

## **NEW CALIFORNIA COMMUNITY ASSOCIATION LEGISLATION**

### **1. Towing; Stats 2006 Ch. 609 (AB 2210; Goldberg)**

This bill repeals Section 22658.2 of the California Vehicle Code, regarding towing of vehicles from common interest developments. The old familiar rules regarding towing of vehicles have been deleted or modified and moved into other sections of the Vehicle Code.

Under newly amended Vehicle Code Section 22658, an association can cause the removal of a vehicle under *any* of the following circumstances:

(1) A sign is posted in plain view at each entrance to the property, at least seventeen (17) inches x twenty-two (22) inches in size, with lettering at least one (1) inch in height, (a) prohibiting public parking, (b) indicating that violating vehicles will be removed at the owner's expense, and (c) containing the telephone number of the local traffic law enforcement agency *and the name and telephone number of each towing company that is a party to a written general towing authorization agreement with the association* (the italicized requirement is a change from the previous signage requirement of old Vehicle Code Section 22658.2). The sign may also indicate that a citation may be issued for the violation.

(2) The vehicle has been issued a notice of parking violation, and ninety-six (96) hours have elapsed since the issuance of the notice.

(3) The vehicle is on private property and lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment necessary to operate safely on the highways, the association has notified the local traffic law enforcement agency, and twenty-four (24) hours have elapsed since that notification.

(4) The lot or parcel upon which the vehicle is parked is improved with a single-family dwelling.

The statute prohibits a tow truck operator from removing a vehicle without first obtaining written authorization from the association, or an employee or agent of the association, who must be present at the time of the tow and verify the alleged violation. However, the person who is required to be present at the time of the tow does not have to be physically present at the specified location of the vehicle that is to be towed. The written authorization must include (a) the make, model, VIN and license plate number of the vehicle that is to be removed, (b) the name, signature, job title, residential or business address and working telephone number of the person who authorizes removing the vehicle, (c) the grounds for removal of the vehicle, (d) the time when the vehicle was first observed parked at the private property, and (e) the time that authorization to tow the vehicle was given. Failure to comply with this requirement can lead to imposition of a \$1,000 fine on an association.

The association is liable to the owner of the towed vehicle for double the storage or towing charges whenever there is a failure to comply with Items (1), (2) or (3) above, or a failure to state the grounds for removal of the vehicle if requested by the vehicle owner. The vehicle owner can also recover damages to the vehicle resulting from the intentional or negligent act of a person removing (*i.e.*, the tow truck operator), or causing the removal (*i.e.*, the association), of the vehicle.

The association is required to notify the local traffic law enforcement agency of removal of a vehicle within one (1) hour of the tow, by telephone or, if impractical, by the most expeditious means available.

The tow truck operator removing the vehicle is required to give various notifications to the owner of the towed vehicle and the owner of the storage facility to which the vehicle is towed.

Note that an association may give a towing company general authorization to remove a vehicle at the towing company's discretion if the vehicle is (a) unlawfully parked within fifteen (15) feet of a fire hydrant, (b) in a fire lane, or (c) in a manner which interferes with an entrance to, or exit from, the community (note that unauthorized parking in a handicapped parking space is not included as part of this list). For these types of tows, an association representative need not be present at the time of the tow to verify a violation.

**Comment:** As a practical matter, this bill could mean the end of towing of vehicles that are parked in violation of an association's rules. As noted above, an association can generally authorize a towing company to remove vehicles for fire hydrant, fire lane or interfering with "entry to or exit from" violations (note that associations will have to appropriately modify their signage and their agreements with tow truck operators), but the fact that an association employee or agent (presumably including association directors and the manager; it is unclear whether a patrol service vendor's personnel would qualify as an "agent") must be present at the time of other tows to verify the violation may make it impractical to have vehicles that violate other association parking rules towed, especially if the tow would be occurring at odd hours--what association director or manager wants to be outdoors at 2:00 a.m. in January to authorize a tow? Further, although the bill specifies the circumstances when a vehicle can be towed, it is unclear

what the specified circumstances mean. For example, the requirement that a sign be posted for some tows does not specify what the vehicle has to be doing in order to be subject to tow. Old Vehicle Code Section 22658.2 was written in a way that suggested that vehicles parked in violation of an association's CC&R's or rules could be towed, but the language in new Section 22658 is different and could be interpreted so as only to permit towing of vehicles that violate the statute's "no public parking" prohibition, *i.e.*, it is possible that a resident who parks in a manner that violates an association's CC&R's or rules might not be subject to tow because such parking by a resident is presumably not "public parking." If this is how the new statute is applied, then an association would be limited to its typical enforcement options (usually fining and suspension of association voting privileges and recreational facility use privileges). It may therefore be advisable for associations with parking issues to revise their fine schedules to provide for higher fines for parking violations, as towing may no longer be a practical means of addressing parking problems.

**2. Water Conservation; Stats 2006 Ch. 559 (AB 1881; Laird)**

This bill adds new Section 1353.8 to the California Civil Code. Section 1353.8, in its entirety, reads as follows: "The architectural guidelines of a common interest development shall not prohibit or include conditions that have the effect of prohibiting the use of low water-using plants as a group."

**Comment:** Because of this bill, (a) those associations that have adopted plant palettes listing the types of plant material that owners can plant on their property will have to ensure that their plant palettes include some drought tolerant species (note that, if a plant palette must be amended to add some drought tolerant species, an association need not go through the thirty (30) day member notice and comment period of Civil Code Section 1357.130 because such an amendment would be required by law, and is therefore exempt from the thirty (30) day notice and comment period pursuant to Civil Code Section 1357.120(b)(4)), and (b) an owner who submits an architectural/landscape application must be allowed to install some drought tolerant plant material (although not necessarily the species of plant material set forth on the application; the association could deny approval for the particular species the owner wishes to install if such denial is otherwise appropriate based on the relevant criteria for that association, but the association should be prepared to suggest some alternative drought tolerant species that would be appropriate for the community and that owner's proposal).

**3. Reserve Funding; Stats 2006 Ch. 188 (AB 2100; Laird)**

This bill amends various sections of the Davis-Stirling Common Interest Development Act related to reserve funding and disclosures about reserves.

First, as part of the reserves summary that forms part of an association's budget, the association will have to include (a) the current deficiency in reserve funding on a per unit basis (if assessments are variable instead of pro rata, then the association is required to calculate the deficiency in a manner that reflects the variation), (b) whether the association's board of directors has determined to defer or not undertake repairs or replacement of any major component with a remaining life of thirty (30) years or less, including a justification for the deferral or decision not to undertake the repairs or replacement, and (c) whether the association has any outstanding loans with an original term of more than one (1) year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired.

Second, an association's reserve study must include a reserve funding plan that indicates how the association plans to fund the annual contribution called for in the reserve study as necessary to defray the cost to repair and replace all major components with an expected remaining life of thirty (30) years or less. The plan must be adopted by the board at an open meeting. Any assessment increase necessary to fund the reserve funding plan must be approved in a separate action consistent with the assessment limitations of Civil Code Section 1366. Commencing on January 1, 2009, a summary of the reserve funding plan adopted by the board of directors must be distributed to members, and must include notice that the full reserve study plan is available from the association upon request (the statute does not specify a timeframe for providing the summary).

Third, the assessment and reserve funding disclosure summary form provided for in Civil Code Section 1365.2.5 is revised to require additional information generally requiring additional projections regarding the status of the association's reserves five (5) years into the future.

Finally, the bill adds new Civil Code Section 1365.6 to make the disclosure and approval requirements for transactions between an association and any of its directors applicable to associations regardless of whether they are incorporated entities.

**4. Small Claims Court; Stats 2006 Ch. 167 (AB 2618; Berg)**

This bill amends Civil Code Section 1369.520, relating to the requirement that prohibits an association or any association member from filing certain lawsuits unless such party first offers to resolve the dispute via alternative dispute resolution. Prior to January 1, 2007, alternative dispute resolution must be offered if the type of relief the party is seeking is declaratory relief, injunctive relief, or writ relief, or any of the foregoing coupled with a claim for monetary damages not exceeding \$5,000. The bill replaces the \$5,000 limit with a reference to the jurisdictional limits for small claims court, which are currently \$7,500 if the claimant is a natural person, and \$5,000 otherwise.

**5. Defibrillators; Stats 2006 Ch. 431 (AB 1507; Pavley)**

This bill adds Section 104113 to the California Health and Safety Code.

Pursuant to this bill, commencing on July 1, 2007, and until July 1, 2012, every “health studio” (as defined) is required to (a) acquire an automatic external defibrillator, and (b) maintain, and train personnel in the use of, any automatic external defibrillator that the health studio acquires pursuant to (a) above. After July 1, 2012, any “health studio” that continues the installation of a defibrillator acquired pursuant to (a) above is required to maintain and train personnel in use of the defibrillator, and is not liable for civil damages resulting from the use, attempted use, or nonuse of the defibrillator.

An employee of a “health studio” who renders emergency care or treatment is not liable for civil damages resulting from the use, attempted use or nonuse of the defibrillator except in the case of personal injury or wrongful death resulting from gross negligence or willful or wanton misconduct or malicious failure to use an automatic external defibrillator. The “members of the board of directors of the facility” and “owners, managers, employees, or otherwise responsible authorities of the facility” enjoy the same immunity from civil damages liability except in the case of personal injury or wrongful death resulting from an employee’s gross negligence or willful or wanton misconduct or malicious failure to use the defibrillator.

The important issue is whether this bill applies to associations. For purposes of the bill, “health studio” is defined as “any facility permitting the use of its facilities and equipment or access to its facilities and equipment, to individuals or groups for physical exercise, body building, reducing, figure development, fitness training, or any other similar purpose, *on a membership basis.*” (emphasis added) Note that a hotel or similar business that offers fitness facilities to its registered guests for a fee or as part of the hotel charges is expressly excluded from the definition of “health studio.” Since an association’s swimming pool, sports courts, workout room and fitness equipment are generally only available to its members, it is possible that the italicized language makes such an association a “health studio” subject to the bill’s requirements.

**6. Election Procedures, Disclosures; Stats 2006 Ch. 310 (SB 1560 Battin)**

This bill is the cleanup legislation to last year’s SB 61, intended to resolve some of the uncertainties created by SB 61. Specifically, the bill (a) allows the inspector(s) of election to appoint and oversee additional independent third parties to verify signatures and count and tabulate ballots, (b) clarifies that a ballot received by the inspector(s) of election is to be treated as a member present for quorum purposes, (c) defines proxies for purposes of the statutory voting procedures, (d) clarifies that the statute does not require an association to prepare or distribute proxies, (e) clarifies that a member need only indicate, rather than handwrite, the property address in the upper left hand corner of the outer ballot return envelope (the member’s signature is still required), (f) deletes the requirement that a member provide the lot, parcel or unit number of the property in the upper left hand corner of the outer ballot return envelope, (g) authorizes the inspector(s) of election (or their designees) to verify member information and signature on the outer ballot return envelope before the meeting at which the ballots are

tabulated, (h) provides that ballots are irrevocable once received by the inspector(s) of election, (i) provides that the ballots are to be kept in the custody of the inspector(s) of election until the time allowed by Corporations Code Section 7527 for challenging the election (currently nine (9) months) has expired, after which time the ballots are to be stored by the association in a secure place for no less than one (1) year after the date of the election, and (j) clarifies that the procedures of Civil Code Section 1363.03 apply to votes cast directly by members, and not to voting by delegates.

The bill also made certain technical changes to the disclosure requirements of Civil Code Section 1365.2.

The bill was effective immediately, and retroactive to July 1, 2006.

**7. Nonjudicial Foreclosure; Stats 2006 Ch. 575 (AB 2624; Houston)**

This bill amends various sections of the Davis-Stirling Act dealing with nonjudicial foreclosure to (a) include the costs of service of either a notice of default or the decision by the association's board of directors to foreclose on the owner's property in the amounts that the trustee conducting a nonjudicial foreclosure can collect from a delinquent owner; (b) provide that the "owner's representative" on whom a notice of default is required to be served is the person whose name is shown on the association's records as the owner of the property, unless the owner has designated someone else in writing and mailed to the association "in a manner that indicates the association has received it" (presumably either registered or certified mail, with return receipt); and (c) require that a notice of sale include a statement that the property is being sold subject to a right of redemption.