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Law Offices of Jeanne McDonald

P.O. Box 2458
Lake Arrowhead, California 92352
(818) 891-9504 telephone / (818) 891-9519 fax
jmcDonald@jhmlawoffice.com / www.jhmlawoffice.com

LEGAL UPDATE FOR 2022: NEW STATUTES

This past year the California legislature placed a heavy focus on housing, and the result was the enactment or revision of several statutes affecting common interest developments. Some of these bills were to clean up legislation from prior years and other bills were intended to address the housing crisis by increasing the number of available rental properties. The following is a summary of these new laws, all of which took effect as of January 1, 2022, or earlier.

SB 432 (Elections)

This bill revised and clarified a few items related to membership votes. The most important provision of this bill was to clarify that the 30-day pre-ballot notice only applies to director elections and director recalls, and not to other types of membership votes. Other clean-up items included a requirement that the candidate list compiled by an HOA for director elections contain the candidates' names and addresses. Also the optional candidate qualification of being qualified for a fidelity bond was broadened to refer to fidelity bonds or fidelity insurance. In addition, the optional candidate qualification of being current on assessments unless the candidate was on a payment plan with the HOA was clarified to require that the candidate must be in compliance with that payment plan. SB 432 also added bank statements to the list of financial information that HOA members are entitled to review and copy. Finally, to eliminate a conflict in the law, SB 432 provided that if an HOA receives a members' petition to conduct a membership vote it has 150 days to complete this vote. This changes the deadline from 90 days, which was impossible to meet in the case of a director recall and election of new directors since that vote takes more than 90 days.

AB 502 (Acclamation)

AB 502 adds Civil Code Section 5103 to statute. This new Code section allows common interest developments to declare a director election by acclamation when there are not more candidates than Board positions to be filled. Once nominations close, the Board, at an open Board meeting, would declare the candidates elected by acclamation. That would conclude the election without the need to pass out ballots. The new Section 5103 only allows acclamation when the Association has added an optional 60-day process to its call for nominations. The result is that if enough candidates are nominated to turn this into a contested election, the entire election process would be lengthened to about five months. Two other requirements for acclamation are that the Association must have conducted a full election within the last three years, and the HOA's candidate qualifications must match the qualifications for serving as a director. The new procedures are complicated so HOAs who believe the acclamation procedure could be helpful should consult their attorney.

AB 611, Confidential Owner Information for Owners in the "Safe at Home" Program

The California "Safe at Home" program protects victims of domestic violence, stalking, sexual assault, human trafficking, elder abuse, and dependent abuse, as well as reproductive health care workers. The new Civil Code Section 5316 requires a common interest development to keep a "Safe at Home" participant's contact information confidential. This includes listings on membership lists, resident directories, keypads, internet web portals, and more.

AB 1101, Managing Agents; Deposits and Withdrawals; Fidelity Insurance

Civil Code Section 5380 places restrictions on a manager's handling of a common interest development's funds. AB 1101 makes some revisions to those requirements. Among other revisions, managing agents can no longer commingle a common interest development's funds. Also, for HOAs with 50 or fewer members, Board approval is now required before the managing agent can transfer funds from either the operating or reserve account of \$5,000 or 5% of the estimated annual income, whichever is less. This amount is reduced from last year's \$10,000 cap. Finally, the CID's requirement of providing fidelity bond coverage was broadened to include more available coverages: crime insurance, employee dishonesty coverage, fidelity bond coverage, or their equivalent.

AB 1466, Government Code's Discrimination Notice

Whenever a common interest development distributes a governing document, it is required to include a face page with a notice stating that any discriminatory provisions in the document are void. AB 1466 revises the language of this notice so every HOA's standard face page needs to be updated. The new language, which must be in at least 14 point boldface, is:

If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

AB 1466 also adds a procedure that would allow an owner to remove from title any discriminatory restriction in their HOA's governing document.

AB 1584, Accessory Dwelling Units; Illegal Leasing Restrictions.

Last year's AB 323 required common interest developments to record CC&R amendments deleting or revising leasing restrictions that AB 323 had declared illegal. The deadline to do this was December 31, 2022. AB 1584 extends that deadline to July 31, 2022, and clarifies that a simple deletion of the violating restriction can be done by the Board without having to take a vote of the owners.

AB 1584 also added to statute Civil Code Section 714.3, which states that any CC&R restriction that "effectively prohibits or unreasonably restricts" the construction of an accessory dwelling unit or a junior accessory dwelling unit on a lot zoned for single-family residential use is void if the construction would meet certain statutory requirements. "Unreasonable" restrictions include those that "unreasonably increase the cost" of construction. This does not apply to condominium projects, only to planned developments.

SB 9, Lot Splits; One Residence on each split lot

SB 9 is intended to address California's housing shortage by encouraging greater housing density on lots zoned for single family residences. As long as certain stated conditions are met, this bill requires local agencies to approve ministerially owners' applications to split a single lot into two lots of at least 1,200 square feet each and to construct two residences of at least 800 square feet on each such split lot. The bill allows local agencies to add some specific optional requirements and it does not address whether owners are allowed to add an accessory dwelling unit or junior accessory dwelling unit to each of the two residences. That is left up to the local agencies.

Ordinarily a common interest development can prohibit owners' architectural applications even if the owner would be able to pull a permit or get zoning approval for their remodel. SB 9 does not specifically state whether a common interest development would still have that ability or if instead the new law overrides the governing documents. The author of the bill has stated that it was not intended to override a common interest development's governing documents but that statement was not added to the bill.

SB 391, Zoom Meetings

Designed to address HOAs' use of Zoom meetings during the Covid-19 pandemic, this bill adds Civil Code Section 5450 to statute. It adds a definition of a "state of emergency" or "local emergency" as declared by the government which would entitle a Board to hold Board meetings entirely by teleconference. Before Section 5450, California law allowed director attendance at open Board meetings by teleconference but at least one director had to be at a location where owners could attend the meeting in person. That location requirement is eliminated for emergency meetings and a provision is made for counting ballots of membership votes by teleconference. SB 391 also has provisions for delivering meeting notices by email if mail service is interrupted

SB 392, Email, etc.

Owners are required to confirm or update their contact information annually. This bill adds a requirement that owners specify whether notices are to be delivered to them by mail or by email, and starting in 2023 the definition of "individual delivery" of HOA notices will be revised to refer to each owner's preference. HOAs are now allowed to post notices by "general delivery" to their internet website, but only if this is stated in the annual disclosures made to the owners. Civil Code Section 5230 was revised to provide that, except for disclosures required by law, HOAs are now prohibited from disclosing an owner's personal information to a third party without the owner's consent.

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This newsletter gives only the briefest summary of each of these bills. If any of the new laws impacts your homeowners association, you should seek an attorney's advice on complying with the new legal requirements.