

Mid-Year Electioneering

Pending (Possible) Legislation for 2005

BY KENNETH H. DILLINGHAM, ESQ.



Returning from CAI's California Legislative Action Committee Sacramento event, we were struck with the volume and significance of the proposed new laws moving through the California House and Senate this year. If passed as presented (which they probably won't), these bills would make it more difficult for homeowner associations to operate. Here are a few of the bills discussed at CLAC's March "march":

Restrictions on Collection of Delinquent Assessments

Several bills have been introduced to restrict the ability of homeowner associations to collect delinquent assessments, including AB 2598, AB 2610, SB 1527, and SB 1682. There have been recent, highly publicized cases of homeowners losing their homes through foreclosure in California, Texas, Nevada, and Florida. Of particular concern to the California representatives was a case in northern California where a couple lost their home over a \$120.00 delinquent assessment. As a result, the new proposals include further disclosures to association members, "actual" notice to owners prior to foreclosure (i.e. personal service), a pre-foreclosure appraisal by the association, and a restriction on accepting bids less than that appraised amount. Of particular concern is a statement attributed to Senator Rico Oller where he intends to introduce a bill banning foreclosures unless an owner owed more than \$50,000.

CLAC is working to consolidate these separate bills and is proposing amendments to them. They will:

- (1) improve notice to the debtors,
- (2) allow an owner to redeem his or her property after sale by foreclosure, and
- (3) allow the continued use of non-

judicial foreclosure as an equitable and inexpensive remedy.

Mandated Dispute Resolution Only for Associations

The California Law Revision Commission, after working several years on the Davis-Stirling Common Interest Development Act, produced several pieces of enacted and proposed new laws. One of these took effect in 2004. It deals with procedural fairness in rule and



Ken Dillingham, Esq., Skip Daum, CAI-CLAC Advocate, Senator Denise Moreno Ducheny, 40th District, and Patee Barta, Marketing and PR Director outside the CLAC meeting room at the Hyatt Regency Downtown Sacramento on March 22, 2004.



decision making, allowing owners to veto unpopular rules. The first of two separate pieces of new legislation, AB 1836 proposes to change the way disputes are handled in common interest subdivisions.

AB 1836 proposes to add another layer of rules dealing with disputes and violations in community associations. The new proposal is to have a hearing procedure mandated upon homeowner associations to address disputes and violations in their communities. These new procedures do not replace existing procedures (e.g. Civil Code 1354 requirement of ADR), but add more at no cost to the homeowner. And while owners may choose not to participate, homeowner associations are forced to participate.

Fully-Funded Reserves and Studies Made Only by Licensed Contractors

Responding to concerns expressed by the California Association of Realtors, AB 2718 addresses reserve funding in homeowner associations. If enacted without any changes, the new law would require "full" and "adequate" funding of reserves. It also would restrict the way those amounts are calculated, by allowing only a "straight line accounting method" rather than a variety of methods currently used by associations. Finally, this proposal would require that any person preparing a reserve study be a licensed professional in each of the areas addressed by the study. For example, roofing contractors would be the only qualified persons to provide roofing estimates. Plumbing contractors would

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be the only qualified persons to provide plumbing estimates.

State Control Over Architectural Approvals

AB 2376 attempts to regulate the architectural approval processes in California homeowner associations. If enacted as drafted, the proposed law would require "fair, reasonable, and expeditious" procedures for architectural decisions, and that those proce-

dures be in the association's governing documents (e.g. rules). Denials must be in writing specifying certain information, including an explanation of why it was disapproved, and can be subject to appeal to the board if made by a committee.

As with any year, the legislative process changes rapidly. In fact, the above bills may be significantly altered by the time this article is pub-

lished. If you would like your voice on these proposals to be heard, we suggest contacting CLAC via their telephone number (916) 658-0257, or their web site, www.clac.org. You may also contact the local or Sacramento office of your California state representative. You can find these numbers in the government pages of your local telephone book or online at www.leginfo.ca.gov. ■



Senator Dennis Hollingsworth carefully listens to CAI-San Diego Attorneys, Reserve Study Specialist, Manager, and Legal Public Relations Director on the intricacies of the laws on assessments/foreclosures and reserve studies which CAI proposes to approve if amended.



Attorney Ken Dillingham, Senator Denise Ducheny, Marketing Director Patee Barta, CAI Executive Director Barbara Ozenbaugh (front), gather with other San Diego industry CLAC members after Ducheny's speech.



Michael Graves, RS, Senator Dennis Hollingsworth, 36th District, Patee Barta, Marketing Director, Eric Basil, Esq. (back), Jon Epsten, Esq., Robert Harchut, PGA, CMCA and Dale Ward, Esq. (seated) pose for a photo after a long discussion with the Senator about controversial laws posed for 2005 on Recovering Delinquent Assessments/Foreclosure and Reserve Study.



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