



Anderson & Kriger
ATTORNEYS AT LAW

HOA DIVISION

Joel M. Kriger, APC

Venus

Fourth Quarter Newsletter, 2004

Important Legislation Affecting Homeowners

Legislation for 2005 Takes Effect

BY KENNETH H. DILLINGHAM, ESQ.



As yet another legislative year draws to a close, California law again changes for common interest subdivisions. From such diverse areas as dispute resolution to financial disclosures, California homeowner associations are facing a slew of new requirements that can prove a trap for the unwary. Directors and managers should review the governing documents for their communities to make sure that any required changes are made.

AB 2598, Restrictions on Assessment Collection Vetoed by Governor

Probably the most stunning, surprising and sweetest victory for homeowner associations in many years was the veto of Assembly Bill 2598.

If passed, the law would have prevented associations from using foreclosure to collect delinquent assessments under \$2,500, and restricted collection remedies for amounts over that. For many communities this would have meant years of nonpayment by one or more owners creating a budgeting shortfall the remaining owners would have had to pay more to address. Through the efforts of many groups, including the California Legislative Action Committee for the Community Associations Institute, a truly massive campaign of letter writing, faxing, calling and e-mailing from thousands of people throughout the state convinced Governor Schwarzenegger that this bill was not good. The Governor's reason for the veto was

detailed in his letter to the Members of the California State Assembly (see page 4).

However, watch carefully for more of the same next year, as the bills supporters have indicated that they will be reintroducing similar legislation in a specific attempt to curb the use of foreclosures to collect assessments.

AB 1836, Dispute Resolution Changes for Communities

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 law. One of these took effect in 2004, and deals with procedural fairness in rule and decision making, allowing owners to veto unpopular rules. The first of two separate pieces of new legislation, Assembly Bill 1836, changes the way disputes are handled in common interest subdivisions.

AB 1836 adds another layer of rules dealing with disputes and violations in community associations. The new law is to have hearing procedure mandated upon homeowner associations to address disputes and violations in their communities. These new procedures do not replace any existing procedure (e.g. Civil Code requirements of alternative dispute resolution), but add another layer of dispute resolution procedures. Specifically at no cost to the homeowner. And while owners may choose not to participate, homeowner associations are forced to participate.

Fair, Reasonable and Expeditious Dispute Resolution Procedures

Associations and boards must now provide "...a fair, reasonable, and expeditious procedure..." for resolving disputes in their communities. If the association does not adopt a new

procedure, the new law provides one for you.

The new procedure must be adopted by the association following the new rule adoption procedures from last year (30-day prior notice to owners, owners have veto rights). It must include the following requirements:

- Either party may invoke the procedure.
- Such notice shall be in writing.
- There must be prompt deadlines, with a maximum time for the association act.
- Associations must participate if an owner invokes the procedure.
- Owners may participate, but is not required to.
- Both parties must have the means by which they may explain their positions.
- Owners have the right to appeal any decision directly to the board.
- Any resolution that is not in conflict with law or the governing documents binds the parties, and may be judicially enforced.
- Owners may not be charged any fee to participate in the process.

If you do not adopt a new policy, the new Civil Code §1363.840 applies. It contains a procedure specifically including the above requirements.

CONTINUED ON PAGE 3 ►

Linking You with Legislators And Latest Legislation

www.leginfo.ca.gov
www.clac.org
www.cacm.org
www.snipurl.com/arnoldweb

New 2005 Legislation

▶ CONTINUED FROM PAGE 1

New ADR Requirements

Associations and community owners have been required to participate in alternative dispute resolution as a prelude to litigation since Civil Code §1354 was enacted. AB 1836 makes some changes to this law.

Civil Code §1354 is now modified to only refer to enforcement of the declaration and governing documents. The ADR provisions are now contained in Civil Code §1369.510, et. seq. These

mail, facsimile transmission, or “other means reasonably calculated to provide” notice.

The parties still have thirty days to respond to an ADR notice, and ninety days to complete the process once the notice is accepted. Now, specific provisions of the California Evidence Code are applicable to the proceedings, and any statute of limitation problem may be “tolled,” or extended, by participating in the ADR process.

Finally, the new law still provides that the cost of the ADR process “...shall be borne by the parties.”



new provisions for ADR are slightly different from the §1354 provisions, but ADR is still required for disputes for declaratory, injunctive, or writ relief, or that relief in connection with a claim for monetary damages not exceeding \$5,000.

Matters subject to the prior ADR requirement have been expanded and clarified. “Enforcement Action” is defined in the new law as civil actions or proceedings, other than cross complaints, to enforce provisions of the Civil and Corporations Code governing homeowner associations, and the governing documents for the community. Both small claims actions and assessment disputes are excluded from this pre-litigation requirement.

The ADR notice must still be served on the parties to the dispute. However, the new law allows for service by personal delivery, first-class mail, express

Changes to Annual Notices to Owners

The new ADR statute still requires an annual notice to owners summarizing the law, with a specific paragraph included. Additionally, the notice to owners must now include the internal dispute resolution procedures adopted pursuant to §1363.850.

AB 2376, New Requirements for Architectural Reviews

Long a function of the board or a committee, the review of architectural changes in common interest subdivisions has been one of the more important aspects to preserving the flavor and feel of a community. It has also been a source of friction between owners and associations.

A new Section 1378 is added to the Civil Code affecting the way associations review and approve or disapprove architectural applications for changes by owners.

Fair, Reasonable, and Expeditious Procedures, Again

Remember “fair, reasonable, and expeditious” procedures for dispute resolution? The same factors now apply to architectural applications. Associations are required to provide fair, reasonable, and expeditious procedures for making architectural decisions. These procedures must provide prompt deadlines, and must state a maximum time for responses by the board or committee. Also, these procedures must be included in the community’s “governing documents,” which is defined in the Civil Code to mean the CC&Rs, bylaws, and rules, among other documents.

Any decision made on an architectural application must be in accordance with applicable law, including California’s Fair Employment and Housing law, and must not be unreasonable, arbitrary, or capricious. Decisions must be in writing (no more talking to the owner on the sidewalk!), and if the application is disapproved, the written notice must contain the reasons why it was disapproved, and the procedures needed for reconsideration.

Owners’ Right to Appeal

If an application is disapproved, the owner is entitled to reconsideration by the board of directors. This reconsideration of the denied application does not need to be made at an open meeting, but it does not qualify as the first step in the internal dispute resolution process. Thus, an owner whose application is denied may first appeal to the board for reconsideration, then, if denied again, may start the dispute resolution procedures required by the new law.



No Right to Change the Common Areas

The new law specifically does not authorize any owner to propose or make any physical change to the common area that is inconsistent with the governing documents for the community or applicable law. Nor is the



association, board or committee required to approve such a change.

New Annual Notices to Owners

The new Civil Code §1378 requires associations to provide a notice to owners each year. This disclosure must contain notice of any requirements for approval of architectural applications and describe the types of changes that require approval. Additionally, the disclosure must include a copy of the procedure used to review and approve or disapprove a proposed change.

AB 2718, New Financial Disclosures and Reserve Requirements

As many communities mature, the issue of reserve funding becomes crucial to associations and owners alike. In response to concerns raised by Realtors and others, this new law was enacted to revise the provisions governing the distribution of financial and other documents to owners, and requiring a specific format for assessment and reserve funding disclosures. It is required for reports and disclosures made after July 1, 2005.

Changes to Reserve Disclosures

Associations have been required to include a summary of their reserves with the budget distributed to the

membership. Previously this summary needed only be in a certain type-face. Now, this summary must be in the same type-face, and must also be based only on assets held in cash or cash equivalents. Additionally, the summary must include, in addition to existing requirements and statements, a state-

ment as to the mechanism by which the board will fund the reserves, including assessments, borrowing, use of other assets, deferral of repairs, or other alternatives. Also, in any reserve summary statement or report, reserve funding calculations may not assume a rate of return on cash reserves in excess of two percent above the rediscount rate published by the Federal Reserve Bank of San Francisco.

Changes to Reporting Timeframes

The time for distributing the budget, reserve summary, and other notices to owners has been lengthened. Formerly forty-five to sixty days before the fiscal year, the new time-frame is thirty to ninety days before the fiscal year. This change applies to distribution of (a) the budget and reserve summary, (b) the lien enforcement statement, and (c) the insurance disclosures.

New Mandatory Assessment and Reserve Funding Disclosure Summary Form

A new Civil Code §1365.2.5 contains a new form to be used in disclosing to owners the assessment and reserve funding summary. This new form must accompany each budget or budget summary distributed to owners. While the form may be supplemented or modified to "...clarify the information delivered," the minimum information set out in the form must be provided.

New Notice Before Borrowing from Reserves

Associations have been able to borrow from reserves to fund short-term cash flow issues in their operating accounts, subject to certain requirements. There is now an additional requirement that before any such borrowing, or before delaying any repayment, the board must provide notice to the owners of the meeting at which the action will be discussed.

► CONTINUED ON PAGE 4



New 2005 Legislation

► CONTINUED FROM PAGE 1

New Method of Delivery of Escrow Documents

Owners have been obligated pursuant to Civil Code §1368 to provide certain documents to prospective purchasers. This obligation normally is satisfied in an escrow for sale, when the association is requested to provide the documents, which associations are obligated to provide. This new law allows those associations who maintain the documents in an electronic format to provide them via an electronic transmission or machine readable electronic storage media (e.g. CD-ROM) if the parties agree.



AB 224, Fire Retardant Roofing Materials

In response to the October wildfires in Southern California, Assembly Member Christine Kehoe introduced, and the Governor signed, a bill restricting the ability of associations to require replacement roofing that poses a fire danger. This new law is applicable to those communities located in very high fire severity zone, and was designed to address a common cause of massive destruction during a wild-fire, wood-shake roofing materials.

Once again associations, board members and managers are faced with a new set of regulations that they must follow. If you have any questions on these or any other issues, please feel free to contact our office for assistance.

Attorney Ken Dillingham is the current Legislative Action Committee Roundtable Chair and CLAC Delegate for San Diego CAI. ■

To the Members of the California State Assembly:

I am returning Assembly Bill 2598 without my signature.

This bill makes sweeping changes to the laws that govern Common Interest Developments (CID) and the foreclosure process for failure to pay delinquent homeowners' assessments. While the intent of this legislation is laudable and intended to protect homeowners from being foreclosed upon for small sums of delinquent assessments, this bill is overly broad and could negatively impact all homeowners living in CIDs.

This bill could unfairly result in increased assessments for other homeowners who pay their assessments in a timely manner and may delay the transfer of real property in CIDs due to the lien procedures set forth in the bill.

Foreclosure should be the last course of action taken against a homeowner. If there were more open discussion between homeowners and their associations, many conflicts could be resolved. That is why I recently signed into law AB 1836 (Chapter 754, 2004) and AB 2718 (Chapter 766, 2004). These bills establish methods to encourage more disclosure and better communication between homeowners and their associations.

I recognize that additional clarification in the foreclosure statutes is necessary. However, this change should be made incrementally working together with all impacted parties. Therefore, I am directing the State and Consumer Services and the Business, Transportation and Housing Agencies to work with all of the interested stakeholders to develop and ensure that the process for collecting CID homeowners' assessments is refined so that all homeowners are treated equitably and foreclosure only occurs after every reasonable alternative is exhausted.

Sincerely, Gov. Arnold Schwarzenegger

Skip Daum is the CLAC Liaison to CAI National and works for CIDs in making sure legislators know "both sides of the story" when it comes to passing or vetoing new laws. Skip led a massive letter-writing and phone-calling campaign along with grassroots California CLAC members to help veto AB 2598 in the best interest of California homeowner associations and those members that customarily pay their assessments on time. Be on watch on this topic of foreclosure in homes where assessments were ignored for seemingly small amounts of money.

It may resurface with better alternatives and new language but "It will be back" as Governor Arnold Schwarzenegger would say!

