

SOUTH COAST HOMEOWNERS ASSOCIATION

LAW AND LEGISLATIVE UPDATE

FEBRUARY 3, 2014

ATTORNEY JAMES SMITH DISTRIBUTED THE FOLLOWING:

- 1) NEW LEGISLATION (5 pages)
- 2) ANNUAL POLICY STATEMENT (13 pages)
- 3) ANNUAL BUDGET REPORT (5 pages)
- 4) SUMMARY OF ASSOCIATION INSURANCE POLICIES (2 pages)
- 5) ASSESSMENT AND RESERVE FUNDING DISCLOSURE SUMMARY (3 pages)

MR. SMITH'S CONTACT INFORMATION APPEARS ON THE NEXT PAGE

SOUTH COAST HOMEOWNERS ASSOCIATION
ANNUAL LEGISLATIVE FORUM

February 3rd, 2014



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, Esq.
GROKENBERGER & SMITH
Attorneys at Law
152 East Carrillo Street
Santa Barbara, CA 93101
Telephone: (805) 965-7746
Fax: (805) 845-2356
Email: jhs@grokenberger.com
Website: www.grokenberger.com

New Legislation

Boards May Amend CC&R's to Reflect Revised Sections of the Davis-Stirling Act

I

California Civil Code section 4235 (a) allows Boards to adopt a resolution to amend the CC&R's to reflect the revised sections in lieu of those sections of the Davis-Stirling Act which existed prior to the 2014 amendments. Owner approval is not necessary.

II

CC&R's that are corrected under California Civil Code section 4235 (a) may be restated in the corrected form and recorded. There must be attached to the restated CC&R's the Board Resolution authorizing the corrections (CC §4235).

Conflict Resolution

I

California Civil Code section 4205 sets forth the hierarchy between the law and the Association's CC&R's, Articles, Bylaws and Rules ("Governing Documents").

II

The order of priority is the law reigns supreme followed in order of priority by the CC&R's, Articles, Bylaws and Rules.

For Stated Purposes, Boards May Grant Exclusive Use of the Common Area

I

Upon approval of 67% of the owners, California Civil Code section 4600 (previously CC §1363.07) allows Boards to grant an owner exclusive use of any portion of the Common Area.

II

Owner approval is not needed to grant an owner exclusive use of a portion of the Common Area for those reasons stated in California Civil Code section 4600.

III

Now, California Civil Code section 4600 allows Boards to grant exclusive use of the Common Area to an owner for 3 additional reasons:

1. For purposes of accommodating a disability;
2. To assign parking space, storage lockers or other amenities that are designated in the CC&R's for assignment but not assigned by the CC&R's to a specific unit; and
3. To comply with governing law.

**Voting by Secret Ballot, as Required by California Civil Code section 5115,
May Now be Used for a Vote on Issues Outside the Scope of Civil Code 5100 (a)**

I

California Civil Code Section 5100 (a) requires that a vote on any issue specified in section 5100 (a) shall be conducted by secret ballot under the procedures set forth in Section 5115 (a).

II

California Civil Code section 5100 (b) now provides that the secret ballot procedures set forth in Section 5115 (a) shall also be used for a vote on any topic set forth in the "Operating Rules" which specifically requires a vote by secret ballot.

III

California Civil Code section 4365 (b) now also requires any vote by the Members to repeal an Operating Rule to be held by secret ballot as provided in Section 5115 (a).

**Proposed Amendments to the Governing Documents must be Delivered to the
Members with the Ballot**

Pursuant to California Civil Code section 5115 (e), for an election to approve an amendment of the Governing Documents (i.e. Articles, Bylaws, CC&R's, Rules), the text of the proposed amendment shall be delivered to the members of the Association with the ballot.

Distribution of Annual Budget Report

I

Pursuant to California Civil Code section 5300 (a), Associations must distribute an Annual Budget Report not less than 30 nor more than 90 days before the end of their fiscal year.

II

The Annual Budget Report must include the 9 items specified in California Civil Code section 5300 (b). A majority of the 9 items were required to be disclosed prior to 2014. The new legislation has simply clustered the disclosures into one document.

Distribution of Annual Policy Statement

I

Pursuant to California Civil Code section 5310 (a), Associations must distribute an Annual Policy Statement not less than 30 days nor more than 90 days before the end of its fiscal year.

II

The Annual Policy Statement must include the 12 items specified in California Civil Code section 5310 (a). A majority of the 12 items were required to be disclosed

prior to 2014. The new legislation has simply clustered the disclosures into one document.

Owner Hearing Required for Reimbursement Assessment

I

California Civil Code section 5855 (a) now requires a noticed hearing before imposing a monetary charge as a means of reimbursing the Association for costs incurred by the Association for the repair of damage to the Common Area caused by an owner, an owner's guests or tenants.

II

At least 10 days prior to the hearing, the Notice of Hearing must be distributed to the owner by individual delivery as defined by California Civil Code section 4040 which includes U.S. mail, overnight delivery or electronic transfer if authorized by an owner.

Association Managers Are Exempt from State Contractor's License Law

I

California Business and Professions Code section 7026.1 corrects a common misinterpretation of the changes made last year to the contractor's licensing law. The misinterpretation originally resulted from confusion over who must be included under the title "consultant," a position that requires a contractor's license if such person provides or oversees a bid for a construction project or arranges for and sets up work schedules for contractors and subcontractors.

II

Under Section 7026.1 (b), it is now clear that the term "contractor" or "consultant" does not include a Common Interest Development manager, as defined by section 11501. Common Interest Development Managers are not required to have a contractor's license when performing management services to a CID.

Cases Decided in 2013

Minor Irregularities will Invalidate an Association's Foreclosure Sale

Arlyne Diamond v. Case Del Valle HOA (2013) 217 Cal App. 4th 1172

I

The Association initiated an action to foreclose on Dr. Diamond's unit. Dr. Diamond successfully defended against the foreclosure.

II

As a condition to foreclosing on a Unit for unpaid Assessments, California Civil Code sections 5660 through 5720 require an Association to follow numerous procedural requirements.

III

In the *Diamond* case the Association failed to strictly comply with several of the technical requirements.

IV

The California Court of Appeal for the 6th District held that Associations must strictly comply with all requirements. Even minor irregularities will invalidate the foreclosure.

ANNUAL POLICY STATEMENT

Within 30 to 90 days before the end of the Association's fiscal year, California Civil Code section 5310 (a) (1) - (12) requires the Board to distribute an Annual Policy Statement. The Statement must provide the Members of the Association with the following information about the Association's policies:

I

Name and Address of Person Designated to Receive Communications

California Civil Code section 5310 (a) (1) requires all Members of the Association to be notified of the name and address of the person designated to receive official communications sent to the Association as provided in California Civil Code section 4035. The person designated to receive such communications and their address is:

II

Notice of Secondary Address

California Civil Code section 5310 (a) (2) requires all Members of the Association to be notified of their right to submit written notice to the Association identifying a secondary address which they may require those notices identified in subdivision (b) of California Civil Code section 4040 be sent to. If such a request is received by the Association, such notices will be sent to both the Owner's primary and secondary addresses.

III

Location for Posting of General Notices

California Civil Code section 5310 (a) (3) requires all Members of the Association be notified of the location, if any, designated for posting of general notices as required by paragraph (3) of subdivision (a) of California Civil Code section 4045. The location(s) for posting of general notices for the Association are:

1. _____
2. _____

IV

Notice of Right to Receive Notices by Individual Delivery

California Civil Code section 5310 (a) (4) requires all Members of the Association to be notified that, if the law requires a notice to be delivered by general delivery or general notice under California Civil Code section 4045 (a), pursuant to California Civil Code section 4045 (b) a Member may request all such notices be sent to them by individual delivery as provided in California Civil Code section 4040.

V

Notice of Right to Receive Copies of Board Meeting Minutes

California Civil Code section 5310 (a) (5) requires all Members of the Association to be notified that, pursuant to California Civil Code section 4950 (b), they have a right to receive copies of the minutes of Board of Director meetings. Pursuant to California Civil Code section 4950 (a), Members must pay for the reasonable cost of copying and distributing the minutes requested.

If you desire copies of the minutes of Board of Director Meetings, please direct your request to:

Please specify, by meeting date, the minutes you are requesting.

VI

Notice of Assessments and Foreclosures

California Civil Code section 5310 (a) (6) requires all Members of the Association to be notified of the statement of "Notice Assessments and Foreclosures" as set forth in California Civil Code section 5730 (a). The Notice required by section 5730 (a) reads as follows:

Notice of Assessments and Foreclosures

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

Assessments and Foreclosures

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure, or without court action, often referred to as non-judicial foreclosure. For liens recorded on and after January 1, 2006, an association may not use judicial or non-judicial foreclosure to enforce that lien if the amount of the delinquent assessments or dues, exclusive of any accelerated assessments, late charges, fees, attorney's fees, interest, and costs of collection, is less than one thousand eight hundred dollars (\$1,800). For delinquent assessments or dues in excess of one thousand eight hundred dollars (\$1,800) or more than 12 months delinquent, an association may use judicial or non-judicial foreclosure subject to the conditions set forth in Article 3 (commencing with Section 5700) of Chapter 8 of Part 5 of Division 4 of the Civil Code. When using judicial or non-judicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the amounts secured by the lien are not paid. (Sections 5700 through 5720 of the Civil Code, inclusive)

In a judicial or non-judicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use non-judicial foreclosure to collect fines or penalties, except for costs to repair Common Area damaged by a member or a member's guests, if the governing documents provide for this. (Section 5725 of the Civil Code)

The association must comply with the requirements of Article 2 (commencing with Section 5650) of Chapter 8 of Part 5 of Division 4 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 5675 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail, including a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Section 5660 of the Civil Code)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Section 5685 of the Civil Code)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

Payments

When an owner makes a payment, the owner may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Section 5655 of the Civil Code)

An owner may, but is not obligated to, pay under protest any disputed charge or sum levied by the association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and by so doing, specifically reserve the right to contest the disputed charge or sum in court or otherwise.

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 2 (commencing with Section 5900) of Chapter 10 of Part 5 of Division 4 of the Civil Code. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in Article 3 (commencing with Section 5925) of Chapter 10 of Part 5 of Division 4 of the Civil Code, if so requested by the owner. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time. (Section 5685 of the Civil Code)

Meetings and Payment Plans

An owner of a separate interest that is not a time-share interest may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exists. (Section 5665 of the Civil Code)

The Board must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Section 5665 of the Civil Code)

VII

Notice of Association's Collection Policies

California Civil Code section 5310 (a) (7) requires all Members of the Association be provided with a statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of assessments. The procedures adopted by the Association are as follows:

1. Unless otherwise stated, general assessment payments shall be due on the first of each month and shall become delinquent if not received on or before the fifteenth (15th) day following the due date.
2. In the event a special assessment is levied, payment(s) shall become due as stated in the Notice of Special Assessment. Unless otherwise stated, special assessment payment(s) shall become delinquent if not received on or before the fifteenth (15th) day following the due date.
3. For each assessment payment becoming delinquent, a ten dollar (\$10.00) late charge, or ten percent (10%) of the amount of the delinquent assessment, whichever is greater, shall be added to that payment.
4. Interest shall accrue on all sums owing (assessments, late charges, collection costs, and attorney fees) at the rate of twelve percent (12%), per annum, commencing thirty (30) days after becoming due.
5. When an Owner's account becomes delinquent, a letter will be sent to the Owner in compliance with California Civil Code section 5660.
6. If the account is not brought current within thirty-five (35) days of the date the letter described in paragraph 5, above, was deposited into the U.S. Mail, including payment of all attorney fees, late charges, collection costs, and interest set forth in said letter, the Association shall cause a lien to be recorded against the delinquent Owner's Unit.
7. If the delinquent Owner's account is not brought current within thirty (30) days following the recording of the lien, including payment of all attorney fees, late charges, collection costs, and interest, the Association may take one or more of the following courses of action:
 - a. Allow the lien to remain as an encumbrance against the Unit and take no further action;
 - b. File a civil lawsuit;
 - c. Refer the matter to a form of Alternative Dispute Resolution; or
 - d. Foreclose on the Unit.

Which course of action the Association elects to follow is dependent upon the facts and circumstances known to the Association at the time the election is made. While the Association may record a Notice of Delinquent Assessment for delinquent assessments owing to the Association, pursuant to California Civil Code section 5720, the Association may not collect such delinquent

assessments by foreclosure if the assessment owing, less accelerated assessments, late charges, fees and costs of collection, attorney fees and interest is less than \$1,800. For delinquent assessments less than \$1,800, the Association may file an action in Small Claims Court to collect the amount of the assessment, late charges, fees and costs of collection, attorney fees and interest. However, if, after recording a Notice of Delinquent Assessment for a sum less than \$1,800, the aggregate of future accruing unpaid assessments, together with the amount of the unpaid assessment set forth in any Notice of Delinquent Assessment recorded against your property exceeds \$1,800, the Association may then commence a foreclosure on your property. Additionally, and regardless of the amount of the delinquent assessments, where assessments are more than 12 months delinquent, the Association may foreclose upon your property.

8. Pursuant to California Civil Code sections 5660 (e) and 5705 (b), you are hereby notified that you have the right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "Meet and Confer" required by Article 2 (commencing with section 5900) of Chapter 10 of the California Civil Code. Pursuant to said sections (5660 (e) and 5705 (b)), you have the right to participate in a "Meet and Confer" both before the Association liens your Unit and before the Association initiates a foreclosure. Pursuant to California Civil Code section 5705 (b), you may also request Alternative Dispute Resolution program with a neutral third party pursuant to Article 3 (commencing with section 5925) of Chapter 10 of the California Civil Code before the Association may initiate foreclosure against your Unit, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

9. Pursuant to California Civil Code section 5670 you are hereby notified that prior to recording a lien for a delinquent assessment the Association offers to participate in a "Meet and Confer" if you so request prior to the time in which the Association may record a lien against your Unit as set forth in paragraph 6 above. Pursuant to California Civil Code section 5705 (b), you are hereby notified that the Association offers to participate in dispute resolution pursuant to the Association's "Meet and Confer" program required by Article 2 (commencing with section 5900) of Chapter 10 and/or Alternative Dispute Resolution with a neutral third party pursuant to Article 3 (commencing with section 5925) if you so request prior to the time in which the Association may initiate a foreclosure against your Unit as allowed by California law.

10. A delinquent Owner is responsible for reimbursing the Association for all collection costs and attorney fees reasonably incurred by the Association in pursuing collection of a delinquent Owner's account.

11. Any payments made toward the sums owing shall first be applied to the principal owed, and only after the principal owed is paid in full shall such payments be applied to interest or collection expenses.

VIII
Schedule of Monetary Penalties and Fees

California Civil Code section 5310 (a) (8) requires all Members of the Association to be provided with a statement describing the Association's disciplinary policy, if any, including any schedule of penalties for violations of the governing documents pursuant to California Civil Code section 5850. The Schedule of Monetary Penalties and Fees adopted by the Association, effective _____, 20__, is:

1. The Association may levy a monetary penalty up to \$500 for any violation of the Association's Governing Documents.
2. Where the violation is ongoing, the Association may levy a monetary penalty of up to \$250 per day for each day the violation continues without correction.
3. Where an Owner, Owner's guests, tenants or invitees have damaged the Common Area, the Association may levy a penalty in a sum equal to the cost to repair the damage and thereafter lien the Owner's Unit, if payment is not made, as allowed by California Civil Code section 5725.

Except for damages to the Common Area, the amount of the monetary penalty will be determined by the Board after considering the severity of the penalty, prior violations and the facts and circumstances under which the violation occurred.

A delinquent Owner is responsible for reimbursing the Association for all collection costs and attorney fees reasonably incurred by the Association in pursuing collection of a delinquent Owner's account.

Additional fees which the Association may charge an Owner for include the following:

1. _____
2. _____
3. _____

Before any fine may be imposed upon an Owner, the Board must provide the Owner with written notice of his/her right to be heard (Notice of Intended Disciplinary Action) as required by Civil Code section 5855.

IX

Notice of Alternative Dispute Resolution Process

California Civil Code section 5310 (a) (9) requires all Members of the Association to be provided with the following summary of the dispute resolution procedure as required by California Civil Code sections 5965:

Failure of a member of the association to comply with the Alternative Dispute Resolution requirements of section 5930 of the Civil Code may result in the loss of the member's right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law.

Internal Dispute Resolution Procedure

California Civil Code section 5310 (a) (9) also requires all Members of the Association to be provided with the following summary of the Association's Internal Dispute Resolution Procedures as required by California Civil Code sections 5920. The Internal Dispute Resolution Procedures set forth below are in addition to, supplement, and do not replace the dispute resolution procedures set forth in California Civil Code section 5925 et. seq.

Homeowner Associations are required to provide a fair, reasonable and expeditious procedure for resolving disputes between an Association and a Member involving their rights, duties or liabilities under The Davis Stirling Act (commencing with California Civil Code section 4000); or the Non-Profit Mutual Benefit Corporation law (commencing with section 7110 of the California Corporations Code); or under the Governing Documents of the Association (i.e. Articles, Bylaws, CC&R's and/or Rules). The procedure adopted by this Association is that described and recommended in California Civil Code section 5915 which procedure is as follows:

Either party to a dispute falling within the scope of California Civil Code section 5900 may invoke the following Dispute Resolution procedure:

1. The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.
2. A Member of an Association may refuse a request by the Association to meet and confer. However, the Association may not refuse a Member's request to meet and confer.
3. The Association's Board of Directors shall designate a Member of the Board to meet and confer.

4. The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.
5. A resolution of the dispute agreed to, if any agreement is reached by the parties, shall be memorialized in writing and signed by the parties. The Board designee shall sign on behalf of the Association.
6. An agreement reached, as described above, binds the parties and is judicially enforceable if the following conditions are satisfied:
 - a. The agreement is not in conflict with law or the governing documents of the Association.
 - b. The agreement is either consistent with the authority granted by the Board of Directors to its designee or the agreement is ratified by the Board of Directors.
7. A Member may not be charged a fee to participate in the process.
8. The timeline for resolving disputes pursuant for the above described Internal Dispute Resolution Procedure is as follows:
 - a. A party requesting to meet and confer regarding a dispute within the scope of section 5900 of the Civil Code (the "Requesting Party") shall submit a request in writing to the "Responding Party" describing the nature of the dispute and stating three dates (Monday through Saturday) and times (between 9:00 a.m. and 7:00 p.m.) for the meet and confer which dates shall not be less than fifteen (15) days nor more than thirty (30) days from the date the Request to Meet and Confer is sent to the Responding Party. The notice shall further state the address to which the Responding Party should send its response.
 - b. The location of the Meet and Confer shall be that location where the Association's Board of Directors regularly meets.
 - c. Within ten (10) days from the date that the Request to Meet and Confer was sent to the Responding Party, the Responding Party shall send their response indicating that they will attend the Meet and Confer as requested by the Requesting Party. Further, the Responding Party shall confirm in said response the date and time of the meet and confer by selecting one of the dates and times set forth in the Request.

- d. If no response is received from the Responding Party within the time allowed, it shall be presumed that the Responding Party is refusing to meet and confer regarding the dispute alleged in the request submitted by the Requesting Party.
9. If an agreement is reached at the Meet and Confer, within five (5) days following the Meet and Confer, the terms of the agreement shall be reduced to writing by the Requesting Party and signed by both the Requesting and Responding Parties. The Association's representative shall sign the agreement on behalf of the Association. If no such written agreement is signed by both the Requesting and Responding Parties within five (5) days following the Meet and Confer, it will be deemed that no agreement was reached at the Meet and Confer.

X

Notice of Procedure for Physical Change to Property

California Civil Code section 5310 (a) (10) requires all Members of the Association to be provided with a summary of the Association's requirements for obtaining approval of a physical change to the property as required by California Civil Code section 4765.

Section _____ of the Association's Declaration of Covenants, Conditions and Restrictions states: **Insert Quote from CC&R's.**

Therefore, prior to making any change, alteration, addition or modification (collectively "Modification") that falls within the scope of the above quoted section, prior written approval must first be obtained from the Association.

1. Submittal of Application

To request approval, an Owner must comply with the following procedure:

- a. The Owner shall obtain from the Association an Application for Modification.
- b. The Owner must completely fill out and sign the Application for Modification.
- c. The Application for Modification, and all information requested in the Application, must be delivered to the Association for review and decision.

2. Review of Application

Within ____ days of the Association's receipt of the Application, and at a noticed meeting which the Owner submitting the Application may attend, the Association's Architectural Review Committee, or Board of Directors, as the case may be, shall review the Application and take one of

the following courses of action:

- a. Approve the Application;
- b. Deny the Application; or
- c. Conditionally approve the Application.

The Association's decision shall be in writing and sent to the Owner. If conditional approval is given, the conditions shall be set forth in writing. If the Application is denied, a written explanation as to why the Application was denied shall be provided to the Owner.

3. Standards for Review

When reviewing an Application for Modification, the Architectural Review Committee, or the Board of Directors, as the case may be, shall be guided in their decision by the applicable provisions of the Association's CC&RS, any standards for review adopted by the Association and applicable law including the Fair Employment and Housing Act (Government Code section 12900 et. seq.), Civil Code sections 4760 (a) (1) and (2), the provisions, if any, of the building code together with any other applicable laws or ordinances. Any decision shall be made in good faith and shall not be unreasonable, arbitrary or capricious.

4. Reconsideration

If the Owner submitting an Application for Modification objects to the Architectural Review Committee's conditions of approval or denial, the Owner submitting the Application may submit a Request for Reconsideration to the Association's Board of Directors.

The Request for Reconsideration shall be submitted to the Association in writing within 15 days of the Architectural Review Committee sending its written decision to the Owner who has requested a Modification. If an Owner does not submit a Request for Reconsideration within said 15 day period, it will be deemed a waiver of the Owner's right to submit a Request for Reconsideration.

If the Owner has timely submitted a Request for Reconsideration to the Association, within 45 days of the Request for Reconsideration being received by the Association, the Board will, at a noticed Board of Directors' meeting, review the Owner's Request for Reconsideration. The Board shall, in writing, either affirm the decision of the Architectural Review Committee, approve the Application for Modification, or approve the Application with conditions. The decision of the Board shall be in writing. If conditional approval is given by the Board, the conditions shall be set forth in writing. If the Application is denied, a written explanation as to why the Board denied the Application shall be provided.

Where the decision on an Owner's Application for Modification was originally made by the Board of Directors or a body that has the same membership as the Board of Directors at a meeting

that satisfies the requirements of California Civil Code section 4920 (a), the owner does not have a right to reconsideration as described above. However, reconsideration by the Board does not constitute dispute resolution within the meaning of California Civil Code section 5905.

XI

Mailing Address for Overnight Payment of Assessments

California Civil Code section 5310 (a) (11) requires all Members of the Association to be notified of the mailing address for overnight payment of assessments as required by California Civil Code section 5655 (c). The mailing address for overnight payment of assessments for the Association is:

XII

Other Disclosures Required by Law

California Civil Code section 5310 (a) (12) states that all other information required by law, the Governing Documents (i.e. Articles, Bylaws, CC&R's and/or Rules) or that that the Board determines to be appropriate for inclusion to be distributed to the Members of the Association.

California Corporations Code section 8321 (a) requires that all Members of the Association be notified, annually, that they have a right to receive a copy of the Association's Financial Report. You may request that a copy of the Financial Report be provided to you by notifying the Board of Directors in writing.

California Civil Code section 5305 states that unless the Governing Documents (i.e. Articles, Bylaws, CC&R's and Rules) impose a more stringent standard, a review of the financial statement of the Association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California Board of Accounting for any fiscal year in which the gross income of the Association exceeds \$75,000. A copy of the review of the financial statement shall be distributed to the Members of the Association with in 120 days after the close of each fiscal year, by individual delivery pursuant to California Civil Code section 4040.

Distribution of Annual Policy Statement

Pursuant to California Civil Code section 5310 (c), this Annual Policy Statement 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.

ASSOCIATION

Dated: _____

By: _____
Secretary

"Caution"

This form is provided as a courtesy by James H. Smith, Esq. of the law firm of Grokenberger & Smith. Telephone: (805) 965-7746. E-mail: 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*.

SUMMARY OF ASSOCIATION'S INSURANCE POLICIES

California Civil Code Section §5300 requires the following summary of the Association's insurance policies be provided, annually, to all owners:

Property and General Liability Policy

1. The Association _____ maintain a policy of Property and General Liability insurance.
does/does not
2. The name of the insurer is: _____.
3. The policy limits of the Property Insurance are: \$ _____.
4. The policy limits of the Liability Insurance are: \$ _____.
5. The amount of the deductible for the Property Insurance is \$ _____.

Earthquake Insurance

1. The Association _____ maintain a policy of Earthquake insurance.
does/does not
2. The name of the insurer is: _____.
3. The policy limits of the Earthquake Insurance are: \$ _____.
4. The amount of the deductible for the Earthquake Insurance is \$ _____.

Flood Insurance

1. The Association _____ maintain a policy of Flood Insurance.
does/does not
2. The name of the insurer is: _____.
3. The policy limits of the Flood Insurance are: \$ _____.
4. The amount of the deductible for the Flood Insurance is: \$ _____.

Fidelity Insurance

1. The Association _____ maintain a policy of Fidelity insurance.
does/does not

2. The name of the insurer is: _____.

3. The policy limits of the Fidelity Insurance are: \$ _____.

4. The amount of the deductible for the Fidelity Insurance is:
\$ _____.

California Civil Code Section §5300 requires the following summary be provided, annually, to all Owners, together with the above information concerning the Association's insurance policies:

"THIS SUMMARY OF THE ASSOCIATION'S POLICIES OF INSURANCE PROVIDES ONLY CERTAIN INFORMATION AS REQUIRED BY SECTION 5300 OF THE CIVIL CODE, AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR THE COMPLETE POLICY TERMS AND CONDITIONS CONTAINED IN THE ACTUAL POLICIES OF INSURANCE. ANY ASSOCIATION MEMBER MAY, UPON REQUEST AND PROVISION OF REASONABLE NOTICE, REVIEW THE ASSOCIATION'S INSURANCE POLICIES AND UPON REQUEST AND PAYMENT OF REASONABLE DUPLICATION CHARGES, OBTAIN COPIES OF THOSE POLICIES. ALTHOUGH THE ASSOCIATION MAINTAINS THE POLICIES OF INSURANCE SPECIFIED IN THIS SUMMARY, THE ASSOCIATION'S POLICIES OF INSURANCE MAY NOT COVER YOUR PROPERTY, INCLUDING PERSONAL PROPERTY OR, REAL PROPERTY IMPROVEMENTS TO OR AROUND YOUR DWELLING, OR PERSONAL INJURIES OR OTHER LOSSES THAT OCCUR WITHIN OR AROUND YOUR DWELLING. EVEN IF A LOSS IS COVERED, YOU MAY NEVERTHELESS BE RESPONSIBLE FOR PAYING ALL OR A PORTION OF ANY DEDUCTIBLE THAT APPLIES. ASSOCIATION MEMBERS SHOULD CONSULT WITH THEIR INDIVIDUAL INSURANCE BROKER OR AGENT FOR APPROPRIATE ADDITIONAL COVERAGE."

_____ ASSOCIATION

Dated: _____

By: _____
_____, Secretary

"Caution"

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

**ASSESSMENT AND RESERVE FUNDING DISCLOSURE SUMMARY
FOR THE FISCAL YEAR ENDING _____**

California Civil Code section 5300 (b) (7) requires that this Assessment and Reserve Funding Disclosure Summary be distributed to all owners not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the Association's fiscal year. The summary is to be provided with, and accompany, the Association's Proforma Operating Budget or Summary thereof that is delivered to all owners pursuant to California Civil Code section 5300.

- (1) The regular assessment per ownership interest is \$_____ per _____.
 Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page ____ of the attached summary.
- (2) Additional regular or special assessments that have already been scheduled to be imposed or charged, regardless of the purpose, if they have been approved by the board and/or members:

Date assessment will due:	Amount per ownership interest per month or year (If assessments are variable, see note immediately below):	Purpose of the assessment:
	Total:	

Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page ____ of the attached report.

- (3) Based upon the most recent reserve study and other information available to the Board of Directors, will currently projected reserve account balances be sufficient at the end of each year to meet the Association's obligation for repair and/or replacement of major components during the next 30 years?
 Yes _____ No _____
- (4) If the answer to (3) is no, what additional assessments or other contributions to reserves would be necessary to ensure that sufficient reserve funds will be available each year during the next 30 years that have not yet been approved by the board or the members?

Approximate date assessment will be due:	Amount per Ownership Interest per months or year:
	Total:

(5) All major components are included in the reserve study and are included in its calculations.

(6) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 5570, the estimated amount required in the reserve fund at the end of the current fiscal year is \$ _____, based in whole or in part on the last reserve study or update prepared by _____ as of _____ (month), _____ (year). The projected reserve fund cash balance at the end of the current fiscal year is \$ _____, resulting in reserves being _____ percent funded at this date.

If an alternative, but generally accepted, method of calculation is also used, the required reserve amount is \$ _____. (See attached explanation.)

(7) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 5570 of the *Civil Code*, the estimated amount required in the reserve fund at the end of the next five budget years is \$ _____, and the projected reserve fund cash balance in each of those years, taking into account only assessments already approved and other known revenues, is \$ _____, leaving the reserve at _____ percent funding. If the reserve funding plan approved by the association is implemented, the projected reserve fund cash balance in each of those years will be \$ _____, leaving the reserve at _____ percent funded.

NOTE: The financial representations set forth in the summary are based on the best estimates of the preparer at that time. The estimates are subject to change. At the time this summary was prepared the assumed long-term before tax interest rate earned on reserves funds was _____ percent per year, and the assumed long-term inflation rate to be applied to major component repair and replacement costs was _____ percent per year.

**SUPPLEMENT TO ASSESSMENT AND RESERVE
FUNDING DISCLOSURE SUMMARY**
[Civil Code section 5570 (b) (3)]

Due to factors beyond the control of the Directors, including but not limited to the rate of inflation, the rate at which the major components actually deteriorate, unanticipated damage to the major components, fluctuations in material and labor costs and changes in building codes and regulations, the accuracy of the information set forth in paragraphs 3, 4, 5, 6 and 7 above is not, and cannot be, guaranteed. Depending upon the accuracy of the present and future assumptions used in providing the information in paragraphs 3, 4, 5, 6 and 7 the information and conclusions set forth in said paragraphs may not be correct. Therefore, any person reviewing this Assessment and Reserve Funding Disclosure Summary should not, without conducting their own independent investigation and analysis, rely upon the accuracy of the information set forth in paragraph 3, 4, 5, 6 and 7.

Upon request, a copy of the Association's complete Reserve Study and Funding Plan, prepared in accordance with California Civil Code section 5550, is available for inspection by any Member of the Association by contacting the Association's Manager or Board.

Please note, for purposes of this Assessment and Reserve Funding Disclosure, the words and phrases stated below are given the following meaning:

1. "Estimated remaining useful life" means the time reasonably calculated to remain before a major component will require replacement.

2. "Major component" has the meaning used in section 5510 (b). Components with an estimated remaining useful life of more than thirty (30) years may be included in a study as a capital asset or disregarded from the reserve calculation, so long as the decision is revealed in the reserve study report and reported in the Assessment and Reserve Funding Disclosure Summary.

_____ ASSOCIATION

Dated: _____

By: _____, Secretary

"Caution"

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