

SOUTH COAST HOMEOWNERS ASSOCIATION

ANNUAL LEGISLATIVE FORUM

January 11, 2023



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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New Legislation

I. TWO ADDITIONAL BEDROOMS MAY BE ADDED TO EXISTING RESIDENTIAL STRUCTURES

Assembly Bill 916 / Government Code § 65850.02

- A. Counties and Cities are prohibited from adopting legislation that requires a public hearing as a condition of reconfiguring existing space to increase the bedroom count **within** an existing dwelling.
- B. Two additional bedrooms may be added within an existing residential structure.

II. OWNERS MAY RENT A PORTION OF THEIR UNIT

Assembly Bill 1410 / Civil Code § 4739

- A. An Association's Governing Documents cannot prohibit an owner from renting a portion of their Unit.
- B. Owners renting part of their Unit must also occupy the Unit.
- C. Associations can require the rental term be for more than 30 days.

III. ASSOCIATIONS CANNOT PROHIBIT A MEMBER OR RESIDENT FROM USING ONLINE RESOURCES, INCLUDING SOCIAL MEDIA, EVEN IF CRITICAL OF THE ASSOCIATION

Assembly Bill 1410 / Civil Code § 4515 (b) (6)

- A. Association Governing Documents cannot prohibit a member or resident from using social media or other online resources, even if critical of the Association or its governance, to discuss the following activities:
 - (a) Development living; (b) Association elections; (c) Legislation; (d) Election to public office; (e) The initiative, referendum or recall process and; (f) Any other issue of concern to members and residents.
- B. Associations cannot retaliate against a member or a resident for exercising the above rights.

**IV. BUILD CODE STANDARDS FOR
ELECTRICAL CHARGING STATION TO BE ADOPTED**

Assembly Bill 1738 / Health and Safety Code Section 18941.11

- A. The next edition of the Building Code (2026) may include mandatory building standards for the installation of electrical vehicle charging stations.
- B. The standards will apply to multifamily dwellings.

**V. REMINDER - REQUIRED INSPECTION OF
EXTERIOR ELEVATED BUILDING ELEMENTS**

Senate Bill 326 / Civil Code § 5551

- A. Building Elements to be inspected include exterior balconies, decks, walkways, stairs, and railing more than 6' above grade that are supported by, or substantially supported by, wood or wood-based products, and which the Association is responsible for maintaining or repairing.
- B. The inspection must include associated water proofing elements.
- C. The purpose of the inspection is to determine the safety of the Building Elements.
- D. The inspection must be performed by a licensed structural engineer or architect.
- E. The inspection must be of a random sampling of the Building Elements necessary to achieve a 95% confidence level that the inspection results are accurate, with a plus or minus error no greater than 5%.
- F. The inspector shall prepare a report and submit it to the Board.
- G. If deficiencies posing a threat to safety are noted, a copy of the report must be filed with the Dept. of Building and Safety.
- H. The first inspection to be completed by Jan.1, 2025, and every 9 years thereafter.

**VI. REMINDER – VIRTUAL
MEMBER & BOARD MEETINGS ENDING**

SB 391 / Civil Code § 5450

- A. In Sept. 2021 emergency legislation was enacted (Civil Code § 5450). Where a declaration of emergency exists, and meeting in person is unsafe, Member and Board meetings may be held virtually.
- B. Unless extended, the Federal Declaration of Emergency for COVID terminates Jan. 14, 2023.
- C. Unless extended, effective Feb. 28, 2023, California is terminating the COVID Declaration of Emergency.
- D. If the Declaration of Emergencies are terminated, virtual Board meetings cannot be held.
- E. In such event, Board meetings must be held as required by Civil Code § 4090. That requires meetings in person, by Zoom and/or teleconference with one physical location where a Board member is in attendance and Members may also gather.

COURT DECISIONS

**VII. REASONABLE ACCOMADATIONS MUST BE GRANTED TO ALLOW
DISABLED RESIDENTS TO USE AND ENJOY THEIR UNIT & THE COMMON AREA**

Federal Fair Housing Act 42 USC 3604 (f) (3) (B)
California Fair Employment and Housing Act 22 CCR § 12176

- A. Unlawful discrimination arises when an Association refuses to allow a reasonable modification in its rules, practices, or services when necessary to allow an individual with a disability to use their Unit and/or the common area.
 - 1. A disability is defined as a physical or mental impairment that limits one or more of major life activities (i.e., seeing, hearing, talking, breathing, walking, caring for oneself, learning, and working).
 - 2. Where the alleged disability is not obvious, Associations have a right to demand proof of the disability.
 - 3. The requested modification may be limited to that which is reasonably necessary to mitigate against that which is interfering with the requesting individual's ability to use and enjoy their Unit and/or the common area.

4. An Association does not have an obligation to incur undue financial burden, administrative burden, or a fundamental change in its programs.

B. The nature and extent of the modifications that an owner may make to their Unit, or the common area, is also governed by Civil Code § 4760.

Douglas Myers v. Highlands at Vista Ridge Homeowners Association

(Sept. 2022) US District Court

Reasonable Accommodation Case

A. For security, Douglas Myers requested 3 strands of barbwire be placed on top of a chain-link perimeter fence surrounding part of the development he lived in.

B. The Association denied his request.

C. The Association then received a letter from Douglas's attorney claiming the barbwire fence was needed as a reasonable accommodation under the Federal Fair Housing Act.

D. Because of crime activity in the neighborhood, Douglas claimed his wife, Ms. Myers suffered from anxiety causing her to feel insecure in her home.

E. The Association responded stating if Ms. Myers suffered from anxiety, they could build a barbwire fence around their own property.

F. Douglas and his wife filed a lawsuit alleging, among other things, that the Association failed to allow a reasonable accommodation as required by the Federal Fair Housing Act.

G. The Association filed a motion for Summary Judgment claiming that the requested accommodation was not reasonable.

H. The court denied the motion stating that a jury could find that a barbwire perimeter fence may be a reasonable accommodation.

Hassan Salehi v. Lakeview Terrace HOA

(July 2022) US District Court

Reasonable Accommodation Case

A. Hassan had knee surgery. He has limited mobility.

B. He cannot safely walk to his assigned parking space.

C. In Feb. of 2022, Hassan requested the Association assign him one of the unassigned parking spaces in front of his apartment as a reasonable accommodation. In exchange he would give up his assigned parking spot.

D. The Association's management company responded stating that Hassan must gather all the information from the contractors that were going to do the work, without stating what information was needed.

E. In March 2022, Hassan's attorney sent a letter to the Association stating that the Association failed to state what information was necessary. It was also pointed out that no construction was required, nor would any costs be incurred.

F. Due to the continuing failure to grant the accommodation, in May of 2022 Hassan filed a lawsuit against the Association alleging the Association failed to grant a reasonable accommodation as required by the Federal Fair Housing Act.

G. The Association moved to dismiss the case claiming there was no denial of the requested accommodation. Rather, they were still in the process of negotiating.

H. The Court denied the Association's request to dismiss. The court granted the preliminary injunction. The court concluded that there was an unreasonable delay in responding to the request which amounted to a constructive refusal to grant the requested accommodation.

VIII. ADR REQUIREMENTS - PREQUISTE TO FILING A SUPERIOR COURT ACTION

***Mayfaire Homeowners Association v. Deol* (April 2022) (Cal. Court of Appeals 5th Dist.)**

Failure to Comply with ADR

A. Deol's house burned down in March 2015. Deol was responsible for rebuilding.

B. In March of 2017 rebuilding had not commenced. The lot was covered with trash and weeds. The Association filed a lawsuit for a violation of the CC&R's, requesting Deol be ordered to rebuild the residence and restore the landscaping.

C. In June 2017 Deol commenced construction. However, the house still was not completed in 2019 when the matter went to trial.

D. At trial Deol argued that there was no evidence introduced that Mayfaire offered to engage in Alternative Dispute Resolution.

E. The manager said she never saw, prepared, or served a request for ADR.

F. The court ruled in favor of the Association requiring the house to be completed in 90 days.

G. The Appeals Court said not so fast:

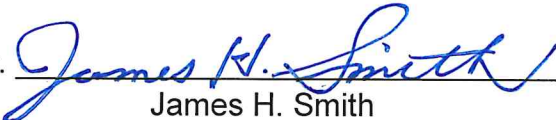
1. If an Association is required to compile with the ADR requirements, those requirements are a prerequisite to filing an action.

2. The Association offered no evidence that it served a Request for ADR prior to filing the suit.

H. The Appeals Court reversed the Judgment in favor of Mayfair and awarded costs to Deol.

Wishing You all the Best in 2023

Rogers Sheffield & Campbell

By. 
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