

New Homeowner Association Legislation for 2006

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In what seems to have become an annual “right of passage” ritual, homeowner associations are again becoming subject to more complex laws. Despite valiant efforts, negative publicity forced negotiations to focus on making the laws less troublesome, rather than making them go away.

The new laws with the greatest impact cover (1) assessment collections, (2) election procedures, and (3) member inspection rights, and will likely require procedure changes and the adoption of new rules.

1. Assessment Collection Procedures – SB 137

Remember last year’s effort against the bill to limit association’s rights to foreclose? Well, the bill was reintroduced, and this time was signed by the Governor. Effective for liens after January 2006, there are changes to the assessment collection procedures for associations.

Threshold – Chief among the changes is a requirement that assessment delinquencies cannot be foreclosed upon unless the principle assessment amount is \$1,800.00 or more than 12 months delinquent. Principle assessments mean assessments only; no late charges, no interest, no attorneys’ fees, and no “accelerated” assessments (assessments that are approved, but not yet due). Only assessments that are due and not paid count.

Right to IDR/ADR – Owners must be informed that they have the right to use dispute resolution for assessment disputes, not once, but twice; first at the pre-lien stage, and second, before beginning the foreclosure process. And, like dispute resolution laws, the owner has the option to refuse to participate; the association does not have that option, and must participate if the owner accepts or starts the process.

Liens – First, if an owner becomes delinquent, the board, and only the board, can make the decision whether to record a lien or not. The decision must be made at an open meeting by a majority vote of the board, and reflected in the minutes with the owners’ identity protected by reference to property parcel number. The decision cannot be delegated.

Pre-lien notice – You must send a pre-lien letter to the owner. In addition to required information in the pre-lien letter, you now have to include a statement about the right to dispute the assessment debt by submitting a written request for dispute resolution pursuant to Civil Code Sections 1363.810, et. seq., and a statement about the right to request alternative dispute resolution with a neutral third party pursuant to Civil Code Sections 1369.510, et. seq. before the Association may initiate

foreclosure. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

Dispute resolution offer – Sometime before recording the lien, the association must offer an owner a chance to “meet and confer” with the association pursuant to any dispute resolution program adopted under Civil Code sections 1363.810 et. seq. Even if you don’t have a program, you still must make this offer.

Once that is complete, the association can record the lien. In addition to all information required in the lien, you must include an itemized statement of the charges owed by the owner. Also, a copy of the recorded lien must be sent to every person whose name is shown as an owner of the home by certified mail no later than 10 calendar days after recording.

After lien is recorded – Nothing can be done with it until the principle assessment amount is \$1,800 or 12 months delinquent. The lien will just sit there, protecting the association’s position in the event of a bankruptcy, sale or refinancing. Once the delinquency crosses that threshold, the association may proceed with judicial or nonjudicial foreclosure to collect the delinquent payments after the following happens:

- At least 30 days prior to any sale, the board, and only the board, must make the decision to initiate foreclosure in executive session, reflected in the minutes of the next open meeting. This decision cannot be delegated to anyone else. Again, the owners’ privacy must be protected by referring to the property parcel number.
- Once the decision is made, you must give notice by *personal service* to an owner who occupies the home or to the owner’s legal representative. If the owner does not occupy the home, you must give notice by first-class mail, postage prepaid, to the most current address shown on the books of the association.
- Sometime before starting a foreclosure on an owner’s home, you must offer the owner to participate in dispute resolution pursuant to Civil Code Section 1363.810 et. seq., or alternative dispute resolution as set forth in Civil Code Section 1369.510 et. seq. The decision to pursue dispute resolution or a particular type of alternative dispute resolution is the *choice of the owner*, except that binding arbitration is not available if the association intends to initiate a judicial foreclosure.

If the owner, at any time in the process, agrees to participate in dispute resolution, the association must participate. The new law does not

