RICHARDSON OBER

2023 Legal Update and Case Law Review

California Legislation and Judicial Decisions Affecting Community Associations

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2023 Legal Update

California Legislation Addressing Community Associations

The following legislative summary provides an overview of new laws impacting community associations that were signed into law this year. All laws outlined below take effect January 1, 2024.

Assembly Bill 1458 (Ta). Association governance; Member elections, quorum.

Bill Overview

The inability to achieve quorum at annual meetings has long prevented community associations from electing directors as provided in their bylaws. This would leave directors in place year after year, effectively frustrating the democratic process. Assembly Bill (AB) 1458 provides a path for community associations to achieve quorum necessary to elect directors by amending Civil Code Section 5115 and Corporations Code Section 7512, allowing a reduced quorum of 20% solely for purposes of association meetings to elect directors.

The Details

This CAI-CLAC sponsored legislation provides much-needed relief for communities that have long struggled to hold director elections.

The 20% reduced quorum in Civil Code 5115 would apply 1) only if the association's governing documents require a quorum to elect directors; and, 2) unless a lower quorum is authorized by the association's governing documents in which case the lower reduced quorum in the governing documents would prevail.

In order for an association to invoke the reduced quorum provision of Civil Code Section 5115, the association must have provided the following language in its general notice required by Civil Code Section 5115(b):

"The board of directors may call a subsequent meeting at least Twenty (20) days after a scheduled election if the required quorum is not reached, at which time the quorum of the membership to elect directors will be 20 percent of the association's members voting in person, by proxy, or by secret ballot."

The legislation applies only to membership meetings to elect directors. The reduced quorum provision does not apply in the case of a special membership meeting to remove directors.

This law is viewed as an important measure to facilitate community association governance and director elections.

Assembly Bill 1033 (Ting). Accessory dwelling units; Separate conveyance.

Bill Overview

AB 1033 allows a local governing agency (i.e. building and safety or code enforcement) to adopt an ordinance allowing a lot owner to separately convey the primary dwelling and the accessory dwelling unit or units ("ADUs") as condominiums, provided certain burdensome requirements are met.

The Details

AB 1033 amends Government Code Section 65852.2 and 65852.26, which essentially informs the local governmental approval agency what it can and cannot do regarding the approval and regulation of ADUs. The amendment of Government Code Sections 65852.2 and 65852.26 authorizes a local agency to adopt a local ordinance allowing the separate conveyance as condominiums. However, in order to qualify, the owner must satisfy the following requirements:

- The condominiums shall be created pursuant to the Davis-Stirling Common Interest Development Act;
- The condominiums shall conform to the Subdivision Map Act (requiring a condominium plan among other requirements);
- The ADU shall undergo a safety inspection;
- Approval from each lienholder on the property prior to recording the condominium plan;
- Approval by the Association; and
- Approval by a vote of the membership if required by the governing documents.

Also note, Section 2.5 of AB 1033 amends the Government Code to allow a local agency to require that the property may be used for rental terms of 30 days or longer.

Assembly Bill 648 (Valencia/Lowenthal). Meetings solely by Teleconference.

Bill Overview

AB 648 makes virtual board and membership meetings a reality. AB 648 amends Civil Code Section 4090 (board meeting defined) and adds Civil Code Section 4926 to allow a community association to conduct a board or membership meeting ***solely*** by video or teleconference, ***without a physical location***, provided the association meets specified safeguards.

The Details

The current definition of teleconference, for purposes of satisfying the "Open Meeting Act," requires an association to identify a physical location so that members may attend in person, and requires at least one director or designated person to be present at that physical location.

AB 648 amends Civil Code Section 4090 by carving out an exception to the physical location and physical presence requirements provided the Association meets the following requirements set forth in the new Civil Code Section 4926:

1. The meeting notice must include:

   a) Clear technical instructions on how to participate by teleconference.

   b) The telephone number and electronic mail address of a person who can provide technical assistance with the teleconference process, both before and during the meeting.

   c) A reminder that a member may request individual delivery of meeting notices, with instructions on how to do so.

2. Every director and member must have the same ability to participate in the meeting as if the meeting were held in a physical location.

3. Any vote of the directors must be conducted by roll call vote.

4. Any person entitled to participate in the meeting shall be given the option of participating by telephone.

Note, however, that an association or board meeting cannot be held solely by video or teleconference if ballots are to be counted and tabulated pursuant to Civil Code Section 5120 (secret balloting procedure). Although in-person meetings play an important role in community building, the virtual meeting has presented opportunities for many homeowners to attend meetings and participate that otherwise were unable to.

Virtual meetings tend to be more productive and efficient, allow more owners to engage in how their community is governed, and tend to allow boards and management to maintain order and keep things civil while proceeding through an agenda more smoothly. Associations and community managers are sure to benefit from this legislation by way of meeting efficiency, time management, board meeting safety, and cost savings.

Association boards and community managers should consider adding the above technical requirements of Civil Code 4926 to their standard meeting notice forms so that the option of conducting a meeting virtually is always available.

Assembly Bill 572 (Haney). Assessments; Deed restricted housing.

Bill Overview

AB 572 amends Civil Code Section 5605, which regulates the amount an association can increase regular assessments or levy a special assessment in a given year. Current law permits a maximum regular assessment increase of 20% over the preceding year, or a special assessment of more than 5% of the annual operating budget, without member approval.

AB 572 carves out an exception for "deed-restricted affordable housing units" limiting regular assessment increases to 5% over the preceding year or more than the percentage change in the cost of living, whichever is greater for such housing units. "Affordable housing" is defined as a unit occupied by lower and moderate-income households. The law applies to new community associations formed on or after January 1, 2025, carving out any existing associations. The law does not apply to communities with 20 units or less.

The Details

The standard method for community association assessments is pro rata, divided equally among all properties in the community; or otherwise based on square footage, or a combination of the two. The limit on a community association's ability to increase regular assessments is 20% over the prior year's assessment. AB 572 creates an exception for so-called deed-restricted affordable housing units by restricting an association's ability to increase regular assessments for such units to the greater of 5% over the prior year or the percentage change in the cost of living, not to exceed 10% over the prior year's regular assessment.

Perhaps intended to protect low-income homeowners, this law would result in unequal and unfair distribution among the members of a community association's annual financial obligation. It would require some homeowners to pay a greater percentage of the operating budget to fund the annual operating budget resulting from this deed-restricted assessment limitation.

The unintended consequence of this law would be 1) the identification of a class of affordable housing or low-income owners which could lead to resentment among other owners; or 2) boards limiting assessment increases for all owners to avoid the impact of disproportionate assessments resulting in artificially low budgets, and/or deferred maintenance or ignored repair obligations. Further, artificially low assessments could eventually require multiple special assessments to fund annual budget shortfalls.

Assembly Bill 1572 (Friedman). Potable water; Nonfunctional turf; Common Area Water Restrictions.

Bill Overview

This bill prohibits the use of potable water (water fit for human consumption) to irrigate nonfunctional turf on all homeowners associations (HOAs) and common interest developments (CIDs) beginning January 1, 2029.

The Details

Despite record rainfall this past season, AB 1572 reminds us of the concerns about California drought conditions and the availability of water to meet the needs of a growing population. AB 1572 would prohibit using water suitable for human consumption to irrigate our grass-covered parkways, open spaces, and lawns, areas referred to as "nonfunctional turf." "Nonfunctional turf" means any turf that is not located in areas designated by a property owner or a government agency for recreational use or public assembly. The law carves out an exception for the use of potable water to the extent necessary to ensure the health of trees and other perennial non-turf plantings, or to the extent necessary to address an immediate health and safety need.

The bill also includes certification requirements to ensure that a community association is in compliance or faces civil penalties.

Under AB 1572, communities with large turf-covered open spaces or common areas will need to consider identifying the use of such areas as recreational or otherwise, in order to justify continued irrigation with potable water. Alternatively, those communities with the financial resources or ability to specially assess could consider the use of reclaimed water in order to maintain these turf areas.

Assembly Bill 1764 (Housing Committee). Housing Omnibus; Director Qualifications "Clean up" legislation.

Bill Overview

This bill amends provisions of the Civil Code addressing existing Civil Code provisions on elections and candidate and director qualifications that required clarification from legislation enacted in 2022.

The Details

Assembly Bill 1764 makes it clear that if an association disqualifies a candidate for any of the enumerated reasons in Civil Code Section 5105 (b) through (e), it shall also require a seated director to meet the same requirements.

AB 1764 also amends Civil Code Section 5105 (b) to add term limits as a basis for mandatory disqualification of a candidate if that candidate has served the maximum number of terms or sequential terms permitted by the association.

Furthermore, AB 1764 also amends Civil Code to perhaps state the obvious that "a director who ceases to be a member shall be disqualified from continuing to serve as a director."

Senate Bill 71 (Umberg). Small claims/superior court limits increased for individuals.

Bill Overview

SB 71 increases the amount an individual can sue for in small claims court from $10,000 to $12,500. SB 71 does not increase the amount a corporate entity (such as an association) can sue for in small claims court, which currently is $5,000. SB 71 also increases the maximum amount in a dispute to $35,000 for what is referred to as a limited superior court civil action. Limited Civil Courts currently hear cases up to $25,000.

The Details

While the goal of any community association should be to resolve conflict and avoid litigation, there are occasions when a judge is needed to decide a legal issue. Civil matters in California courts are broken up into three separate tiers, the lower 2 being limited civil and small claims.

Currently, an individual can pursue a claim against an association up to $10,000, whereas an association is limited to $5,000. Small claims court has long been viewed as a means for parties to quickly and inexpensively bring their disputes to court and many individual homeowners have availed themselves of the small claims option. For an association, however, the relatively low $5,000 jurisdictional limit is often a deterrent to bringing a small claims action.

This bill widens the "gap" between what an association and an owner can sue for, perhaps leading to more small claims actions by owners against their associations. Increasing the claim amount for individuals is also likely to increase the number of small claims filings in general, which in the end may slow the wheels of justice.

2023 Case Law Review

Judicial Decisions Affecting Community Associations

LNSU #1, LLC v. Alta Del Mar Coastal Collection Community Assn., (2023) 94 Cal.App.5th 1050

Are Emails Considered Meetings? Not Unless You Conduct Business!

An appellate court held that email exchanges do not meet the definition of Board Meetings under Civil Code Section 4090.

Two homeowners in a development managed by the Alta Del Mar Coastal Collection Community Association, alleged violations of the Common Interest Development Open Meeting Act ("OMA") through use of email communications.

The Plaintiffs argued the emails exchanged by the directors about landscaping and other Association business violated the OMA. The plaintiffs suggested that by communicating through email, the Association had not given notices or agendas for the meetings, prevented all members from attending and speaking at the meetings, and failed to prepare minutes. The court disagreed that any violations of the OMA occurred, because it held that the email exchanges among directors were not board meetings under the OMA. The Plaintiffs appealed.

The appellate court agreed. It held that "board meeting," as defined by section 4090, subdivision (a), is an in-person gathering of a quorum of the directors of a homeowners association at the same time and in the same physical location for the purpose of talking about and acting on items of association business. Email exchanges among directors on those items that occur before a board meeting and in which no action is taken on the items, such as those at issue in this case, do not constitute board meetings within the meaning of that definition.

Lake Lindero Homeowners Ass'n, Inc. v. Barone, (2023) 89 Cal.App.5th 834.

When is a Recall Successful? Corporations Code May Rule Over Bylaws.

An appellate court held that Corporations Code Section 7222 controls when deciding how many votes are needed to recall the Board.

An Association held a recall election. A majority of the votes cast by the Owners were in favor of the recall consistent with Corporations Code. One of the directors stated that the Bylaws require a majority vote of all of the Owners to be successful and refused to leave his seat on the Board. The Association filed a complaint to ask the court to weigh in on the validity of the election.

The Association alleged that the recall was successful because it met the burden of removing the Board under Corporations Code Section 7222. Although the initial recall meeting did not meet quorum, the Owners had adjourned the meeting to a later date in order to allow a reduced quorum for a future meeting. The Defendant alleged that the Association Bylaws did not allow for an adjourned meeting for recall, and that even at an adjourned meeting, the Bylaws would require the majority votes of the entire membership. The trial court held the Corporations Code Section took precedence over the Association's Bylaws. The trial court found that the recall election was approved by a vote of 156 in favor of recalling the entire board, with 190 ballots received out of 459 total membership votes and was valid. The defendant appealed.

The appellate court affirmed the trial court's order. Under Corporations Code Section 7616, the court can determine the validity of any corporation election. The appellate court agreed that Corporations Code Section 7222 was the standard for determining the number of votes needed for a recall. As a result, the recall meeting was valid, and the director was wrong to refuse to accept the results of the recall due to the Bylaws rather than the requirements in the Corporations Code.

Lauckhart v. El Macero Homeowners Association, (2023) _Cal.App.5th

Owners and Property are subject to Subsequent CC&R Amendments.

An appellate court found that the statute of limitations prevented an Owner from challenging the validity and enforceability of the CC&Rs.

Beginning in 1995, an Association recorded several amendments to the original 1964 CC&Rs. The amendments renamed the original development and allowed the association to purchase property for the purpose of creating a common interest development.

After a neighboring parcel was abandoned by the county, the Association annexed the parcel and added it to the maintenance obligations of all Owners. In 2020, several Owners refused to pay assessments for the annexed property. Those Owners disputed the Association's actions and alleged that the Board had violated the CC&Rs by exceeding the authority when annexing the property.

The plaintiffs filed a complaint seeking to invalidate the CC&Rs. According to the Owners, the Association committed fraud when it recorded the CC&R amendments. The Owners believed that the Association falsified the necessary approval required to amend the CC&Rs and that therefore the authority granted in the amendments was invalid. As a result, the Plaintiffs allege that the Association could not: annex any land; that it was not a common interest development; and that it had no authority to collect assessments. The trial court ruled against the Plaintiffs and stated that they had waited too long to pursue their claims, and as a result were unable to establish the basic elements of fraud.

The court of appeal agreed with the trial court. According to appellate court, the act of recording the 1995 amendments put all Owners on notice of the changes in the CC&Rs, and the authority to annex property. Therefore, the Owners had missed their 4-year window to challenge the validity of the amendments by waiting until 2020. The court also found that the Plaintiffs had failed to show that the Association had engaged in any fraudulent conduct or intentionally mis-stated Owner approval for the 1995 amendments. As a result, the CC&Rs were found to be valid and enforceable against all Owners.

Takiguchi v. Venetian Condominiums Maintenance Corp (2023) Cal.4th

Boards Must hold Elections as required by Corporations Code.

An appellate court concluded that a Board that failed to hold annual membership meetings to elect directors was in violation of the Corporations Code.

Between 2009 to 2021, the board at the Venetian failed to hold annual elections, often due to the absence of a quorum. When the 2021 election failed to achieve quorum, a group of Owners petitioned the Board to try again to hold a meeting and count the ballots. The Board refused and canceled the 2021 annual meeting.

One of the Owners filed a petition in court requesting an order obligating the Association to acknowledge quorum and count the ballots. Corporations Code Section 7510 allows a court to order a meeting if the corporation fails to hold regular meetings or count ballots within 60 days of the designated election.

The Owner submitted statements from Owners and from the Inspector of Election showing that the Association had reached quorum. The trial court agreed and ordered a meeting so that the ballots could be counted. The Association appealed.

The appellate court agreed with the trial court. The appellate court found that the Owners had demonstrated that the Association had met quorum and was able to meet the requirements needed to count the ballots. Instead, the Association had used inaccurate records to effectively evade its obligation to hold meetings and elect a Board.

Fairly-Haze v. Whitesails Community Association, (2023) Cal 2nd

When is an Accommodation for a Disability Unreasonable?

In an unpublished case, the appellate court upheld the reasonable efforts of the Association in finding an accommodation for an Owner's disability.

A dispute arose between Owners and the Association regarding parking spaces. The Owners wanted to install equipment above one of their two assigned parking spaces, as well as have a dedicated handicapped accessible parking space in the underground garage. The Board offered accessible common area spaces outside the garage in exchange for the use of Owners' spaces inside the garage. When the Owners rejected the offer, the parties agreed to submit these issues to private binding arbitration where the arbitrator initially agreed with the Association.

The Owners filed a lawsuit to vacate the arbitrator's awards. The Owners claimed that the decision was contrary to public policy and violated their unwaivable statutory rights under the Building Code and the Fair Employment and Housing Act (FEHA Government Code Section 12900 et seq). The Association claimed that it was physically impossible to provide the accommodations that the Owners requested. The Association stated that it had made reasonable efforts to ensure that the Owners would have accessible parking, but that to balance community interests it needed to exchange parking spaces with the Owners. The trial court agreed with the Association and the arbitrator's ruling. The Owners appealed.

The appellate court agreed with the trial court. The Owners failed to show that there was any alternative order the Arbitrator could have made, which the Association could have legally complied. The Association had made reasonable offers to accommodate the disability based on who owned and controlled the parking spaces. As a result, both the arbitrator and the attorneys' fee award were upheld.

North Coast Village Condominium Assn. v. Phillip, (2023) Cal.4th

The Association can Obtain Restraining Orders for Paid and Unpaid Employees.

An appellate court found that a trial court was wrong to prevent an Association from receiving a workplace violence restraining order on behalf of directors and other employees.

A dispute arose between two Owners, each of whom had spent time serving on the Association's board of directors. After several interactions, one Owner ran for the Board alleging misconduct by the other Owner, who was a sitting director. As a result of allegations and other continuing threats, the sitting director alleged that his health and safety were at risk from the Owner's conduct.

The association filed a workplace violence restraining order (TRO) petition in support of its Board president and 46 other employees. The defendant had made a credible threat of violence against the director by making knowing or willful statements or engaging in a course of conduct that would place a reasonable person in fear for his or her safety or the safety of his or her immediate family. The Association asked for a stay-away order of at least 30 yards from all the protected parties as well as the director's home, workplace, and vehicle. The stay-away order application further requested that the Defendant not be allowed to enter the Association's management office or patrol office. The trial court found that the Association should have used a civil harassment TRO rather than a workplace violence TRO. As a result, the trial court denied the request for a TRO with the exception of as to the one director, Anderson, who received only personal protection that did not extend to his duties as a director. The Plaintiff appealed.

The appellate court held that the trial court should have evaluated the TRO under the workplace violence requirements as the Association originally requested, and not under a different standard of harassment. The appellate court also found that it would have been proper for the trial court to find that directors are employees of the employer, the association. Many of the allegations provided by the Association demonstrated the interactions with the Defendant had escalated as a result of Mr. Anderson's service on the Board. The appellate court ordered the trial court to evaluate whether the behavior involved violence and credible threats of violence towards an employee, and that those employees may include unpaid directors.

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