

## Corporate Status Counts!

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Did you know that if an Association's corporate status is suspended, it may prevent the Association from being able to sue or defend itself in court? If the Association sues, even in small claims court when its corporate status is suspended, the Association could be sued for malicious prosecution.

Recently it seems that we have seen corporate suspensions more frequently than in the past, and some of them even appear to be errors either by the California Franchise Tax Board ("FTB") or the Secretary of State ("SOS"). A suspension typically occurs because an Association has failed to file its annual nonprofit tax return (FTB Form 100), its annual information return (FTB Form 199), its biennial corporate statement of information (SOS Form SI-100) or its biennial common interest development statement of information (SOS Form SICID). A suspension can also lead to a revocation of the Association's nonprofit tax exemption. Even an unincorporated Association could have its nonprofit status suspended for failing to file Form SI-CID.

You cannot just assume that an incorporated Association is in good standing. To be sure, you must confirm that it is in good standing. If it is not, the Association must begin immediately to correct that condition. The fastest way to check the status is to go to the SOS's website at <http://kepler.sos.ca.gov>. A search can also be done on an engine like Google or Yahoo. Try searching "California Business Search page." Once on the page that says "Business Search," follow the directions, and type in the corporate name (or corporate number, if known) in the appropriate blank. When using key words, keep in mind that the search engine will list every corporation with those words in it. So be sure to look for the exact corporate name and then click on it. If the next screen says "Active" next to "Status," most likely it is in good standing. If it says "Suspended," the Association has problems that need to be fixed. Also check to be sure that the "Agent for Service of Process" lists the correct person and address, as the Association's named agent will get notices from the SOS and the FTB intended for the Association, including the forms the Association will need to complete and return periodically to stay in good standing. The agent named there can be served with legal papers, if someone sues the Association, so the named agent must be instructed to alert the Association if that happens, and not just throw them away. If the Association does not receive the legal papers, this could result in a significant default judgment being taken against the Association. The named agent should not be a developer representative who is no

longer involved or a management company that hasn't managed the Association for several years.

If the Association sues or gets sued and then discovers that it cannot proceed or defend itself because of a suspension, there are some ways to expedite the process of lifting the suspension, but there are also additional fees required. Also, the normal process of reinstatement now can take a lot longer to proceed through the SOS's or FTB's offices due to their state's cutbacks in staffing and working hours. The process of lifting a suspension can be complicated, so be sure to contact the Association's attorney.

It is slower than the internet, but one can also check a corporate status by "snail mail." Download a Business Entities Records Order Form at [http://www.sos.ca.gov/business/pdf/be\\_ircform.pdf](http://www.sos.ca.gov/business/pdf/be_ircform.pdf). Request the "Certificate of Status" on the second page of the form. A certified copy is the only official way to confirm the Association's corporate status, but the webpage is generally correct. The form states the mailing instructions and costs for the report, certification fee, and copy options.