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NEW LAWS AFFECTING HOMEOWNERS ASSOCIATIONS IN 2016

The following new laws affect common interest developments/homeowner associations directly or indirectly. They are effective on January 1, 2016, unless otherwise stated.

CALIFORNIA STATUTES

1. ANNUAL BUDGET DISCLOSURE OF FHA STATUS.

AB 596 amends Civil Code Section 5300, beginning July 1, 2016, to require condominium developments to include in their annual budget report a separate statement as to whether they are approved as an FHA condominium project and as a VA condominium project.

2. ARTIFICIAL TURF.

AB 349 amends Civil Code Section 4735(a), effective September 4, 2015, and makes void any provision of the governing documents, including architectural guidelines, which prohibits the use of artificial turf or any other synthetic surface that resembles grass. Amended Civil Code Section 4735 also prohibits an association from requiring that an owner of a separate interest remove or reverse any water-efficient landscaping measures installed in response to a state of emergency upon the conclusion of the emergency. An association is not prohibited from applying landscaping rules to the extent that the rules do not prohibit low water-using plants in lieu of a lawn or artificial turf or other synthetic grass. Associations should review their architectural guidelines and rules and regulations to ensure that they are in compliance with this law.

3. ASSESSMENT AND RESERVE FUNDING DISCLOSURE FORM.

AB 1516 revises Civil Code Section 5570(a)(7) to replace the word "funding" with "funded" in two locations.

4. CLOTHESLINES.

AB 1448 adds Civil Code Section 4750.10 to provide that any provision of a governing document is void and unenforceable if it prohibits or restricts the use of a clothesline or drying rack in an owner's

exclusive use backyard. Reasonable restrictions which do not significantly increase the cost of using a clothesline or drying rack are enforceable. Clothesline and drying rack are defined in the statute and do not include parts of the building or structure such as railings, awnings, etc. Since many association CC&Rs contain provisions prohibiting clotheslines, boards should be aware of this law and not enforce such a provision and/or amend their CC&Rs.

5. ELECTRIC VEHICLE CHARGING STATIONS.

AB 1236 adds Section 65850.7 to the Government Code to require every California city, county, or city or county with a population of 200,000 or more residents to adopt an ordinance that creates a streamlined permitting process for electric vehicle charging stations. The statute also provides that a city, county, or city and county shall not deny an application to install an electric vehicle charging station unless it makes written findings of fact that the installation would have a specific, adverse impact on public health or safety. The intent of the statute is to encourage and promote the use of electric vehicle charging stations and remove barriers to installing them.

6. MOLD.

SB 655 adds Section 1941.7 to the Civil Code and amends Sections 17920 and 17920.3 of the Health and Safety Code. The law provides that a landlord is not required to repair dilapidation related to mold until the landlord has notice of it or the if the tenant is in violation of certain affirmative obligations. The law also provides that visible mold, except mold that is minor and found on surfaces that can accumulate moisture as part of their property and intended use, is a substandard condition. Although this law specifically applies to landlords of leased property, the law could be applied to associations by courts. Associations have been held to a landlord standard of care in certain situations. Best practices dictate that visible mold be eliminated as soon as possible.

7. RECYCLED WATER.

AB 786 amends Civil Code Section 4735, effective October 11, 2015, to allow an association to fine or impose a penalty against an owner who fails to use recycled water to water landscaping if recycled water is provided to that owner by a retail water supplier. This would be the only exception to fining an owner who fails to water landscape to prevent it from dying or looking green.

CASELAW

1. ATTORNEYS FEES. In the California Supreme Court case of Tract 19051 Homeowners Association v. Kemp (2015) 60 Cal. 4th 1135, the Supreme Court reversed the Court of Appeal decision reversing a trial court's attorney fee award in favor of the defendant. The trial court concluded that Tract 19051 was not a common interest development and rendered judgment in favor of defendant, including attorneys fees. The Court of Appeal agreed with the trial court that Tract 19051 was not a common interest development but reversed the attorneys fees award to defendant. The Supreme Court concluded that the Court of Appeal erred in reversing the attorneys fees award because the underlying lawsuit was

an action to enforce the governing documents of a common interest development and defendants were the prevailing party. Because plaintiff would have been entitled to an attorneys fees award if it had prevailed, it would not be fair to preclude defendant from his entitlement to attorneys fees.

2. HARDWOOD FLOORS. The case of Ryland Mews HOA v. Munoz (2015) 234 Cal. App. 4th 705 involves an appeal from a preliminary injunction requiring a defendant to install rugs over 80% of his floors. Munoz installed hardwood floors and refused to eliminate the noise by covering the floors with rugs because his wife suffered from allergies. The Association sued Munoz on behalf of the owner below and asked the court to issue a preliminary injunction to require Munoz to take steps to mitigate the problem during the pendency of the case. The Court ordered that Munoz place rugs over 80% of the hardwood floors and present a proposal to the Association's Board or review committee for modifying the floors to bring them into compliance with the Association's guidelines. A court will usually not order the floors removed at this stage of the proceedings because the court would not want to upset the status quo and rather wait until after a trial.

3**. RENTERS FEES.** The Court of Appeal in Watts v. Oak Shores Community Association (2015) 235 Cal. App. 4th 466 held that associations may adopt reasonable rules and impose fees on owners relating to short-term rentals of condominiums. The Association in this case had a rule that imposed a $325.00 fee on owners who rented their lots. Another rule provided that condominiums could only be rented for not less than seven days. The Court held that the $325.00 fee did not violate Civil Code Section 5600, which prohibits excessive fees and assessments. The rule was supported by a study that showed that tenants cost the Association almost $900 per rental per year.