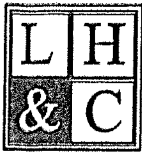

Loewenthal, Hillshafer & Carter, LLP

Web Site: www.lhclawyers.net
E-mail: info@lhclawyers.net

5700 Canoga Avenue, Suite 160
Woodland Hills, California 91367
Tel: (818) 905-6283
Fax: (818) 905-6372
Toll Free: (866) 474-5529

Robert D. Hillshafer
David A. Loewenthal
Kevin P. Carter
Michael D. Attar
Barbara A. Higgins

Of Counsel,
Laura J. Snoke

LHC Newsletter Vol. 10, No. 6
Contact us Toll-Free: 1-866-474-5529 (info@lhclawyers.net)

By: Robert D. Hillshafer, Esq.
David A. Loewenthal, Esq.
Barbara A. Higgins, Esq., of
Loewenthal, Hillshafer & Carter, LLP

2019 Year-End Review of California Legislation and Cases As They Affect Community and Homeowners' Associations

NEW LAWS EFFECTIVE JANUARY 1, 2020:

SB 323. New Election Reform Laws
[Amends *Civil Code* **Sections 5100, 5105, 5115, 5125, 5145, and adds Section 5910.1**]

The California legislature and Governor have once again enacted more onerous and largely unnecessary changes to the election laws governing community associations. These changes create additional time constraints and formalities in the conduct of elections of directors that will increase the administrative expenses and compliance issues of every Association. The important changes are listed below:

Candidate Disqualification: *Civil Code* Sections 5100 and 5105 now require that election rules include the following qualifications to run for the board: (1) All candidates must be a member of the Association; and (2) owners that are corporations or trusts may be represented by an appointed "natural person."

Section 5105 also allows the disqualification of a candidate 1) with a prior criminal conviction that prevents the association from acquiring a fidelity bond or would result in the termination of the associations existing fidelity bond; 2) whose election would result in joint owners of a separate interest serving on the board at the same time; or, 3) who has been an owner for less than one (1) year.

Section 5100 does not allow disqualification for failure to pay fines and may not disqualify owners that have paid delinquent assessments under protest, is paying delinquent assessments under a payment plan or hasn't been given the opportunity to engage in IDR. The last prohibition means that an owner who has not received a "pre-lien letter" that offers IDR cannot be disqualified.

Offices conveniently located in Los Angeles, Ventura, Santa Barbara, and San Luis Obispo Counties

New Election Notices: Section 5115 now requires: (1) notice of the deadlines and nomination procedures be sent at least 30 days prior to nomination deadline; (2) notice of the list of candidates and election rules must be given to all members at least 30 days prior to the ballots being distributed to the members along with date, time and address for ballots to be submitted and date time and location for election meeting; and (3) distribution of ballots at least 30 days prior to election meeting. Effectively this means that the notice and nomination process must start 90 days prior to the meeting.

Terms: Notwithstanding provisions in bylaws, Section 5100 now requires elections be held at the end of each director's expiring term and at least every four years. This means that failure to meet quorum in an election doesn't mean automatic carryover terms.

Election Records and Member Access: Section 5105 (a) as amended requires an association maintain election materials including the candidate registration list and a voter list that includes certain required information. Members also have the right to verify the information on the voter list and registration list at least 30 days before the ballots are mailed. Inspectors of Election must correct errors identified by members within two business days of notice.

Civil Code Section 5200 adds "Election Materials" to the already long list of "Association Records" which members have access to. These now include 1) ballots, 2) signed envelopes, 3) list of voter's names, parcel numbers, and voters to whom ballots were to be sent, 4) proxies and 5) candidate registration list. Signed envelopes may be inspected but not copied. All these items must be retained by the Inspectors of Election or at a designated location until the expiration of the election challenge period under law.

Membership Rosters now must include Email Address: A very important change impacting rights of privacy is the fact that the membership roster definition specifically requires members email addresses be listed unless the member has formally opted out under the existing procedure in Section 5220.

Election Inspector Qualifications: Section 5110 previously allowed election rules to provide for vendors under contract with the Association, such as the property manager or even legal counsel, to act as election inspectors. That allowance has been removed, eliminating management and counsel as inspectors, which will clearly represent an increased expense to the Association. The one exception here is for an engagement of a vendor specifically for the purpose of serving as election inspector.

Amendment of Election Rules: Section 5105(h) prohibits amendments of the election rules within 90 days prior to any election.

Challenges to Election Process: Section 5145 has been expanded to require a Court to void an election when the challenging party establishes by a preponderance of the evidence that election procedures were not followed. However, the amended law does allow the Association to avoid this voiding if it can show that non-compliance did not impact the election results.

Note: These changes go into effect on January 1, 2020. For those associations whose annual meetings and elections take place in January such that ballots would be mailed out prior to

January 31, 2020, the only element of this new law that would impact the election would be the appointment of an election inspector that is not a contract vendor of the Association. If the ballots are mailed out to the members prior to January 1, 2020 it would not be mandatory to adopt a new election policy consistent with these new laws for the January 2020 election. However, it would be a very good idea to consider starting the rules amendment process as soon as possible to allow the 28-day notice to the members of the proposed rules amendment.

AB 670. Accessory Dwelling Units ("ADU's"). *(New Law)*

[Added as ***Civil Code*** **Section 4751**]

An "accessory dwelling unit" is a second unit on a lot, either detached or contained within the walls of the house on the lot, up to 1200 square feet, including bathroom, sleeping, and cooking spaces. A "junior" ADU may be up to 500 square feet, with its own outside entrance and cooking facility, but may share a bathroom with the main house. In order to increase affordable housing in California, this new law was enacted to encourage homeowners to convert their garages or unused land in their backyard into living spaces to use as low-income rentals. It also requires Community Associations to allow ADU's. This bill voids and makes unenforceable any governing document provision that would prohibit the construction of ADU's. However, the law does not prevent "reasonable restrictions" which presumably would be under the architectural process or would deal with other issues such as parking and lease restrictions already in place. Such reasonable restrictions would generally be those which do not unreasonably increase constructions costs or effectively prohibit construction of ADU's. Governor Newsom also signed into law various companion bills to assist and encourage the construction of ADU's. See *Government Code* Sections 65852.2, 65852.22, 65852.26, 65583, and 65852.2 and *Health and Safety Code* Section 50504.5. **Note**: ADUs should be encompassed and regulated within architectural committee rules guidelines - in accordance with the law. This new law could create parking issues and greater usage of Association amenities.

SB 326. Inspections of Balconies and Other Exterior Elevated Elements *(New Law)*

[Amends ***Civil Code*** **Section 6150** and added as ***Civil Code*** **Sections 5551 and 5986**]

This law requires Associations to conduct a reasonable and diligent visual inspection of exterior elevated elements, defined as "load-bearing components" which are six (6) feet above ground and substantially comprised of wood (such as decks, balconies, stairways, railings, etc.) and associated waterproofing systems, to determine whether they are in generally safe condition and are in compliance with applicable standards. The first inspection shall be completed by July 1, 2025. The inspections must be conducted at least every nine (9) years by a licensed structural engineer or architect, and the law contains other instructions to follow in terms of procedure and performance. As part of the inspection, the engineer or architect is to provide a report to the Board regarding their findings and remaining useful life of the inspected components. If the inspector determines that there is an immediate threat to the safety of occupants then the inspector must, within fifteen (15) days of completion of the report, provide it to the local code enforcement agency.

If the inspection report identifies an immediate threat to the safety of residents, the Association's must take immediate steps such as closing off and preventing access to the exterior elevated

common area or exclusive use common area until proper repairs have been made and approval by the local code enforcement agency.

Boards should be discussing these issues with their reserve study professional to make sure that these components are being properly identified and reserved for future repair/replacement.

Also, in a move which is very good news for Association's confronting construction defect claims against the Declarant, this statute now prohibits developers from having veto authority over whether to initiate construction defect litigation. Notwithstanding contrary provisions in the governing documents, a Board has the authority to commence legal proceedings against a Declarant, developer or builder. The statute, with certain exceptions, prohibits an Association's governing documents from limiting a Board's authority to commence legal proceedings against the Declarant, developer or builder. Thus, a provision in the Declaration requiring a membership vote prior to filing an action is likely unenforceable. This legislation is the first striking back against the trend for Developers to insert a poison pill into CCRs to impede, impair and even prevent Board's from making decisions about Association claim without having to jump through the election hoop and obtain a supermajority of approval from the members, many of whom are not well-informed and who are thinking only about short term financial impact, which the Board cannot do. This legislation is in direct response to the decision in the Branches case decided last year which threw out a construction defect claim because a vote was not taken.

SB 652. Display of Religious Items on Entry Doors Protected *(New Law)*

[Added as ***Civil Code*** **Sections 1940.45 and 4706**]

The governing documents of an Association cannot prohibit the display of religious items on the entry or entry door frame of an Association community member's separate interest unit or home. The only exception would be for maintenance, repair, or replacement of an entry door or door frame.

AB 5. Employee or Independent Contractor *(New Law)*

[Amends ***Labor Code*** **Section 3351** and added as ***Labor Code*** **Section 2750.3**; amended **Sections 606.5 and 621 of the *Unemployment Insurance Code*.**]

The intent of this law is to codify the decision in *Dynamex Operations West, Inc. v. Superior Court*, (2018) 4 Cal.5th 903 and clarify its application. For purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person who provides labor or services for money shall be considered an employee (instead of an independent contractor) unless the hiring entity (Association) demonstrates the worker (a) is free from the control and direction of the hirer regarding the performance of the work, (b) performs work that is outside the usual course of the hirer's business, and (c) the person is customarily engaged in an independently established trade, occupation, or business. The new law exempts certain, specified occupations from the *Dynamex* test above, but provides that these occupations are governed instead by the criteria set forth in *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341. (See *Labor Code* Section 2750.3 for those exemptions and criteria.)

SB 754 – Board Member Elections and Election By Acclamation *(New Law)*

[Amends *Civil Code* **Section 5100** and *Corporations Code* **Section 7522.**]

This law requires an Association to hold an election for a seat on the Board of Directors at the expiration of the director's terms and at least once every 4 years. It also requires (when the number of director nominees at the close of the nomination period is less than the number of vacant director positions), that the director nominees be considered elected by acclamation if the Association includes 6,000 or more units, complies with specified notice requirements, and permits all candidates to run, except that an Association must disqualify a candidate for not being a member of the association at the time of the nomination, and authorizes an Association to disqualify a candidate for specified other reasons in the law.

SB 234 – Allows Number of Children in Family Day Care Homes to Increase *(New Law)*

[Amends ***Health and Safety Code*** **Sections 1596.72, 1596.73, 1596.78, 1597.30, 1597.45, and 1597.54,** and adds ***Health and Safety Code*** **Sections 1597.41, 1597.42**, and repeals certain other sections.]

Protections are now extended and afforded to "large family daycare homes" (14 children) in addition to "small family daycare homes" (8 children), so that both are treated as "residential use of property". This applies to daycares in condominium and townhome complexes as well as single family, detached homes. CC&Rs cannot restrict the use and occupancy of the home as a daycare if it meets the definition of a "family daycare home".

SB 222 – Cannot Discriminate on Basis of Veteran or Military Status (CC&Rs) *(New Law)*

[Amends ***Government Code*** **Sections 12920, 12921, 12927, 12930, 12931, 12955, 12955.8, 12956.1, and 12956.2.**]

This law requires a printed disclosure or stamp on the cover page of the CC&Rs recognizing veterans and military status as another class of people protected from discrimination, and informing the reader that any restrictions in the CC&Rs that violate state and federal fair housing laws are void and may be removed.

NEW CASE LAW – 2019

Published Decisions:

In Re: Maria A. Basave De Guillen (Highland Greens Homeowners) (2019) 604 B.R. 826

Significance: This was a matter of first impression for this Bankruptcy Appellate Panel, and they believe the Davis-Stirling Common Interest Development Act was intended primarily to protect homeowners or debtors in this case. Post-lien assessments are considered unsecured and therefore dischargeable in bankruptcy.

Facts: An Association filed a proof of claim for $64,137.20 supposedly secured by a pre-petition default judgment against a Chapter 13 debtor for unpaid dues on her condominium, attorney fees, and collection costs and seeking an equitable lien against the property that would

not be discharged. Debtor objected on various grounds, including: there was no basis to find an equitable lien, that most of the claim should be reclassified as unsecured because the Association did not comply with the procedures set forth in the Davis-Stirling Act, and that the claim should not include future assessments because Debtor was current post petition on those obligations, among other grounds.

Disposition: The Bankruptcy Appellate Panel ruled partly in favor of the Debtor homeowner, sustaining the objection in part, allowing the claim in full, but reclassifying it as $29,000+ secured and $34,000+ balance unsecured.

Key Findings: The Davis Stirling Act does not authorize a continuing lien securing future assessments which accrue after the recordation of the lien. Moreover, the language of the CC&Rs did not create a contractual basis for a continuing lien.

Curto v. Country Place (2019) 921 F.3d 405

Significance: The Association's policy of assigning many more swimming pool hours to men on the weeknights was discriminatory because it made certain assumptions about the genders, resulting in women with regular day-time jobs having little access to the pool, and this policy was found to be "facially discriminatory".

Facts: Certain residents brought action against their Association alleging that the Association's policy of gender-segregated swimming hours at the community pool violated the Fair Housing Act ("FHA").

Disposition: The granting of the Association's requested Judgment was reversed on appeal.

Key Findings: The swimming schedule actually adopted by the Association was plainly unequal in its allotment of favorable swimming times (even if each gender had the same number of hours to use the pool).

Eisen v. Tavangarian (2019) 36 Cal.App.5th 526

Significance: The court acknowledged that Associations can create view obstruction rights/restrictions through well-crafted CC&R's as there is no California common law right to a view. Ultimately any CC&Rs affording view protections will be narrowly constructed in favor of the free use of land.

Facts: This is a dispute between two property owner neighbors over renovations which allegedly violated the CC&Rs and one neighbor's view. After a non-jury trial, judgment was entered in favor of Plaintiff.

Disposition: The judgment and injunction enforcing the CCRs after bench trial is reversed except as to order re hedges. The case was sent back to the trial court with instructions for additional consideration. The Court of Appeal held that (1) the provision in the CC&Rs that controlled the basic size of homes did not preclude renovations to second story, (2) plan approval requirements were no longer in effect, (3) the provision that limited construction of "structures"

did not apply to alterations or renovations to existing homes; and (4) owners did not waive and were not estopped from enforcing provision that limited height of hedges.

Key Findings: Although there is no right to an unobstructed view over adjoining property, a right may be created through adoption of enforceable CC&Rs. In this case, the CC&Rs did not regulate renovations and remodeling, so therefore, they did not preclude renovations to neighboring property's second story that allegedly interfered with other property owner's view. The requirement for plan approval for renovations going forward ceased to exist as a precondition once the entities that could authorize renovations ceased to exist.

Obduskey v. McCarthy & Holthus LLP (2019) 139 S.Ct. 1029

Significance: For purposes of the Fair Debt Collection Practices Act (FDCPA) attempting to enforce a security interest by debt collector by means of nonjudicial foreclosure is not the same as attempting to collect a money debt and therefore the FDCPA is not applicable under those circumstances.

Facts: The law firm of McCarthy & Holthus LLP was hired to carry out a nonjudicial foreclosure on a Colorado home owned by petitioner Dennis Obduskey. McCarthy sent Obduskey correspondence related to the foreclosure. The letter purported to provide notice pursuant to, and in compliance with both the Fair Debt Collection Practices Act (FDCPA) and Colorado law. Obduskey responded with a letter invoking a federal Fair Debt Collection Practices Act (FDCPA or Act) provision, which provides that if a consumer disputes the amount of a debt, a "debt collector" must "cease collection" until it "obtains verification of the debt" and mails a copy to the debtor. Obduskey alleged McCarthy neither ceased collecting on the debt nor provided verification. Instead, McCarthy initiated a nonjudicial foreclosure action by filing a notice of election and demand with the county public trustee. The notice stated the amount due and advised that the public trustee would sell the property for the purpose of paying the indebtedness. Obduskey sued, alleging that McCarthy failed to comply with the FDCPA's verification procedure. The District Court dismissed on the ground that McCarthy was not a "debt collector" within the meaning of the FDCPA, and the Tenth Circuit affirmed. Certiorari was granted.

Disposition: The Supreme Court affirmed holding that a business engaged in no more than nonjudicial foreclosure proceedings (such as a law firm) is not a "debt collector" subject to the main coverage of the FDCPA.

Key Findings: The FDCPA first sets out the primary definition of the term "debt collector": a "debt collector," it says, is "any person . . . in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts."

The FDCPA then sets forth the limited-purpose definition, which states that "[f]or the purpose of section 1692f(6) . . . [the] term [debt collector] also includes any person . . . in any business the principal purpose of which is the enforcement of security interests." The Court found it was

undisputed that McCarthy was, by virtue of its role enforcing security interests, at least subject to the specific prohibitions contained in §1692f(6).

Significantly, the Court found that only if McCarthy fell within the primary definition's scope do the Act's other provisions, i.e. the limited purpose definition, apply.

The Court rationalized that the limited-purpose definition (with its § 1692f(6) exception) places those whose "principal purpose ... is the enforcement of security interests" outside the scope of the primary "debt collector" definition, § 1692a(6), where the business is engaged in no more than the kind of security-interest enforcement at issue here—nonjudicial foreclosure proceedings. As such, the Court concluded that McCarthy was not subject to the main coverage of the Act and therefore not a debt collector within the meaning of the Act.

Orchard Estate Homes, Inc. v. Orchard Homeowner Alliance (2019) 32 Cal.App.5th 471

Significance: The Court declined to require that a petitioning association affirmatively prove that apathy was present since that requirement was not expressed by the Legislature in a Petition proceeding to reduce the percentage necessary to amend a Declaration.

Facts: Orchard Estate Homes, Inc., is a 93-unit planned residential development, governed by covenants, conditions, and restrictions (CC&R's), and rules and regulations prohibiting short term rentals of units for durations of less than 30 days. When Orchard's homeowners association attempted to enforce this rule against an owner who used a unit for such purpose, a lower court ruled that the rule was unenforceable because it was not contained in the CC&R's. Orchard put the issue to a vote to amend the CC&R's. After balloting was completed, approximately 62 percent of the owners/members of the homeowners association voted to prohibit short term rentals, but the percentage was less than the super-majority required to accomplish the amendment.

Orchard then filed a Petition pursuant to Civil Code section 4275 seeking authorization to reduce the percentage of affirmative votes to adopt the amendment, which was opposed. The trial court granted the petition and an appeal was filed arguing that the trial court erred in ruling that voter apathy was not an element of Civil Code section 4275 that must be proven and considered by the Court.

Disposition: The Appellate Court affirmed the judgment granting the Petition.

Key Findings:

The Court of Appeal held that voter apathy is not a decisive element in Civil Code 4275 in granting a Petition, pursuant to Civil Code Section 4275, as the HOA garnered 85 out of 93 members to cast votes. The Court noted that the statute (Civil Code Section 4275) does not include voter apathy among the list of elements that must be established. Moreover, Orchard was not required to plead and prove voter apathy under the plain language of Civil Code section 4275. Accordingly, the Court of Appeal upheld granting the Petition.

Sands v. Walnut Gardens (2019) 35 Cal.App.5th 174

Significance: Where an Association fails to conduct regular and routine preventive inspections and maintenance on common area components, the Association may be liable on a breach of contract cause of action where the CC&Rs require the Association to maintain the project in a first-class condition. However, the Association may not be liable for negligence where there is no independent duty outside of the CC&Rs.

Facts: The Sands owned a unit in the Walnut Gardens development. A pipe on the roof broke and water entered their bedroom. The Association's property manager hired people to repair the pipe and roof. The Association had the responsibility to maintain common areas, including this piping and roof. The Sands sued the Association for breach of contract and negligence. The trial court granted a nonsuit.

Disposition: The Appellate Court reversed and remanded the judgment relating to breach of contract and affirmed the ruling on the negligence claim.

Key Findings: The Association's Covenants, Conditions, and Restrictions provided in part that the Association was required to keep the project in "a first-class condition." The Sands' first witness testified the Association was performing no preventive maintenance at all, even though preventive maintenance was desirable. Significantly, the roof and pipes over the Sands' unit had not been inspected or maintained in years. The Appellate Court found that reasonable jurors could have concluded a total failure to maintain common areas as a breach in the Association's obligation to keep these areas in first class condition.

The Association contended there was no evidence establishing the Association was "on notice that it needed to make repairs or do something to the roof or the pipes." The Appellate Court found this argument was incorrect. The property manager testified "[m]aintenance wasn't happening. It was a very sad situation for the homeowners." As such, the Appellate Court concluded that a jury could find buildings need maintenance to remain in first class condition. The Appellate Court noted that the Association knew "[m]aintenance wasn't happening."

Ultimately, the Appellate Court held that a complete lack of preventive maintenance is evidence the Association did not keep the roof or pipes in first class condition. Therefore, the lower court's nonsuit was reversed and remanded relating to the breach of contract cause of action. On the tort claim (negligence), the Court found that outside the covenants, conditions, and restrictions, the Association had no independent duty as to the pipes and roof arising from tort law. As such, the nonsuit was affirmed on the tort claim.

Unpublished Decisions of Educational/Informative Value:

The following cases are not binding, legal precedent, but give the reader some idea of how a court might rule under the same or similar circumstances.

Benlloch v. Johnson 2019 WL 2353439

Vice President serving on the Board of Director of HOA obtained a three year civil harassment restraining order against a member. The Association paid Vice President's legal fees. The trial

court awarded Benlloch $13,200 in attorney fees. An appeal followed and the decision was affirmed.

Code of Civil Procedure Section 527.6, subdivision (s) provides that the "prevailing party in [a proceeding pursuant to an application for a civil harassment restraining order] may be awarded court costs and attorney's fees, if any." The Appellate Court found that a lawyer certainly billed for the legal services provided to Benlloch. Thus, the Court held there was no dispute that there were attorney fees generated, which is all the statute requires, regardless of who paid the fees. The Court noted that it was irrelevant whether the Bylaws authorized the Association to pay for attorney fees on behalf of a Director.

Harbour Island v. Alexander 2019 WL 311447

HOA's preliminary injunction against owner was upheld seeking to mitigate noise disturbances including thumping and door slamming; keep dogs from urinating and defecating in common areas where sign stated no pets were allowed, and abstain from photographing the HOA president at the community swimming pool.

The nuisance restriction in the CC&Rs was broad enough to allow HOA to exclude dogs from specified common areas for health and safety reasons. Court held that HOA was entitled to seek an injunction to stop acoustic nuisances that interfere with neighbors' quiet enjoyment; the request may be supported by testimony from affected homeowners that the noise was "intolerable." The Court found that HOA was not required to perform a physical inspection of the noise complaints and that testimony from witness homeowners was sufficient. As such, the Court ordered the installation of a pneumatic door closer, HOA-approved door bumpers or pads, and throw rugs in two rooms. The Court noted that the mitigation measures ordered were a minimal hardship.

Richardson v. Huntington Pacific Beach House Condominium Association 2019 WL 4014736

This case arises out of a dispute between the homeowners association of a beachfront condominium complex and three owners who combined owned six units in that complex. Owners (Respondents) sought injunctive relief in the form of an order directing the Board of Directors of the Huntington Pacific Beach House Condominium Association (HOA) to comply with Civil Code section 4600 requiring an affirmative approval from 67% of the membership to grant exclusive use of any portion of the common area. The court determined the HOA violated section 4600 by failing to subject an owner's courtyard-facing window to door conversion to an Association wide vote and required the HOA to undertake such a vote to validate or reject the owner's conversion project despite the ARC approval. Specifically, Respondents asserted owner's changes took common area for his exclusive use, which required affirmative approval from the 67 percent of the HOA membership, not just approval by the ARC. Association asserted, among other defenses, that the amount/size of "common area" in dispute was minimal and that exceptions to Civil Code Section 4600 voting requirements applied. The Court opined that no minimal size exception exists as to Civil Code Section 4600. Ultimately, the Court held HOA failed to establish any exception to Civil Code Section 4600 and therefore the order was affirmed on appeal. This case is being petitioned to the California Supreme Court.

Violette v. Chapman Townhomes 2019 WL 3229738

The Court held that Plaintiff who was a tenant in an HOA where there was water intrusion and mold cannot state a cause of action for breach of the implied warranty of habitability by simply alleging HOA (Chapman) is the owner of common areas and is thus effectively the "landlord" of those areas. Further, the Court held that Plaintiff could not simply lump HOA in with the landlord defendants and claim it is liable for warranting the habitability of her individual unit. Thus, the Court concluded the trial court did not err by sustaining Chapman's demurrer to the cause of action for breach of the implied warranty of habitability. The Court noted that HOA can be treated like a "landlord" under traditional tort principles where it is expected to exercise due care in the maintenance of common areas under its control. However, the HOA is not obligated to ensure that common area is "habitable" and/or to ensure the "habitability" of a separate dwelling unit that it does not own or lease to a tenant.

Windham at Carmel Mountain Ranch Association v. Lacher 2019 WL 210662

The HOA filed a preliminary injunction Complaint against owners who were obstructing termite fumigation tenting of the building where owners initially refused to sign the consent form, refused to provide key to unit, and called the police when the fumigation company arrived. The Appellate Court affirmed the granting of the preliminary injunction to vacate their premises temporarily to allow for fumigation of termites, as well as the award of attorney fees to the HOA, as the prevailing party, which brought the suit seeking the injunctive relief.

***Yu v. Broadway Hollywood Homeowners Association* 2019 WL 1075254**

Owner sued HOA for declaratory relief, alleging the Association violated its governing documents by failing to offer valet parking, and interfered with a homeowners board election by (1) sending an attorney letter to homeowners regarding ongoing litigation between the owner and the Association and (2) committing 11 other acts. The Association specially moved to strike the election interference cause of action under Code of Civil Procedure section 425.16, the anti-SLAPP statute.

The evidence indicated the HOA's attorney letter was circulated in such a way as to reasonably imply it was designed to influence the election on behalf of a current board member. The Court noted that the letter was addressed broadly, sent to everyone but the Plaintiff Yu by overnight mail just 10 days before the 2014 Election, and contained statements about the merits of her claims that turned out to be false, delivered in a tone suggestive of a campaign mailer. Accordingly, the Court concluded that the evidence adequately established Plaintiff's probability of prevailing on the merits and therefore denied the Association's motion. Finally, the Court also determined that Lamden is narrow in its interpretation in that the Association had no discretion to abrogate valet parking, to grant parking service only to residents or customers, or to grant only serial parking and therefore upheld the judgment for plaintiff.