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NEW STATUTORY LAWS AND CASE LAW AFFECTING HOMEOWNERS ASSOCIATIONS IN 2009

The Governor vetoed numerous bills following the long budget impasse. Among them were several bills which would have affected homeowner associations. The bills which were approved by the Governor related to foreclosures and solar energy. All laws take effect on January 1, 2009, unless otherwise provided.

NEW STATUTORY LAWS

1. **MORTGAGE FORECLOSURES (Senate Bill 1137):** This bill was signed as an emergency measure in July of 2008. ***It went into effect immediately.*** Mortgage lenders must contact California home borrowers by phone or in person to discuss modifications to their loan before commencing foreclosure proceedings. The lender must wait 30 days following contact or attempt to contact homeowner before filing a notice of default. Tenants are required to receive 60 days' notice to vacate once a property is foreclosed. The law also allows cities to impose fines of up to $1,000 a day on property owners who do not maintain vacant homes purchased in foreclosure. Many cities have adopted ordinances requiring lenders taking back property or purchasers at foreclosure sales to maintain property or face the consequences of fines.

2. **MORTGAGE FORECLOSURES (Senate Bill 1511)**: This bill amends Section 2924b of the Civil Code to require a lender who has foreclosed to mail to an association, upon the association's request, a copy of the Trustee's Deed Upon Sale within 15 days following a foreclosure sale. ***An association must record a request including the legal descriptions of all separate interests in the association before the Notice of Default is recorded by the lender.***

3. **SOLAR ENERGY SYSTEMS/GOVERNING DOCUMENTS (Assembly Bill 1892)**: This bill amends Civil Code Section 714. It provides that any restriction in the governing documents that prohibits or restricts the installation or use of a solar energy system on an owner's separate

interest or exclusive use common area is void and unenforceable. This law provides for a penalty not to exceed $1,000 for wilful violations of the statute, plus reasonable attorneys fees.

VETOED BILLS

1. **ASSESSMENTS (Assembly Bill 952)**: This bill would have amended Civil Code Section 1366 to require the approval of a majority of a quorum of owner-occupants of "affordable units", in addition to a majority of a quorum of other owners. It would have required an association to establish a payment plan for the owner-occupants of affordable units who request such a plan for special assessments. The bill would have been applicable to owner approved assessments. "Affordable units" referred to low and moderate income housing sponsored by the government.

2. **BOARD EDUCATION (Assembly Bill 2806)**: This bill would have encouraged board members to complete an educational course in common interest development laws. It would have required candidates for the board to disclose whether they have completed the course and existing board members to disclose to the board whether they have completed the course.

3. **COMMON INTEREST DEVELOPMENT BUREAU (Assembly Bill 567)**: This bill would establish a Common Interest Development Bureau within the Department of Consumer Affairs. The purpose of the Bureau would be to provide training materials to directors of associations, maintain a toll-free telephone number and website to provide information and assistance, and would require an association director or agent to meet certain requirements. The Bureau would investigate and assist in resolving disputes. The Bureau would issue citations and fines to associations for violations of the Davis-Stirling Act and other laws governing associations.

4. **RENTAL RESTRICTIONS (Assembly Bill 2259)**: This bill would have added Section 1360.2 to the Civil Code. It would have required that rental restrictions be present in the governing documents at the time an owner acquires his/her unit to be enforceable against that owner. This law would have been devastating to associations adopting rental restrictions to control the number of rentals in their developments. The bill came about due to a case where one owner owned 22 units in the same association. The association passed an amendment to the governing documents to limit the number of homes which could be rented. The owner petitioned a State trade association to sponsor a bill to protect her interests.

5. **PROPERTY DISCLOSURES (Senate Bill 127)**: This bill would have required that specific disclosures to transferees as part of a sale, lease or option in an association be made no later than 20 calendar days after the execution of the purchase agreement instead of as soon as practicable. The disclosures relate to hazards and characteristics affecting the property.

WITHDRAWN BILLS TO RE-APPEAR NEXT YEAR

1. **DAVIS-STIRLING ACT RE-WRITE:** Assembly Bill 1921 sought to clarify and simplify several existing code sections but due to concerns about certain provisions, the bill was withdrawn and will be re-introduced at the beginning of the next legislative session in 2009.

NEW CALIFORNIA CASE LAW

(The following is not an exhaustive list of new case law. It is a selective list of cases of interest.)

EXCLUSIVE USE OF COMMON AREA

1. **HARVEY V. THE LANDING HOMEOWNERS ASSOCIATION (April 30, 2008):** The Board of Directors of The Landing passed a resolution transferring to the fourth floor owners exclusive right to use the common area attic space above the unit. The resolution stated that the attic space was accessible only by each unit owner and inaccessible to other owners. The resolution also provided that the attic space was a maintenance burden to the association because the attic was inaccessible. One board member refused to approve the measure and sued the association, certain board members, and owners of the fourth floor units for trespass, breach of fiduciary duty and injunctive relief. The Court of Appeal upheld the board's decision under the judicial deference rule, stating "we defer to the Board's authority and presumed expertise regarding its sole and exclusive right to maintain, control and manage the common areas when it granted the fourth floor homeowners the right, under certain conditions, to use the inaccessible attic space.

ATTORNEYS FEES

2. **RITTER & RITTER, INC. V. THE CHURCHILL CONDOMINIUM ASSOCIATION (August 21, 2008)**: The Ritters sued The Churchill and its directors for nuisance, negligence, breach of fiduciary duty, breach of the CC&Rs and breach of the covenants of good faith and fair dealing, seeking damages for odor intrusion into their unit through slab cracks which they maintained the association was bound to fill. The Ritters also sought to enjoin The Churchill to require it to fill all slab cracks throughout the building. The jury found for the Ritters in the trial court and found the Ritters to the prevailing parties for the purpose of awarding attorneys fees. The Court of Appeal upheld the trial court's decision. The issue in the determination was whether the Ritters achieved their objective, even though the association was not required to fill all slab cracks throughout the building because the owners voted not to do it. The Court of Appeal held that the Ritters achieved their main litigation objective and were the prevailing parties for purposes of awarding attorneys fees.

NEW CASE LAW OUTSIDE OF CALIFORNIA

1. **VILLAS WEST II OF WILLOWRIDGE HOMEOWNERS ASSOCIATION, INC. V. EDNA MCGLOTHIN (May 2008)**: The association's governing documents contained a total ban on leasing units. When Edna McGlothin moved into a nursing home, her daughter rented out the unit despite the ban. The association sued Edna McGlothin and she counter-sued claiming a violation of the Fair Housing Act. The trial court and appellate court concluded that the ban violated the Fair Housing Act. However, the Indiana Supreme Court concluded that the Association's leasing ban did not violate the Federal Fair Housing Act. The Estate of Edna McGlothin has petitioned the Indiana Supreme Court for a rehearing on the ground that the ban disproportionately affects African-Americans because 54% of African-Americans rent their homes. Although this decision is not binding outside of Indiana, it can be cited as persuasive authority in California and other states unless

or until the decision is overturned.