

## **Sonoran Sea Homeowner's Meeting – October 3, 2009**

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Jim DesRochers called the meeting to order at 4:27pm. Board members in attendance: Roman Candeleria, Mike Feibus, Rod Herbert, Elaine Landry, Gregg Olsen, Peter Stuvan. Absentees: Renee Sheffield and outgoing board member Fritz Berhorst.

The meeting began with Sonoran Spa HOA administrator Rolando Rojas presenting the report for the storage units, only to Sea owners who have storage units. Roman informed storage owners that the Spa storage owners voted at their general meeting to have storage garage doors painted. The project would involve a \$40 assessment per storage unit. Sea owners also approved the project, with one storage owner dissenting. Storage unit owners should drop off their storage key with Rolando at the Spa HOA office along with a check for \$40.

### **Rental Agency Update:**

Jim reported that all rental checks for August activity – typically due toward the end of September – have now been delivered. HOA dues from RPR also are now paid up. Several owners voiced dissatisfaction with RPR, both with regard to marketing efforts as well as slow delivery of rental checks. Jim informed owners that the board has been investigating proposals from alternative rental agencies, but as yet has not come across anyone the board feels is in a financial position to take on the job. Marni Allen, the owner of 612E, said she is willing to work to investigate other options, and also is willing to work with the board and RPR to improve marketing efforts.

With regard to marketing and publicity, Jim disclosed that an NBC film crew will be in Rocky Point for a week producing a spot on the town for *Arizona Midday*. The film crew will be staying at the Sonoran Sea, and using it as a base for the production. Several owners have offered up their condos to support the effort. The production is being funded in large part by Mary Snyder and Miguel Guevara, who developed the Sonoran Sea.

### **Restaurant Update:**

Ricardo Sanchez and Mercedes Herrera of 705E, who own a restaurant in California, have taken over the restaurant, aqua bar and snack shack at the Sea. The aqua bar and snack shack are actually owned by Ricardo. The Sea HOA owns the restaurant, and recently signed a new lease with them. The board is making some concessions in rent over the short term to help the new owners succeed.

### **Trust Information:**

Elaine reported that there has been some confusion as to whether Fideicomisos, the trust vehicle Americans use to hold property in Mexico, falls under the IRS' voluntary disclosure program (VDP) of offshore trusts. According to Elaine's investigation, the IRS has not excluded Fideicomisos from the program, so owners have until October 15, 2009 to contact VDP and initiate the filing of Forms 3520 and 3520A. Elaine prepared a document summarizing her findings, which is attached. Owners are advised to contact their accountants and lawyers for how to handle their individual situations. Note that this issue concerns only owners who actually hold claim to their condo. Owners with developer financing – or any other type of loan instrument – and do not hold a trust on their condos should not concern themselves with the issue at this time.

### **Financial Update:**

Rod reported that as of August 31, 2009, the HOA's income year-to-date is nearly \$156,000 short of what was budgeted. There are several factors causing the shortfall to budget, including delinquent HOA dues as well as dramatically lower impact fees due to the drop in rentals.

Expenses are nearly \$46,000 lower than budgeted – this despite individual expenses that were far higher than budgeted. A few examples: painting was nearly \$31,000 over budget, and Costa Diamante fees were nearly \$15,000 higher than budget. Transportation – due primarily to repairs on the HOA's aging van – were nearly \$4,000 over budget. Rod praised Carlos for tightly managing the costs that are more in his control, and credited him with keeping overall expenses under budget.

In summary, Rod reported that the HOA is about \$110,000 short of where we wanted to be. Our goals were to bring the emergency fund back up to appropriate levels after depleting them due to CY2008 project over-runs. Delinquencies were a bit more than \$63,000 as of August 31, though they have been lowered some since.

Jim reported that if expenses, inflows as well as the dollar-to-peso exchange rate continued on trend, he did not expect a need to raise HOA dues in CY2010.

**Maintenance Update:**

Roman reminded owners who have not yet changed out the water valves in their condos to have them done. He also reminded owners to take advantage of the program the HOA set up to exchange water heaters. Contact Carlos for more information.

Roman reported on upcoming maintenance projects, including: the pool deck, which will be acid-washed and sealed; deteriorated canterra stones, which will be replaced. The waterfall façade is deteriorating, but it remains structurally sound – which is good news. The pool will be drained for repairs and maintenance on the aqua bar. This will happen after the NBC film crew leaves.

Individual condo security screen doors increasingly are in need of repair. He has a quote of \$60 per door. Contact Carlos to have yours repaired.

Roman discussed developing plans for adding a vestibule entryway to the restaurant from the ocean side to protect against the wind, just as the Spa has done with its lobby. East building hallways need work, and will be repaired. Umbrella stands are rusting. He got quotes for making concrete stands that are lower than quotes he received to rust-treat and paint the existing ones - so we're having the new ones made. Also replacing the UV filter –the supplier owns a condo at the Sea, is providing the filter to us at cost.

As mentioned in the financial report, Roman discussed the deteriorating condition of the HOA's van, and more expenses are coming. As a result, the HOA is investigating purchasing a new van.

Roman expressed disappointment with the quality of the rail painting, and said that we would need to re-paint.

After yet another complaint as to the condition of the tennis court, Jim stated that the HOA will include repairing it in the 2010 budget.

Owners requested more TV stations, both in English and in Spanish. Another request is to replace the condo front doors with real wood doors. Jim stated that Carlos will investigate costs for both. Another request was to raise the temperature of the adult spa to hot tub-level temps, and see that security keeps children out of the adult spa. Jim said that the HOA would respond to the requests.

Jim announced that effective October 4, 2009, dogs would not be allowed on the grass. Owners must walk their dogs on the deck paths straight to the beach, or in the dog-walk areas on the parking lot side of the complex.

Jim also reported that the HOA now officially owns the phone system, and is working on several enhancements, including free calls to the US. Phones will also be installed in the restaurant and aqua bar so owners and renters can call down for food. The HOA is also working on better WiFi service, as well.

**Other:**

Jim reported that Fritz Behrhorst, the west building representative, has resigned from the board. As there were no board-member elections listed on the agenda, Jim appointed Mike Russo, 1005W and 112W, as his interim replacement pending election to the board at the next general meeting, typically held in the first quarter of the new year.

Jim also noted that there are two other long-time board members who would eventually like to be replaced. He asked for volunteers with a) financial/accounting skills and b) technology/communications skills to come forward.

Jim adjourned at 6:05pm

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To follow is the document Elaine prepared based on her findings regarding Mexican property trusts and IRS requirements for disclosure, as mentioned above. Remember: you are advised to consult your attorney and/or account for direction on this issue.

## MEXICAN TRUST (FIDEICOMISO) AND IRS REQUIREMENT FOR FOREIGN TRUSTS

### Voluntary Disclosure Program (VDP) waives 20% offshore penalty fee if entered by Oct.15<sup>th</sup> 2009

See bottom of document for quick procedures to enter the Voluntary Disclosure Program by Oct. 15<sup>th</sup>\*\*

The confusion over IRS Form 3520 and whether it relates to condos held in Mexico has been raging for the past few years.

The IRS has now declared that holders of a **FIDEICOMISO** must file Form 3520 and 3520A. As the US government seeks additional tax revenue they are stepping up investigation into such things as foreign holdings. They can access lists of Fideicomiso holders and , after October 15<sup>th</sup>, if they discover that a 3520 has not been filed, the owner will be subject to substantial penalties.

A taxpayer who has failed to file tax information returns, such as a Form 3520 for foreign trusts but who has reported and paid tax on all their taxable income with respect to all transactions related to the foreign trusts, should file delinquent information returns with the appropriate service center according to the instructions for the form and attach a statement explaining why the information returns are filed late.

Federal Forms 3520 and 3520A must be filed starting in the year the trust was issued . Include a copy of your Purchase Agreement, Trust and Schedule E , if applicable. Waiver applies to a maximum six-year period from 2003-2008.

Form 3520 is required to be filed (perhaps annually, but not clear) by US owners of a foreign trust to report transactions.

Form 3520A is required to be filed annually by foreign trusts with US owners.

Taxpayers who have a Fideicomiso (Trust) need to come in through the VDP program to qualify for the reduced penalties. Especially if there has been no tax non-compliance, the 20 percent offshore penalty would not apply to those assets. They only need to identify themselves to the IRS and they can get the correct forms filed shortly thereafter. They need to identify themselves by October 15, 2009.

If the taxpayer owns non income producing property in the taxpayer's own name, there has been no U.S. taxable event and no reporting obligation to disclose. The taxpayer will be required to report any current income from the property or gain from its sale or other disposition at such time in the future as the income is realized. Because there has as yet been no tax noncompliance, the 20 percent offshore penalty would not apply to those assets. If the foreign assets were held in the name of an entity such as a trust or corporation, there would have been an information return filing obligation that may need to be disclosed.

A taxpayer could file just file the delinquent returns, but coming through the program will allow the reduction of the penalty.

NOTE : Any tax return not filed during the previous 6-year period that was otherwise required to be filed by law, must be filed by the taxpayer. In addition, any inaccurate returns for any of the 6 years must be amended by the taxpayer. You may want to contact your attorney and/or accountant regarding this situation.

### \*\* VDP Program

**Step 1** Contact your local IRS-Criminal Investigation Office

<http://www.irs.gov/compliance/enforcement/article/0,,id=205909,00.html> By October 15<sup>th</sup>.

Provide CI with your name, address, social security number and date birth. (CI will run preliminary checks to ensure that the taxpayer qualifies for program)

When the taxpayer clears the initial checks, CI will contact the taxpayer and asked for the "optional letter".

**Step 2** Complete and sign the optional letter with original signature <http://www.irs.gov/pub/foia/ig/ci/ltr-voluntary-disclosure-option-format-20090729.doc> Send completed letter to local IRS-CI Office. Once the CI completes the evaluation, it will be forwarded for processing. An examining agent will contact the taxpayer to complete the process. [Link to Frequently Asked Questions on Voluntary Disclosure](#) <http://www.irs.gov/newsroom/article/0,,id=210027,00.html>

***The IRS expects taxpayers to seek qualified legal advice and representation in connection with considering and making a voluntary disclosure. If a taxpayer seeks the advice of a tax practitioner but nonetheless decides not to make a voluntary disclosure despite the taxpayer's noncompliance with United States tax laws, Circular 230, section 10.21, requires the practitioner to advise the client of the fact of the client's noncompliance and the consequences of the client's noncompliance as provided under the Code and regulations.***