. We got the word out and numerous board members attended hearings that the district held and eventually rates were rolled back and even refunds were provided for the excess payments.

During the '90s, we became aware of the numerous legislative changes being made in Sacramento. We've had many meetings on this subject. For several years, we engaged a legislative monitor to report on these activities and even did a bit of grass roots lobbying. We attempted to engage our local state representatives such as Brooks Firestone, Jack O'Connell and Pedro Nava to help them understand the concept of common interest developments and how proposed legislation would impact (positively or negatively) area associations.

In our formative years, we conducted several surveys among members and achieved a high rate of response. We published the results in the newsletters for all to be informed. We also published a membership directory to facilitate member contact. 21<sup>st</sup> century privacy considerations curtailed that activity. Members do have the opportunity to interact and network at our quarterly meetings.

We've done several all-day board training sessions (and are overdue for another one). We currently provide four programs per year and enlist local experts as well as association professionals from throughout the state. Most of these professionals have been willing to come to our area and become involved when we ask them.

Over the past twenty-five years, we have distributed the *Condominium Bluebook* to members annually. This is a valuable reference for California law of common interest developments and is updated annually by the author. We have distributed numerous other publications over the years to members as part of your annual dues.

Since 2005, we have placed a website on the internet [www.southcoasthoa.org](http://www.southcoasthoa.org). The site contains reference materials such as outlines distributed at meetings along with an archive of

prior year newsletters from 2000-2018 and links to other HOA organizations and relevant materials. Our newsletter sponsor contact information can also be found on the site. The materials on the site are free.

All of the services provided to South Coast HOA are done by volunteers. Your dues cover the out-of-pocket costs of maintaining the organization. Even our speakers do not charge us to travel and present at the meetings. Needless to say, many hours have been contributed by many people to create the successful organization that we have today.

In January 2019, South Coast HOA membership stands at 188 – 137 Associations, 6 Individuals and 45 Professional and Vendor Members. The challenge is to make more associations aware of South Coast HOA and the educational opportunities for board members as well as professional vendor members. At a very nominal cost of \$5/month (\$60 per year), board members have the ability to attend meetings (many at no additional charge) and to receive current newsletters, publications and an occasional email if there is a need for that. Annual membership renewals have been at an even lower cost. Our website has a membership application. We strongly encourage our professional and vendor members to make your clients aware of South Coast HOA. This organization exists for them.

I'm sure it's coincidental that our first meeting was 6 days into the Presidency of George H.W. Bush. With his recent passing, many have reflected upon his life and legacy. He was passionate about serving others and started the Points of Light Foundation which has made over 5,000 awards to volunteers and continues to do so.

"I think the spirit of America, one American wanting to make another American's life better, or internationally our desire to see countries do better, or people in countries do better, coming from this concept of volunteerism is a very valid and important part of our internal being."

"The American Dream means giving it your all, trying your hardest, accomplishing something. And then I'd add to that, giving something back. No definition of a successful life can do anything but include serving others."

Finally, our thanks go to all the volunteer board members who have attended our meetings over these past 30 years. Board members come from every walk of life imaginable with the common bond of holding a leadership position in their homeowners association. Government has not made this responsibility simpler. The evolution of social media can compound the difficulties.

So, in a small way, this is our "point of light" to you, the board volunteer. Our goal is to provide you with more credible resources to help you properly discharge your duties. Sometimes it seems like "Mission Impossible". Thank you for your service to our communities.



Michael J. Gartzke, CPA  
January 16, 2019

# **SOUTH COAST HOMEOWNERS ASSOCIATION**

## **ANNUAL LEGISLATIVE FORUM**

January 16, 2019



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

### Electrical Vehicle Charging Stations; Costs & Insurance

#### SB 1016; Civil Code § 4745

A. Civil Code § 4745 has been amended to address the responsibility for cost of installation and use of electrical vehicle charging stations.

1. Prior to installing a charging station in the Common Area or Exclusive Use Common Area the owner must agree in writing to:
  - a) Pay for the cost to install and;
  - b) Pay for the associated cost of usage including electricity.

B. Civil Code § 4745 has also been amended to reduce insurance coverage required to be maintained by owners who install charging station.

1. Owners who install charging stations must maintain a liability coverage policy.
2. Within 14 day of an Association granting approval to install a charging station, the owner installing must provide the Association with a certificate of insurance naming the Association as an additional insured.
3. An insurance certificate shall be provided annually thereafter by the owner and successor owners.

C. The requirement that owners installing charging stations maintain a liability policy, with limits of \$1,000,000, has been eliminated.

D. Associations may impose restrictions and requirements governing installation and use of charging stations.

1. Any condition imposed shall not unreasonably restrict the installation and use of the charging station.
2. A restriction is unreasonable when it significantly increases the cost of the charging station or significantly decreases efficiency.
3. Any application for approval shall be processed and approved by the Association in the same manner as an application for a modification to a Unit or the Common Area.

E. Associations have no obligation to incur any expense related to the installation, use maintenance or repair of a charging station.

**Electrical Vehicle Time of Use Meter**  
**("EV-dedicated TOU meter")**

**SB1016; Civil Code § 4745.1**

A. Section 4745.1 is added to the Civil Code. This Section prohibits unreasonable restrictions on the installation of Electrical Vehicle-dedicated Time of Use ("TOU") Meters.

1. EV-dedicated TOU meters are electrical meters supplied and installed by an electric utility.
2. EV-dedicated TOU meters track the time of use.

B. Associations may impose reasonable restrictions on the installation of EV-dedicated TOU meters.

1. Reasonable restrictions are those based on space, aesthetics and structural integrity.
2. Owners must comply with the Association's architectural standards for EV-dedicated TOU meters.
3. There is no requirement that an owner provide liability insurance for the installation and use of EV-dedicated TOU meters.

C. Associations have no obligation to incur any expense related to the installation, use, maintenance or repair of EV-dedicated TOU meters.

**BOARD FINICAL REVIEW REQUIREMENTS**

**AB 2912; Civil Code § 5500**

A. Association Boards have been required to review specified financial information quarterly. As amended, Civil Code § 5500 now requires Boards to review the specified information monthly. The financial information to be reviewed by the Board monthly include:

1. Current reconciliation of the Association's operating accounts.
2. Current reconciliation of the Association's reserve accounts.
3. Current year's actual operating revenues and expenses compared to the current year's budget.
4. Latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts.

5. Income and expense statements for the Association's operating and reserve accounts.
6. Check register, monthly general ledger, and delinquent assessment receivable reports.

### **PROCEDURE FOR FINICAL REVIEW REQUIREMENTS**

#### **AB 2912; Civil Code § 5501**

A. The Board's financial review requirements under CC § 5500 may be complied with in 1 of the 2 following manners.

1. A review by every individual Board member or;
2. A review by a subcommittee of the Board consisting of the treasurer and one other Board member.

B. The review by all Board members, or review by an independent committee, must be ratified at a Board meeting. The ratification must be noted in the Association's Minutes of that meeting.

### **BOARD APPROVAL FOR FINICAL TRANSFERS**

#### **AB 2912; Civil Code § 5380 (b) (6) & § 5502**

Transfers exceeding \$10,000 or 5% of an Association's combined reserve and operating account deposits, whichever is lower, shall not be authorized from the reserve or operating accounts without prior written Board approval.

### **Associations Must Maintain Fidelity Bonds**

#### **AB 2912; Civil Code § 5806**

A. Unless the governing documents require greater coverage amounts, Associations shall maintain fidelity bond coverage for its directors, officers, and employees.

1. The amount of coverage shall be equal to or more than the combined amount of the reserves of the Association and total assessments for 3 months.
2. They fidelity bond shall also include computer fraud and funds transfer fraud.

B. If the Association uses a managing agent or management company, the Association's fidelity bond coverage shall additionally include dishonest acts by that person or entity and its employees.

## **Procedure for Rule Changes**

### **SB 261; Civil Code § 4360**

- A. Prior to a Board voting to enact or amend a rule, the proposed rule or amendment must be distributed to the owners.
- B. Prior law required distribution to the owners at least 30 days prior to the Board's vote.
- C. The time for distribution to the owners has now been reduced to at least 28 days prior to the Board's vote on the proposed rule or amendment.
- D. For purposes of Civil Code § 4360, rules include:
  - 1. Restrictions governing of the Common Area or Exclusive Use Common Area;
  - 2. Procedures establishing architectural standards and alterations;
  - 3. Procedures for member discipline including any schedule for monetary penalties;
  - 4. Delinquent assessment payment plans;
  - 5. Any procedures adopted for resolution disputes and;
  - 6. Election procedures.

## **The Ones That Got Away**

- A. SB 1128; Director Qualifications, Election Rules and Procedures:
- B. SB 721 / Health & Safety Code 17973 Balcony & Deck Inspections:



**BOARD CERTIFICATION RE: FINANCIAL REVIEW**

Unless the Governing Documents impose more stringent standards, California Civil Code section 5500 requires the Board of Directors to review certain financial information monthly. Pursuant to California Civil Code section 5501, the review requirements of Civil Code section 5500, may be met when every individual of the Board reviews the required documents, or a subcommittee of the Board, consisting of the Treasurer and at least one other Board member, reviews the required documents independent of a Board meeting, so long as the review is ratified at a Board meeting subsequent to the review and that ratification is reflected in the Minutes of that meeting. The information required to be reviewed, and which was reviewed, includes:

1. Most Current Bank Statements & Reconciliations for Association's Operating Accounts

Account # \_\_\_\_\_ Bank \_\_\_\_\_ Statement Date \_\_\_\_\_

Account # \_\_\_\_\_ Bank \_\_\_\_\_ Statement Date \_\_\_\_\_

2. Most Current Bank Statements & Reconciliations for Association's Reserve Accounts

Account # \_\_\_\_\_ Bank \_\_\_\_\_ Statement Date \_\_\_\_\_

Account # \_\_\_\_\_ Bank \_\_\_\_\_ Statement Date \_\_\_\_\_

3. Current year's actual operating reserves and expenses compared to current year's budget for the period ending \_\_\_\_\_.

4. Operating income and expense statement for Association's operating and reserve accounts for the period ending \_\_\_\_\_.

5. Most current check register, monthly general ledger and delinquent receivable report.

The individual Board members reviewed the above identified documents or;  The Association's Treasurer and at least one Board member reviewed the above identified documents. At the Board held on \_\_\_\_\_, the Board ratified the review. The foregoing action shall be documented in the Association's Minutes and this Certificate attached to those Minutes.

\_\_\_\_\_ ASSOCIATION

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Secretary

**"Caution"**

This form is provided as a courtesy by James H. Smith, Esq. of the law firm of Rogers, Sheffield & Campbell, Telephone: (805) 963-9721. Your Association's Governing Documents and/or changes in the law may require this form to be modified.

## 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 \_\_\_\_\_

**MONTHLY FINANCIAL REVIEW CHECKLIST**

TO: BOARD OF DIRECTORS - SAMPLE ASSOCIATION

FROM - YOUR MANAGEMENT COMPANY

Please find attached the financial reports and account statements for the operating and reserve accounts for the month ended OCTOBER 31, 2018

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>	
<u>UNION BANK</u>	\$ <u>12,005.62</u>	①
_____	\$ _____	

Operating Income and Expense Statement for the period ended OCTOBER 2018 (CC5500(e)) }  
 Budget vs Actual Income and Expense Statement – same period OCTOBER 2018 (CC5500(c)) } ②

**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>	
<u>UNION BANK</u>	<u>10/31/18</u>	<u>MM</u>	<u>NOT MUCH</u>	\$ <u>78,049.73</u>	③
_____	_____	_____	_____	\$ _____	
_____	_____	_____	_____	\$ _____	
_____	_____	_____	_____	\$ _____	

Reserve Income and Expense Statement for the period ended OCTOBER 2018 (CC5500(e)) ④

Check Register (CC5500(f)) ⑤

Monthly General Ledger (CC5500(f)) ⑥

Delinquent Assessment Receivable Report (CC5500(f)) ⑦

Balance sheet (recommended but not included in CC 5500) ⑧

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

NOVEMBER 19, 2018. Ratification is reflected in the board meeting minutes of NOVEMBER 19, 2018.

By JIM SMITH Title TREASURER Date 11/14/18



1



Electronic Debits	Date	Description	Reference	Amount
	10/01	CHECKING TRANSFER TO BANK OF AMERICA	62745995	83.27
	10/01		54453767	389.73
	10/01		56725964	605.00
	10/09		52719938	151.70
	10/15		59686272	365.03
	10/15		58542344	310.12
	10/15		59686273	303.71
	10/26		62990552	1,176.08
	10/30		53895417	389.73
<b>9 Electronic Debits</b>				<b>3,774.37</b>

Daily Balance

Date	Ledger balance	Date	Ledger balance	Date	Ledger balance
09/29 - 09/30	14,070.35	10/01	13,275.35	10/02	13,558.35
10/03 - 10/08	13,841.35	10/09	13,689.65	10/10 - 10/14	15,670.65
10/15 - 10/16	14,691.79	10/17 - 10/22	14,637.79	10/23 - 10/24	14,397.79
10/25	14,321.72	10/26 - 10/29	13,145.64	10/30 - 10/31	12,755.91

CHECK IMAGES WOULD FOLLOW

1

3:53 PM  
11/07/18

[Redacted] Association  
**Reconciliation Detail**  
Union Bank Operating, Period Ending 10/31/2018

Type	Date	Num	Name	Clr	Amount	Balance
<b>Beginning Balance</b>						14,070.35
<b>Cleared Transactions</b>						
<b>Checks and Payments - 12 items</b>						
Bill Pmt -Check	09/28/2018	EFT	[Redacted]	X	-389.73	-389.73
Bill Pmt -Check	09/30/2018	EFT		X	-83.27	-473.00
Bill Pmt -Check	10/01/2018	EFT		X	-605.00	-1,078.00
Bill Pmt -Check	10/01/2018	EFT		X	-389.73	-1,467.73
Bill Pmt -Check	10/09/2018	EFT		X	-151.70	-1,619.43
Bill Pmt -Check	10/10/2018	1014		X	-54.00	-1,673.43
Bill Pmt -Check	10/15/2018	EFT		X	-365.03	-2,038.46
Bill Pmt -Check	10/15/2018	EFT		X	-310.12	-2,348.58
Bill Pmt -Check	10/15/2018	EFT		X	-303.71	-2,652.29
Bill Pmt -Check	10/15/2018	BP		X	-240.00	-2,892.29
Bill Pmt -Check	10/17/2018	BP		X	-76.07	-2,968.36
General Journal	10/31/2018	46		X	-1,176.08	-4,144.44
<b>Total Checks and Payments</b>					-4,144.44	-4,144.44
<b>Deposits and Credits - 4 items</b>						
Deposit	09/28/2018			X	283.00	283.00
Deposit	10/01/2018			X	283.00	566.00
Deposit	10/02/2018			X	283.00	849.00
Deposit	10/09/2018			X	1,981.00	2,830.00
<b>Total Deposits and Credits</b>					2,830.00	2,830.00
<b>Total Cleared Transactions</b>					-1,314.44	-1,314.44
<b>Cleared Balance</b>					-1,314.44	12,755.91
<b>Uncleared Transactions</b>						
<b>Checks and Payments - 2 items</b>						
Bill Pmt -Check	10/25/2018		[Redacted]		-1,533.82	-1,533.82
Check	10/25/2018		[Redacted]		-15.05	-1,548.87
<b>Total Checks and Payments</b>					-1,548.87	-1,548.87
<b>Deposits and Credits - 4 items</b>						
Deposit	10/31/2018				100.31	100.31
Deposit	10/31/2018				132.27	232.58
Deposit	10/31/2018				283.00	515.58
Deposit	10/31/2018				283.00	798.58
<b>Total Deposits and Credits</b>					798.58	798.58
<b>Total Uncleared Transactions</b>					-750.29	-750.29
<b>Register Balance as of 10/31/2018</b>					-2,064.73	12,005.62
<b>New Transactions</b>						
<b>Checks and Payments - 2 items</b>						
Bill Pmt -Check	11/01/2018		[Redacted]		-605.00	-605.00
Bill Pmt -Check	11/15/2018		[Redacted]		-240.00	-845.00
<b>Total Checks and Payments</b>					-845.00	-845.00
<b>Deposits and Credits - 2 items</b>						
Deposit	11/01/2018				283.00	283.00
Deposit	11/08/2018				283.00	566.00
<b>Total Deposits and Credits</b>					566.00	566.00
<b>Total New Transactions</b>					-279.00	-279.00
<b>Ending Balance</b>					-2,343.73	11,726.62

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11/07/18  
Accrual Basis

[ ] Association  
**Profit & Loss Budget Performance**  
October 2018

	Oct 18	Budget	\$ Over Budget	Jan - Oct 18	YTD Budget	\$ Over Budget	Annual Budget
<b>Ordinary Income/Expense</b>							
<b>Income</b>							
Operating Income	3,982.00	3,982.00	0.00	39,620.00	39,620.00	0.00	47,544.00
Laundry Income	232.58	150.00	82.58	1,344.66	1,500.00	(155.34)	1,800.00
Interest Income	27.86	0.00	27.86	216.01	0.00	216.01	0.00
<b>Total Income</b>	<b>4,222.44</b>	<b>4,112.00</b>	<b>110.44</b>	<b>41,180.67</b>	<b>41,120.00</b>	<b>60.67</b>	<b>49,344.00</b>
<b>Expense</b>							
Common Electric Expense	151.70	158.33	(6.63)	1,567.64	1,583.34	(15.70)	1,900.00
Common Water Expense	668.74	718.33	(49.59)	8,264.28	7,183.34	1,080.94	8,620.00
Fire Protection	0.00	5.00	(5.00)	0.00	50.00	(50.00)	60.00
Insurance Expense	499.75	513.67	(13.92)	5,422.54	5,136.66	285.88	8,184.00
Landscape Maintenance Expense	240.00	240.00	0.00	2,400.00	2,400.00	0.00	2,880.00
Landscape Supplies Expense	0.00	25.00	(25.00)	136.75	250.00	(113.25)	300.00
Legal Fees	0.00	16.67	(16.67)	0.00	166.66	(166.66)	200.00
License & Fees	0.00	0.83	(0.83)	0.00	8.34	(8.34)	10.00
Management Expense	380.00	380.00	0.00	3,800.00	3,800.00	0.00	4,560.00
Monthly Accounting	200.00	200.00	0.00	2,000.00	2,000.00	0.00	2,400.00
Office Supplies & Postage	25.00	30.00	(5.00)	431.29	300.00	131.29	360.00
Pest Control Expense	0.00	25.00	(25.00)	165.00	250.00	(85.00)	300.00
Refuse Expense	310.12	278.67	31.45	3,290.44	2,786.66	503.78	3,344.00
Repairs & Maintenance	1,602.87	212.76	1,390.11	2,849.87	2,127.48	722.39	2,553.00
Reserve Study Expense	0.00	8.33	(8.33)	0.00	83.34	(83.34)	100.00
Tax Preparation Expense	0.00	40.00	(40.00)	470.00	400.00	70.00	480.00
Water Softener Expense	76.07	83.33	(7.26)	76.07	833.34	(757.27)	1,000.00
Reserve Funding	1,176.08	1,176.08	0.00	11,760.80	11,760.84	(0.04)	14,113.00
<b>Total Expense</b>	<b>5,330.33</b>	<b>4,112.00</b>	<b>1,218.33</b>	<b>42,634.68</b>	<b>41,120.00</b>	<b>1,514.68</b>	<b>49,344.00</b>
<b>Net Ordinary Income</b>	<b>(1,107.89)</b>	<b>0.00</b>	<b>(1,107.89)</b>	<b>(1,454.01)</b>	<b>0.00</b>	<b>(1,454.01)</b>	<b>0.00</b>
<b>Other Income/Expense</b>							
<b>Other Expense</b>							
Reserve Expenses per Study	0.00	0.00	0.00	0.00	(3,850.00)	3,850.00	(3,850.00)
Tree Trimming	0.00	0.00	0.00	0.00	900.00	(900.00)	900.00
Hot Water Heaters - Laundry	0.00	0.00	0.00	0.00	1,950.00	(1,950.00)	1,950.00
Unscheduled Reserve Expense	0.00	0.00	0.00	0.00	1,000.00	(1,000.00)	1,000.00
<b>Total Other Expense</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Net Other Income</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Net Income</b>	<b>(1,107.89)</b>	<b>0.00</b>	<b>(1,107.89)</b>	<b>(1,454.01)</b>	<b>0.00</b>	<b>(1,454.01)</b>	<b>0.00</b>



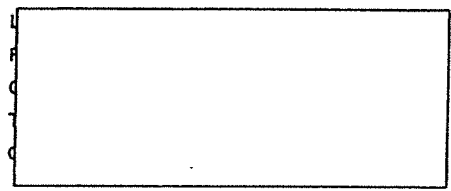
Statement  
of Accounts  
UNION BANK  
SAN FRANCISCO MAIN 0001  
PO BOX 512380  
LOS ANGELES CA 90051-0380

Page: 1 of 1  
Statement Number:   
09/29/18 -10/31/18

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Monday - Friday: 8 AM - 6 PM ET

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Norcross, GA 30092  
Visit us at hoabankservices.com



Beginning September 15, 2018, tellers in Union Bank branches will be required to collect primary identification (i.e., driver license or passport) from individuals making any cash transactions of \$100 or more at a teller window.

**Business MoneyMarket Account Summary**

Account number:

Days in statement period: 33

<b>Beginning Balance on 09/29</b>		<b>76,845.79</b>	<b>Interest</b>	
<b>Total Credits</b>		<b>1,203.94</b>	<b>Paid this period</b>	<b>27.86</b>
Other Credits(1)	27.86		<b>Paid year-to-date</b>	<b>216.01</b>
Electronic Credits(1)	1,176.08		<b>Interest Rates</b>	
<b>Ending Balance on 10/31</b>		<b>78,049.73</b>	<b>Annual Percentage Yield Earned</b>	<input type="text"/>

**Credits**

Electronic Credits	Date	Description	Reference	Amount
	10/26	UB CHECKING TRANSFER 181026 0080890737 0627 1 Electronic Credits	62990552	1,176.08 1,176.08
Other Credits	Date	Description	Reference	Amount
	10/31	INTEREST PAYMENT 1 Other Credits		27.86 27.86

**Daily Balance**

Date	Ledger balance	Date	Ledger balance	Date	Ledger balance
09/29 - 10/25	76,845.79	10/26 - 10/30	78,021.87	10/31	78,049.73

CERTIFICATE OF DEPOSIT/BROKERAGE  
ACCOUNTS STATEMENTS WOULD FOLLOW.



SAMPLE ASSOCIATION  
RESERVE FUND INCOME AND EXPENSES  
PERIOD ENDED OCTOBER 31, 2018

INCOME:

Reserve Assessments \$11,760.80  
Interest Income 216.01

Total Income \$11,976.81

EXPENSES:

None for 2018

Total Expenses 0

Net Income - Reserves \$11,976.81

Reserve Fund - January 1, 2018 66,072.92

Reserve Fund - October 31, 2018 \$78,049.73

3:58 PM  
11/07/18

[Redacted] Association  
Check Detail

5

October 2018

Num	Date	Name	Memo	Account	Paid Amount
BP	10/15/2018	[Redacted]	[Redacted]	Union Bank Operating	
34095	10/01/2018	[Redacted]	Monthly Landscape Service [Redacted]	Landscape Maintenance Expense	-240.00
TOTAL					-240.00
BP	10/17/2018	[Redacted]	47662	Union Bank Operating	
0032018	10/17/2018	[Redacted]	[Redacted] Water Conditioning	Water Softener Expense	-76.07
TOTAL					-76.07
EFT	10/01/2018	[Redacted]		Union Bank Operating	
	10/01/2018		Monthly Accounting Monthly Management Fees [Redacted]	Monthly Accounting Management Expense Office Supplies & Postage	-200.00 -380.00 -25.00
TOTAL					-605.00
EFT	10/01/2018	[Redacted] INSURANCE	680-04578540-17-42	Union Bank Operating	
	10/01/2018		Insurance Instalment	Prepaid Insurance	-369.73
TOTAL					-369.73
EFT	10/09/2018	SO CAL EDISON	2-03-428-3616	Union Bank Operating	
	10/01/2018		SCE Monthly Billing	Common Electric Expense	-151.70
TOTAL					-151.70
EFT	10/15/2018	GOLETA WATER DISTRICT-4474	0000731656-001734474	Union Bank Operating	
	10/01/2018		Goleta Water [Redacted]	Common Water Expense	-365.03
TOTAL					-365.03
EFT	10/15/2018	GOLETA WATER DISTRICT-4484	0000724562-001734484	Union Bank Operating	
	10/01/2018		Goleta Water District [Redacted]	Common Water Expense	-303.71
TOTAL					-303.71
EFT	10/15/2018	MARBORO INDUSTRIES	6-00624918	Union Bank Operating	
	10/01/2018		Marborg Monthly Billing (4yd Bin & 65 gal Recycling)	Refuse Expense	-310.12
TOTAL					-310.12
1014	10/10/2018	Durbiano Fire Protection		Union Bank Operating	
92856	10/10/2018		Durbiano Fire: Fire Extinguisher Maintenance	Repairs & Maintenance	-54.00
TOTAL					-54.00
1015	10/25/2018	[Redacted]	3323-LP-4840	Union Bank Operating	
			Reimbursement Light Fixture	Repairs & Maintenance	-15.05
TOTAL					-15.05
1016	10/25/2018	[Redacted] CONSTRUCTION	[Redacted]	Union Bank Operating	
5476	10/25/2018		[Redacted] Install New Water Heater	Repairs & Maintenance	-1,533.82
TOTAL					-1,533.82

6

3:57 PM  
11/07/18  
Accrual Basis

Association  
General Ledger  
As of October 31, 2018

Type	Date	Num	Name	Memo	Amount	Balance
Monthly Accounting						1,800.00
BA	10/01/2018			Monthly Accounting	200.00	2,000.00
Total Monthly Accounting					200.00	2,000.00
Office Supplies & Postage						406.29
BA	10/01/2018				25.00	431.29
Total Office Supplies & Postage					25.00	431.29
Pest Control Expense						165.00
Total Pest Control Expense						165.00
Refuse Expense						2,960.32
BA	10/01/2018		MARBORG INDUSTRIES	Marborg Monthly Billing (4yd Bin & 65 gal Recycling)	310.12	3,290.44
Total Refuse Expense					310.12	3,290.44
Repairs & Maintenance						1,317.00
BA	10/10/2018	92856	Dublano Fire Protection	Dublano Fire: Fire Extinguisher Maintenance	54.00	1,301.00
BA	10/25/2018	5476		Install New Water Heater	1,233.82	2,434.82
Check	10/25/2018	1015		Reimbursement Light Fixture	15.05	2,849.87
Total Repairs & Maintenance					1,002.87	2,849.87
Tax Preparation Expense						470.00
Total Tax Preparation Expense						470.00
Water Softener Expense						0.00
BA	10/17/2018	0932018	RAYNE OF SANTA BARBARA, INC	Rayne Water Conditioning	76.07	76.07
Total Water Softener Expense					76.07	76.07
Reserve Funding						10,584.72
General Journal	10/31/2018	46		Reserve Contribution	1,176.08	11,760.80
Total Reserve Funding					1,176.08	11,760.80
TOTAL					0.00	0.00

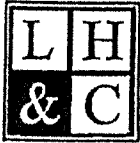
A PORTION ONLY - SAMPLE

SAMPLE ASSOCIATION  
AGED RECEIVABLE REPORT  
OCTOBER 31, 2018

Unit	Total	Current	30-60 days	60-90 days	over 90 days
1	283.00	283.00			
2	0.00	0.00			
3	(566.00)	(283.00)	(283.00)		
4	0.00				
5	0.00				
6	283.00	283.00			
7	(283.00)	(283.00)			
8	0.00				
9	(283.00)	(283.00)			
10	0.00				
11	0.00				
12	1,132.00	283.00	283.00	283.00	283.00
Totals	566.00	0.00	0.00	283.00	283.00
Assessments Due		1,698.00			
Prepaid Assessments		1,132.00			

Owners Association  
**Balance Sheet**  
As of October 31, 2018

	<u>Oct 31, 18</u>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
Union Bank Operating	12,005.62
Reserve Funds	
Union Bank Reserves	<u>78,049.73</u>
<b>Total Reserve Funds</b>	<u>78,049.73</u>
<b>Total Checking/Savings</b>	90,055.35
<b>Accounts Receivable</b>	
Accounts Receivable	<u>1,698.00</u>
<b>Total Accounts Receivable</b>	1,698.00
<b>Other Current Assets</b>	
Prepaid Insurance	<u>363.12</u>
<b>Total Other Current Assets</b>	<u>363.12</u>
<b>Total Current Assets</b>	<u>92,116.47</u>
<b>TOTAL ASSETS</b>	<u><u>92,116.47</u></u>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
Other Current Liabilities	
Dues Collected In Advance	<u>1,132.00</u>
<b>Total Other Current Liabilities</b>	<u>1,132.00</u>
<b>Total Current Liabilities</b>	<u>1,132.00</u>
<b>Total Liabilities</b>	1,132.00
<b>Equity</b>	
<b>Reserve Activity</b>	
Reserve Contribution	11,976.81
<div style="border: 1px solid black; height: 20px; width: 500px;"></div>	
<b>Total Reserve Activity</b>	78,049.73
<b>Members Equity</b>	14,388.75
Net Income	<u>(1,454.01)</u>
<b>Total Equity</b>	<u>90,984.47</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><u>92,116.47</u></u>



Loewenthal, Hillshafer & Carter, LLP

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Loewenthal, Hillshafer & Carter, LLP

**2018 Year-End Review of California Legislation, Appellate Court Decisions and Laws taking effect January 1, 2019 and impacting Community Associations**

***NEW LAWS EFFECTIVE JANUARY 1, 2019:***

**AB 1766. Required Pool Safety Equipment.** This law will require that entities with *defined public swimming pools* which have *lifeguard services* and charge a *direct fee*, must also provide an Automated External Defibrillator (AED) during pool operations. *Note:* This law should only apply to Associations which use lifeguards *and* charge a fee for pool use by non-members (who are considered members of the public). [Added as *Health & Safety Code* Section 118046.]

**AB 2353. Construction Defect Inspections.** This law provides that inspections to determine the existence of and method of repairs of defects must be conducted by a person licensed pursuant to the Contractor's State License Law with a license that applies to *the field and scope* in which the person is conducting the inspection and issuing inspection findings or a report. [Added as *Civil Code* Section 916.5.]

**AB 2912. Association Finances.** This law is intended to protect the owners in a common interest development ("CID") from fraudulent activity by those entrusted with the management of the Association's finances. It *prohibits transfers of greater than \$10,000 or 5%* of the total combined reserve and operating accounts, whichever is lower, *without prior written, board approval*. It also requires the Association to maintain *fidelity bond coverage*, that is equal to or more than the combined amount of the reserves of the association and total assessments for three months. The Association's fidelity bond shall also include computer fraud and funds transfer fraud. If the Association uses a managing agent or management company, the association's fidelity bond coverage shall additionally include dishonest acts by that person or entity and its employees. It requires that a managing agent who accepts or receives funds belonging to the association, upon written request by the board, to deposit those funds into an interest-bearing account in a bank, savings association, or credit union in California, provided certain requirements are met. The Board must now review various financial documents and statements on at least a *monthly* basis, including the check register, monthly general ledger, and delinquent assessment receivable reports. *These requirements may be met when every member of the Board, or a subcommittee of the Board including the Treasurer and at least one other board member, reviews these documents and*

statements independent of a board meeting, if the review is ratified at the board meeting subsequent to the review and that ratification is reflected in the minutes of that meeting. [An act to amend Sections 5380 and 5500 of, and to add Sections 5501, 5502, and 5806 to the *Civil Code*.] **Significance: This new law significantly increases the financial review requirements of HOA boards of directors, limits automatic transfer of funds without board approval, and requires the HOA to purchase and maintain a fidelity bond.** Note that many CCRs already require procurement of Fidelity Bonds for three months of assessments.

**AB 3041. Real Property Transfer Fees.** (*Civil Code* Section 1098.6). Except as provided specifically in the bill, this new law prohibits the CC&Rs from imposing transfer fees in connection with the sale of residential real estate.

**SB 261. Governance/Notice Requirements.** If an Association is required to deliver a document by "individual delivery" or "individual notice," this bill now authorizes the Association to use *email* if the member provides consent to receive such delivery by email until that consent is revoked. In addition, the notice period (comment period) requirement for proposed operating rule changes is reduced from 30 to 28 days. [Amends Sections 4040 and 4360 of the *Civil Code*.] **Significance: This common-sense law could save Association's significant postage expense and will allow needed rules to be adopted in a timely fashion without undue delay.**

**SB 721. Balcony Inspection & Repair.** (*Health and Safety Code* 17973). This bill requires an inspection of exterior elevated elements and associated waterproofing elements, as defined, *including decks and balconies*, for buildings with 3 or more multifamily dwelling units by a licensed architect, licensed civil or structural engineer, a building contractor holding specified licenses, or an individual certified as a building inspector or building official, as specified. The bill requires, among other things, the inspections, including any necessary testing, must be completed by January 1, 2025, with certain exceptions, and would require subsequent inspections every 6 years, except as specified. Immediate hazard conditions require a 15-day notice mandate to local enforcement agency to send out a 30-day corrective notice to building owners, subject to civil penalties and liens, for lack of timely compliance. Most nonemergency repairs need to be completed within 120 days or four months. ***The Good News: The bill excludes common interest developments from these provisions. However, any proposed condo conversion buildings to be sold to the public after January 1, 2019, must have the required inspection conducted prior to the first close of escrow of a separate interest in the project, and requires the inspection report and written confirmation by the inspector that any recommended repairs or replacements have been completed to be submitted to, among others, the Department of Real Estate and included in certain required statements and reports, as specified.*** **Significance: HOAs scored a major victory with this bill when common interest developments were removed from its onerous, expensive inspection and repair requirements.**

**SB 954. Mediation Confidentiality Disclosure.** (*Evidence Code* Section 1122) Under existing law, anything said in the course of a mediation consultation or in the course of the mediation is not admissible as evidence nor subject to discovery, and all communications, negotiations, and

settlement discussions by and between participants or mediators are confidential. This *new law* requires an attorney proposing participation in mediation, to provide his or her client, as soon as reasonably possible *before* the client agrees to participate in the mediation or mediation consultation, with a *printed disclosure* containing the confidentiality restrictions related to mediation, and to obtain a printed acknowledgment signed by that client stating that he or she has read and understands the confidentiality restrictions. **Significance: It should make participants in mediation better informed as to the mediation process and should allow for greater candor in settlement discussions.**

**SB 1016. Electric Vehicles.** This law makes minor changes to *Civil Code* Sections 4745 and 4745.1 by specifying that homeowners must bear the costs associated with the installation and electrical usage of electric vehicle charging stations placed in a common area or an exclusive use common area. The law would require the owner of the charging station, wherever located within the common interest development, to maintain a liability coverage policy, and provide the association with a corresponding certificate of insurance. A prevailing homeowner who sues over a request to have installed an electric vehicle charging station is entitled to attorneys' fees, as is the Association if it prevails in an enforcement action. Any covenant, restriction, or condition contained in any document affecting the transfer or sale of any interest in a common interest development, or any provision of the CID's governing documents, that effectively prohibits or restricts the installation or use of an electric vehicle charging station within an owner's unit or of an EV-dedicated TOU meter, as defined, is void and unenforceable. [Enacted to amend Section 4745 of the Civil Code and add Section 4745.1.]

#### **VETOED BILLS OF INTEREST:**

##### **SB 1128. Governance – Elections/Board Member Qualifications/Notices**

This bill proposed that automatic election to the Board if the number of qualified nominees was *equal to or less* than the number of available seats on the Board in theory, to order avoid costly expenses to Associations that didn't have contested elections. It also would have included overreaching candidate qualification and voting requirements and would have allowed members to consent to receiving HOA notices by email, (and to rescind that consent via email).

##### **SB 1265. Homeowner Voting & Privacy Issues/Candidate Qualifications**

*This bill would have taken away Association's rights to decide on preferred qualifications for Board candidates*, and would have allowed convicted felons to run for the Board with certain exceptions, and also allowed owners who had not paid their assessments to run. The bill *threatened homeowner privacy rights* by allowing any owner to review and copy proxies and ballot envelopes with owners' addresses and signatures, post the names and parcel numbers of all those eligible to vote, and would have significantly increased costs, including the hiring of an election inspector and additional mailings, and allowance of attorneys' fees for an owner consulting with an attorney prior to small claims court, in the event of a dispute. The bill *shifted the burden of proof* in a civil action *to the HOA* to prove that an election violation did not occur, which is unreasonable when it is the *homeowner* filing the lawsuit.



## NEW CASE LAW – 2018

### *Published Decisions:*

**Artus v. Gramercy Towers Condominium Assn., (2018) 19 Cal.App. 5<sup>th</sup> 923.**

**Significance:** *Permanent* injunctive relief or declaratory relief (or a request for appointment of a receiver to monitor the HOA's future conduct) will not be granted when there was *no evidence of continuing or intended future violations of the Davis-Stirling Act, nor any provision in the governing documents which violated the Act*. Allegations that the HOA *could* violate the Act when conducting future elections were considered pure speculation, and *insufficient* to warrant such relief.

**Facts:** After members of an HOA voted by a substantial majority to eliminate the practice of cumulative voting, Plaintiff (who owned three units in the condominium development and had been elected to the Board three times) sued the HOA, claiming that aspects of the election violated the Davis-Stirling Act. She obtained *preliminary* injunctive relief on two of her statutory claims, preventing a board election under the new, direct vote rule. The HOA then held a second election on the issue of cumulative voting, and the outcome of the second election was the same by a substantial margin. Finding that the second election addressed "whatever valid objections [Plaintiff] may have had to the first", the Court denied permanent injunctive and declaratory relief. Plaintiff appealed the judgment against her and also the Court's denial of her request for statutory attorneys' fees and costs.

**Disposition:** The trial court's judgment and order denying fees and costs were affirmed.

**Key Findings:** (1) The only evidence provided by the homeowner to support her claim that a future violation was likely to occur was evidence that the HOA had violated the Act in the past. The HOA had acted in good faith to comply with the law, and even corrected any deficiencies in the second election. (2) Nothing in Civil Code Section 5145 demonstrated a legislative intent to depart from well-established principles that fees and costs are ordinarily not granted for interim success, and can only be awarded to the Court-determined prevailing party at the conclusion of the litigation.

**Branches Neighborhood Corp. v. CalAtlantic Group, Inc., (2018) 26 Cal.App.5th 743**

**Significance:** *"Poison Pill" CC&R provisions created by Developers to hinder or even prevent Boards of Directors from pursuing legitimate construction defect claims by requiring a vote of the members may be strictly construed and enforced if not followed to the letter. The Court ignored public policy considerations against allowing the Developer to usurp recognized Board authority to prosecute claims for defects without the vote of a supermajority of members that may be nearly impossible to obtain. The Court defaulted to a public policy favoring the developer protecting its interest rather than consumers, even though the elected Boards and Associations have a legal obligation to repair defective conditions without adequate resources to perform them without the consent of the members.*

**Facts:** Plaintiff Branches Neighborhood Corporation, (an "HOA"), filed an arbitration claim against the HOA's developer for construction defects. The arbitrator granted summary judgment in Defendant's favor, concluding the HOA did not receive the consent of its members to file the claim until *after* the claim was filed, in violation of its CC&Rs. The trial court subsequently denied the association's motion to vacate the award, concluding the Court had no power to review the arbitrator's decision.

**Disposition:** The Court of Appeal affirmed the trial court's judgment not to vacate an arbitration award against the HOA.

**Key Findings:** In an expansion of self-serving Developer-favoring doctrines requiring arbitrations of construction defect claims pursuant to CCR provisions which were not negotiated by the Association, the Court is ignoring the fact that such provisions take advantage of inherent participation issues in Associations that put the corporation at risk. Finding no such claimed statutory right or public policy in favor of the HOA's position, the Court of Appeal determined the simple language of the CC&Rs controlled. The Court, apparently not wanting to deal with reality, found that the provision was consistent with the Davis-Stirling Act's aim to balance association's need to operate efficiently with the rights of members to be informed beforehand and participate in decision-making as opposed to the Association's duty to correct defective conditions at the members expense

**Golden Eagle Land Investment, L.P. v. Rancho Santa Fe Assn., (2018) 19 Cal.App.5th 399**

**Significance:** An issue of public interest when participating in a government land use entitlement process affecting HOA property is an act in furtherance of the right to free speech, under the anti-SLAPP statute. Association meetings to discuss the development project and a letter contacting the County regarding same were protected speech.

**Facts:** Property owners brought action against HOA, asserting numerous statutory and tort theories arising out of dispute over land use approvals for a development project. The trial court granted in part and denied in part the HOA motion to strike under the anti-SLAPP statute prohibiting strategic lawsuits against public participation. Owners appealed and the HOA cross-appealed.

**Disposition:** Affirmed in part, reversed in part, and remanded.

**Key Findings:** (1) The HOA's activities in writing the letter to the County and in holding meeting(s) to receive views on the project constituted conduct affecting the public interest, and could fall within protection of anti-SLAPP law and were therefore privileged under California law; (2) the developer failed to establish probability of prevailing on its claim for violation of Open Meeting Act, and thus, after showing of protected conduct, its claim was precluded by anti-SLAPP law; and (3) any reliance by developer on representation of association president was not justifiable and thus did not support a fraud claim.

**Greenfield v. Mandalay Shores Community Assn., (2018) 21 Cal.App.5th 896**

**Significance:** In *beach communities*, the City and Coastal Commission regulations govern the allowance of short-term rentals (“STRs”) and take precedence over the CC&Rs. This ruling fundamentally limits Association’s from protecting its members from the burden of transient rentals unless approved by the Commission or municipalities. This decision is based on “public access” theories in coastal areas which shouldn’t apply to common interest developments that people bought into with notice of restrictions.

**Facts:** Homeowners, who rented their home in beach community for periods of less than 30 days, filed suit against their HOA for declaratory relief and sought a preliminary injunction to stay enforcement of the HOA’s resolution banning short term rentals, contending that the ban violated Coastal Act because the HOA failed to obtain a coastal development permit before adopting the ban. The Superior Court denied the motion for preliminary injunction, and Homeowners appealed.

**Disposition:** Judgment reversed and the Superior Court was ordered to enter a new order granting appellant’s motion for preliminary injunction, staying enforcement until trial.

**Key Findings:** Short term rentals were common in Oxnard Shores before the STR ban, and are a matter for the City and Coastal Commission to address. STRs may not be regulated by “private actors” (including an HOA), where it affects the intensity of use or access to single family residences in a coastal zone.

**MTC Financial v. Nationstar Mortgage, (2018) 19 Cal.App.5th 811**

**Significance:** If an HOA is in a junior lienholder position, and forecloses first, the senior lienholder recovers nothing from the sales proceeds or surplus. However, the senior lien remains in place and the HOA would take subject to the senior lien.

**Facts:** Following nonjudicial foreclosure sale of real property on which two deeds of trust were filed for recording simultaneously and indexed sequentially, and when *junior* lienholder foreclosed its second deed of trust, the Superior Court determined that holder of mortgage was not entitled to surplus funds as senior lienholder. Holder of mortgage appealed.

**Disposition:** The Court of Appeal affirmed the lower court’s ruling.

**Dynamex Operations West, Inc. v. Superior Court, (2018) 4 Cal.5th 903**

**Significance:** This is a *landmark* decision by the California Supreme Court impacting businesses across the state because it expands the *definition of “employee”* and puts the *burden on employers* to prove that independent contractors are properly classified, overturning nearly three decades of case precedent. This case underscores that Association’s should refrain from hiring unlicensed individuals such as handymen and instead contract with a licensed business for such maintenance work because the risk of wage and hour claims as well as worker’s compensation claims is too significant. The Court reinterpreted and rejected parts of the pre-existing *Borello* test for determining whether workers should be classified as either employees or independent contractors for the purposes of the wage orders adopted by California’s Industrial

Welfare Commission (“IWC”) in favor of a worker-friendly standard that may upend the existing independent contractor labor market. Using the newly developed “ABC test”, the Court adopted a standard that *presumes* that all workers are employees instead of contractors. *Note: Please consult a Labor/Employment (Wage & Hour) attorney for further analysis of your specific business classifications, as this is a specialized area of law.*

**Facts:** Parcel delivery drivers brought a lawsuit against their employer, claiming they were being incorrectly classified as independent contractors rather than employees. The drivers claimed that Dynamex violated provisions of the California Industrial Welfare Commission Wage Order, as well as various sections of the Labor Code.

**Disposition:** (1) “ABC” test applied to determination of whether drivers were employees or independent contractors under work standard in wage orders; (2) sufficient commonality of interest existed as to whether drivers' work was outside company's usual course of business, as prong of “ABC” test, and thus resolution on a class-wide basis was warranted; and (3) sufficient commonality of interest existed as to whether drivers were engaged in independent business, as prong of “ABC” test, and thus resolution on class-wide basis was warranted. Court of Appeal affirmed.

**Key Findings or The “ABC” Test:** *Unless the hiring entity establishes (A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact, (B) that the worker performs work that is outside the usual course of the hiring entity's business, and (C) that the worker is customarily engaged in an independently established trade, occupation, or business, the worker should be considered an employee and the hiring business an employer under the “suffer or permit to work standard” in wage orders; the hiring entity's failure to prove any one of these three prerequisites will be sufficient in itself to establish that the worker is an included employee, rather than an excluded independent contractor, for purposes of the wage order. Cal. Code Regs. tit. 8, § 11010 et seq.*

## 2018 FEDERAL CASES OF INTEREST

**McNair v. Maxwell & Morgan PC, (9<sup>th</sup> Cir. 2018) 893 F.3d 680**

**Significance:** When an attempt to collect HOA fees is made through *judicial* foreclosure (instead of nonjudicial foreclosure), it is considered a “debt collection” governed by the Fair Debt Collection Practices Act (“FDCPA”). Any post-judgment attorneys’ fees must first be approved by the court before being sought.

**Facts:** Plaintiff alleged that a law firm representing an HOA violated the FDCPA in their efforts to collect unpaid homeowner association assessments, other charges, and attorneys’ fees, that Plaintiff allegedly owed their client. Defendant law firm filed a Motion for Summary Judgment which was granted by the trial court.

**Disposition:** Reversed on appeal and remanded.

**Key Findings:** At the point of relevant filing, no court had yet approved the amount of the “accruing” attorneys’ fees claimed by the attorneys for the HOA. Accordingly, Defendants “falsely represented the legal status of this debt” under the FDCPA, by implicitly claiming that the accruing attorneys’ fees had already been approved by a court.

**Goudelock v. Sixty-01 Association of Apartment Owners, (9<sup>th</sup> Cir. 2018) 895 F.3d 633**

**Significance:** Debtors who *successfully complete their Chapter 13 bankruptcy plans, which include the surrender of the condominium unit* and earn a discharge are *freed permanently* from the personal obligation to *pay their HOA dues*, including post-petition assessments. If not already foreclosed upon, *the HOA still may lien and foreclose* on the property for non-payment of *postpetition* assessments.

**Facts:** Goudelock stopped paying condominium assessments in 2009. The HOA initiated foreclosure proceedings in state court. Goudelock moved out of the unit and filed for Chapter 13 relief in March 2011. As part of her Chapter 13 plan, Goudelock surrendered the unit. Sixty-01 filed a proof of claim for \$18,780 in unpaid assessments and asserted that the assessments continued to accrue at a monthly rate of \$388. The mortgage lender paid the outstanding assessments. The unit sat unoccupied until Feb. 26, 2015, when the mortgage lender foreclosed on it. (The condominium association had canceled its foreclosure proceeding.) On July 24, 2015, Goudelock completed her plan obligations and received her discharge. Meanwhile, in April 2015, the condominium association had commenced an adversary proceeding to determine the dischargeability of Goudelock’s personal obligation to pay the postpetition assessments which accrued between the March 2011 bankruptcy filing and February 2015, when the mortgage lender foreclosed on the unit.

**Disposition:** The Bankruptcy Court granted summary judgment in favor of the HOA, and the District Court affirmed the lower court’s granting of the summary judgment. Goudelock appealed and the appellate Court reversed on the issue of postpetition condo assessments, against the HOA.

**Key Findings:** (1) The Court observed that there was no Circuit Court of Appeals decisions that had yet to address the dischargeability of condominium association assessments that became due after the filing of a Chapter 13 petition. But, noted that two courts had addressed the dischargeability of similar postpetition assessments under Chapter 7. (2) The postpetition assessments were not listed in the statutory exceptions allowed to the broad discharge of debts once Goudelock completed her plan obligations. (3) Notions of equity (“free rent”) and fairness cannot override the Code’s express provisions. It is believed that this decision fundamentally relates to the fact that the Chapter 13 plan involved the owner surrendering the unit to the lender and the lender delaying for several years in foreclosing and acquiring title. This is another classic example of the Association having to make difficult decisions to expend money to foreclose simply to force a new, paying owner (such as a bank) to step forward and assume responsibility for assessments. It is altogether likely that the Association could have obtained relief from the automatic stay in bankruptcy early in the proceeding, but waited for the lender to act instead of foreclosing and moving to rent the property pending the senior lender foreclosing. The waiting game can be very expensive.

**Geraci v. Union Square, (7<sup>th</sup> Cir. 2018) 891 F.3d 274**

**Significance:** *No federal law prevents members of a condominium association from knowing why their association is bearing legal costs and the facts and allegations against it. Sending litigation updates and holding an open forum are reasonable measures to take in order to inform association members of such information. HOA members should also learn from this case that their medical/psychological conditions are subject to investigation in litigation as well as becoming part of the public record.*

**Facts:** Condominium owner brought action against HOA, alleging its failure to accommodate and retaliation under Fair Housing Act (FHA) for her post traumatic stress disorder (PTSD) by holding an open forum for condominium's owners to discuss the status of her lawsuit against HOA and by publishing two litigation updates, which caused her embarrassment and emotional distress. Yet, no information revealed at the open forum or in either litigation update went beyond the factual representations made in the public record or lawsuit. Following a trial, the jury returned a verdict in favor of the HOA. Owner appealed.

**Disposition:** Affirmed on appeal.

**Key Findings:** Owner's allegation was insufficient to support her claim for retaliation, and the district court did not abuse its discretion in allowing Association's expert witness to testify as to owner's mental impairment. Plaintiff has the burden of proving she is legally handicapped under FHA, and the HOA may present opposing, expert evidence. Owner failed to point to any conduct that a person of normal fortitude would have viewed as coercive, intimidating, threatening, or interfering with the exercise of her protected rights under FHA, and her PTSD became public knowledge when she filed her lawsuit. The Plaintiff in a Fair Housing Act (FHA) action has the burden of proving she is handicapped within the meaning of the statute. Such cases are typically decided on a case-by-case basis.

## **2018 Unpublished Cases of Interest**

*The following cases are not binding, legal precedent, but give the reader some idea of how a court might rule under the same or similar circumstances.*

### **Kulick v. Leisure Village, 2018 WL 1918670**

Kulick published newsletters under an assumed name and circulated them within the community in violation of the homeowners' rules prohibiting anonymous publications. The HOA later successfully sued Kulick when he interfered with the insurance coverage for the association and the governing board. Kulick then published another newsletter criticizing the lawsuit and accusing the governing board of malfeasance. When the HOA wrote a response to the newsletter and distributed it to the community, Kulick filed this lawsuit for defamation, among other causes of action. The HOA then filed an anti-SLAPP motion which was granted. The Court then dismissed the defamation cause of action with prejudice, and awarded attorney fees and costs to the HOA and its attorneys. This case is another in a growing list of cases in which the Courts are not inclined to allow defamation claims in cases concerning communications in the context of

homeowner association issues and business, which is good news for Associations but require Board members to grow thick skins since most of the derogatory comments are against directors.

Kulick appealed and contended that the trial court erred by granting the special motion to strike pursuant to the anti-SLAPP statute, Civil Code Section 425.16.

The Court ruled *in favor of the HOA* for the following reasons:

- First, expressions of opinion that do not include or imply false factual assertions do not constitute actionable defamation. Thus, the Letter's characterization of the Newsletter as "reckless," Kulick's accusations as "spiteful," and the Newsletter as an "unwanted intrusion" are expressions of opinion and not actionable defamation.
- Second, the remaining, challenged statements in the Letter are privileged pursuant to Civil Code section 47. The litigation privilege of Civil Code section 47, subdivision (b), pertains to any communication: 1) made in judicial or quasi-judicial proceedings; 2) by litigants or other participants authorized by law; 3) to achieve the objects of the litigation; and 4) that have some connection or logical relation to the action. (The litigation privilege extends to communications made before, during, or after trial.) The Letter was written and distributed to the HOA's members during the pendency of the HOA's previous lawsuit against Kulick. The Letter discussed the lawsuit and invites the HOA's members to review the courthouse filings

**Michaelson v. V.P. Condominium Corporation, 2018 WL 989826**

When parking spots are *unassigned*, those parking areas become part of the *general common area with no exclusivity*. A developer, therefore, cannot convey exclusive use rights involving unassigned common areas. The HOA presented evidence that each condominium owner paid one-eleventh of the taxes on the unassigned garage because it is part of the Common Area of the development. This is consistent with the doctrine that every element in a condominium project is either a separate interest unit owned by a member or common area which is owned by all members in equal undivided shares. If the condominium plan doesn't assign a component to a unit, it is therefore considered common area which cannot be assigned except upon the vote of 67% of the membership.

**Schwindt v. Omar, 2018 WL 4659630**

Homeowner Plaintiff's next-door neighbors built a room addition that extended into their patio area. The Board had approved the room addition over Plaintiff's objection. Plaintiff sued the neighbors and claimed that under the CC&Rs, room additions could not be built in patio areas, and that the room addition unreasonably interfered with her view. Following a bench trial, the Court ordered the neighbor- Defendants to demolish their room addition and return their home to its original state. They then appealed, and they argued that the Board's approval of their addition should have been binding on all the parties, unless the trial court found the Board's approval to be "clearly arbitrary and capricious". The appellate court agreed and noted that the lower court's statement of decision failed to address that issue or standard.



## RESOURCES AVAILABLE ON THE SOUTHCOASTHOA.ORG WEBSITE

There are a number of resources available to you on the [www.southcoasthoa.org](http://www.southcoasthoa.org) website. These are available at no charge (and no password) to you.

**Meetings** – You will find information about our upcoming meeting, including topics, dates, times and location. We work to schedule 3-4 meetings per year for member association board members and interested professional/vendor members. Generally, there is no cost to attend our meetings.

**Membership** - A membership application is on the site that can be downloaded and printed to send in with payment. The modest dues cover our out-of-pocket costs. Much of South Coast HOA's work is done by volunteers.

**Newsletters** – Current newsletters are a member benefit. We have archived previous newsletters since 2000 by year. An article index is also available to locate topics that are relevant to you. You can download any prior newsletter. The 2018 newsletters have just been added.

**Resources** – Over the past several years, our meeting speakers have provided presentation outlines and materials to attendees. These include our popular annual Law and Legislative updates as well as other operational topics. These outlines have been posted under the "Resources" tab for your access.

**Sponsors** – Many of our professional and vendor members are listed under the "Sponsors" tab. The sponsors also appear at the end of each newsletter. We thank them for their added support. Sponsors are also members.

**Links** – On the home page, you will find links to several other organizations providing educational opportunities to board members. There is also a link to the California Legislature website where you can find information on state laws (codes), pending legislation and its status within the legislative process.

**A Note about email** – Each association or vendor member is entitled to place one email address with us to send newsletters, meeting reminders and other occasional items of interest. We ask that only one email per association be provided. Maintaining the email list takes time and if all board member and vendor email addresses were included, there could be 1,000 names. If you are the email contact for your association, you may forward our email to your fellow board members. I know there are services that handle this list for organizations. There are several organizations that I receive email from these types of services and they always land in my spam filter, no matter how many times I approve the sender.