

# **SOUTH COAST HOMEOWNERS ASSOCIATION**

## **ANNUAL LEGISLATIVE FORUM**

January 27, 2021



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. Rental Restrictions**

#### **SB 3182 / Civil Code § 4741**

- A. Except as noted, no owner is subject to a provision in an Association's Governing Documents prohibiting them from renting their Unit, ADU or Junior ADU.
- B. Associations may adopt and enforce limited rental restrictions. Those restrictions must allow at least 25% of the Units to be rented.
- C. An ADU or Junior ADU is not deemed rented when the main residence is owner occupied.
- D. Associations may prohibit leasing for less than 30 days.
- E. To the extent an Association's Governing Documents are inconsistent with Section 4741, they must be amended by December 31, 2021.
- F. If an owner has the right to rent prior to a rental restriction going into effect, they have continuing right to rent despite any rental restriction to the contrary.
- G. Willful violations of Section 4741 will result in a civil penalty not to exceed \$1,000 plus actual damages proven.
- H. Under CC §4740, the right to rent is not terminated upon a transfer of a Unit where the transfer is exempt from reassessment under Revenue & Taxation Code 62 or 480.3 (e.g. transfers parent to child, transfers between co-owners etc.).

## II. COVID Reporting Requirements

### AB 685 / Labor Code § 6409.6

- A. If an employer receives notice of potential COVID exposure at the worksite, written notice must be provided within **1 business day**.
- B. The Notice must be given to:
1. All employees on the worksite and;
  2. All subcontracted employees.
- C. The Notice must be given by a means reasonably determined to be received within 1 business day (e.g. personal service, text, email).
- D. The Notice shall be in the language understood by a majority of the employees.
- E. The Notice must warn the recipients that they may have been exposed to COVID.
- F. The Notice shall provide information regarding all COVID related benefits under State and Federal law including Work Comp benefits, sick leave benefits and anti-retaliation protections.
- G. The Notice shall provide a summary of the disinfection and safety plan to be implemented per CDC guidelines.
- H. If there has been at least 3 confirmed COVID cases at a worksite within 14 days, the local health department must be notified of the identities of the infected persons.

## Existing Legislation & Cases

### III. ABC's of HOA Rules.

#### Impact on COVID Enacted Rules, Power to Adopt Rules & Expiration of Rules

##### Civil Code § 4360

- A. Absent statutory authority, or express authority in an Association's Governing Documents, HOA's have no inherit power to adopt rules.
- B. If the rule to be adopted is: (1) within the scope of the Association's power to adopt; (2) does not conflict with the CC&R's and; (3) is reasonable, then the Association may adopt the rule following the procedure set forth in CC § 4360, requiring a 28 day advance notice to the Owners.
- C. Due to the impact of COVID, many Associations circumvented the 28 day advance notice, by immediately enacting rules regulating the use of Association facilities and, in some cases, Units.
- D. CC § 4360 (d) allows Boards to bypass the advance 28 day notice requirement where it is determined that: (1) a rule is needed to address an imminent threat to public health, safety or; (2) there is a risk of substantial economic loss.
- E. A rule adopted under CC § 4360 (d) expires 120 days from adoption **AND CAN NOT** be readopted or renewed under CC § 4360 (d).

### IV. Prohibiting Smoking in Condominium Units

- A. For the following reasons, the weight of Authority is that an in Unit smoking ban, through an amendment to an Association's CC&R's, is reasonable and enforceable (*Christiansen v. Heritage Hills*, Colorado District Court (2006) 06CV1256):



1. Secondhand smoke is a recognized health hazard (CDC, Report Surgeon General 1986, Calif Air Resources Board – ETS Exposure in Multi – Unit Homes).
2. There is no constitutional right to smoke (*Davis v. Echo Valley HOA* (2019) 945 F. 3<sup>rd</sup>. 483; Report Public Health Institute 2008).
3. California mandates smoke-free workplaces (Calif. Labor Code §6404.5).
4. Cities have enacted smoking bans that prohibit smoking in condominiums (Santa Monica, Pasadena & San Rafael).
5. In 2013, the State of California passed legislation allowing landlords to ban smoking rental units. (Civil Code section 1947.5).
5. Secondhand smoke has been found to be a nuisance (*Christiansen v. Heritage Hills*, Colorado District Court (2006) 06CV1256).

B. To increase the odds of being enforceable, an **IN UNIT SMOKING BAN** should be placed in an Association’s CC&R’s (*Davis v. Echo Valley HOA* (2019) 945 F. 3<sup>rd</sup>. 483).

C. There may be instances where an in Unit smoking ban would be unreasonable (e.g. Planned Development where the Units (i.e. homes) are sufficiently separated). In such case, the burden of the restriction may be outweighed by the benefit.

### **V. It Has Now Been Officially Proclaimed**

(*Davis v. Echo Valley HOA* (2019) 945 F. 3<sup>rd</sup>. 483).

“Condo living can be trying, and board membership a thankless task.”