SOUTH COAST HOMEOWNERS ASSOCIATION

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DO ALL ASSOCIATIONS HAVE TO ACCEPT PETS?

Advice received by one local resident

As most of you know, the "Pet Bill" was signed by Governor Davis last year and was effective January 1, 2001. This new law states in Civil Code Section 1360.5(a) that "(n)o governing documents shall prohibit an owner of a separate interest (your unit or home) from keeping at least one pet…. Subject to reasonable rules and regulations of the association." Section (b) states that "'pet' means any domesticated bird, cat, dog, aquatic animal kept in an aquarium…" In Section (e), the law states that "(t)his section shall become operative on January 1, 2001, and shall apply to governing documents **entered into, amended or otherwise modified on or after that date." (**Emphasis added).

One local resident moved into an association that does not allow cats or dogs. The association will allow fish and birds. The association has had this restriction for many years and it is very clear in its CC&Rs that no cats or dogs are permitted. This new resident has a cat and the cat is now inside the association building. The board requested that the resident remove the cat in conformance with its CC&Rs.

The resident then contacted our California State Senator Jack O'Connell requesting information about the "Pet Bill", AB 860 (2000). Here is the main paragraph of the letter, sent under Senator O'Connell's signature, dated October 22, 2001.

"As you know AB 860 allows mobilehome park residents and homeowners in common interest developments to keep pets subject to reasonable rules and regulations. Under AB 860, rules in these communities **must** allow people to have at least one pet, which includes a bird, dog, cat or fish. The community can still limit the size of pets, the quantity of pets and establish other reasonable rules and regulations so that the pet is not a nuisance or annoyance to neighboring residents. Therefore, while your Condominium Association may

vote to adopt a policy regarding the size and quantity of pets, it could not vote to ban them entirely. Should your Association adapt (sic) a measure that you believe is not "reasonable", you could challenge that regulation in court. For your information, I have enclosed a copy of AB 860. I hope it is useful to you."

Now, I don't know about you but if I was that resident and received this letter from my State Senator regarding pets, I would take it to the next board meeting and make a strong case that the association cannot ban me from keeping a cat in my unit. "I have a letter from my State Senator that says that Associations **must** allow pets! He must be right!"

I called the Senator's Santa Barbara office and spoke with one of his staff members familiar with the request. I pointed out that nowhere in his letter does he clarify that this bill is effective for governing documents entered into after January 1, 2001. The staff person informed me that he was not a lawyer and their office was simply responding to the question raised by the resident. But yet the letter states that "rules in these communities **must** allow people to have at least one pet…" This point was made emphatically clear to the resident. Since I now represent the South Coast Homeowners Association, a special interest in the eyes of the staff, in your behalf, I have precious little influence with them. I recommended that the board contact the Senator's office directly, which one of the board members did. The response received was as follows:

"You are absolutely correct that AB 860 only pertains to governing documents entered into, amended, or otherwise modified on or after January 1, 2001. However, my letter was intended to address the question of whether a common interest development can, at this time, adopt a rule that prohibits pets pursuant to AB 860. Therefore, taken in context, my letter to …. Is also absolutely correct."

Is the resident going to read the copy of the bill that indicates when and how the law is to be applied? I think not. So now this association's volunteer board of directors will have to expend valuable time and financial resources to enforce its governing documents which are valid and enforceable under California law because a resident receives misleading advice from our State Senator. In addition, the Senator's letter encourages the resident to challenge the restriction in court. Great. Under Civil Code Section 1354, part of the Davis-Stirling Act, associations and their members are strongly encouraged to enter into ADR, alternate dispute resolution (i.e. arbitration or mediation) to resolve disputes before taking the matter directly to court, contrary to the advice offered by the Senator's staff. Failure to attempt to resolve the dispute via ADR will permit the court to throw out the case without a hearing.

COMMENTARY: I wonder what is really going on at the Senator's office. His staff has been very protective of this legislation since the Senator first introduced it back in 1996. They were not happy when South Coast opposed his version at that time. His campaign receives contributions from organizations that support dog/cat ownership in all residential settings, regardless of whether it negatively impacts all other residents or if the animals can be cared for properly in these settings. Would they like to have a dispute like this work its way through the court system and try to overturn the California Supreme Court decision in *Nahrstedt* (1994) that concluded association CC&Rs banning pets was reasonable?

EMAIL USE - THINK ... BEFORE YOU PRESS "SEND"

By Beth A. Grimm, Esq.
Pleasant Hill, CA

Editor's Note – Beth Grimm is a Bay Area attorney who practices community association law, representing associations and homeowners who live in developments with CC&Rs. She has made an annual presentation to South Coast members the past three years. This portion of her article, "Email and the Internet – How to Avoid the Pitfalls" is reprinted from her September-October 2001 issue of the California Homeowner Association Legal Digest with her permission. Subscription information to her very informative newsletter is available at www.bgcondolaw.com or 3478 Buskirk Ave, PMB 1000, Pleasant Hill, CA 94523

How many of you think about where your e-mail goes, where it is stored, and what kind of damage, if any, it might do because of its contents, if it were to fall into the wrong hands, before you press the "send" button?

I do, because I have been receiving some very potentially damaging e-mails from clients. After you review this section on privilege and the difficulty an association might have in protecting e-mail communications from discovery in a court process, you will definitely give it some more thought the next time you get ready to send a message to anyone on the board, a homeowner, a manager, or the attorney for the association.

Using e-mail or sending a message on the Internet is pretty "freeing", maybe too much so. It is not like using the telephone. When you make a telephone call, there is someone on the other end that has the ability to respond, to challenge what you say, to defend themselves, or to come right back at you. When using e-mail, it's not like having a face-to-face consultation or confrontation. There is no one on the other end that can contradict you, challenge what you say, or punch you in the nose so you might have the courage (or audacity) to say something you usually would not say. When using e-mail, if there is emotion involved, or frustration, it can be dangerous. Pounding away on a "vent letter" is one thing, but tapping out the message on the keyboard - with 'send" a click away, allows no safety valve. If one writes an actual letter for "snail mail", the process involves sticking it in an envelope, and then usually having a "cooling off period" between the time you stick the letter in the envelope and mailing it. You have an opportunity, after writing it, to pull it back before you stick it in the mail and it becomes unretrievable. For this reason, it seems that much of the public finds great satisfaction in "venting" on e-mail - at least for a minute. I find that people tend to be more aggressive, more careless, more pointed, more emotional, more condescending and less thoughtful, less careful, less amiable, and less aware of protocol in their email messages.

The following are some things to think about, using real life examples, from e-mail I have received from clients:

- Have you ever thought how embarrassing it would be if something you wrote about a homeowner got back to them? ("Did you see Joe out walking his dog yesterday. I think we ought to do something. Besides the fact that he looks like his "pit bull" and acts like him he lets his dogs poop in the common area and walks right on by. We should fine him.")

- Did you ever stop to think how damaging it would be if you accidentally made an admission over e-mail and the e-mail was admissible in court? ("Well, we haven't enforced that rule for years, but these Section 8 renters are trouble makers - like usual - and we need to do everything we can to got them to leave. Let's ask the attorney what we can do.")

- Did you ever stop to think how harmful it would be if you accidentally set up a discrimination claim for someone? ("We don't have to worry about that. They can't do much about it anyway, because they can't hear anything - they are both deaf." Or "They should just move, there is no place for their children to play, anyway.)

- Did you ever stop to think about how the open meeting laws might be violated if 2 out of 3 or 3 out of 5 board members end up in a chat room or instant message discussion about the pool rules that will be adopted at the next board meeting?

- Did you ever stop to think about how discussing strategy in a lawsuit with your attorney might come back to bite you if the notes are discovered in a court proceeding?

There are many, many things that one should think about when using e-mail, besides common courtesy and making sure that the message goes directly to whom you intend to be the recipient and no one else.

Editor's Postscript: With the ever-increasing use of email, a cyberspace trail exists along with a paper trail if someone prints the email out. Recently, your editor became embroiled in an association/member dispute for which I was engaged to assist the association. The member involved sent me some threatening emails attacking my character, principles and conduct and further threatening me with legal action. Because he would reply to my email using the "reply" button in Internet Explorer, there is a chain of email back and forth (his threats and my responses) which I have a printout for. Should anything come of this (I doubt it), I have substantial evidence of his threats. As Ms. Grimm pointed out, think before you send. The member probably doesn't understand the potential for his email being used against him. The member was definitely emotional and careless.

Further, I have heard about association members setting up unofficial web sites exchanging information, even member versions of association minutes. While our laws guarantee free speech, it is important for all association members to understand that this new medium does not expand rights to do anything more than other means of communication (verbal/written, etc.)

DUES INVOICES

Dues invoices for 2002 will be mailed in December. Thanks for your patience.

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

THE MEDIA STRIKES AGAIN

When you thought you had seen it all – we got this

Little did I know that the items from the print media that I profiled in the last two editions of the newsletter would pale in comparison to the articles, editorial and subsequent letters to the editor that appeared in the *Santa Barbara News-Press* starting Tuesday, September 25. Read this all the way through.

ROUND 1 – An article appeared in the paper in the local section with the headline "It's owner vs. rules in battle over aesthetics". The article mentioned that an owner in a local association was fighting her association for "soul-soothing natural beauty – and against conformity". The owner was "struggling with the board as well as with the (association's) new property manager, to save three hanging bird feeders and a shallow bath she tacked years ago to a pair of carob trees. They're just a few feet from her home – but off her property – and within a common corridor under the authority of the board…But now the board has decided to cut down the carob trees."

The Association President was interviewed. "They'll be removed, not to spite (the owner), but to make way for shrubbery that will screen the condos from a new residential development next door." The board was also aware of a rat problem and had asked that the feeders be removed to help address the problem. "(The owner) hired an attorney to warn the association to keep their hands off her bird feeders."

So is it the trees or the birdhouses? Are the trees going to be cut down to get rid of the birdhouses? The owner had been one to bring the rat problem to the board's attention. They have been eating the irrigation hoses. The issue of seed birdhouses was discussed at the March board meeting, acted upon at the April meeting and residents were given until May 31 to comply. All owners receive copies of the monthly minutes and an association newsletter.

ROUND 2 – Three days later the lead editorial in the paper was "Please, save the trees". According to the editorial "…it seems in order to make sure (the owner) obeys the rules, the board will now cut down the two trees holding the bird feeders – ostensibly to plant shrubs. We also don't understand the logic of cutting down healthy trees just because they hold bird feeders and seem to be in a 'common area'. Isn't there a way to compromise here? Perhaps a relaxing of the rules should be considered. Anyone on the (Association) board ever hear of 'grandfathering'? After all, beauty should count for something. Cutting down trees just to make a point, in addition to being destructive, shows lack of judgement."

Isn't serving as a volunteer on your association's board of directors the most wonderful, gratifying thing you have ever done in your entire life? Now the newspaper editors know what you're thinking and you're thinking something other than what you're saying. The board is going to cut down the trees "ostensibly to plant shrubs". Is the board's word worth nothing compared to the owner's? Speaking of lack of judgement, why did the editor not take the board president's words at face value. Did they believe he was lying about the hedge screening one boundary along the development? Why was the term "common area" in quotes in the editorial? Did the editor believe that this was a generic term or something the President made up? It gets better.

ROUND 3 – Four days after the editorial appeared, the following letter appeared in the Letters to the Editor section of the paper.

"Kudos to the homeowners at (Association) plus many other residents, I'm sure who appreciate the beautiful, mature, old-growth trees in our area. I live across the street in another development that's being stripped into conformity. The results are boring and have created absurd landscaping, drip system and tree-removal expenses.

Neighbors in my complex are suffering from high assessment penalties as a result of the reckless actions of the latest dictatorial behavior of the same property manager that is attempting to destroy (the Association). Keep fighting neighbors."

All along we've been seeing these articles and hoping that it would simply go away. What's the point of fighting it? Is that what the paper wants? If the term "common area" throws them, how on earth can you get through to them? I wasn't too keen on the terms "reckless, dictatorial and destroy" as applied to one of our management professionals. Then came this.

The letter was a fake.

How do you know the letter was a fake? Well, the letter refers to the development across the street (unnamed) managed by the same property manager. All associations maintain a membership roster and a residents' roster for voting, sending correspondence, newsletters, minutes, dues notices, etc. The property manager knows who owns in the complex. He's got a list. No one by the name of that shown on the letter lives across the street. The News-Press letters policy printed adjacent to the letter shown above states "letters…must include a legible name, address and telephone number for verification purposes."

So at this point, it was time to weigh-in with the *News-Press* and find out what was going on. I started exchanging emails with Will Fleet, General Manager of the *Santa Barbara News-Press.* On October 9, he responded as follows: "We believe the letter to which you referred, regrettably, may not be verified or proven to be false, either way. As you may be aware, we are undergoing significant personnel changes in the editorial page department. We will revisit our policies regarding letters to the editor with the new management of the editorial pages. This unique situation will provide an example to help us formulate the new policies".

I then sent the following email, also on October 9. Is this what Beth was talking about as emotional in her article previous?

"Thank you for your response to my email. I am most disappointed that letters are published without verification especially when professional members of our community are vilified for doing their job.

I believe that it would be appropriate, if not required, for the News-Press to publish a statement in its editorial pages that acknowledges that the editors made a mistake in publishing the 10/2/01 letter attacking the volunteer board of directors and their association manager without verifying its legitimacy.

These unwarranted personal attacks are one of the reasons that volunteers no longer are

willing to serve on boards such as a homeowners association board. Had your reporter done any research into the operation and management of the homeowners association, he would have found that:

- The area in question (where the trees are) is part of the association's common area which is to be maintained by the association for the benefit of all, not just one or a group of members.

- (The owner) had been a member of the board of directors in the past and by her signing the revised governing documents back in 1990 as a board member, she should have been aware that the board President did not have the authority to turn over the maintenance of the common area to one individual, especially another board member.

- The association has incurred substantial expense to maintain these plantings and that the size of the trees has grown to the point that the landscape contractor is no longer able to care for them properly. Other similar trees have had to be removed for safety and aesthetics.

South Coast Homeowners Association is a nonprofit organization dedicated to the education of homeowner association boards and their members since 1989. The *News-Press* has had a complimentary subscription to our newsletter for many years."

So I vented!

Mr. Fleet's response – "We will not be able to publish a statement as you have requested (regarding the publishing of the fake letter). You are certainly welcome to respond with your own letter to the editor."

ROUND 4 – Did you think it was over? I had asked Mr. Fleet to meet with the reporting staff to discuss what a homeowner's association is, how South Coast HOA could be a resource for them in future and the publishing of the fake letter. He agreed to set it up and two weeks later, I represented South Coast HOA in a meeting with the reporter who wrote the article, Jesse Chavarria, the managing editor of the paper and Mr. Fleet, the general manager, at the News-Press office. We spent a full hour together. (I didn't expect that much time but there was genuine interest in the management of the paper about what I wanted to discuss). About half the time was spent on South Coast HOA's role in the community, what we do, etc. I gave them samples of recent newsletters along with information about the *Condominium Bluebook* that contains the state law that governs associations that we distribute annually to all of you.

We discussed the story and how I believed that the reporter had been duped by the owner and had not done enough research to do a balanced story. The property manager was not interviewed; South Coast was not contacted. He volunteered that some information provided by the owner could not be used in the article because it would be considered a personal attack against others. Nonetheless, the reporter felt that the owner's story was credible but didn't want to write a "50-inch" article to expand coverage of the subject. The landscape contractor, who the board has relied upon for many years for professional advice and guidance for many years, recommended the removal of the trees because the roots were expanding to break up asphalt. Other similar trees had lifted garage slabs and root barriers

would make these types of trees unstable. The same contractor had been profiled in the *News-Press* the previous day as the company behind the "rich tapestry of plantings" at the Goleta Water District's Garden Design Center. Perhaps the landscape contractor could be considered an outside expert by the Association board?

Finally, we discussed the fake letter. As noted above, the *News-Press* indicated that it could not verify whether the letter was legitimate. What the general manager did say, however, was startling. He indicated that the letter to the editor (reprinted earlier) should have never appeared in the *Santa Barbara News-Press* even if the letter-writer was verified as legitimate. When he questioned the editorial page editor, the editor said that it wasn't a personal attack on the manager because the manager was not identified in the letter. Yet, the Association was identified and the Association across the street was referenced which means that all of the people that the manager must deal with in these two associations know who he is. It turns out that the editorial page editor, a relatively new employee (I miss John Lankford!) was a "lame duck", on his way out. In between the time the letter appeared and my visit to the News-Press offices, the employee had left the employ of the newspaper. The General Manager was not happy with his former editor's performance.

The General Manager cited his many years in the newspaper industry and his impressive professional credentials. He indicated that most newspapers including the *Santa Barbara News-Press* do not verify letter-writers that submit letters to the paper. This was surprising to me since someone could use these pages under an assumed name for their own selfish interests. He maintained that he could not remember an instance of a fake letter appearing in one of his papers before. He reiterated that the News-Press would not run a retraction (retractions are for a mistake in fact as opposed to a mistake in judgement). He did apologize to the property manager for their lack of professional judgement in running a personal attack letter in their paper against the manager.

LAST BUT NOT LEAST – As reported in the paper on October 24, the board met and according to the reporter, the trees "have won a temporary reprieve from the chain saw". The issue will be discussed further at the Association's annual membership meeting in early 2002.

Needless to say, this incident has caused a great deal of disruption for the Association and their property manager. I got the impression that the reporter was looking for the Association to really challenge him; to accept the invitation to "fight". I see similarities between how the Association was portrayed by the paper and how our elected representatives perceive Associations.

The association mode of living is one that has been encouraged by state and local government for many years. The government's responsibility for streets and parks is reduced by that provided by associations. Association housing is newer and therefore will have higher average assessed valuations than single family homes, many of which still have their pre-Proposition 13 tax bases. Association members pay higher property taxes for less services. Governments provide little support for volunteer board members. Boards must rely on their professional service providers and organizations such as South Coast HOA, CAI and ECHO for the necessary information and training to fulfill their obligations to the association members.

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