

Pitfalls for the Unwary

By: Jay Hansen, Esq.

This article presents an overview of select pitfalls for the unwary, including expiring CC&Rs, corporate suspensions and more. Take a few moments now to identify whether or not your association or any you manage are affected by these pitfalls. If they are, now is the time to act.

Are Your CC&Rs Expiring?

Oh, this is a bad one! If you are reading this now, and you don't know if your CC&Rs expire, or you don't know if the associations you manage have CC&Rs that expire, then you could have a problem. First you need to look. If you find that the CC&Rs do expire with no extensions, and if you are a common interest development (CID), which most associations we represent will be, look at Civil Code §1357. It provides for extending the term by a vote of more than 50% of the owners, when the CC&Rs have no provision for how to extend the termination date. Be sure you know when this hammer will fall, and be sure to act well in advance to prevent it from happening. This applies most often in Associations that were formed before 1986 and usually even earlier than that. **DON'T JUST ASSUME YOU ARE SAFE! ONCE YOUR CC&RS EXPIRE, THERE IS PROBABLY VERY LITTLE YOU CAN DO.** (See Checklist §2, #29, p. 288, in our 2011 Resource Book.)

Has Your Corporation Been Suspended?

This is not good either. Each year we are amazed at the number of associations we find whose corporation has been suspended. **WHEN YOUR CORPORATION IS SUSPENDED, THE CORPORATION HAS NO RIGHT TO SUE OR DEFEND ITSELF IN COURT UNTIL THE SUSPENSION HAS BEEN LIFTED.** This typically happens because someone failed to notify the Secretary of State that you changed your address. Most management companies know to change this and do so when they take on an association as a new client. Unfortunately, some don't. Self-managed associations may not be aware, and if an officer sells and moves away, mailings from the Secretary of State may follow that owner to Tierra del Fuego or end up in the dead letter office. Each corporation must file Form SI-100 (SI= Statement of Information) every two years before the end of the month in which it was originally incorporated. You must also file Form SI-CID at the

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10200 Willow Creek Rd., Suite 100
San Diego, California 92131
858.527.0111 • fax 858.527.1531

Coachella Valley

44-875 Deep Canyon Rd., Suite 3
Palm Desert, California 92260
760.836.1036 • fax 760.836.1040

Inland Empire

43460 Ridge Park Dr., Suite 200
Temecula, California 92590
951.461.1181 • fax 858.527.1531

same time. If you don't get the notice from the Secretary of State because of a bad mailing address, and you don't get your paperwork filed on time with the names and addresses of your officers and a name and address for an agent for service of process, the Secretary of State will suspend the corporation shortly thereafter. Note that unincorporated CIDs must also file Form SI-CID by July in each odd-numbered year. (See Checklist §2, #20, p. 286, in our 2011 Resource Book.)

Who Gets Your Common Area Tax Bills?

"What common area tax bills?" you ask. "I thought our common area was exempt from real property taxes." Generally, that is true, but it wouldn't be the first time that the Assessor made a mistake, or the developer failed to file the right paperwork to get the property designated as common area. Also, the exemption applies only to "ad valorem" taxes, *i.e.*, taxes based on assessed value. Counties may set the common area assessed value at zero, but some assess it at \$9.00, because that dollar figure is basically a code that tells the Assessor it is common area. However, there are sometimes flat annual fees, such as a "water access charge" for properties. They are often small amounts and sometimes waived by the Assessor when a tax bill is below \$20 or some other small number, but not all counties will do that all the time. If you get a small charge imposed, or there is some other mistake that hasn't been fixed, and your tax bill is still going to the developer's address, or the management company that you had 23 years ago, you may be in for a big and costly surprise when the purchaser at a tax sale shows up and demands that you pay them big bucks to get your common area back.

We are not making this up. We have had several associations that have spent thousands and even tens of thousands of dollars fighting with the Assessor, the Tax Collector and the tax sale purchasers in court to get their property back. **BE SURE YOU KNOW THE ADDRESS WHERE YOUR TAX BILLS ARE GOING, AND GET THEM CHANGED. MANAGEMENT COMPANIES, ADD THIS TO YOUR LIST OF ADDRESS CHANGES LIKE THE NOTIFICATIONS TO THE SECRETARY OF STATE WHEN YOU GET A NEW CLIENT.** (See Checklist §4, #19 and #20, p. 293, and §2, #21, p. 287, in our 2011 Resource Book.)

Do Your Liens Expire?

This isn't as bad as the CC&Rs expiring, but it's still not great. Before the Davis-Stirling Act took effect in 1986, former Civil Code §1356 provided that assessment liens expired after one year, if the debt wasn't paid, or the association didn't foreclose, but by filing an extension, the expiration could be delayed for an extra year. Older CC&Rs, and perhaps some after 1986 still have this expiration language in them, and the current statute does not state that it supersedes the old law. **IF THIS APPLIES TO YOU, BE AWARE OF THIS PROVISION. IF YOU PLAN TO AMEND YOUR CC&RS, EVEN FOR SOMETHING ENTIRELY DIFFERENT, CONSIDER AMENDING THIS PROVISION TO ELIMINATE THE ONE YEAR EXPIRATION DATE.**