

**NEW CALIFORNIA LEGISLATION AFFECTING
COMMUNITY ASSOCIATIONS**

1. Director Attendance of Meetings via Technology;
Stats 1997 Ch. 136 (Assembly Bill No. 389; Cunneen)

This bill re-instates and partially amends Corporations Code Section 7211's provisions regarding director participation in board meetings by electronic means. The previous provisions expire by their own terms on January 1, 1998. As amended, Section 7211(a)(6) provides that, *unless the corporation's articles of incorporation or bylaws provide otherwise*, a director can participate in a board meeting via conference telephone, electronic video screen communications, or other communications equipment. A director who participates in a meeting by conference telephone is deemed to be present in person at the meeting as long as all directors participating in the meeting are able to hear one another. A director who participates in a meeting by electronic video screen communication or other communications equipment (other than conference telephone) is deemed to be present in person at the meeting if:

- (a) each director present can communicate with all of the other participating directors concurrently;
- (b) each director is provided the means of participating in all matters before the board, including the capacity to propose, or to object to, a specific action to be taken by the corporation; and
- (c) the corporation adopts and implements a means of verifying both:
 - (i) that a person participating in a meeting is either a director or other person entitled to participate in the meeting; and
 - (ii) all actions of, or votes by, the board are taken or cast only by the directors, and not by persons who are not directors.

OBSERVATION: Before getting caught up in the ability to hold meetings via technology, bear in mind that community association board meetings must be conducted in accordance with the Common Interest Development Open Meeting Act (Civil Code Section 1363.05), which entitles association members to receive notice of, attend and speak at board meetings (other than executive sessions or emergency meetings). It is unclear how these two code sections interact.

However, at a minimum, it would seem that for a conference call, at least one director should be on a speaker phone at a physical location open to interested members. Video conferencing may be more problematic. As technology changes, more solutions and additional issues will undoubtedly arise in the interaction of these code sections.

2. **Recordation of Identifying Statement;**
Stats 1997 Ch. 182 (Assembly Bill No. 1025; Torlakson)

This Bill adds Section 1363.6 to the California Civil Code. Section 1363.6 authorizes an association's board of directors to record in the county recorder's office a statement (or amended statement) identifying relevant information for the association, including any or all of the following:

- (a) The association's name;
- (b) The name, address and daytime telephone number of the association's managing agent, treasurer or other individual or entity authorized to receive assessments and fees;
- (c) A list of the separate interests subject to assessment by the association, identified by assessor's parcel number, legal description, or both;
- (d) The recording information for the declaration; and
- (e) If an amended statement is being recorded, the recording information for the prior statement or statements which the amendment is superseding.

The county recorder can charge its regular per-page recording fee for recording such a statement.

OBSERVATION: This bill is a watered-down version of a bill backed by the escrow industry. In its original form, the bill would have made recordation of the statement described above *mandatory*; in its chaptered form, the bill makes such recordation optional. The bill's purpose is to make it easier for an escrow agent handling the sale of a separate interest in a common interest development to contact the manager or other person responsible for collecting assessments to find out whether the association is owed any money by the seller. Associations who have had trouble collecting amounts owing from selling homeowners, and particularly associations with many assessment delinquencies, should consider recording the statement authorized by Section 1363.6.

3. **Management Professionals; Construction Defects;**
Stats 1997 Ch. 632 (Assembly Bill No. 76; Miller)

(A) **Management Professionals**

This bill re-instates provisions of the Davis-Stirling Common Interest Development Act relating to management company disclosures to an association's board of directors. The previous provisions expired by their own terms on January 1, 1997. In its re-instated form, Civil Code Section 1363.1 requires a management company to disclose in writing the following information about itself to an association's board of directors as soon as practicable (but not more than ninety (90) days) before entering into a management agreement:

(1) Names and business addresses of the owners or general partners (if the management company is a corporation, the statement must include names and business addresses of the directors, officers, and all shareholders holding greater than a ten percent (10%) interest in the corporation).

(2) Whether any relevant licenses (e.g., architectural design, construction, engineering, real estate or accounting) have been issued by the state and are currently held by the persons specified in (1) above. If a license is held, the statement must identify (i) what license is held, (ii) the dates the license is valid, and (iii) the name of the licensee appearing on the license.

(3) Whether any relevant professional certifications or designations (e.g., architectural design, construction, engineering, real property management, or accounting) are currently held by the persons specified in (1) above. If a certification or designation is held, the statement must identify (i) what certification or designation is held, and what entity issued it, (ii) the dates the certification or designation is valid, and (iii) the names in which the certification or designation is held.

(B) **Construction Defects**

With respect to construction defects, the bill does a number of things. First, it amends Civil Code Section 1368 to add to the information the seller of a residence in a common interest development must provide to a prospective purchaser. As amended, Section 1368 requires the seller to provide to the prospective purchaser a copy of the preliminary list of defects provided to the member pursuant to the Calderon legislation (Civil Code Section 1375), unless the association and builder have entered into a settlement agreement or otherwise resolved the matter, in which case the seller must disclose the information described in new Section 1375.1.

New Section 1375.1 requires an association to inform its record members as soon as reasonably practicable after the association and builder have entered into a settlement agreement or otherwise resolved a construction defect matter of the following:

(1) A general description of the defects that the association reasonably believes, as of the date of the disclosure, will be corrected or replaced.

(2) A good faith estimate, as of the date of the disclosure, of when the association believes the defects identified in (1) above will be corrected or replaced (the association may state that the estimate may be modified).

(3) The status of the claims for design or construction defects that were not identified in (1) above as defects that will be corrected or replaced.

For purposes of Section 1375.1, "defects" also includes damages resulting from defects.

Finally with respect to construction defects, the bill amends Section 1375 (the Calderon legislation) to add to the list of information the association must disclose to members if the association's board of directors rejects a settlement offer from the builder. Section 1375 requires the association to hold a meeting of members prior to commencing a construction defect action. As amended, Section 1375(g)(1)(B)(ii) now requires the notice of this meeting to include a statement of the various alternatives reasonably foreseeable by the association to pay for the various options available to address the defects, and whether the payments are expected to be made from reserve accounts, from the imposition of regular or special assessments, or from emergency assessment increases.

**4. Pool Safety;
Stats 1997 Ch. 913 (Senate Bill No. 873; Vasconcellos)**

This bill adds new sections to the California Health and Safety Code regarding pool safety. New Section 116049.1 requires that all "public swimming pools" (broadly defined to include community pools in a common interest development) (a) have ground-fault circuit interrupters in the branch circuit for (i) all dry-niche light fixtures and (ii) all underwater wet-niche light fixtures operating at more than fifteen (15) watts, and (b) have encapsulated terminals for all light fixtures. If these requirements are not satisfied as of January 1, 1998, the pool must be retrofitted to comply by July 1, 1998, and the pool's owner or operator must have the pool inspected by a qualified inspector on or before September 1, 1998, to verify compliance with these requirements. All electrical work required to comply with new Section 116049.1 must be performed by a licensed electrician.

The bill also adds new Section 116064, which applies to "public wading pools" (broadly defined to include community pools in a common interest development with a maximum water depth of eighteen inches (18")). The bill imposes certain safety requirements related to circulation drains and other items in order to prevent physical entrapment or suction injury. Specifically, public wading pools will have to have at least two (2) circulation drains per pump

that are hydraulically balanced and symmetrically plumbed through one (1) or more "T" fittings, and are separated by a distance of at least three feet (3'). Main drain suction outlets must be covered with grates or antivortex plates that cannot be removed without the use of tools; if a main drain suction outlet is less than twelve inches (12") across, it must be covered with antivortex grates or similar protective devices. Also, the maximum velocity in the pump suction hydraulic system may not exceed six feet (6') per second when one hundred percent (100%) of the pump's flow comes from the main drain system and any main drain suction fitting in the system is completely blocked.

All public wading pools constructed on or after January 1, 1998, must comply with the new requirements. Commencing on January 1, 1998, whenever a construction permit for alteration of a public wading pool is issued, the pool must be retrofitted to comply with the bill. Finally, the bill requires that all public wading pools, regardless of original construction date, be retrofitted to comply with Section 116064 by January 1, 2000.

OBSERVATION: If an association's swimming pool does not already comply with the requirements of new Health and Safety Code Section 116049.1, the association should make sure that retrofitting is completed by July 1, 1998, and that the required inspection takes place by September 1, 1998.

Unless an association's wading pool is being otherwise altered, the required retrofitting need not be accomplished until January 1, 2000. However, if complying with some (or all) of the new requirements is not onerous (e.g., installation of grates or other protective devices over suction outlets), it is probably better to comply sooner rather than later. If an injury occurs that would likely have been prevented if the wading pool satisfied the new requirements, a plaintiff may attempt to use noncompliance with the requirements (even though they may not apply until January 1, 2000) as evidence of negligence. In any event, associations should be sure to complete all necessary retrofitting before the deadline.

Please note that the foregoing list is not exhaustive. These are the bills which have been chaptered which we believe have the greatest impact on common interest developments.