A SUMMARY OF NEW LAWS AND HOA REQUIREMENTS OF THE LAST YEAR – AND SCARY CHANGES YET TO BE CONSIDERED IN SACRAMENTO
By Beth Grimm, Attorney AKA Californiacondoguru.

The last year has been pretty volatile for HOAs in California. Legislators in Sacramento have been busy and so have I, writing about new bills and laws and proposed bills. I just returned from doing my annual program in Goleta, California, for the Southcoast group where people are always attentive, good questions are asked, and a lot of information is presented, including almost an hour of straight Q&A which may be my favorite part of the program. It involves board member and owner questions directly from the trenches. Thanks to all those who attended; I love coming to your town each year! I will share the highlights with my E-newsletter readers and you can share with your friends, this summary of some of the most important things that are happening and being talked about in the industry. As a reminder, all my E-newsletters are archived on my website at www.californiacondoguru.com and I passed the 100 mark sometime last year.

COMMON ISSUES/COMPLAINTS ABOUT BOARDS AND MEETINGS/ USE OF EMAIL! I hear it all the time … Our Board does everything in secret! Or they use executive session to talk about us! Or The Board members decide everything before the meeting even happens-they do it by email, so there is never any discussion on anything. What do you do about this, if you are the board, and are the brunt of these accusations? What you do if you are a homeowner and have these complaints? How do you get the Board's attention? Board, how do you respond? What happens with emails? How can use of email lead to lawsuits that go far beyond a simple claim based on the law preventing use of it for doing business?

It is true – some boards abuse the option of meeting in executive session. They talk about budgets, people they don't like, and/or fear transparency when it comes to bad news like discovery of serious deferred maintenance issues or other problems that may cost the owners a lot of money**.** Some communicate by email and make all of the board decisions outside of board meetings either because it is easy or convenient or they don't like to discuss things in front of the members. Others walk the line very closely but push the envelope. The bottom line is that you will get different legal advice from different attorneys. I will hit some highlights here, but my advice always is to consult with your own Association attorney because as board members, you gain certain protections if you rely on the advice of experts and attorneys are supposed to be experts in these areas. There are two areas I talked about because of a recent article I read which highlights the fact that attorneys do not always agree. Some attorneys stick to a strict interpretation of discussion of personnel matters which are subject to executive session as relating only to employees that are paid by the Association. I brought up some examples where board members and managers conduct needed to be reviewed by the board and I thought it appropriate to discuss an executive session. One was a situation where a Board member is disclosing confidential information from executive session meetings to the members which is a violation of the director's fiduciary duty. Another was a situation where manager overstepped their authority. These particular situations involve questions that go beyond simply discussing personnel or contract negotiations. The director issue involves the question of whether the director should be subject to some disciplinary or legal action. The manager situation involves the question of whether the manager should be terminated or their contract should be adjusted to negotiate some additional terms and limitations regarding authority.

I also discussed one subject that is not mentioned in the Davis Stirling act but which gives boards the right to meet in executive session - that involve threats of litigation and the need for attorney feedback. Boards are entitled to confidentiality when it comes to the attorney-client privilege and I suggested that if a board justifiably believes there is a threat of legal action that the board get a lawyer involved and get good advice. Boards can arrange a call in from the Association's legal counsel during a Board meeting to get legal advice and that would qualify that meeting as an executive session. Reviewing an attorney letter would be grounds

for holding an executive session. I could do a whole newsletter on boards' misuse of executive session and what all the topics are – but you can review them at the California state website www.CA.gov and navigate to the California laws, or there is a book on available on my website called **The Davis Stirling Act In Plain English.** The pertinent code section is Civil Code Section 4935.

Use of email is forbidden by California law for conducting HOA business except for situations that are require emergency attention AND that all board members agree on. That's it, that's the bottom line. The law is found at Civil Code Section 4910.

Sb 407 - USE OF COMMON AREA MEETING SPACES, CLUBHOUSE AGREEMENTS, PRIVATE FUNCTIONS, PUBLIC RALLIES, POLITICAL MOTIVES, The new law found in Civil Code section 4515 is rough. It requires HOAs to allow certain limited use by owners **and** residents (which would include tenants) of common area spaces, clubhouses, gathering areas, etc. while at the same time taking away the right to require that the resident procure a liability insurance policy or pay a security deposit to cover potential damage and cleanup. It arguably only relates to political rallies and the like, but it does include association elections which covers any measures owners are asked to vote on, not just board elections. The Civil Code Section number is 4515. The legislative intent which comprises a subsection of the law is pretty broad. "***It is the intent of the Legislature to ensure that members and residents of common interest developments have the ability to exercise their rights under law to peacefully assemble and freely communicate with one another and with others with respect to common interest development living or for social, political, or educational purposes.***" Associations can segregate policies for private parties though, and charge security deposits and require insurance protections. It is best to get legal advice if you have questions about functions at your association, and get a good policy together for use of common area space. GO TO www.californiacondoguru.com, E-newsletter archives, and look up the 2018 January and February Use of Common Area Spaces and Clubhouses newsletters for more!

YOU DODGED A BULLET, OR SO YOU THINK! But Beware! SB 721 - This bill included a California legislative attempt to require HOAs to do destructive investigation on decks and make substantial repairs in a specific timeline. Thanks to The Community Associations Institute - California Legislative Action Committee (**www.caiclac.com**) and others who took action with their legislators, the bill has been recently amended to exclude homeowner associations. It would have required Condo Associations to go through some onerous, time-consuming, costly, and maybe even impossible procedures given the timelines. It still applies to multifamily apartment buildings. This bill could change again, so stay alert. It is critical to have good inspection and repair procedures and policies in place for decks and balconies, in any event, as well as plans to enforce maintenance, repair, and replacement obligations when these components are the owner's responsibility. It is important to have good policies related to responsibility for and what can be done to balcony surfaces and how often drains must be checked, etc. Decks and balconies that fail, whether at the fault of the poor human decisions, like careless overloading, or due to unattended dry rot, are a serious source of liability exposure! GO TO www.californiacondoguru.com, E-newsletter archives, and look up the 2018 March SB 721 newsletter for more!

AB 634 SOLAR INSTALLATIONS, Affecting Civil Code Sections 714.1 and 4600, and Section 4746 was added to the Davis Stirling Act.

The California legislature has already weighed in and law has been passed that requires homeowner associations to consider all requests for solar installations with all seriousness. Boards cannot just say no without good reason. We talked about what good reasons might be, and also how boards might manage multiple requests for solar installations on the roofs of buildings or in the common area. common area. Boards need to be proactive and work with solar providers to identify possibilities.

Another important aspect of this is how the Association protects itself in terms of maintaining, removal, replacement, and care of the roofs that exist under the solar installations. Recorded agreements can help establish procedures for current owners and any who purchase units after solar is added to clarify who is obligated to maintain, move and remove solar installations and why and when. Restrictions as to who can go on the roofs and how to protect the Association from liability and damage exposure when contractors are climbing on the roofs are important considerations in adopting policies. Of utmost importance is to get out ahead of the rush to claim a right to space on the roof for solar, so that you can head off the potential legal and other issues that might pop up while you are pondering just what to do. Let your owners know you are working on a policy, that you are being proactive, so that they do not kick the door open and surprise you by sending their contractors up to the roof with screws and solar tubing.

GO TO www.californiacondoguru.com, E-newsletter archives, and look up the 2018 February Solar Act newsletter for more!

AB 1412- CC 4041 DIRECTOR LIABILITY AND OWNER NOTIFICATION- Liability of board members is always a hot topic and when the legislators pass a law about it, it is important to take note. With this bill there is some director immunity established in mixed use developments equivalent of what directors in purely residential associations already had. There are also requirements that Boards tell owners what information they have to supply to the Association. A requirement for HOAs to notify owners of the requirement to provide contact information was added. It is a good time for Boards to request emergency contact information as well. The pertinent Civil Code Section is **4041.**

DISTURBING BILL COMING UP THROUGH THE RANKS! DON'T BE BLINDSIDED! The bill is SB-1265. Common interest developments: elections. (2017-2018). You can get on the list to receive updates through CLAC (www.caiclac.com) and/or the state website at www.ca.gov. Navigate to the legislative section and get on the list to receive updates. According to the current status, this bill was last amended on May 25, 2018. **There definitely things to be concerned about in this bill!! It intends to amend Sections 5105, 5110, 5125, 5145, and 5930 5200 of, and to add Sections 4801 and 5910.1 to, the Davis Stirling Act regulating common interest developments. It affects elections and other matters.**

Here is how the legislators feel about HOA elections, to be written into the **proposed** law! Note it **IS NOT LAW YET** but could pass this year.
Section 4801 would be added to the Davis Stirling Act, to read:
"The Legislature hereby finds and declares both of the following:
(a) Common interest developments function as quasi-governmental entities, paralleling in many ways the powers, duties, and responsibilities of a local government.
(b) As a result, it is the intent of the Legislature for this chapter to ensure that democratic principles and practices are in place with respect to the governance of common interest developments."

This bill- with regard to HOA elections:

**would delete the requirement that HOA rules specify the qualifications for candidates for the board and any other elected position and the qualifications for voting.

**would prohibit an HOA from disqualifying a member from nomination, except for not being a member at the time of nomination and as specified with respect to certain felonies or the failure to pay regular assessments.

**would eliminate using a person or entity that gets paid for services by an HOA (like a manager or management company, lawyer or CPA) as an inspector of elections, where under current law an HOA could choose a paid vendor if expressly authorized by the rules of the association.

**would include distribution of email addresses in response to a request for the membership list of the HOA by a member.

GO TO www.californiacondoguru.com, E-newsletter archives, and look up the 2018 May SB 1265 proposals newsletter. They don't trust you – do you trust them?

WHAT SHOULD AN HOA BOARD DO IF FACED WITH A HARASSMENT / DISCRIMINATION COMPLAINT? Now you really need to know because the Fair Housing Act was amended to require Boards to do something if a complaint is made to prevent discrimination. Is that always possible? What preventive measures can you put in place, if any? Should you hide under a rock? The easy answer to that is a big FAT NO! The question of what to do is answered in a detailed E-newsletter available on my website. GO TO www.californiacondoguru.com, E-newsletter archives, and look up the 2018 April new Discrimination requirements laws newsletter.

I value Q and A and invite you to send questions to califcondoguru@aol.com that are short, generic in form, and that if answered will help others as well. I do not give free legal advice in answer to questions sent to me or read or save long emails detailing all the problems at any association, but as time permits, I do answer questions that apply generally enough to help others, so have at it!