

What Are Those Forms For? And Why Do We Care?

By: Kelly G. Richardson

Dear Mr. Richardson:

In reference to an article in the Real Estate Section of the Daily News dated 10/21/06 I have the following question. What Update Form must an H.O.A. file every 2 years with the Secretary of State to protect the corporate name of the H.O.A.? As far as I know our H.O.A. has never submitted an update since it organized in 1987. I have been President of the H.O.A. for the past 4 years & before that during 1995,'96 & '97 not knowing such a requirement existed. Thanking you in advance for your attention to my question.

*Best regards,
JK, San Fernando Valley*

Dear JK:

This is an important question. Yes, common interest developments (aka "HOA's") corporations must file two forms with the California Secretary of State every other year. The forms are the "SICID" and "SI-100," and can be obtained from the Secretary of State without charge on the internet at http://www.ss.ca.gov/business/corp/pdf/so/corp_so100.pdf. In fact, the website is so user-friendly now, that you can fill out the forms online, and then print them out, ready for signing and mailing. That site is http://www.ss.ca.gov/business/corp/pdf/so/corpua_cid.pdf, but can also be found by maneuvering around the website.

The SI-CID Form.

The SI-CID Form consists of eleven questions on one page. Most of the answers will not change from year to year, so it should only take a few minutes to fill out. The filing fee is only \$15. The SI-100 Form. The SI-100 Form also is one page in length, but consists of twelve questions which need answering. This form asks for the name of the

corporation, the name of its officers, its agent for service of process (i.e. legal papers) and its managing agent. The information on this form will of course change from time to time, but still should only take a few minutes to complete. The filing fee for this is \$20.

"Official" Filing Services

There are a number of businesses who send out official looking notices that use a Sacramento or Los Angeles address and appear to be quite governmental. They will tell your association that it is important to file the corporate forms, or serious consequences could result. And, for something you can do yourself for a total of \$35 plus postage, they'll have you fill out the forms and then they will file them for you in Sacramento...for a fee from \$75 to even more than a hundred dollars. If you want someone to charge your association two to three times the actual state filing cost, just so they can mail it instead of you, then go ahead and pay. But know that you don't have to, and that if you read their "notices" carefully, somewhere you will see a fine print disclosure that these "services" are in fact not connected with the state government at all.

Check Your (Association's) Corporate Status

It is very easy to check if your Association is current. The Secretary of State website is <http://kepler.ss.ca.gov/list.html>. From there, input the parts of your association's name that you are sure are correct. You should find your association listed, as well as its status. Many associations for years do not use the legally correct name of their association, but it is easy to find on this web site (as well as in the association Bylaws). Is the agent for service of process listed on the

web site correct? If not, you need to file updated forms soon.

The Unpleasant Consequences of Not Filing

After an incorporated association is delinquent on filing these forms, they will be suspended. In the eyes of the law, this means the corporation does not exist. There are some very important and unhappy results of this, until it is corrected.

When Your Name Is No Longer Your Own

If an incorporated association is suspended by the Secretary of State, its corporate name is unprotected. This means anyone else who is applying for a corporate name and that happens to pick your association's exact name will get that name if your association's corporate rights are suspended. Once that happens, your association will need to change its name...something that is hard to explain to your members.

Your Association Is Out of Order

Corporations that are suspended cannot appear in court. Under the law, they are not citizens while suspended. The suspended corporation cannot pursue a lawsuit, and cannot defend itself from lawsuits. There is nothing more unpleasant than finding out in the middle of the lawsuit that your association client is suspended. As a result, we customarily check the corporate status of all new client associations... we would prefer not to have that nasty surprise.

You Do Not Need Me (Lawyers) For This

Filling out these forms is neither difficult nor expensive. While you certainly could pay your lawyer, manager or accountant to do this, it is not necessary. Even if your association has become suspended, with a little work you can get your association reinstated. Of course, many boards would rather pay someone else to do it, so the managers and accountants often take care of this for their association clients.

Are We Incorporated?

Many older associations were never incorporated. It is easy to determine if your association is incorporated. Check your Bylaws and your CC&R's. One or both of

those governing documents will usually refer to your association as either incorporated or unincorporated. Also, double check the name. A minor discrepancy in the name used commonly by your association may make it harder to find in the Secretary of State web site, if at all. So input the correct name, and you'll get the correct information. Finally, don't be surprised if there are other associations with very similar names to yours... but I am sure those others don't hold a candle to yours.

Hope this helps, and good luck.

Kelly G. Richardson, Esq.

© All Rights Reserved