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SUMMARY OF NEW LEGISLATION AND COURT DECISIONS

By

Robert D. Hillshafer and David A. Loewenthal

Compared to recent years, 2009 was not a year with dramatic amounts of new or significant legislation or court decisions impacting community associations. The following discusses new laws going into effect in 2010 and court decisions made during 2009.

NEW LAWS EFFECTIVE JANUARY 1, 2010:

Disclosures to Members-AB 899

This bill adds Civil Code Section 1363.005 to the Davis Stirling Common Interest Development Act. This section requires associations to distribute to any member making a request, the Disclosure Documents Index which is attached hereto as Exhibit A. This Index may be distributed to the requesting member by personal delivery or first class mail, or by email, fax or other means if the member agrees to such alternative forms of delivery. The provision indicates that the "agreement" of the member to distribution via electronic means must conform to the requirements of federal law for such consent. This modification is simply another attempt by the legislature to ensure "transparency" by Board's concerning the operation of community association's. Unfortunately, each new attempt to ensure such transparency has a cost component without a significant increase in the actual transparency.

This bill also modifies the Assessment and Reserve Funding Disclosure Summary in Civil Code Section 1365.2.5. That summary is mandated to contain certain specific information, including, but not limited to, the estimated amount required in the reserve fund at the end of the next five budget years and the projected reserve cash fund in each of those five years. The new law requires the preparer of the Summary to identify the assumed long-term before-tax interest rate earned on reserve funds and the assumed long-term inflation rated to be applied to major component repair/replacement costs at the time the summary was prepared. The revised Summary is attached hereto as Exhibit B.

Pool Safety - AB 1020

As of December 20, 2008, the Virginia Graeme Baker Pool and Spa Safety Act (federal law) required that public pools and spas had to be equipped with certain anti-entrapment devices. The term "public" was broadly defined to include community associations and enforcement of this law was assigned to the Consumer Product Safety Commission. This law also established a grant program for states that incorporated the federal law into a state law. AB 1020 is California's codification of the federal law into the state law, which will facilitate local health department agencies adoption of regulations at the local level.

This law provides that a pool or spa constructed prior to January 1, 2010 must comply with the standards of the federal act or be retrofitted in accordance with the standards prior to July 1, 2010, except that pools constructed between December 19, 2007 and January 1, 2010 which complied with the Act do not to be further retrofitted. A form must be filed with the local health department attesting that the retrofit work has been performed prior to September 30, 2010. If an Association's pool/spa is being retrofitted to comply with this law, the form must be filed with the local agency within 30 days of completion.

Because of the obvious life-safety implications of the retrofit mandate, we have generally advised associations to close pools and spas which do not comply with the Act until the retrofit has been completed. The life-safety aspect raises the duty of the Board from a mere maintenance obligation to a fiduciary obligation which could result in personal liability of directors if someone is injured due to the lack of the anti-entrapment device in an Association pool. In addition to personal liability implications, failure to complete this mandated retrofit could seriously impact insurance coverage for the Association.

Water Efficient Landscaping- AB 1061

Current California law prohibits an Association's architectural guidelines from banning or effectively prohibiting the use of low water-using, drought-tolerant plants as a group. This new law expands that prohibition to all of an Association's governing documents.

New Civil Code Section 1353.8 provides that any provision of any governing document, whenever adopted, is VOID and unenforceable if it prohibits or effectively prohibits the use of such low water-using, drought-tolerant plants as a group. Similarly, this new law provides that governing document provisions are void and unenforceable if they prohibit or restrict compliance with local water efficiency landscape ordinances, emergency water ordinance or any public entity mandated water conservation program.

Please note that this new law does not prevent Association's from banning certain types or species of plants. Rather, the governing documents cannot ban the

entire group as a whole. This bill should stimulate Board's to review existing governing document provisions for potential violations and to modify enforcement actions to comply with this new law.

Assessments Based on Property Value- AB 313

This bill adds Civil Code Section 1366.4 to the Act and prohibits associations from levying assessments based on the assessed taxable value of the property, except for associations that had made such levies prior to December 31, 2009 or were responsible for payment of property taxes. This law is designed to prevent de facto discrimination in assessments based on length of ownership such that newer members would be assessed at a higher rate based on a higher purchase price. Since such an assessment method is quite rare, this law should not have any significant impact.

Legislation to Watch in 2010- SB 259

This proposed legislation would prevent minor technical violations of the HOA election laws (Civil Code Section 1363.03) from invalidating election results and actions of Boards. The goal is to prevent the chaos and expenses which would result in minor violations were allowed to be a basis for invalidating elections and decisions by Boards so elected.

COURT DECISIONS IN 2009

Published Appellate Decisions

To be binding as precedent in subsequent litigation, appellate court decisions must be certified for publication, generally because the case is determined to address some broad public issue which may recur in the future. In the context of community association law, although there are many appellate decisions, many of the decisions are not certified for publication, often because the case involves a vary narrow issue of interpretation of a CCR provision or unique fact pattern. In 2009, there was at least one unpublished opinion which a number of community association attorneys sought to have certified for publication because it would have clarified Association obligations to maintain/repair common areas which were originally defectively constructed and may not be susceptible to complete repair within a practical budget. Also in 2009, there were some trial court decisions which are not necessarily binding precedent, but do provide insight into "hot button" issues that may confront associations in the near future.

Carolyn v. Orange Park Community Association (2009) 177 Cal. App. 4th 1090

This case addresses the application of the Americans With Disabilities Act ("ADA") and the California Disabled Persons Act ("CDPA") to community associations. These group of laws prohibit discrimination on the basis of disability in places of "public accommodation."

The court was asked by the plaintiff to determine that recreational trails within the Association were a public accommodation, even though these trails were common area privately owned by the Association. The Association had a general policy of allowing public access to these trails, subject to limitations at access points to vehicles. The plaintiff, a disabled person who was not a member of the Association, desired to access and use the Association's trails in a horse drawn carriage. The court ruled that the Association's recreational trails were NOT public accommodations under either law and further found that the Association's practice of allowing public access did not "transform" the trails into a public accommodation.

However, the court did note that there are certain circumstances where recreational common areas within CID's can be classified as public accommodations (such as swimming pools or golf courses generally open for public use). The court also noted that even though common areas are not public accommodations, Association's are subject to federal and state fair housing laws which require Association's make reasonable accommodations to disabled resident's, whether members or tenants.

Association's must be diligent not to ignore complaints about access to common areas by residents based on disability, as there are public interest groups which have attorneys on staff that will immediately pursue discrimination claims. If such complaints or requests are made based on disability grounds, even if the disability seems incredible or is based on psychological reasons, Boards should immediately involve legal counsel to avoid risking a misstep relative to these laws.

Nelson v. Avondale Homeowners Association (2009) 172 Cal. App. 4th 857

This case involves the interpretation and enforcement of CCR provisions concerning limitations on conducting business within a common interest development. Mr. Nelson admittedly was operating a medical and religious counseling business from his home in direct violation of the governing documents. During a 12 month period the association had logged in excess of 1000 visitors going to the Nelson residence. In response to a violation and hearing notice demanding he cease the operation, the owner requested that he be allowed to continue for 6-12 months because he was recovering from an illness. Following the hearing, the board voted to revoke all guest passes for persons who were business customers of the owner. At the Superior Court level, Mr. Nelson filed suit seeking to enjoin the Association from denying guest access but his motion for an injunction was denied. The Association also sought an injunction against the owner to cease his business operations and the court granted this request.

Mr. Nelson appealed and alleged that the Association was violating the California Fair Employment and Housing Act and Unruh Civil Rights Act by refusing to reasonably accommodate his disability. The Court of Appeals rejected Nelson's claims, partially because they were without merit and partially because Nelson failed to follow established appellate procedures and did not raise certain of his discrimination arguments in the trial court.

This outcome underscores the need of Association to be diligent in dealing with violations and addressing issues involving disability and alleged discrimination.

Calemine v. Samuelson (2009) 171 Cal. App. 4th 153

Although this case does not actually address a matter involving common interest development law, it does illustrate a very common scenario regarding disclosure obligations following a settled construction defect lawsuit by an association. It also provides some insight into how sellers who are or were directors of the Association during the defect litigation or during post-settlement repairs, can be viewed relative to their disclosure obligations.

Calemine bought a condominium from Samuelson, who was a long-time member of the Board, who was aware of two separate construction defect cases and two post-settlement attempts to repair below grade waterproofing and water intrusion issues into the garages of a number of units. Samuelson completed a transfer disclosure statement as required under California law and disclosed that there had been past water intrusion into the garage area but that repairs had been undertaken and the intrusion had not recurred. Samuelson's disclosure statement did not disclose the two prior lawsuits for construction defects or the settlements. In fact, he checked "no" as to litigation section on the form, ostensibly because there was no current litigation.

Samuelson brought a motion for summary judgment on the basis that his disclosure was adequate pursuant to California law. The court granted the motion and Calemine appealed. The appellate court reversed the trial court's ruling on the summary judgment, finding that there was an issue of fact as to whether Samuelson's non-disclosure of the litigation was material to the value or desirability of the property because there was a common law duty to disclose material facts about the property. We believe that a significant element in the appellate court's reversal of the summary judgment had to do with Samuelson's significant and intimate knowledge of the lawsuits and the attempted repairs by the Association due to his role as a long-time director.

The significance of this case seems to be that directors may well be determined to have a greater duty to disclose than the average member based on a superior level of knowledge and information concerning the association.

In a companion case, **Calemine v. Jared Court HOA**, which is an unpublished decision by the same court, Mr. Calemine brought an action against the Association for breach of the CCRs and negligence relative to the common area below grade waterproofing. His theory was that the Association was obligated to perform any and all repairs to stop the water intrusion, regardless of the expense.

After settling its second construction defect lawsuit, the Board engaged consultants to assist in performing a scope of repair which would be effective and affordable. Because of unique site conditions, installation of waterproofing on the entire

height of the below grade masonry wall was exorbitantly expensive, very disruptive and could not be guaranteed to stop all water intrusion into the garages. Some of the intrusion was through the garage floor and some was through the back masonry wall. The Board made a decision, based on professional advice, including that of its legal counsel and construction consultants, to undertake a repair which it could afford and was likely to resolve the water intrusion issues. The membership was advised at the time that to undertake repairs would result in a significant special assessment, much inconvenience, and still not be guaranteed to work completely.

After a full blown trial, the trial court found that under the California Supreme Court's decision in **Lamden v. La Jolla Shores Clubdominium**, because the board had relied upon professional advice concerning the manner and scope of repair, the decision of the board was entitled to deference and would not be disturbed. Calemine appealed this decision as well but the appellate court affirmed the decision of the trial court, reciting in detail all the various steps which the Board had gone through in making the decision concerning the repair scope and the various professional advice which it had received to assist in making that decision. Also relevant was the fact that the water intrusion was not into habitable living space. Because of the decision's thorough application of the Lamden analysis to the decision regarding repairs of construction defects, many CID lawyers asked the court to certify the decision for publication because this is a fact pattern which is oft-repeated in this industry. Unfortunately, the case was not certified for publication.

Although unpublished, the decision does reflect that courts recognize that upon a showing of diligence in investigating and obtaining competent professional advice, they should not "second guess" good faith decisions by volunteer boards. The decision also references an attempt by the Association to notify its members and prospective purchasers as to the facts and reasoning of the board in making its decision regarding repairs, so as to manage expectations and theoretically reduce potential claims. Any Association which goes through a construction defect litigation should probably consider publishing a similar disclosure document unless perhaps, the Association has performed the suggested scope of repairs to defects which were the basis of its construction defect case.

Trial Court Decisions of Note

In a recent Ventura County trial, a homeowners association that attempted to force a homeowner to place solar panels in a location on his roof which was 40% less efficient but less aesthetically intrusive than where he sought to place them in an architectural application, was ordered to allow the placement of the panels where requested and ordered to pay tens of thousands of dollars of the homeowner's attorneys fees and costs. Civil Code Section 714 provides that any restriction in a governing document which "effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable."

While this section allows restrictions which impose reasonable limits on solar energy systems, those based solely on aesthetic considerations or which hinder effectiveness or increase cost will be problematic, as evidenced in the Ventura County case. The growing trend in California is that aesthetics, which are often a very important consideration to purchasers of homes within planned communities, are being subjugated to "green" interests such as solar energy and water conservation. Consequently, architectural review committees and Boards of Directors must recognize that simply because CCRs or guidelines mandate certain aesthetics, that interest may be trumped by the "green" movement and should make sure that applicable governing documents are not invalid on their face in violation of these green laws and are not applied in ways to run afoul of these laws.

EXHIBIT "A"

Disclosure Documents Index		
Item	Description	Reference Code
1	Assessment and Reserve Funding Disclosure Summary (form)	Civil Code Sec. 1365.2.5
2	Pro Forma Operating Budget or Pro Forma Operating Budget Summary	Civil Code Sec. 1365(a)
3	Assessment Collection Policy	Civil Code Sec. 1365(e) and 1367.1(a)
4	Notice/Assessments and Foreclosure (form)	Civil Code Sec. 1365.1
5	Insurance Coverage Summary	Civil Code Sec. 1365(f)
6	Board Minutes Access	Civil Code Sec. 1363.05(e)
7	Alternative Dispute Resolution (ADR) Rights (summary)	Civil Code Sec. 1369.590
8	Internal Dispute Resolution (IDR) Rights (summary)	Civil Code Sec. 1363.850
9	Architectural Changes Notice	Civil Code Sec.1378(c)
10	Secondary Address Notification Request	Civil Code Sec. 1367.1(k)
11	Monetary Penalties Schedule	Civil Code Sec. 1363(g)
12	Reserve Funding Plan (summary)	Civil Code Sec. 1365(b)
13	Review of Financial Statement	Civil Code Sec. 1365(c)
14	Annual Update of Reserve Study	Civil Code Sec. 1365(a)

EXHIBIT "B"

Assessment and Reserve Funding Disclosure Summary
for Fiscal Year Ended _____

(1) The regular assessment per ownership interest is $_____ per ____. Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page ____ of the attached summary.

(2) Additional regular or special assessments that have already been scheduled to be imposed or charged, regardless of the purpose, if they have been approved by the board and/or members:

Date assessment will be due:	Amount per ownership interest per month or year (If assessments are variable, see note immediately below):	Purpose of the assessment:
	Total:	

Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page ____ of the attached report.

(3) Based upon the most recent reserve study and other information available to the board of directors, will currently projected reserve account balances be sufficient at the end of each year to meet the association's obligation for repair and/or replacement of major components during the next 30 years

Yes _____ No _____

(4) If the answer to (3) is no, what additional assessments or other contributions to reserves would be necessary to ensure that sufficient reserve funds will be available each year during the next 30 years that have not yet been approved by the board or the members?

Approximate date assessment will be due:	Amount per ownership interest per month or year:
	Total:

(5) All major components are included in the reserve study and are included in its calculation.

(6) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 1365.2.5, the estimated amount required in the reserve fund at the end of the current fiscal year is $_____, based in whole or in part on the last reserve study or update prepared by _____ as of _____ (month), _____ (year). The projected reserve fund cash balance at the end of the current fiscal year is $_____, resulting in reserves being _____ percent funded at this date. If an alternate, but generally accepted, method of calculation is also used, the required reserve amount is $_____. (See attached explanation)

(7) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 1365.2.5 of the Civil Code, the estimated amount required in the reserve fund at the end of each of the next five budget years is $_____, and the projected reserve fund cash balance in each of those years, taking into account only assessments already approved and other known revenues, is $_____, leaving the reserve at _____ percent funding. If the reserve funding plan approved by the association is implemented, the projected reserve fund cash balance in each of those years will be $_____, leaving the reserve at $_____ percent funding.

NOTE: The financial representations set forth in this summary are based on the best estimates of the preparer at that time. The estimates are subject to change. At the time this summary was prepared, the assumed long-term before-tax interest rate earned on reserve funds was ____ percent per year, and the assumed long-term inflation rate to be applied to major component repair and replacement costs was ____ percent per year.

For the purposes of preparing this Summary:

(1) "Estimated remaining useful life" means the time reasonably calculated to remain before a major component will require replacement.

(2) "Major component" has the meaning used in Section 1365.5. Components with an estimated remaining useful life of more than 30 years may be included in a study as a capital asset or disregarded from the reserve calculation, so long as the decision is revealed in the reserve study report and reported in the Assessment and Reserve Funding Disclosure Summary.

(3) The form set out in subdivision (a) shall accompany each pro forma operating budget or summary thereof that is delivered pursuant to this article. The form may be supplemented or modified to clarify the information delivered, so long as the minimum information set out in subdivision (a) is provided.

SIGNIFICANT HOA BILLS ACTED ON BY THE CALIFORNIA LEGISLATURE

This chart summarizes the major features in bills that the Legislature acted on and which were lobbied by CAI-CLAC, along with their Impacts on more than 40,000 Homeowners Associations (HOAs), during the first half of the 2009-2010 session.

BILL / AUTHOR	ISSUE	CAI-CLAC's POSITION	IMPACT ON HOAs	STATUS
AB 1328 SALAS	This bill allowed boards of directors to override their HOA's CC&Rs (which generally require a vote by all owners) in order to enter into a 5 year water or energy savings contract based on undefined "anticipated savings". The bill did not require boards to disclose to owners that directors may unilaterally enter these contracts without owner input. The bill had insufficient prohibitions on conflicts of interest.	Oppose.	If a multi-year contract is entered into without substantiation of significant savings, increased costs are a high probability. Future boards would be bound to contracts for 5 years. Litigation among boards, owners and third parties may result.	Vetoed
AB 899 TORRES	Should HOAs be required to give owners a "Disclosure Documents Index" which, by its terms is incomplete, will add confusing terms, and unnecessary? New definitions are added to the reserve budgeting process that could be misunderstood.	Oppose.	Unnecessary and misleading disclosures to owners will increase operating costs to, and the liability of HOAs.	Signed by Governor Effective 1/1/10
SB 259 BENOIT	Should minor technical violations of the HOA election law invalidate election results and all decisions made by the elected board for up to one full year after the election?	CAI-CLAC is the Sponsor.	Chaos would reign if elections and all decisions by a board were invalidated for minor election procedural infractions. Avoided costs and potential savings could be significant.	Two-Year Bill... may be acted upon in 2010
AB 1020 EMMERSON	Should public swimming pool owners (including HOA pools) be required to, upon completion of installing an anti entrapment device, file a notice of completion with the local government?	As Amended, Watch.	Cost of anti-entrapment devices, building permits and inspections per pool ranges from a few hundred to thousands of dollars. Cost to file the completion report with the local gov't. would be nominal. Failure to install anti entrapment device penalty is $1,000/day (per federal law).	Signed by Governor Effective 1/1/10
AB 1061 LIEU	Should HOAs be able to apply landscaping standards that conflict with local and State conservation laws?	As Amended, Watch.	HOA landscape regulations that violate local gov't. water conservation law will be void and unenforceable.	Signed by Governor Effective 1/1/10
AB 49 FEUER	Should every urban property owner be required to reduce water usage by 20% by 1/1/20?	Amend. HOAs that have already implemented water conservation measures that meet or exceed the 20% reduction should not be forced to add additional changes and improvements previously made should be credited toward the 20% goal. For those HOAs that have master water meters where the water serves the homeowners, they should not be subject to fines, additional fees or penalties.	For HOAs that have master water meters serving homeowners, it could cost many thousands of dollars. Those that have already reduced water consumption might have to pay untold thousands of additional dollars.	In Conference Committee. Provisions also appear in another bill that is in play in the recently convened "Special Session" aimed at resolving CA's water problems.
AB 985 DE LA TORRE	Should HOAs, real estate agents, title and escrow companies be required to distribute a Racial Covenant Modification form when CC&Rs or other governing documents are provided to homeowners?	Disapprove.	Potential litigation for failure to comply. Costly to retain and distribute the state mandated document, particularly for self managed associations.	Vetoed
SB 407 PADILLA	Should all real property owners, including HOAs, be required to replace every non-conserving interior water device (toilets, faucets, showerheads) on or before 1/1/14 in remodeled units, 1/1/17 in single family units, and 1/1/19 in commercial property & multi-family structures (apartments)?	As Amended, Watch.	Minimum cost of labor and materials estimated to be: $150 per faucet, $250 per toilet and urinal, $100 per showerhead.	Signed by Governor Portions Effective 1/1/14, 1/1/17 & 1/1/19
SB 209 CORBETT	Should Certified (Disability) Access Specialist Reports that are submitted to a court be confidential and subject to protective orders?	As Amended, Watch.	Making the report confidential will facilitate early evaluation of issues before the court thereby reducing legal costs associated with disability access claims.	Signed by Governor Effective 1/1/10

SOUTH COAST HOMEOWNERS ASSOCIATION

ANNUAL LEGISLATIVE FORUM

January 26, 2010

The statements set forth below are provided to assist participants in following the program. They should not be interpreted as absolute statements of law. The actual application of any statute or court decision is dependent upon the facts and circumstances presented in each case.

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APPROVED METHODS OF DELIVERING DISCLOSURE DOCUMENTS TO OWNERS

(Assembly Bill 899, California Civil Code §1350.7)

I

California Civil Code §1350.7, which was enacted in 2003, has been amended. California Civil Code §1350.7 establishes the methods which may be used to serve documents required to be sent to Owners, including the new Disclosure Documents Index described in this outline.

II

If an Association transmits documents electronically, it must first obtain owner consent as required by California Corporations Code §20. California Corporations Code §20 requires that the consent to be given by an owner meet the requirements of the Electronic Records Act set forth at 15 USC 7001(C)(1).

III

Attached hereto is a form (Form 30A) which may be used to meet the requirements of the Electronic Records Act.

UPON REQUEST OF AN OWNER, A HOMEOWNERS ASSOCIATION MUST PROVIDE A DISCLOSURE DOCUMENTS INDEX

(Assembly Bill 899, California Civil Code §1363.005)

I

Upon request of an owner, a Homeowners Association must provide the requesting owner a Disclosure Documents Index.

II

The Disclosure Documents Index must be in the form of that attached hereto (Form 9A).

MANDATORY WATER CONSERVATION DEVICES

(Senate Bill 407, California Civil Code §§1101.1 through 1101.9)

I

After January 1, 2014, all single family residential property, as a condition for the issuance of a final building permit, must replace all water fixtures with water conservation plumbing fixtures (i.e. toilets, shower heads and faucets).

II

After January 1, 2017, all single family residences must have water conservation plumbing fixtures.

III

After January 1, 2014, all non compliant plumbing fixtures in any multi family residential real property must be replaced with water conservation plumbing fixtures under the following circumstances:

(A) Floor area increased by more than 10%;

(B) Alteration or improvement is made with an estimated value exceeding $150,000.00.

IV

On or after January 1, 2019, all multi family residential real property must have installed water conservation plumbing fixtures.

V

The duty to install water conservation plumbing fixtures is the responsibility of the building owner.

VI

The only exception to the foregoing is where a licensed plumber certifies that, due to the age or configuration of the building, it is not possible to install water conservation plumbing fixtures.

PROVISIONS IN CC&R's THAT ARE CONTRARY TO WATER CONSERVATION REGULATIONS ARE VOID

(Assembly Bill 1061, California Civil Code §1353.8)

I

Since 2006, any provision in CC&R's prohibiting water efficient landscaping is void.

II

California Civil Code §1353.8 now also makes void any provision in CC&R's which has the effect of prohibiting compliance with;

(A) Water efficient landscaping ordinances;

(B) Emergency water conservation regulation; or

(C) Water conservation programs (i.e. low flow toilets, shower heads and faucets).

GOLETA WEST SANITARY DISTRICT RATES MAY INCREASE BY 110%

I

The City of Goleta proposes to "Detach" from the Goleta West Sanitary District parcels served by the G.W.S.D. which are located within the City of Goleta.

II

The reason for the proposed Detachment is to;

(A) Divert approximately 1.2 million dollars in property taxes, the majority of which would be paid to the County of Santa Barbara, from the Goleta West Sanitary District to the City of Goleta's general fund; and

(B) Cause to be transferred to the City of Goleta a portion of the Goleta West Sanitary District's 30 million dollars in reserves.

III

Money diverted will be used for general City expenses. The City would then increase its sewer customer's fees to pay for sewer operations.

IV

It is anticipated that sewer rates will increase by up to 300% over the next five years. Additionally, due to the anticipated transfer of millions of dollars from the Goleta West Sanitary District's Reserve Fund to the City, it will result in underfunded responsibility for infrastructure maintenance and improvements.

HOMEOWNER ASSOCIATIONS MUST PROVIDE REASONABLE ACCOMMODATIONS FOR DISABLED RESIDENTS

I

The following arises from a complaint filed with the State Department of Fair Housing. A physician recommended a companion dog for a Tenant living in an apartment complex who suffered from "mental pain".

II

The apartment Owner refused to allow the Tenant's dog because it exceeded the apartment Owner's 35 lb. weight limit. The Tenant filed a complaint with the State Department of Fair Housing which resulted in a settlement of $300,000.00 being paid by the apartment Owner to the Tenant.

III

It is safe to assume that the result would have been identical had the Tenant been the resident of a Condominium Complex with a pet restriction set forth in its CC&R's.

IV

Upon an alleged disabled person requesting an accommodation, the Association should:

(1) Confirm that the individual is disabled as defined by law; and

(2) Confirm that the accommodation has been recommended by an appropriate professional.

V

Directors should also be mindful of California Civil Code §1360 which states modifications to a Unit and/or the Common Area must be allowed for purposes of accommodating disabled residents.

STARLIGHT RIDGE SOUTH HOMEOWNERS' ASSOCIATION VS. HUNTER BLOOR

((2009) 177 Cal.App.4th 440)

The Starlight Ridge case involves a frequent issue regarding maintenance responsibility as between an Association and an Owner. Starlight Ridge is a Planned Development. The Association's only responsibility on each Owner's Lot is to maintain the "Landscape Maintenance Area" including "all improvements", facilities, landscaping and planting thereon.

Owners are responsible for all other maintenance on their Lots including drainage systems and devices.

A drainage v-ditch crossing Ms. Bloor's Lot collapsed. The v-ditch was located fully within the Landscape Maintenance Area. In the past, the Association demanded the Owners repair the v-ditch within the Landscape Maintenance Area on their Lots. The Owners had always complied.

The Association filed a lawsuit against Ms. Bloor who failed to repair the collapsed v-ditch located in the Landscape Maintenance Area on her Lot.

The Association argued that the CC&R's require Owners to maintain drainage systems on their Lot. Ms. Bloor argued that the CC&R's required the Association to maintain the Landscape Maintenance Area on each Owner's Lot including the improvements within the Landscape Maintenance Area. Ms. Bloor pointed out that the v-ditch was an "improvement located on the Landscape Maintenance Area." Therefore, Ms. Bloor claimed that the v-ditch was the responsibility of the Association.

The Superior Court ruled that the Association, not Ms. Bloor, was responsible for maintenance and repair of the v-ditch. The Appeals Court overruled the Superior Court's decision holding that Ms. Bloor was responsible.

The Appeals Court stated that the wording of the CC&R's supported either argument. It further concluded that both arguments were reasonable given the wording of the CC&R's. However, the Court looked to the conduct of the Parties. The Association had previously required Owners to repair and Owners had done so without objection.

The decision in this case holds that where CC&R's are ambiguous with respect to maintenance responsibilities, the Court may look to past conduct for purposes of assisting and interpreting the CC&R's.

Form No. 9A
1/10
California Civil Code
§1363.005

DISCLOSURE DOCUMENTS INDEX

Pursuant to your request, the _____ Homeowners' Association provides this Disclosure Documents Index as required by California Civil Code §1363.005.

ITEM	DESCRIPTION	REFERENCE CODE
1	Assessment and Reserve Funding Disclosure Summary (form)	Civil Code Sec. 1365.2.5
2	Pro Forma Operating Budget or Pro Forma Operating Budget Summary	Civil Code Sec. 1365(a)
3	Assessment Collection Policy	Civil Code Sec. 1365(e) and 1367.1(a)
4	Notice/Assessments and Foreclosure (form)	Civil Code Sec. 1365.1
5	Insurance Coverage Summary	Civil Code Sec. 1365(f)
6	Board Minutes Access	Civil Code Sec. 1363.05(e)
7	Alternative Dispute Resolution (ADR) Rights (summary)	Civil Code Sec. 1369.590
8	Internal Dispute Resolution (IDR) Rights (summary)	Civil Code Sec. 1363.850
9	Architectural Changes Notice	Civil Code Sec. 1378(c)
10	Secondary Address Notification Request	Civil Code Sec. 1367.1(k)
11	Monetary Penalties Schedule	Civil Code Sec. 1363(g)
12	Reserve Funding Plan (summary)	Civil Code Sec. 1365(b)
13	Review of Financial Statement	Civil Code Sec. 1365(c)
14	Annual Update of Reserve Study	Civil Code Sec. 1365(a)

Form No. 30A
11/10
Civil Code § 1350.7
Corp. Code §20
15 USC 7001(c)

REQUEST FOR ELECTRONIC TRANSMISSION AND OWNER NOTIFICATION

This Request for Electronic Transmission and Owner Notification is provided by _____ ("Owner") to the _____ Homeowners' Association (the "Association") for purposes of satisfying the requirements of California Civil Code §1350.7, California Corporations Code §20 and 15 USC 7001(c),

REQUEST FOR ELECTRONIC TRANSMISSION

A. The above named Owner hereby requests that the Association deliver to Owner all information and communications by electronic transmission.

B. This request shall supersede all previous notifications from Owner, whether written or oral, requesting that information and communications from the Association **NOT** be sent electronically.

C. The electronic address to which electronic communications are to be sent to Owner is:

_____

NOTIFICATION TO OWNER

1. Notwithstanding the fact that you have requested information and communications be sent electronically you may, upon written request, receive information and communications from the Association in non electronic form. To do so, you must notify the Association in writing of the information and/or communications that you desire be sent to you in non electronic form.

2. You may withdraw your request that information and communications from the Association be sent electronically. To withdraw your request you must send a written and signed notification to the Association specifically stating that you no longer desire to receive information and communications from the Association electronically.

3. The type of information and communications that will be sent electronically include all communications the Association sends to Owners voluntarily and as required by law.

4. If your electronic address provided above changes, or you request electronic transmission from the Association to be sent to a different address, you must notify the Association of your new electronic address. The notification must be delivered to the Association in writing.

5. To access and retain Association records sent electronically, your hardware and software must meet the following minimum requirements:

Hardware requirements: _____

Software requirements: _____

6. Upon the Association's receipt of this Request for Electronic Transmission and Owner Notification dated and signed by Owner, a copy will be sent to you electronically for purposes of demonstrating you can receive and access information sent by the Association. If you do not receive an electronic copy of this Document within fifteen days of delivery to the Association, you must notify the Association in writing. If you fail to do so, it shall be concluded you can receive and access information and communications sent electronically by the Association.

7. If the hardware or software requirements for access are changed, you may withdraw your request that the Association deliver all information and communications by electronic transmission.

8. Notwithstanding your request that information and communications from the Association be sent electronically, the Association reserves the right, in its sole discretion, to send information and communications in non electronic form.

9. If one of multiple Owners of a Unit have requested information and communications be sent electronically, it will be deemed that such Owner has done so on behalf of all Owners.

10. The address of the Unit owned by the below signed Owner(s) is:

_____

_____

_____

Dated: _____ By:_____

, Owner

Dated: _____ By:_____

, Owner

"Caution"

This form is provided as a courtesy by James H. Smith, Esq. of the law firm of Grokenberger & Smith. Telephone: (805) 965-7746. Your Association's Governing Documents and/or changes in the law may require this form to be modified.G:\Wpwork\1Forms\HomeownersAssn\Associations\Request for Electonic Transmission and Owner Notification.doc