
COMMON INTEREST DEVELOPMENT UPDATE

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LEGISLATION UPDATE

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Several bills affecting community associations were signed into law by Governor Schwarzenegger. Unless otherwise indicated, these laws became effective January 1, 2008.

A. AB 691

This bill amends Sections 11500 through 11502.5 and 11504 through 11506 of the Business and Professions Code as it relates to the definition of a Certified Common Interest Development Manager. AB 691 modifies existing law in two ways. While Common Interest Development Managers are not required to be certified, these statutes govern the requires for those who wish to hold themselves out as "Certified Common Interest Development Managers."

Certification Requirement Changes: First, AB 691 modifies the requirements that a person must meet to be "certified." Most of the modifications in the amended statutes are cosmetic and intended to non-substantively revise definitions and correct grammatical errors in the statutes. For instance, all requirements involving the "governing body" of an association have been revised to the "board of directors" of an association. Similarly, the term "community association" in the statutes has been simplified to "association." While nearly all of these changes are non-substantive, there are two modifications that augment the requirements for certification of Common Interest Development Managers.

The first such modification appears in Section 11502 of the Business Professions Code, which governs the requirements for certification. Section (b) of this statute sets forth the required curriculum which a manager must study. The manager must then pass an examination based on that curriculum in order to

become a Certified Common Interest Development Manager. AB 691 adds the categories of "operations" and "emergency preparedness" to the course of study of the law of "Risk Management" currently required under Section 11502(b)(1)(C). Secondly, AB 691 modifies Section 11502(b)(2)(M) to require that managers receive instruction in general management as to Conflict Avoidance and Resolution Mechanisms.

Extension of "Sunset" Provisions: The Second, and more important modification imposed by AB 691 is the extension of the "sunset provision" of Sections 11501 through 11506. Existing law governing certification of common interest development managers was set to expire on January 1, 2008. This modification extends the statutes until January 1, 2012.

B. AB 980

Previous law permitted various fees to be included in the price of a transfer of residential real estate. This bill delineates the parameters of what may be defined as a "transfer fee," and sets forth requirements for recording the transfer fee in order for the fee to be valid. It requires that a separate disclosure as to transfer fees be recorded as part of the title and distributed to potential homeowners.

Definition of a transfer fee: AB 980 adds Civil Code Section 1098, which defines a transfer fee. A transfer fee is defined as "any fee payment requirement imposed within a covenant, restriction or condition" contained in a deed, contract or other document affecting the transfer or sale of any interest in real property. The term "transfer fee" does not apply to:

- (i) governmental taxes or fees;
- (ii) mechanic's liens;

- (iii) monetary obligations imposed by court order or pursuant to property agreements (from divorce or separation);
- (iv) fees in connection with probate;
- (v) fees charged by lenders;
- (vi) authorized common interest development assessments, charges, penalties or fees; and
- (vii) any fee recorded against the property prior to December 31, 2007, aside from a fee imposed by CC&Rs that provides notice to the transferee (or purchaser) that the payment of the transfer fee is required, the amount of the fee, the circumstance under which the transfer fee requirement expires, the entity to which the fee will be paid, and the general purpose for which the fee will be used.

Required Documentation of Transfer Fees imposed prior to January 1, 2008: AB 980 adds Civil Code Section 1098.5, which requires that in order for a transfer fee to be valid after December 31, 2008, all transfer fees imposed prior to January 1, 2008 must record a separate document informing the transferee of the transfer fee by December 31, 2008. As stated above, this requirement can be avoided if the transferor complies with section (vii) of the previous paragraph.

The document must be entitled "Payment of Transfer Fee Required" in at least 14-point boldface type. The Document must also include the following:

- (i) the names of the current owners of the property;
- (ii) the legal description of the property;
- (iii) the Assessor's Parcel Number (APN) of the property;
- (iv) the amount of the fee, and an explanation as to whether the fee is a flat fee or percentage of the sales price;
- (v) for residential sales, dollar-cost examples of the fee for homes priced at \$250,000, \$500,000 and \$750,000;
- (vi) the date and circumstances under which the transfer fee expires;
- (vii) the purpose for which the funds will be used;
- (viii) the entity to which the fee will be paid and the specific contact information regarding where the funds are to be sent;

- (ix) signature of the authorized representative of the entity to be paid.

Required Documentation of Transfer Fees imposed after January 1, 2008: Civil Code Section 1098.5, imposes the same requirements as to the contents of the "Payment of Transfer Fee Required" document. The document, however, must be recorded concurrently with the instrument creating the transfer fee requirement.

Obligations of the recorder of the instrument: AB 890 only imposes limited requirements on the recorder of the document. The recorder must verify the names of the current owners of the property, the legal description of the property, the property's APN, the entity to which the fee will be paid, the specific contact information regarding where the funds are to be sent, and the signature of the authorized representative of the entity to be paid.

Obligations of Transferor to Distribute Notice of Transfer Fee: Beginning January 1, 2008, a transferor who transfers a property subject to a transfer fee must provide an additional disclosure statement together with the required Real Estate Disclosure Statement to the potential buyer. This additional disclosure statement must contain the following information:

- (i) notice that a transfer fee is required upon transfer of the property;
- (ii) the amount of the fee, and a description of how the fee is calculated;
- (iii) notice that the final amount of the fee may be different if the fee is based upon a percentage of sale price;
- (iv) the entity to which the fee will be paid;
- (v) the purpose for which the funds will be used;
- (vi) the date and circumstances under which the transfer fee expires

If the above provisions are not satisfied, the buyer of the property will not be subject to the transfer fee.

C. SB 528

Existing law requires that meetings of the board of directors of an Association give members of the Association notice of the time and place of the meeting at least four days prior to the meeting. SB 528 amends Section 1363.05 of the

Civil Code to require the board of directors to include the proposed agenda for the meeting with the four-day notice. The board will be prohibited from discussing any item not set forth in the agenda unless the meeting was called on an emergency basis. A resident who is not a member of the board, however, may speak on items not set forth in the agenda. In this scenario, the board of directors would be permitted to briefly respond to the member's question, ask for clarification or make brief reports or announcements related to that topic. The bill does allow the board of directors to provide a reference or factual information to any of its agents, request any agent to report back to the board at a subsequent meeting, to place a matter of business on a future agenda, or direct any agent to perform administrative tasks that are necessary to carry out these provisions.

This bill also provides an exception to the prohibition if:

- (i) a majority of the board of directors present at the meeting determines that an emergency situation exists;
- (ii) the board determines, by a specified vote, that there is a need to take immediate action and that the need for action came to the attention of the board after the agenda was posted and distributed; or
- (iii) the item appeared on an agenda that was posted and distributed for a prior meeting that occurred not more than 30 calendar days before the date that action is taken on the item and, at the prior meeting, action on the item was continued to the meeting at which the action is taken.

Lastly, the bill requires the board, before discussing any item pursuant to these provisions, to openly identify the item to the members in attendance at the meeting.

D. 47 C.F.R. §76.2000 - Access to Multiple Dwelling Units and Centrally Managed Real Estate Developments

In November 2007, the Federal Communications Commission ("FCC") promulgated a rule change that supercedes exclusivity agreements between common interest developments and cable or satellite providers. The text of the law prohibits cable operators or MVPD (Multichannel Video Programming Distribution) service providers from enforcing the terms of any contracts that provide the operator with exclusive rights to provide video programming services to a "multiple dwelling unit building." The regulation specifically delineates condominium buildings as a type of "multiple dwelling unit building."

While the regulation does not prevent an association from *entering into* an exclusive contract with a satellite or cable television provider, the ban on enforcing such a contract effectively nullifies any benefit for a cable or satellite provider to consider entering into such a contract with a community association.

Subsequent Litigation: In January 2008, the National Multi Housing Council and National Apartment Association filed suit against the FCC, seeking to strike down the ban on exclusive rights contracts that was promulgated by the FCC. The Plaintiffs argue that the FCC does not have legal authority to regulate such agreements. This legislation is pending.

Roseman & Associates, APC, is a full service law firm representing common interest developments, including homeowners associations and property management companies.

Our services include:

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- ◆ Construction Defect Litigation
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