

CommonINTERESTS

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It's that time of year again, when we take stock of new statutes adopted by the Legislature and signed by the Governor. Here's a look at those successful bills impacting the homeowner association industry that will take effect on January 1, 2012.

1. Board Meetings; Stats 2011 Ch. 257 (SB 563; Committee on Transportation and Housing)

This bill makes several changes to the Davis-Stirling Common Interest Development Act that will make it more difficult for associations to operate:

- The bill prohibits boards of directors from taking action outside of a meeting (so, no more "actions by board of directors taken outside a meeting by unanimous written consent"). This will make things more difficult for associations whose boards meet less frequently than monthly (*e.g.*, vacation home communities or associations that have little other than routine matters to handle); emergency meetings of the board can, however, be conducted via electronic transmission (*e.g.*, online chat or e-mail) if *all* directors consent in writing to conducting a meeting in that fashion, and if the written consent or consents are filed with the minutes of that meeting.

- The bill implicitly authorizes boards of directors to delegate actions within its authority to others, including committees of the board, association officers, and management agents. It is unclear, however, whether management agents will be comfortable exercising such authority.

- The bill makes it more burdensome for boards to conduct meetings via conference call by requiring that at least one physical location be identified at which association members would be able to attend the meeting (at least one director would also have to participate in the meeting from that location).

- Notice of board meetings held in executive session (other than emergency meetings) must be provided to members in the same manner as notice of open director meetings is required to be provided (*i.e.*, posting, or by mail if requested by the member, or by electronic means if the member consents); however, notice of executive session board meetings need only be given two days, instead of four days, in advance. The notice of the executive session meeting must contain the agenda for the meeting.

- Agendas of board meetings held in executive session are no longer exempt from a member's inspection request (*i.e.*, members are entitled to copies of executive session agendas).

- The bill changes the definition of "meeting" for purposes of the Common Interest Development Open Meeting Act to be either a teleconference (as described above) or a congregation of a majority of the board in the same time and place to hear, discuss, or

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deliberate upon any item of business *that is within the authority of the board* (the italicized text replaces "scheduled to be heard by the board, except those matters that may be discussed in executive session"); thus, boards will no longer be able to escape application of the open meeting requirements based on the argument that the subject matter of the gathering was not "scheduled to be heard by the board."

- Boards will not be able to discuss or take action in executive session on matters that are not on the executive session agenda, subject to the same exceptions that apply to board meetings held in general session.

Although there is much of this bill not to like, it does do one positive thing:

It implicitly clarifies that an association's board of directors can meet solely in executive session, which should eliminate the perceived necessity of boards to engage in the practice of opening a meeting in general session, immediately adjourning into executive session to conduct executive session-appropriate business, and then reconvening in general session and immediately adjourning thereafter. If it was ever necessary before, such charade is no longer required.

2. Rental Restrictions; Stats 2011 Ch. 62 (SB 150; Correa)

This bill adds new Section 1360.2 to the Davis-Stirling Common Interest Development Act. With respect to any rental restriction in a governing document (or amendment to a governing document) that becomes effective on or after January 1, 2012, such restriction will only apply to owners who acquire their separate interests after the effective date of the rental restriction, *i.e.*, owners who acquired their separate interests prior to the effective date of the rental restriction are "grandfathered" and not subject to the rental restriction (although the bill does give "grandfathered" owners the authority to consent to be subject to an "after-enacted" rental restriction). An owner seeking to rent his or her separate interest pursuant to the owner's "grandfather" status must provide the association verification of the date the owner acquired title to the separate interest, as well as the name and contact information of the prospective tenant or the prospective tenant's representative.

Certain types of transfers will not result in the loss of "grandfather" status: transfers that do not trigger property tax reassessment under Section 62 or 480.3 of the Revenue and Taxation Code, and certain probate, spousal, or marital dissolution transfers.

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Common interest developments limited to industrial or commercial uses by either zoning or recorded CC&Rs are exempt from the bill's effect (*i.e.*, rental restrictions in commercial and industrial developments apply equally to all owners regardless of when the restriction went into effect or when the owner acquired the separate interest).

Also, the bill amends Civil Code Section 1368 (setting forth the list of items that the seller or transferor of an interest in a common interest development must provide to a prospective transferee and that an association must provide to an owner upon request) to add to the list of documents that must be provided a statement describing any rental prohibition for the community and its applicability. Associations with rental prohibitions will therefore have to prepare appropriate statements to include in their Section 1368 escrow packages.

Comment: Like so many other parts of the Davis-Stirling Common Interest Development Act, new Section 1360.2 is not an example of clear draftsmanship, and disagreements and disputes will undoubtedly arise as to its effect when applied to particular rental restrictions. One thing, however, is absolutely clear: With respect to any residential common interest development subject to a rental restriction that goes into effect on or after January 1, 2012, Section 1360.2 creates two classes of owners – those who are subject to the restriction, and those who are exempt. New Section 1360.2 also has the effect of limiting an association's ability to deal with problems resulting from the rental of units, i.e., even if a new rental restriction is adopted, depending upon the rate of ownership transfers in the community, it could be years before the new restriction becomes sufficiently applicable to address the problem because the restriction will not apply to any of the "grandfathered" owners (unless they agree to voluntarily relinquish their "grandfathered" status).

3. *Electric Vehicle Charging Stations; Stats 2011 Ch. 121 (SB 209; Corbett)*

This bill adds new Section 1353.9 to the Civil Code. The bill renders void and unenforceable any provision in a governing document that effectively prohibits or restricts the installation or use of an electric vehicle charging station; "reasonable restrictions," *i.e.*, restrictions that do not significantly increase the cost of the charging station or significantly decrease its efficiency or specified performance, are permissible. Charging stations must be designed in compliance with the California Building Standards Code and meet applicable health and safety standards and requirements imposed by state and local permitting authorities. A charging station may include several charge points so as to be able to simultaneously connect several electric vehicles to the charging station.

If association approval is required for installation or use of a charging station, then the association is required to process the application in the same manner as an application for an architectural modification. Approval or denial must be in writing, and an application is deemed approved if not denied in writing within sixty (60) days from the date of receipt of the application, unless the delay is the result of a reasonable request for additional information.

The statute expressly provides for installation of charging stations in common areas and exclusive use common areas. A homeowner is required to obtain approval to install the charging station from the association, and the association is *required* to approve the installation if the homeowner agrees to do each of the following:

- Comply with the development's architectural standards for installation of the charging station;
- Engage a licensed contractor to install the charging station;
- Within fourteen (14) days of approval, provide a certificate of insurance that names the development as an additional insured under the homeowner's insurance policy; and
- Pay for the electricity usage associated with the station.

Owners of parking stalls on or near which a charging station is placed are responsible for all of the following:

- Damage to the charging station, common areas, exclusive use common areas, or adjacent units resulting from installation, maintenance, repair, removal, or replacement of the charging station;
- Costs for the maintenance, removal, repair and replacement of the charging station until it has been removed from the common area or exclusive use common area;
- The cost of electricity associated with the station;
- Disclosing to prospective buyers the existence of the charging station and the related responsibilities for which the buyer would become responsible;
- At all times maintaining an umbrella liability coverage insurance policy in the amount of One Million Dollars (\$1,000,000.00) covering these obligations of the homeowner, and naming the development as an additional insured with a right to notice of cancellation.

An association that willfully violates new Section 1353.9 is liable to the applicant or other party for actual damages, plus a civil penalty to the applicant or other party of up to One Thousand Dollars (\$1,000.00). Prevailing parties in actions to enforce this new Section are entitled to recover reasonable attorney's fees.

Comment: *As far as homeowners wanting to install electric vehicle charging stations in their own garages goes, this bill is relatively benign. Generally speaking, an association ought not be more concerned about an owner installing a charging station in his garage than it should be about the owner installing new kitchen appliances. The potential for problems arises in connection with an owner installing a charging station in an exclusive use common area (e.g., a carport or assigned parking stall) or, even worse, a generic common area. For example, what if the association's only common area is a private street, and an owner wants to install a charging station on the street in front of his home? The obligations imposed by the bill on homeowners who propose installing charging stations on common area or exclusive use common area are fairly onerous and should dissuade most rational homeowners from pursuing such installation, but there's always one*

4. Small Claims Court; Stats 2011 Ch. 64 (SB 221; Simitian)

This bill increases the jurisdictional limit in small claims court for plaintiffs who are natural persons from \$7,500 to \$10,000 (exception: the \$7,500 jurisdictional limit remains in effect for automobile accident bodily injuries, but only if the defendant is covered by an automobile insurance policy that includes a duty to defend). The jurisdictional limit for plaintiffs that are entities (such as community associations) remains at \$5,000.

5. Request for Disclosure Documents; Stats 2011 Ch. 206 (AB 771; Butler)

This bill amends Civil Code Section 1368 (the section that lists the documents that a prospective transferor of a separate interest in a common interest development is required to provide to a prospective transferee, and that an association is required to provide to a requesting owner). The bill adds to the list of documents required to be provided copies of approved open session board meeting minutes for meetings conducted over the previous twelve months, if requested by the prospective purchaser.

The bill authorizes an association to post the documents required to be provided on the association's website. The bill also clarifies that the "reasonable fee" that an association is entitled to collect for providing requested documents must be based on the association's actual cost for procurement, preparation, reproduction, and delivery of the requested documents. A written or electronic estimate of the fees must be provided to the requesting owner on the form specified in new Section 1368.2. The completed form must again be provided to the requesting owner at the time the requested documents are delivered. No additional fees may be charged by an association for electronic delivery of the requested documents. An association may not withhold delivery of documents for any reason other than nonpayment of the allowable fee. Associations may contract with third parties (e.g., management companies) to facilitate compliance with the requirements of Section 1368.

6. Residential Real Property Disclosures; Stats 2011 Ch. 61 (SB 837; Blakeslee)

Civil Code Section 1102.6 sets forth a disclosure form that a seller of residential real property composed of one to four dwellings is required to provide to a prospective purchaser. The form lists a variety of features that the transferor is supposed to check if the property has the features (e.g., central heating, microwave, automatic garage door opener, rain gutters). The bill adds water conserving plumbing fixtures to the list of features. You may recall that the Civil Code was amended effective January 1, 2010, to require all single family residential property to replace its noncompliant plumbing fixtures with water conserving plumbing fixtures by January 1, 2017, and on or after January 1, 2014, such retrofit must be accomplished as a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local housing building department in connection with any building alteration or improvement.

7. Corporate Statement of Information; Stats 2011 Ch. 204 (AB 657; Gordon)

This bill makes minor changes to Sections 1363.5 and 1363.6 of the Civil Code regarding the informational filings that an association is required to make with the California Secretary of State.