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NEW STATUTORY UPDATES

The California legislature has enacted several revisions to statute that affect how homeowners associations function, all of which take effect January 1, 2012. My last newsletter discussed a new statute on lease restrictions in the CC&Rs; this newsletter will discuss the other changes to California law.

Board Meetings **(SB 563, amending Civ. Code § 1363.05)**

Notice and agenda.

- If an owner consents, the board may distribute board meeting notices and agendas to that owner by electronic means (such as email).

Executive session.

- Prior law only discussed executive session meetings held directly after open board meetings. A revision adds a reference to boards meeting solely in executive session, which clarifies a point of some confusion.
- Two days before each executive session meeting, the association now needs to post or distribute the notice and agenda in the same manner as for open board meetings. (The agenda should of course be worded in general terms.)
- Owners are now entitled to inspect or copy executive session agendas, although they still are not entitled to executive session minutes.

Telephone or video conferencing.

Directors can attend board meetings via telephone or other audio or video communications if all directors in attendance, including off-site directors, can hear each other. Statute was revised to clarify that:

- Board meetings, including executive session, can be conducted entirely by teleconference.
- For open board meetings, at least one director must be present at a physical location listed in the notice of the meeting where homeowners can attend, and all directors and homeowners attending the meeting must be able to hear each other.

Decisions outside of a Board meeting.

- Up until January 1, boards have been able to make decisions outside of meetings if the decisions were unanimous and in writing. That is now prohibited. No action on any "item of business" may be taken outside of a meeting by email or by any other means, regardless of whether the decision is unanimous.
- An "item of business" is defined as "any action within the authority of the board, except those actions that the board has validly delegated to any other person or persons, managing agent, officer of the association, or committee of the board comprising less than a majority of the directors."

- There is one exception: Emergency board meetings may be conducted by electronic means such as email if before the meeting all directors consent in writing to the meeting. Those written consents can be transmitted electronically and they must be filed with the minutes of the meeting.

Escrow disclosures
**(AB 771 and SB 150, amending Civ. Code § 1368
& adding Civ. Code § 1368.2)**

Required disclosures

Escrow disclosures must include the following documents or information:

- If your governing documents contain an unenforceable age restriction (excluding qualified senior citizen housing), there is a minor change to the required disclosure language.
- If the governing documents prohibit the rental or leasing of any of the units or lots, you must provide a statement describing the prohibition and its applicability.
- If requested by the prospective purchaser, a copy of the minutes of the meetings, excluding meetings held in executive session, of the association's board of directors, conducted over the previous 12 months, that were approved by the association's board of directors.
- A new form must be filled out and delivered to owners or their authorized recipients on receipt of their written request. The form gives an "estimate of the fees that will be assessed for providing the requested documents." It can be downloaded from www.jhmlawoffice.com.

Delivery and website posting

- Up until now, statute required escrow disclosures to be made to the seller, although the documents are usually delivered to escrow. Now statute allows for delivery to a "recipient authorized by the owner."
- Escrow documents can be posted on the association's website, where owners can download them at their option (not the association's) instead of receiving hard copies or emailed versions.

Fees

- The "reasonable fee" that the association can charge for providing these documents now includes delivery charges, but you cannot charge for emailing the documents or otherwise delivering them electronically. You can withhold delivery until these fees are received.
- Fees for document delivery to escrow have to be split out from transfer fees and any other charges.

Small Claims
(SB 64, amending Code Civ. Proc. § 116.221)

Homeowners and other individuals can file in small claims court for claims up to \$10,000.00 (except for injuries from car accidents). Homeowners associations and other entities are still capped at \$5,000.00.

Electric charging stations
(SB 209, adding Civ. Code § 1353.9)

This one has been called "a solution in search of a problem." Restrictions against owners' installation of charging stations for electric vehicles are void and unenforceable, except certain reasonable restrictions are allowed. Owners wanting to install an electric charging station must submit an architectural request to the board, and the request must be approved if the owner agrees to certain specified terms. The owner is responsible for all related disclosures and costs, including insurance.