



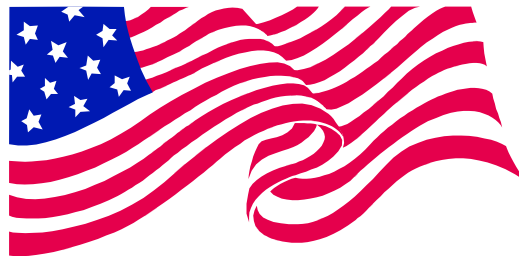
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*Recent Updates and Impacts on Association Law*

**August 2002**

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The California legislature recently enacted two bills affecting homeowners associations. The two bills are discussed below.

**The Flag Bill (effective January 1, 2003)**


Senate Bill 2032, codified in California Civil Code Section 1353.5, appears to be an attempt to broaden owners' rights to display the American flag. In reality, it does little to expand the rights currently afforded owners under Government Code Section 434.5. Under new Civil Code Section 1353.5, an association's governing documents may not prohibit or limit, or be construed to limit or prohibit, the display of the United States flag by an owner in or on an owner's separate interest or exclusive use common area. The statute carves out an exception for the protection of the public health and safety (*e.g.*, if the display of the flag on the owner's property impedes traffic).

"Display of the flag," as defined in Civil Code Section 1353.5, includes United States flags made of fabric, cloth, or paper displayed from a staff or pole or in a window. The statute also provides that if an owner prevails in an action to enforce his rights under Civil Code Section 1353.5, he is entitled to recover his costs and attorneys fees.

It is interesting to note that under existing Government Code Section 434.5, owners already had a right to display the flag on their private property, and while reasonable restrictions as to time, place and manner of display were allowed, such restrictions had to relate to preservation of public health, safety or order and could not be based on aesthetics. Thus, the only real "broadening" of the existing rights was to expand "private property" to specifically include exclusive use common area. However, in the context of an attached condominium building, the exterior of the building is generally not defined as "separate interest" or "exclusive use common area." Applying the literal meaning of the new statute, an association could prohibit an owner from displaying a flag on a pole attached to the outside of his unit. However, under Government Code Section 434.5, if the owners own the common area as tenants in common, the exterior of the building may be deemed "private property," as the owner owns an undivided interest in the building. Accordingly, the owner's rights may be broader under Government Code Section 434.5!

## Executive Session/Minutes (effective January 1, 2003)

California Civil Code Section 1363.05, known as the Common Interest Development Open Meeting Act, already mandates that any matter that is discussed in executive session must be generally noted in the minutes of the board of directors. The legislature has now amended Civil Code Section 1363.05(c) to clarify *when* such information must be noted in the minutes. Section 1363.05(c) now reads as follows: “Any matter discussed in executive session shall be generally noted in the minutes of the *immediately following meeting open to the entire membership.*” Accordingly, if executive session takes place (a) immediately prior to a Board meeting or (b) in the middle of a Board meeting (*i.e.*, the Board adjourns into executive session for a permissible purpose), then the minutes of that Board meeting must state that the Board met in executive session and “generally note” matters that were discussed. If the Board meets in executive session after the regular Board meeting, then the executive session matters would be generally noted in the next Board meeting’s minutes (one month later).

We will keep you apprised of other legislation and case law impacting community associations. Please call our office with any questions you may have regarding these matters. 

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