SOUTH COAST HOMEOWNERS ASSOCIATION

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IN THIS ISSUE

UPCOMING MEETINGS

Saturday, May 19, 2001 – ABCs (A Basic Course) for Community Association Leaders – Elephant Bar Restaurant – 8:30 – 5:00

In conjunction with the Community Association Institute area chapters (Mid-California and Channel Islands), we are pleased to offer this national curriculum to South Coast members. This all-day class covers law, finances, maintenance, rules enforcement, problem solving and running a board meeting. We offered this class in 1998 and 1999 and it was well received. We missed last year so it's back by popular demand! Continental breakfast and lunch included. Registration information mailed separately.

Cost - $49 before May 12, $59 after

Saturday, June 23, 2001 – Reserve Studies and Budgets – with Roy Helsing, Helsing & Associates, Dublin, CA at Holiday Inn, Goleta 10 AM – detailed information to follow

Thursday, July 26, 2001– Legal Seminar with Beth Grimm – Our annual summer law session – 7 PM at the Holiday Inn, Goleta – detailed information to follow.

REDISCOVERING COMMUNITY IN THE COMMON INTEREST DEVELOPMENT ENVIRONMENT

Thoughts On The CID Paradox
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Editor's Note: Larry was our speaker for our March meeting. If you missed it, you missed a very entertaining, thought-provoking program. This article was passed out to the meeting attendees and Larry has graciously allowed us to reproduce it for our newsletter. Larry also allowed us to video the program and we now have the video available to borrow. Contact Mike Gartzke at 964-7806 for borrowing arrangements.

"*Community*" is a word as indelibly etched in the American psyche as '*freedom*" or "*liberty*". Ours is a nation founded on principles of individual freedoms, self-expression and individuality. Indeed, at the root of the American experience is a fundamental belief in the kind of rugged individualism that challenged a monarchy, settled a continent and now pushes us further into the heavens.

Yet, underlying this desire for individual freedom and expression has always been the basic human need for social identity, a seemingly primal drive to belong to a greater whole, to be a member of the "tribe". In short, a tradition of "*community*" has grown progressively stronger with each generation of Americans. One need only look at a demographic map of the country to see that a vast majority of Americans live within 500 miles of either coast, early settlement and family tradition maintaining populations in the east, with weather and opportunity drawing us to the west.

This sense of community is so strong that when we meet a new person most of us usually find out about where they are from within a few moments of polite conversation. We identify people with the communities from which they hale. I am a native Nebraskan but often refer to myself as a Minnesotan (having spent many years of my adult life there). Pressed further on the subject I would tell you I was a Lincolnite or Minneapolitan. Pressed still further I would tell you I was from the Russian Bottom in Lincoln or the community of Robbinsdale in Minneapolis.

All of this serves to illustrate how attached we, as a culture, are to our sense of community. For all the complaining, grousing and outright electoral rebellion we subject our political leaders to we will always hearken back to a place we call "*home*".

The great anthropologist Margaret Mead once observed that, "*An individual member of any society can accomplish anything with the help and support of the group, but left alone to his own devices he will accomplish only half as much and it will mean little without anyone to share it with.*" The desire to be accepted and belong, to be part of a greater whole is not only a matter of personal orientation but necessary for societal and individual development.

So here we are. After more than 200 years of experience with the American experiment we are engulfed in the single greatest sociological change since World War II. People are coming together into ever smaller and more tightly knit communities we call common interest developments. In 1965 there were approximately 500 CIDs nationwide. Today it is estimated that there are nearly 200,000. Millions of people have come together in these mutual benefit communities out of either personal choice or economic necessity. How then do we resolve the deeply ingrained issues of self-expression and individualism with the seeming paradox of architectural (*and often behavioral*) homogeneity demanded by most CID governing documents?

As someone who has made a living nearly all his adult life from the progenation of common interest developments, I grow increasingly aware of this paradox. When I first entered the association management business more than 20 years ago I, like most of my colleagues, were strict constructionists regarding architectural control, covenant and rules enforcement. Enforcement, and indeed the covenants and rules themselves were born out of a perception that "*maintaining the value of the asset*" required somehow limiting the self expression of individuals within the community. "*Maintain. protect and enhance the value of the asset* " grew to be a mantra of sorts within the CID industry. Rightly or wrongly, it has brought us to the place we find ourselves, often more concerned with conformity than personal contentment.

In many CIDs the paint is perfect and the lawns are as finely manicured as a European palace. Guests are strictly regulated regarding where they can park while they visit, and for how Iong. Picket fences within many communities can be painted by the individual members any one of 50 or so shades of white to retain a homogenous appearance. Pets are routinely regulated for type and size. Behaviors of members and guests have become the purview of association policy rather than common sense, reasonable thought and personal responsibility. Litigation and dispute resolution are permeating our mutual benefit communities and directors often find themselves making decisions out of a fear of reprisal or litigation rather than out of a sense of fairness or of building a strong community fabric.

In his book "***Privatopia***" the author, Evan McKenzie, points out that in many ways the proliferation of "walled, gated communities" is symbolic of the deeper divisions seen in society as a whole. 'Those "*who have*" increasingly feel the need to protect and isolate themselves from those "*who have not*" or those who are somehow different. The need to minimize "the threat" has led us deeper into personal isolation from our neighbors. This "isolationism" often carries beyond the walls and gates of the CID to the very doorsteps of the members of the communities themselves. We are probably all poorer for listening to the sound of shrill voices telling us to be physically and financially afraid of each other's tastes and behaviors.

Growing up in the little town of Alma, Nebraska we knew and visited frequently with all of our neighbors. It was considered a noble enterprise in those days to reach out to anyone in the community who might be struggling or need help. Transgressions were quickly forgiven and tolerance of individual eccentricities or sometimes odd behaviors, however manifested, was commonplace. These things were viewed as enrichments to the lives of the community rather than violations of some codified standard of behavior. They are the kinds of things that added value and character to every small town in America and they may be in danger of being lost forever in the new community models that pock the modem urban landscape.

In today's world of planned communities and high-rise condominiums it is a rare thing for neighbors to even know each other, let alone reach out in time of need. Instead, if someone is in trouble in one of our community associations we threaten to lien their home and then foreclose. Neighbor helping neighbor has never been so far removed from our collective consciousness. Tolerance and forgiveness are words that seem to be missing in the lexicon of CIDs. Perhaps this is how it should be. After all, many community members have no desire to meet their neighbors or become part of the fabric of a larger community. They are content to "*live and let live*" and do not welcome or desire the community to encroach on their lives.

We have come to this point after a long journey, which taught hard lessons along the way. It is difficult to imagine we have summated this peak. The journey continues and lessons of the past need to be reexamined for their current and future appropriateness. Common sense needs to be resuscitated in the realm of CIDs with added emphasis given to the "*community* " aspect of community governance.

To remain vital and viable, CID leaders and managers may need to become less focused on the physical plant and become more focused on the human characteristics of CID living. Associations without a sense of' community are merely shells populated by replaceable components rather than friends and neighbors cooperating to enrich and improve the quality of their lives. Nurturing this sense of community will become the greatest challenge of the next 25 years. Striking the balance between the value represented by the bricks and sticks and the sense of "*quality of life*" is daunting. However, if we should ignore the difference we may find ourselves facing a political and economic climate that renders the entire concept of CIDs untenable.

How then should we start moving toward this idyllic sounding governance concept? Perhaps one way might be to begin focusing on "*quality of life*" issues within the community. We need to begin asking ourselves hard questions regarding covenants, rules and their enforcement. For example, when architectural variances are requested we might ask, ''*Will this change really negatively impact values?*" When faced with frequent violations of a particular rule, we may need to evaluate whether the rule makes sense relative to its impact on value and the enjoyment of people's homes.

Clearly, in our ever more litigious society we need to be diligent against arbitrary enforcement of rules and covenants. However, should the fear of litigation force people to abandon common sense? If it does we will become more and more captive of a system that takes decision-making and personal responsibility out of the hands of individuals and places them into the hands of the CID Boards. As attorney and association legal expert Wayne Hyatt states in the California Association of Community Managers' video *Community Associations, Can We Talk?* "It is not true that one need to abandon common sense when enforcing rules & covenants. A waiver or special circumstances do not necessarily create a precedent or effect future enforcement".

It may be time to act of a heightened sense of fairness rather than blindly following the rules without consideration of community and "*quality of life*" consequences. Grappling with this concept has proven as much a challenge for the industry as anything we have faced. Time alone will answer the questions about how much of a home's value is based on the enjoyment of the neighborhood versus the pristine, homogenous look and maintenance of the structures. I suppose, in the end, we would all be well served by becoming a little more "*generous of spirit*" when dealing with each other inside our communities.

Newsletters probably need more emphasis on individuals in the community. Common sense tells us that if you know about your neighbor you will be more likely to think of him/her as someone who acts out of good intentions rather than malice. We as a society have lost the sense of grace that motivated us to walk across and meet the neighbors. Many of us prefer to be left alone. I wonder how much richness and value we leave on our doorsteps because we

fail to feel comfortable approaching the people next door or across the street and making them friends as opposed to "*strangers living down the way* ".

Another key element might involve associations making an effort to build a sense of identity in the larger community. Newsletters about the people who live in the association, who make up the fabric of the community can contribute a great deal to raising the awareness about a community's identity and help galvanize feelings of belonging by the members.

Typically, when a builder constructs and sells a community he/she will spend hundreds of thousands of dollars on advertising to entice buyers to believe the new community is just this side of Valhalla. The builder creates a strong sense of community in order to sell the homes. Once they are sold the builder goes away, the advertising goes away and after a time, the larger community's awareness of the association goes away as well. There are exceptions of course. There will always be the Rossmoors, Woodbridges and Leisure Worlds that are so large they can not be ignored. However, if the association uses its newsletter properly and distributes it to local Real Estate brokers and appraisers, the local town council, grocery stores, dry cleaners, etc. it might very well become the best advertising vehicle ever to enhance the general market's perception of the association as a community.

In the final analysis, CIDs are about people as much as they are about structures and perfect landscaping. People have personal interests that can be well served by the association. Having evolved somewhat over the years from that strict constructionist described above, I now think that perhaps the small town that dwells somewhere in the heart of each of us, that spirit of neighborliness that was an under-pinning of liberty, just might be able to be recaptured inside the CID industry. It will require the effort. rethinking and retooling of volunteer board members and industry professionals but in the end may be the best chance to rekindle the spirit that made communities warm and friendly places where we could count on each other for help, friendship and a resolve to just "*do better*. "

We are in the unique position of creating the future in any image we as an industry choose. I suppose it may be an overstatement to suggest that the spirit of "community " dwells as much in the heart as in the organization. We should all hope to listen closely to the sound of that heart beating as we move into the new millennium. Good luck to us all.

IMPORTANT CASE LAW FOR 2001
By David A. Loewenthal, Esquire

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There were several important cases decided during the past year that effect community associations. Below is a summary of some of the cases including Aas v.William Lyon Company which was decided by the California Supreme Court.

Smith v. Laguna Sur Villas Community Association - This California Court of Appeals decision is important as it clearly defines that the association, not individual homeowners, are the clients of the attorney. It is the association that holds the attorney-client privilege. Therefore, the board of directors of an association can refuse to provide attorney-client documents to individual homeowners. This case which was decided on April 3, 2000, by the California Fourth District Court of Appeals helps protect the rights of homeowner associations involved in litigation. Orange County Superior Court Judge Wieben Stock held, and the Court of Appeal agreed, that an association such as Laguna Sur Villa that represents its membership in construction lawsuits is the client that holds the attomey-client privilege, and not individual homeowners. It is the association that maintains the attomey-client relationships. Though this case involved a construction defect litigation case, the interpretation of the ruling appears to indicate that this would be the situation in any case involving an association. Additionally, once a member of a board of directors leaves the board, he or she is no longer the "client". Therefore, a former board member is no longer privy to the litigation information.

Aas v. William Lyon Company - The California Supreme Court heard this case and filed a decision on December 4, 2000. The California Supreme Court upheld the decision of the Court of Appeals. The decision states that plaintiffs, in this case both a group of single family homeowners and a condominium homeowners association, may not recover damages in negligence from a developer, contractor or subcontractors for construction defects that have not yet caused property damage or physical injury. This decision is significant for associations and individual homeowners in that even if defects are noted and even if the defects are in violation of municipal building codes, unless there is damage to property or personal injury, damages for defective construction may not be recovered under the negligence theory.

What does this mean to associations faced with construction defects? If the defects are found within the warranty period, a builder may repair or replace the defective component. However, what about latent defects that have not caused damages? What of shear walls that have not been nailed properly which may fail during an earthquake or roof tiles improperly installed that may leak and cause additional damage to property, or fire walls that do not meet building codes which may fail during a fire? If these components have not yet caused damage, no matter how evident it is that these building elements were not properly constructed, this decision indicates there is no liability on the part of the developer, contractors or subcontractors under a negligence theory.

The decision, passed by a 5 to 2 margin by the Supreme Court Justices, appears to allow developers, contractors and subcontractors to build and to install building components that may not be built according to building codes or installed to manufacturers' specifications. The decision does not hold the developers, contractors or subcontractors responsible for these deficiencies unless there is a failure that causes physical injury or property damage within the ten-year statute of repose.

Supreme Court Chief Justice George voted in dissent of the matter. Chief Justice George summarized the majority opinion as follows: " In determining that a negligently constructed

home must first collapse or be gutted by fire before a homeowner may sue in tort to collect costs necessary to repair negligently constructed shear walls or fire walls, the majority today embraces a ruling that offends both established common law and basic common sense."

Dolan-King v. Rancho Santa Fe Association - This is an important case in that the court deferred to Board decisions on architectural matters which prior to this case had been expressed only in the context of maintenance decisions as was the issue presented in the Lainden case. In this case, the architectural committee of Rancho Santa Fe Association, which is called the Art Jury, rejected an application from Dolan-King to add a room addition and change her fencing. The rejection of the application was based upon finding that the windows and doors were not consistent with the stucco to glass ratio of the rest of the home and the fence was not an accepted style of the area. Dolan-King sued the association and the trial court rejected the Art Jury's decision and held that her proposal was reasonable and consistent and also awarded Dolan-King $187,000 in attorneys' fees. The association appealed. The appellate court ruled in favor of the association citing the principles that recorded covenants and restrictions are assumed reasonable and under *Nahrstedt* the restrictions must be reviewed for reasonableness as applied to the whole community as opposed to individual cases.

Jankey v. Twentieth Century Fox - Though this is not a community association case, it has important implications for associations. The decision in this case is significant to associations because it determined that even though an association's swimming pools, tennis courts, golf courses and other recreational facilities are the types of "public accommodations" listed in the Americans with Disabilities Act, they are not actually "public" unless they are truly open to the public. Invited guests are not the public. The reason this is important for community associations is if an association is a "public accommodation" then costs to upgrade in order to accommodate the disabled would be paid by the association. If an association is not public as is the case with most community associations, any disability upgrades must be permitted, if requested by residents, but the cost will be bome by the person requesting the modification, not the association.

Assildeh v. California Federal Bank - This case involves disclosure responsibilities by a real estate broker regarding construction defects. A home buyer purchased a unit in a condominium association that was involved in a construction defect lawsuit. The existence of the suit was disclosed by the seller and the agent for the buyer. After the escrow closed the buyer requested permission to install marble flooring in his unit and the request was denied. The denial was based on the fact that the floor of the unit could not support the marble. The homeowner sued the seller, the seller's agents and the financing bank for nondisclosure. The court of appeal ruled that the duty to disclose extends only to disclosure of the existence of the defect lawsuit and not the details of the litigation.

The above was prepared for general information. For specific legal matters or further interpretation of the information, contact a community association attorney.

PLEASE FEEL FREE TO MAKE COPIES FOR YOUR BOARD MEMBERS
SHARE THIS NEWSLETTER WITH YOUR ENTIRE BOARD OF DIRECTORS

MEMBERSHIP DIRECTORY SPONSORS

As a result of my delay in getting last fall's questionnaire results tabulated, the 2001 South Coast Membership Directory has not yet gone to press. (The results will appear in the directory). Since a number of professional members paid to place an ad in the directory, I am listing their names here and thank them for their support of South Coast HOA.

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