



## HOA Brief Newsletter

Tips for the HOA Community

#24

### 2013 Legislative Update for California Community Associations

2013 Proved to be a relatively quiet year for legislation for community associations. However, that does not mean that 2014 does not bring some drastic changes.

#### 1. *AB 805 - Restated Davis-Stirling Act*

AB 805 enacted in 2012 reorganized and restated the Davis-Stirling Act and moved it to a new part of the California Civil Code. While there are some changes to the Davis-Stirling act as a result of AB 805, most of the changes are relatively benign as this was designed to be a non-controversial matter. We have already written about the more significant changes coming with the restated Davis-Stirling act, and you can find our detailed article, "[Guide to the Davis-Stirling Act Reorganization \(AB 805\)](#)" available at our blog, [HOABrief.com](http://HOABrief.com).

#### 2. *SB 745 - Davis-Stirling Restatement Clean-up Legislation*

SB 745 is a multi-issue omnibus bill, and as it relates to community associations primarily acts to "clean up" some issues related to the reorganizing of the Davis-Stirling Common Interest Development Act, which becomes effective on Jan. 1, 2014. As enacted in 2012, AB 805 reorganized and rewrote the Davis-Stirling Act in a new part

of the California Civil Code. As often happens with such a significant undertaking, items are inadvertently omitted, or changes in the law are not incorporated in time to be included in the bill. SB 745 serves to rectify those types of issues.

One of the inadvertent omissions in AB 805 dealt with how a document could be delivered to an association. As enacted by AB 805, new Civil Code section 4035 allowed for documents to be delivered to an association in a wide variety of ways, including email, fax or other electronic means, or personal delivery if the association had agreed to such methods of delivery. However, U.S. mail was omitted as an acceptable way to deliver documents to an association. SB 745 amends section 4035 to also allow for delivery of documents to an association via "first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service center."

In addition, two bills were enacted in 2012 which amended three provisions of the former Davis-Stirling Act (which is still current until the end of 2013). As both bills were enacted after AB 805, the provisions of those bills were not included in the new Davis-Stirling Act. SB 745 corrects this omission.

One of the issues addressed by this correction is the requirement to have a person present at a physical location where members of an association can listen to the board transact business if a board meeting is held telephonically. As enacted, AB 805 required that at least one director be present at such a location. SB 745 amends Civil Code section 4090 to restore the option of allowing the person required to be present to be a director "or a person designated by the board." This gives boards some flexibility with respect to telephonic meetings, and allows for the board to designate someone, such as the association's manager, to be present at a physical location for members to listen to the board meeting rather than requiring that at least one director be present at the location.

SB 745 also clarifies several of the new provisions in the "new" Davis Stirling Act. New Civil Code section 4205 provides guidance as to which of an association's governing documents controls if there is a conflict among the documents. As enacted in AB 805, there is some ambiguity as to whether section 4205 also defines when a conflict exists. As that was not the intention of the legislature when it enacted AB 805, SB 745 amends the language of section 4205 to avoid any misunderstanding regarding the purpose and intention of the statute.

New Civil Code section 4070 is also amended by SB 745 to authorize an action that is required to be approved by a majority of a quorum of the members at a duly held meeting at which a quorum is present to, instead, be approved by a majority in a duly held election in which a quorum is represented, thereby also

applying the statute to elections conducted by written ballot.

Lastly, SB 745 amends the form for billing disclosures and prohibits cancellation fees for requests for documents, as specified.

### **3. SB 752 - Commercial and Industrial Common Interest Development Act**

Starting Jan. 1, 2014, commercial or "non-residential" common interest developments will have their own version of the Davis-Stirling Act type legislation directed exclusively at such non-residential associations. Previously, such associations were governed under the same set of statutes as residential associations, despite the different interests of the owners in these types of associations. SB 752, known as the Commercial and Industrial Common Interest Development Act, creates a new section of the Civil Code, starting with section 6500, which applies exclusively to non-residential associations.

While the statutes are new, the act mirrors the reorganized Davis-Stirling Act. Previously, with some exceptions, the Davis-Stirling applied to these non-residential associations. The exceptions were specified in Civil Code section 1378. The new Commercial and Industrial Common Interest Development Act mirrors the residential Common Interest Development Act (Davis-Stirling), but excludes provisions which are designed to protect residential owners.

Specifically, the commercial and industrial act excludes election provisions and disclosure requirements imposed on residential developments.

#### **4. SB 298 - Allowing HOAs to contract with Local Law Enforcement**

Existing law provides that a board of supervisors of a county, and a legislative body of a city, may contract to provide supplemental law enforcement services to private individuals or entities at special events or occurrences.

Senate Bill 298 introduces a pilot program which authorizes the Board of Supervisors of the County of Orange, or the city council of a city within this county, to contract to provide supplemental law enforcement services to a homeowners' association on an occasional or ongoing basis to enforce the Vehicle Code on a homeowners' association's privately owned and maintained road, as specified.

What that essentially means is that under this pilot program, if a community association, located in Orange County, California, gated or not, has privately owned and maintained roads, and would like to have enhanced services for such things as special occasions or traffic enforcement, it can now contract for those services. The bill requires that any association entering into such a contract with local law enforcement must provide for full reimbursement to the county or city of the actual costs of providing those services, as determined by the county auditor or auditor-controller or the city auditor. The pilot program under this bill is currently set to expire on January 1, 2017.

#### **5. SB 822 - Community Association Managers Not "Contractors" or "Consultants" Under B&P Code Section 7026.1**

In 2012, AB 2237 was enacted which amended Section 7026.1 of the Business and Professions (B&P) Code relating to

contractors (Section 7026.1). There was some confusion as to whether the language in AB 2237, which required "consultants" overseeing home improvement construction projects to be licensed "contractors," applied to community association managers.

SB 822 added the following provision to Section 7026.01: "The term "contractor" or "consultant" does not include a common interest development manager, as defined in Section 11501, and a common interest development manager is not required to have a contractor's license when performing management services, as defined in subdivision (d) of Section 11500."

Managers and board members should be reminded that contractors must be engaged to perform certain jobs. B&P Code section 7048 requires use of a licensed contractor for projects having an aggregate contract price for labor, materials, and all other items of \$500 or more. Also keep in mind that SB 822 will not take effect until January 1, 2014. Some have cautioned that until that time, community association managers should remain cautious when undertaking construction project oversight which might be seen to constitute the work of a "contractor" or "consultant."

#### **6. SB 652 - New Transfer Disclosure Statements for Owners of Residential Property**

SB 652 amends the form of the Transfer Disclosure Statement required under Civil Code §1102.6 for residential property which requires residential sellers to disclose all construction defect claims to prospective buyers. This expands the disclosures beyond current law because there may have been certain claims that owners and builders settled on and are no longer

considered pending, but buyers need to know about them.

The new Transfer Disclosure Statement asks the seller about the following types of claims:

- Any lawsuit by or against the seller “threatening to or affecting” the property.
- Claims for damages by the seller pursuant to Civil Code § 910 or 914.
- Claims for breach of warranty pursuant to Civil Code § 900.
- Claims for breach of an enhanced protection agreement pursuant to Civil Code § 903.
- Claims alleging defects or deficiencies in the property or common area improvements.

If any of these claims have occurred, the seller will be required to provide further explanation.

### **7. SB 454 – Locations for Electric Vehicle Charging Stations**

SB 454 expands the locations where electric vehicle charging stations may be installed. However, private and exclusive use areas,



guest parking, and certain roadways are exempt from the bill.

### **8. Potential Regulatory issue with New Pool Rules**

The California Department of Public Health recently examined its regulations regarding public pools. Title 22 of the California Code of Regulations, already requires that daily records of public pool sanitation be kept. This implies that daily testing of public pools must also be conducted. There are several issues which may arise regarding these pool regulations. These include such issues as, (1) are association pools “public” or “private for such purposes, (2) if they are “public”, why would association pools be included as opposed to public pools or water slide parks, (3) what costs will be incurred if daily testing is required and who will perform the testing, (4) how will the daily testing requirement

We will provide an update once some of these questions are answered. Until then, stay tuned!



4000 Barranca Parkway, Suite 250  
Irvine CA 92604  
Ph: (949) 654-1510

Email: [robert@NDHOALaw.com](mailto:robert@NDHOALaw.com)  
Website: [NDHOALaw.com](http://NDHOALaw.com)  
Blog: [HOABrief.com](http://HOABrief.com)

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