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2021 Year-End Review of California Legislation and Cases which affect Community and Homeowners' Associations

NEW LAWS EFFECTIVE JANUARY 1, 2022 (or as otherwise noted*):

*Some relevant laws did not reach the Governor's desk for his review or approval after being introduced and discussed in committee(s). Some of those bills are referenced below to apprise you of what was in the legislative pipeline, as they could resurface in one form or another in the future.

AB 468. Emotional Support Animals

[*Status: Approved by Governor and Chaptered by the Secretary of State on 9/16/21*]

This new law imposes various requirements designed to curb fraudulent emotional support animal claims and distinguishes between guide or service dogs and emotional support animals. It has three main components in attempting to crack down on ESA fraud: *First*, a person or business that sells or provides a dog for use as an emotional support dog will have to provide a very specific *written notice to the buyer or recipient of the dog* stating that (1) the dog does not have the special training required to qualify as a guide, signal, or service dog; (2) the dog is not entitled to the rights and privileges accorded by law to a guide, signal, or service dog; and (3) knowingly and fraudulently representing oneself to be the owner or trainer of any canine licensed as, to be qualified as, or identified as, a guide, signal, or service dog is a misdemeanor. The *second* component requires the same type of notice be provided with products sold in connection with the ESA. *Thirdly*, the new law *prohibits* health care practitioners from *providing documentation* relating to an individual's need for an emotional support dog *unless* the health care practitioner (1) holds a *valid, active, license* to provide professional services within the scope of the license in the jurisdiction where the documentation is provided; (2) establishes a *client-provider relationship* with the individual for at *least 30 days prior* to providing the documentation, (3) *completes a clinical evaluation* of the individual regarding the need for an emotional support dog, and (4) provides *notice to the individual* that knowingly and fraudulently

representing oneself to be the owner or trainer of any canine licensed as, to be qualified as, or identified as, a guide, signal, or service dog is a misdemeanor. Violating these requirements subjects the health care practitioner to discipline from the licensing board. Existing federal and state laws must still be followed for reasonable accommodations and equal access to housing. Definitions of an ESA are also provided in the law.

[*AB 468. An act to add Article 4 (commencing with Section 122317) to the Health & Safety Code.*]

AB 502. Common Interest Developments: Election Requirements

[*Status: Approved by Governor and Chaptered by the Secretary of State on 10/06/21.*]

AB 502 removes the requirement that a homeowner association (“Association”) must have 6,000 or more units in order to use an election by acclamation procedure which allows Associations to bypass a full election for board of directors if the number of nominees is not more than the number of vacancies to be filled. This bill would expand the election by acclamation process to be optional for all Associations, regardless of size. Additionally, it requires that an Association must have held a regular election for directors in the last three years in order to use an election by acclamation procedure and it adds in an additional notice 90 days before the deadline for nominations.

[*AB 502. An act to amend Civil Code Section 5100 and to add Section 5103 to the Civil Code.*]

AB 611. Safe at Home Program – Homeowners’ Associations

[*Status: Chaptered by the Secretary of State on 8/31/21.*]

This bill requires Associations to accept and use the address designated by the Safe at Home program for all housing association communications upon request of a program participant who is also a member of the HOA. The Safe at Home program is a pre-existing program for victims of domestic abuse, violence, sexual assault, human trafficking, stalking, or elder abuse, etc. whereby the Secretary of State is designated as the agent for receipt of mail and legal service for the program participant. This bill requires the Association to keep the participant’s community address, name, and email address confidential upon request and if in the program.

[*AB 611. An act to add Section 5216 to the Civil Code, relating to confidential information.*]

AB 1101. Common Interest Developments: Funds: Insurance

[*Status: Approved by Governor and Chaptered 09/23/21.*]

This bill adds a guaranty corporation to one of the federally protected types of accounts available for depositing Association funds. The bill would also impose certain limits on the use of funds deposited on behalf of an association, including prohibiting funds from being invested in stocks or high-risk investment options. This bill prohibits transfers of funds out of the Association’s reserve or operating accounts unless the amount of the transfer is the lesser of five thousand dollars \$5,000 or 5% of the estimated income in the annual operating budget, for associations with 50 or less separate interests, or the lesser of \$10,000 or 5% of the estimated income in the annual operating budget, for associations with 51 or more separate interests without prior written approval from the board. This bill specifically requires the association to maintain crime

insurance, employee dishonesty coverage, fidelity bond coverage, or their equivalent, for the association and the association's managing agent or management company and would require the protection against computer and funds transfer fraud to be in an equal amount. The bill would specify that self-insurance does not meet the requirements of these provisions.

[*AB. 1101. An act to amend Sections 5380, 5502, and 5806 of the Civil Code.*]

AB 1466. Real Property: Discriminatory Restrictions.

[*Status: Approved by Governor and Chaptered on 09/28/21.*]

This bill authorizes a title company, escrow company, county recorder, real estate broker, real estate agent, or *any other person* to record a Restrictive Covenant Modification if they believe the CC&Rs, a deed, or governing document contain an unlawful or discriminatory restriction or covenant (such as based on race or children, etc.). The bill, beginning July 1, 2022, would *require* a title company, escrow company, real estate broker, or real estate agent who has actual knowledge of such an unlawful/discriminatory restriction existing in CC&Rs, a governing document, or deed that is being directly delivered to a person who holds or is acquiring an ownership interest in property, to notify the person of the existence of that covenant and their ability to have it removed through the restrictive covenant modification process. The bill would, upon request before the close of escrow, require the title company or escrow company that is directly involved in the pending transaction to assist in the preparation of a Restrictive Covenant Modification, as specified. This bill has the negative effect of allowing anyone to submit and have recorded proposed modifications to governing documents. County Counsel and Recorders are given up to ninety days to reject or record the proposed modification.

[*AB 1466. An act to amend Sections 12956.1, 12956.2, 27282, and 27388.1 of, and to add Sections 12956.3 and 27388.2 to, the Government Code.*]

AB 1584. Housing Omnibus

[*Status: Approved by the Governor and Chaptered by the Secretary of State on 09/28/21*]

This is one of the most significant new laws of 2021 affecting rental properties, accessory dwelling units ("ADUs"), and junior accessory dwelling units ("JADUs") located in an Association community development. This new law allows and requires Associations to amend their governing documents without a membership vote to comply with the rental revisions stated in AB 3182 [*Civil Code* Section 4741] enacted last year and requires those changes [to any prohibited restrictive rental covenants] to be made by July 1, 2022. The bill requires a Board to provide general notice of the amendment at least 28 days before approving the amendment and would require any decision on the amendment to be made at a board meeting, after consideration of any comments made by Association members. Regardless of its amendment status, the Association shall comply with the prohibition on rental restrictions discussed in *Civil Code* Section 4741 on or after January 1, 2021, even if its governing documents currently say otherwise. Associations that attempt to enforce prohibited rental restrictions in violation of the law will be subject to up to \$1,000 in monetary penalties.

This bill makes void and unenforceable any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in real property that either effectively prohibits or unreasonably restricts the construction or use of an ADU or JADU on a lot zoned for single-family residential use that meets the above-described minimum standards established for those units, but would permit reasonable restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct, an ADU or JADU consistent with its provisions.

[*AB 1584*. An act to amend Sections 798.56, 2924.15, and 4741 of, and to add Section 714.3 to, the *Civil Code*, to amend Section 1161.2 of the *Code of Civil Procedure*, to amend Sections 65589.5, 65651, 65863.10, and 65863.11 of the *Government Code*, and to amend Section 18214 of, and to add Section 34178.8 to, the *Health and Safety Code*, relating to housing.]

SB 9. Housing Development: Approvals (Lot Splitting – Duplexes)

[*Status: Approved by the Governor and Chaptered by the Secretary of State on 09/16/21*]

SB 9 requires cities to approve without discretionary review or hearing any proposed housing development in a single family zone seeking to add a second residential unit or subdivide the lot into two, if certain requirements are met as stated in the law.

The municipality would have to ministerially approve a duplex or subdivision in a single family-housing zone. Some cities are concerned about the loss of local control over housing lots, including a lack of environmental (CEQUA) evaluation and local community input.

SB 9 is silent as to the impact of pre-existing CC&R restrictions prohibiting such a subdivision. While the author specifically stated the bill does not impact community interest developments (“CIDs”) and does not override governing documents, there are expressed concerns from the Community Associations Institute “that SB 9 could be construed as constituting public policy in favor permitting construction of duplexes in CIDs”.

Obviously, this new law can have high density effects on Association developments in an “urbanized area” or “urban cluster” if a homeowner decides to convert one lot into two with a total of four housing structures on them. Boards should consider whether they wish to review and/or amend their governing documents to prohibit lot splitting or restrict the number of dwellings, including ADUs, as it will likely require a vote of the membership. This could become the subject of further clarification through legislation or the courts for Associations.

[*SB 9*. An act to amend Section 66452.6 of, and to add Sections 65852.21 and 66411.7 to, the *Government Code*.]

SB 10. Planning and Zoning: Housing Development: Density.

[*Status: Approved by the Governor and Chaptered by the Secretary of State on 09/16/21*]

SB 10 authorizes a city or county to ministerially pass an ordinance (notwithstanding any local restrictions on zoning ordinances) to authorize developments up to ten-units (or less) in areas

zoned for single-family housing, and at a height specified by the ordinance if the parcel is in a transit-rich area, jobs-rich area, or an urban infill site (which terms are defined in the bill). The bill will invalidate CC&R restrictions that prohibit or unreasonably restrict such authorized development. For example, an empty lot in a single-family residential community could be rezoned through a city ordinance into a ten-unit apartment or condominium building.

The bill does not reconcile the impact of constructing a ten-unit structure in single-family home planned use development on infrastructure use and maintenance, assessment allocation, and the requisite governing document amendments that will be needed to accommodate such subdivisions. Thus, it is not advantageous for most community associations.

[*SB 10. An act to add Section 65913.5 to the Government Code.*]

SB 60. Residential Short-Term Rental Ordinances: Health or Safety Infractions: Maximum Fines [*Status: Approved by the Governor and Chaptered by the Secretary of State on 09/24/21*]

This is a bill to raise the maximum fines for a violation of an ordinance relating to a short-term rental, as defined, that constitutes an infraction and poses a threat to health and safety, to \$1500 for the first violation, \$3000 for a second violation of the same ordinance within one year, and \$5000 for each additional violation of the same ordinance within one year of the first violation.

[*SB 60. An act to amend Sections 25132 and 36900 of the Government Code, to take effect immediately.*]

SB 391. Common Interest Developments: Emergency Powers and Procedures.

[*Status: Approved by the Governor and Chaptered by the Secretary of State 09/23/21*]

SB 391 establishes alternative teleconferencing procedures for a board meeting or a meeting of the members *if* gathering in person is unsafe or impossible because the common interest development is in an area affected by a federal, state, or local *emergency*. This new law goes into effect immediately and specifies the conditions and procedures which must be met and followed, including notice and instructions for accessing the meeting and obtaining technical assistance. SB 391 permits communities to hold such meetings without the requirement of a physical location if proper notice and instructions are given; however, a physical location must be provided for a meeting where ballots are being counted unless unsafe to gather in person, and then specified protocol must be followed in that rare instance.

[*SB 391. An act to amend Section 4090 of, and to add Article 11 (commencing with Section 5450) to Chapter 6 of Part 5 of Division 4 of, the Civil Code.*]

SB 392. Document Delivery

[*Status: Approved by the Governor and Chaptered by the Secretary of State 10/21/21*]

Instead of only using the required, specified traditional First Class and Certified mail delivery required by law, this bill would instead require, on and after January 1, 2023, an Association to

deliver those documents in accordance with the preferred delivery method specified by the member or, if the member has not provided a preferred delivery method, by traditional mail, as described above. This bill would amend *Civil Code* Section 4041 to instead require, on and after January 1, 2023, an Association to deliver those documents by email if preferred by the member unless the member has not provided a valid email address to the Association or has revoked consent to receiving documents by email, in which case the association would be required to deliver the documents by traditional mail as described above. The bill would require an Association to deliver those documents either by email or traditional mail, at its discretion, if two-thirds of the members approve. The bill would require an association to annually notify each member that by providing an email address to the association, the member agrees that communication between the member and the association shall be conducted by email.

The bill would also amend *Civil Code* Section 4040 to require an association to make a good faith effort to obtain an email address for each member on or before June 1, 2022.

SB 392 would include posting the notice on the association's internet website among the authorized delivery methods if this method is so designated by the association in its annual policy statement.

The new law prohibits Association records, and any information from them, from being sold, used for a commercial purpose, or used for any other purpose not reasonably related to a member's interest as a member. And, would prohibit an Association or its managing agent from transmitting a member's personal information to a third party without the consent of the member unless required to do so by law.

[SB 392. An act to amend Sections 4041, 4045, 4055, 5200, 5220, 5230, 5260, 5310, and 5320 of, and to amend, add, and repeal Section 4040 of, the *Civil Code*.]

SB 607. Balcony Inspections

[*Status: Approved by the Governor and Chaptered by the Secretary of State 9/28/21 .*]

Besides discussing a number of requirements for unrelated professions, this bill would eliminate the prohibition against a contractor performing balcony inspections from bidding on the repair work. (Pre-existing law prohibited a contractor from bidding on the repair work if he was performing the inspection.) Also, beginning January 1, 2023, contractor licensees must file a bond of \$25,000 (instead of \$15,000) with the State Contractors Licensing Board.

SB 432. Common interest developments.

[*Status: Approved by the Governor and Chaptered by the Secretary of State 10/07/21 .*]

This bill would revise and recast common interest development election procedures, including, among other things, limiting certain noticing provisions to the elections of directors and to recall elections, requiring an association to maintain association election materials, as defined, for one year after the date of the election, and specifying that the candidate list is required to include the name and address of individuals nominated as a candidate for election to the board of directors. SB 432 would include among the permissible reasons for disqualifying a person from nomination if the person has served the maximum number of terms or sequential terms allowed by the

association.

[*SB 432. An act to amend Sections 5100, 5105, 5115, and 5200 of the Civil Code, and to amend Section 7511 of the Corporations Code.*]

2021 PROPOSED BILLS OF INTEREST - Not Signed Into Law.

AB 919. Construction Defects: Actions: Statute of Limitations

[*Status: Re-referred to Committee on Judiciary on 04/14/21. Not approved or chaptered.*]

Notwithstanding the 10-year statute of limitations already in effect for latent defects, and subject to certain qualifying criteria, if the underlying construction project on which the action is based used a certified skilled and trained workforce, then the action to recover monetary relief shall be brought no more than five years after substantial completion of the improvement but not later than the date of recordation of a valid notice of completion. This 5-year statute would *only* apply to actions against a non-profit housing corporation if the action is not for the recovery of damages related to major structural or systemic defects.

AB 1313. Immunity From Civil Liability

[*Status: Referred to Committee on Judiciary on 03/04/21. Not approved or chaptered.*]

Under AB 1313, a business would not be liable for an injury or illness to a person due to coronavirus (COVID-19) based on a claim that the person contracted COVID-19 while at that business, or due to the actions of that business, whether direct or indirect, if the business has substantially complied with all applicable state and local health laws, regulations, and protocols. It would not apply if the injury or illness resulted from a grossly negligent act or omission, willful or wanton misconduct, or unlawful discrimination by the business or an employee of the business. Further, it would not affect any employee's claim for the payment of workers' compensation benefits and would go into effect immediately if enacted (which has not occurred).

For purposes of this bill, "business" would mean a sole proprietorship, partnership, corporation, association, or other group, however organized, and regardless of whether organized to operate at a profit, and includes a nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code, so would include homeowners associations.

AB 1410. Associations: declared emergency: protected uses

[*Status: Referred to Assembly Committee on 4/05/21. Not approved or chaptered.*]

This proposed bill would prohibit the governing documents from restricting a homeowner's right to rent or lease *a portion of the homeowner occupied separate interest for 30 days or more, without regard* to whether such restriction existed at the time the homeowner acquired title to the separate interest. This bill would also extend the provision protecting a homeowner's right to use their backyard for personal agriculture to include all of the homeowner's separate interest.

Any restrictions on discussions critical of the association would be prohibited; and every director and full-time Association employee would be required to complete a course in ethics and harassment prevention. The Association would be prohibited from taking any enforcement action regarding landscaping of a homeowner's separate interest during a declared emergency, or on days where the air quality is unhealthy...
