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2020 Review of California Court Decisions Affecting Community Associations

NEW LAWS EFFECTIVE JANUARY 1, 2021 (Or As Otherwise Noted*):

*Given the unusual circumstances of 2020 and the consequential effects of the pandemic, several relevant laws did not make it to the Governor's desk for his review or approval after being introduced and then discussed in committee(s). Some of those bills are referenced below to apprise you of what was in the pipeline, as they could resurface in one form or another in the future.

Before we address the various, relevant laws enacted or introduced, we also want to bring to your attention the California Department of Public Health's new guidelines for outdoor playgrounds and recreational facilities, effective November 20, 2020. These protocols apply to publicly accessible outdoor locations (encompassing homeowners' associations), including play structures, slides, and swings, but do not include indoor playgrounds.

State Protocols for Reopening Outdoor Playground Facilities

"All playground facilities operators should review and follow these recommendations:

1. An adult must actively supervise each child at all times to make sure that children two years of age or older keep their face covering over their nose and mouth and stay 6 feet away from adults and children outside their household.

a. Children who are supervised by the same adult must stay together in the same play area or play structure at all times, to allow active supervision.

b. If an infant or child requires attention (nursing, diapering) that precludes an adult from actively supervising other children using the playground, the adult should ask the other children to leave the play structure/area and stay by the adult's side until needed care is complete.

2. People standing outside the playground, including people waiting to enter the playground, should remain 6 feet away from areas of the playground used by children and adults.

3. Maintain six-foot distancing between children and adults from different households including children using or waiting to use play structures or play areas, and families waiting to enter the playground.

4. Increase cleaning of frequently touched surfaces, daily as practicable.

5. To the extent feasible, provide handwashing stations or sanitizer to facilitate hand hygiene, especially during times of heavy usage. Use a hand sanitizer containing (60% ethanol or 70% isopropanol). Never use hand sanitizers with methanol due to its high toxicity to both children and adults.

6. Post the maximum number of children allowed at the entrance of each playground.

a. Determine and post the maximum occupancy of each play structure, (e.g., climbing structures, slides, swings, spinning structures, and sand areas) with 6 foot vertical and horizontal distancing.

b. Determine and post the maximum occupancy for supervising adults to ensure that each adult can maintain six feet of distance from other adults and children.

c. Provide directions on how to wait in line when maximum playground occupancy has been reached.

7. Mark playgrounds to help children and adults maintain 6 foot distancing.

a. Mark spaces for families to stand while waiting to enter the playground. The spaces should be far enough apart to allow 6 feet of distance between households.

b. For play structures or play areas that can hold more than one child while allowing 6 foot distancing:

i. Post the maximum number of children allowed on each structure/in each area to allow 6 foot distancing vertically and horizontally.

ii. For play structures or areas that can hold more than 1 child, consider marking with tape or other visual indicators to help children assess whether they are 6 feet apart.

c. Mark designated spaces 6 feet apart for children to stand while waiting to use a play structure/area.

Signs should be visibly posted to encourage compliance and limit the number of people using the equipment. Walks of the property by Board Members or property management will also encourage cooperation.

For additional details, please go to:
https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Outdoor Playgrounds.
The website includes the flyer outlining the eight (8) visitor rules to be followed, and provides the flyer that facility operators are to download, print, and post at all outdoor playgrounds.

AB 3088. Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 aka COVID-19 Small Landlord and Homeowner Relief Act of 2020 (Homeowner Act)
[Status: Approved by Governor Newsom and Chaptered. Effective: Immediately]

This bill is a temporary solution enacted to provide some level of relief to residential renters/tenants and modest protections for small landlords and homeowners. The Act provides protection against unlawful detainer actions for unpaid rent for the period from March 1, 2020 to August 31, 2020 due to COVID-19-related financial distress. For the period of September 1 to January 31, 2021, a financially COVID-19-impacted tenant will be responsible for at least 25 percent of the rents due for that period to receive such eviction protection. The Act does not waive unpaid rent but instead converts that amount to consumer debt, collectible in small claims court as of March 1, 2021. If the tenant is not able to meet that 25 percent minimum, this new law would provide eviction protection until February 1, 2021. Importantly, a landlord who resorts to extrajudicial self-help to force a tenant to vacate premises will be liable for new penalties of $1,000 to $2,500. To qualify for the bill's protections, tenants will need to sign a declaration that they have been financially impacted as a result of the pandemic and also will need to provide specific information and evidence necessary to warrant the protection.

The new law still allows landlords to pursue unlawful detainer actions in a variety of circumstances, including actions against nonresidential, commercial tenants, evictions for lease defaults other than nonpayment of rent, evictions for missed rent payments prior to March 2020, and evictions for nonpayment of rent unrelated to COVID-19.

AB 3088 does not preempt existing eviction moratoriums by local governments, which remain in place until they expire. However, new local eviction moratoriums passed after August 19, 2020 cannot take effect until February 1, 2021, and ordinances that expire prior to February 1 cannot be extended until that date. Further, if local ordinances establish a repayment period, they must require that repayments begin on or before March 1, 2021.

The bill requires a mortgage servicer, as defined, to provide a specified written notice to a borrower, as defined, if the mortgage servicer denies forbearance during the effective time period, as defined, that states the reasons for that denial if the borrower was both current on payments as of February 1, 2020, and is experiencing a financial hardship that prevents the borrower from making timely payments on the mortgage obligation due, directly or indirectly, to the COVID-19 emergency. The Homeowner Act would also require a mortgage servicer to

comply with applicable federal guidance regarding borrower options following a COVID-19 related forbearance.

(An act to amend Sections 1946.2, 1947.12, and 1947.13 of, to amend, repeal, and add Sections 798.56, 1942.5, 2924.15 of, to add Title 19 (commencing with Section 3273.01) to Part 4 of Division 3 of, and to add and repeal Section 789.4 of, the Civil Code, and to amend, repeal, and add Sections 1161 and 1161.2 of, to add Section 1161.2.5 to, to add and repeal Section 116.223 of, and to add and repeal Chapter 5 (commencing with Section 1179.01) of Title 3 of Part 3 of, the Code of Civil Procedure.)

AB 3182. Rental Prohibition
[Status: Approved by Governor Newsom and Chaptered. Effective: 1/01/21]

This most significant new law for community associations prohibits both broad rental bans and some specific rental restrictions in CC&Rs, and instead creates a uniform approach for all associations to follow, even though members may desire to vote in (or have previously voted for) a ban or some restriction on the rental or leasing of units/separate interests. These new laws directly impact rental quotas, minimum lease term provisions and regulation of Accessory Dwelling Units.

This bill amends Civil Code Section 4740 to instead make *void and unenforceable any governing document that purports to prohibit the rental or leasing of any of the separate interests* in a common interest development. The bill also provides that an owner of a separate interest in a common interest development is not subject to a provision in a governing document or an amendment that effectively prohibits or unreasonably restricts the rental or leasing of any of the separate interests. However, *short term rentals for a period of 30 days or less are excluded from this new bill, so are not affected by it.*

The most notable change to amended Section 4740 is that it deletes former subdivision (f) which made it applicable only to governing documents prohibiting rentals that became effective on or after January 1, 2012. The Amended Section 4740 also eliminates an Owner's ability to vote for, or expressly consent to the application of a rental quota or rental prohibition. As many of you will recall, back in 2011 there was a rush by Associations to amend their CCRs to implement a provision that established a maximum number of rental units allowed within a project because as of January 1, 2012, any prospective amendment would only apply to owners that purchased a separate interest after that date. That statutory provision effectively created two classes of members in every association, those that were not subject to the quota and newcomers that were subject to the rental quota, which was not a particularly good solution to anything and created uncertainty and feelings of disparate treatment.

The Amended Section 4740, as modified and noted above, fundamentally means that except as provided in new Section 4741, rental quotas and minimum lease terms are invalid and unenforceable even though the requisite percentage of members voted or may want to vote on the restrictions or expressly consent[ed]to be bound by these restrictions. It may also invalidate restrictions in place which comply with these statutes as to the quota percentage.

New Civil Code Section 4741 provides:

4741.

(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests, accessory dwelling units, or junior accessory dwelling units in that common interest development to a renter, lessee, or tenant.

(b) A common interest development shall not adopt or enforce a provision in a governing document or amendment to a governing document that restricts the rental or lease of separate interests within a common interest to less than 25 percent of the separate interests. Nothing in this subdivision prohibits a common interest development from adopting or enforcing a provision authorizing a higher percentage of separate interests to be rented or leased.

(c) This section does not prohibit a common interest development from adopting and enforcing a provision in a governing document that prohibits transient or short-term rental of a separate property interest for a period of 30 days or less.

(d) For purposes of this section, an accessory dwelling unit or junior accessory dwelling unit shall not be construed as a separate interest.

(e) For purposes of this section, a separate interest shall not be counted as occupied by a renter if the separate interest, or the accessory dwelling unit or junior accessory dwelling unit of the separate interest, is occupied by the owner.

(f) A common interest development shall comply with the prohibition on rental restrictions specified in this section on and after January 1, 2021, regardless of whether the common interest development has revised their governing documents to comply with this section. However, a common interest development shall amend their governing documents to conform to the requirements of this section no later than December 31, 2021.

(g) A common interest development that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars ($1,000).

(h) In accordance with Section 4740, this section does not change the right of an owner of a separate interest who acquired title to their separate interest before the effective date of this section to rent or lease their property.

Section 4741 goes on to create new and different problems and standards with which the Association's will have to comply. Whereas prior Section 4740 addressed provisions that "prohibited" the rental of separate interests within a Common Interest Development, new Section 4741 adds an additional twist of uncertainty by adding to the mix the vague and ambiguous language that: "governing document or an amendment to a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests." The inclusion of the additional criteria opens up a veritable Pandora's box of disputes

and arguments about the meaning of "has the effect of prohibiting" or what "unreasonably restricts the rental" in the context of general rental restrictions in CCRs or Rules. When language such as "unreasonably restricts" is injected into the discussion it generally means that a Court of law will be forced to determine what is reasonable or not, which should be unnecessary in this context.

However, at least Section 4741 provides some guidance as to the meaning of those phrases in subdivision (b) and (c). (b) indicates that a rental quota of greater or equal to 25% of the separate interests may be rented out at any one time, which means that the legislature has deemed that to be "reasonable." The applicability of this 25% quota as being reasonable as to a particular owner appears to turn on whether the separate interest was purchased prior to the end of 2020. . Subdivision (h) of Section 4741 appears to indicate that if an Owner purchased prior to January 1, 2021 his rights to rent a separate interest would not be changed by a quota previously adopted even if the quota is 25% or greater. There is some ambiguity concerning whether an existing quota of 25% or greater will comply with the statute only if adopted prospectively because Section 4741 (b) indicates that "nothing in this subdivision prohibits a common interest development from adopting or enforcing a provision authorizing a higher percentage of separate interests to be rented or leased." This can be construed to imply prospective adoption rather than relative to an existing set of CCRs.

Another rental restriction which falls victim to this new statute is minimum lease terms in the governing documents greater than 30 days in length. Because original Section 4740 did not address rental terms, many Association's amended CCRs to provide for a minimum lease term of six months or a year in recognition that the longer the lease term the more cooperative the tenant will be. New Section 4741 (c) invalidates those longer lease term requirements and will force the Association to amend the documents accordingly by the end of 2021 or be subject to a fine of $1000.00. Regardless of the date of amendment of the governing documents, commencing January 1, 2021 all Associations must comply with this limitation regarding quotas and lease terms.

One of the most glaring flaws in these new laws is that it forces the Association to undertake amendments to eliminate quotas of less than 25% and lease terms of greater than 30 days. It does not permit the Board to "correct" the provisions to reflect the change in statute to those levels, it mandates replacement of the invalid provision with a new provision compliant with the law. Aside from the disruption in the day to day operation of the association in this context, the process of amendment of governing documents is complicated, expensive and time-consuming because of the election requirements and the presence of supermajorities to pass such amendments.

Another relevant aspect of AB 3182 relates to ADU/JADU issues. We are all aware that if an Owner obtains approval/permitting of an ADU the Association may not reject or prevent the construction of same upon an Owner's submission of the governmental approval for the ADU which is required by the local government, but may require an architectural application be submitted and may require aesthetic conformity with architectural guidelines. However, in the amendment to Government Code Section 65852.2 (a)(3) there is a provision that: "If the local

agency has not acted upon the completed application within 60 days, the application shall be deemed approved."

The obvious problem with this provision is that the Association will not have any official approval on which to rely in addressing ADU architectural applications and may lead to disputes with Owners over their "right" to construct an ADU. In light of this provision, the ADU policies implemented should contain a provision which obligates the submitting Owner to establish with written evidence that their ADU application to the local agency has been "deemed approved" under this statute and that the Owner's word is not sufficient.

[AB 3182: An act to amend Section 4740 of, and to add Section 4741 to, the Civil Code, and to amend Section 65852.2 of the Government Code, relating to housing.]

SB 326. Exterior Elevated Elements

Signed into law on August 30th, 2019, Senate Bill 326 (or Civil Code Section 5551) is the "Exterior Elevated Elements" ("EEE") or "balcony inspection bill" which specifically focuses on common interest development buildings containing three (3) or more multi-family dwelling units. EEE's are specifically defined therein, and encompass decks, balconies, stairways and walkways and their railings. While the bill requires inspections of EEEs, it goes further than that, and impacts both reserve studies as well as construction defect litigation.

At least once every nine (9) years, the Board of an Association of a condominium project shall cause a reasonably competent and diligent visual inspection to be conducted by a licensed structural engineer or architect of a random and statistically significant sample of exterior elevated elements for which the association has maintenance or repair responsibility. (Reserve studies must be conducted every three (3) years per Civil Code Section 5550.)

The inspection shall determine whether the exterior elevated elements are in a generally safe condition and performing in accordance with applicable standards.

Prior to conducting the first visual inspection, the inspector shall generate a random list of the locations of each type of exterior elevated element and the law specifies what should be included on it. The inspector shall perform the visual inspections in accordance with the random list generated. If during the visual inspection the inspector observes building conditions indicating that unintended water or water vapor has passed into the associated waterproofing system, thereby creating the potential for damage to the load-bearing components, then the inspector may conduct a further inspection. The inspector shall exercise their best professional judgment in determining the necessity, scope, and breadth of any further inspection. Based upon the inspector's visual inspections, further inspection, and construction and materials expertise, the inspector shall issue a stamped or signed written report containing specified information, including several items, i.e. the expected future performance and remaining useful life of the load-bearing components and associated waterproofing system, recommendations.

If, after inspection of any exterior elevated element, the inspector advises that the exterior elevated element poses an immediate threat to the safety of the occupants, the inspector shall provide a copy of the inspection report to the association immediately upon completion of the

report, and to the local code enforcement agency within 15 days of completion of the report. Upon receiving the report, the association shall take preventive measures immediately, including preventing occupant access to the exterior elevated element until repairs have been inspected and approved by the local enforcement agency.

Each subsequent visual inspection conducted under this section shall commence with the next exterior elevated element identified on the random list and shall proceed in order through the list.

The first inspection shall be completed by January 1, 2025, and then every nine years thereafter in coordination with the reserve study inspection pursuant to Section 5550. All written reports shall be maintained for two inspection cycles as records of the association.

The continued and ongoing maintenance and repair of the load-bearing components and associated waterproofing systems in a safe, functional, and sanitary condition shall be the responsibility of the association as required by the association's governing documents.

The Association Board and/or a local government or local enforcement agency may enact rules, bylaws, and ordinances imposing requirements greater than those imposed by this section, but not less.

An act to amend Section 6150 of, and to add Sections 5551 and 5986 to, the Civil Code, relating to civil law.

SB 908. Debt Collectors: Licensing and Regulation: Debt Collection Licensing Act.

[Status: Approved by Governor Newsom and Chaptered. Effective: 1/01/21]

This bill establishes the Debt Collection Licensing Act beginning on January 1, 2022, and provides for licensure, regulation, and oversight of debt collectors by the Commissioner, defines terms for its purposes, and make other related changes. The bill prohibits a person from engaging in the business of debt collecting in this state without a license and requires the person to comply with reporting, examination, and other oversight by the commissioner. The bill requires a payment of an application fee, signing the application under penalty of perjury, and submission to a criminal background check by the Department of Justice.

This bill requires each licensee to, among other things, file reports with the Commissioner under oath, maintain a surety bond, and pay to the commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of these provisions, as estimated by the commissioner. The bill authorizes the commissioner to enforce these provisions through various means.

This bill includes allowing a telephone call using an alias as long as the collection company is identified, but expressly disallows sending digital or written communications that do not display the license number of the debt collector in at least 12-point type.

An act to amend Sections 1788.11 and 1788.52 of the Civil Code, and to add Division 25 (commencing with Section 100000) to the Financial Code, relating to debt collectors.

SB 1030. Accessory Dwelling Units (ADUs) and Junior (ADUs) – City Approvals
(Status: Approved by Governor and Chaptered by Secretary of State on 9/25/20.)

This bill requires city and county approval of building permits for ADUs with a proposed or existing single-family dwelling if certain ministerial or administrative criteria are met.

An act to amend Sections 54221, 54230, 65583.2, 65589.5, 65655, 65852.2, and 65941.1 of the Government Code, to amend Sections 17980.12 and 34120.5 of the Health and Safety Code, and to amend Sections 5849.7, 5849.8, and 5849.9 of the Welfare and Institutions Code, relating to housing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

AB 1885 – Debtor Exemptions: Homestead Exemptions
(Status: Approved by Governor and Chaptered by Secretary of State on 9/18/20)

Existing law provides that a specified portion of equity in a homestead, as defined, is exempt from execution to satisfy a judgment debt and prescribes that the amount of the Homestead Exemption is either $75,000, $100,000, or $175,000, depending on certain characteristics of the homestead's residents.

Effective January 1, 2021, this bill would instead make the Homestead Exemption the greater of $300,000 or the countywide median sale price of a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed $600,000. These amounts would adjust annually for inflation.

An act to amend Code of Civil Procedure Section 704.730.