



NEW LAWS EFFECTIVE JANUARY 2023 and OTHER RECENT CHANGES IN THE LAW IMPACTING COMMUNITY/HOMEOWNERS ASSOCIATIONS

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As it does just about every year, the California Legislature has made changes to the law impacting community association's statewide. This article covers those changes effective January 1, 2023 and other recent changes in the law that are worthy of being covered or repeated, as they may apply to your California community association. We have included examples of the application of the new law.

Outline of what is covered in this article:

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AB 1410 - Social Media and Rental Restrictions

Synopsis: The bill creates Civil Code §5875, which prohibits associations from pursuing enforcement actions for violations of governing documents (except for nonpayment of assessments) during a declared state or local emergency if the nature of the emergency giving rise to the declaration makes it unsafe or impossible for the owner to prevent or fix the violation.

AB 1410 also creates Civil Code § 4739, which eliminates restrictions found in the governing documents on leasing portions of an owner-occupied home, as long as the lease is for a period of more than 30 days. Associations will have to allow owners to rent out rooms in their homes **as long as the owner also lives in the home**. This new law would effectively allow owners to create what is equivalent to a boarding house, so long as the rentals are longer than 30 days.

AB 1410 creates Civil Code § 4515, which voids and makes unenforceable any provision in a community association's governing documents that restricts using social media or other online resources to discuss community association-related topics, even if the content is critical of the association or its board. This new law does not require that associations provide

social media or other online resources or to allow members to post content on the association's own website. It also prohibits retaliation against a member or resident for exercising their free speech rights. Social media may be used to discuss association living, elections, legislation, and other political and association matters.

Amended/New Sections: Civil Code §§ 4515, 4739 and 5875

Effective Date: January 1, 2023

Comments: We have not seen too many association's governing documents that prohibit members from using social media to criticize the board or the association. In fact, we generally tell boards that we recommend that they stay off social media altogether as postings could end up getting the association sued for defamation. This new law is problematic, as it is unclear whether defamation, harassment, and bullying of directors could potentially be permitted.

Associations should adopt policies regarding renting a portion of a separate interest (unit or home) that are in accordance with the Civil Code.

Also problematic, the prohibition against pursuing a governing document violation enforcement action during a declared state of emergency potentially includes architectural, nuisance, occupancy, and use violations. Once associations are again permitted to resume enforcement, they are encouraged to speak with their legal counsel for direction.

AB 2863 - Green Building Standards

Synopsis: Mandatory building standards for short-term and long-term bicycle parking within multifamily residential buildings.

Comments: This bill requires the Department of Housing and Community Development, upon the next triennial update of the California Green Building Standards Code that occurs on or after January 1, 2023, to research and develop mandatory building standards for short-term and long-term bicycle parking in multifamily residential buildings, as well as in nonresidential buildings. The bill authorizes the department to propose these standards for adoption. The bill requires the department and the commission, in developing these standards, to develop minimum mandatory bicycle parking standards using a method that is independent of the number of vehicle parking spaces.

Amended/New Sections: Health & Safety Code § 18944.19

Effective Date: January 1, 2023

AB 2097 - Removal of Mandatory Parking Minimums

Synopsis: Under existing law, public agencies can require parking for new developments. This bill prohibits public agencies from imposing minimum parking requirements on residential, commercial, or other developments located within a ½ mile of public transit, unless they make detailed written findings that doing so would have a “substantially negative impact” on the public agency’s ability to fulfill certain regional or special housing needs or on existing residential or commercial parking within a ½ mile of the development.

Comments: This bill is most likely to affect brand new developments seeking parking changes, but could possibly affect existing developments seeking to obtain local governmental approval for changing their parking situation, for example, the annexation of new property that will have parking, and possibly when changing an existing parking area into something else, such as a storage area or clubhouse.

Amended/New Section: Government Code § 65863.2

Effective Date: January 1, 2023

AB 2011 & SB 6 – Expected New Affordable Housing and Housing Where Previously Not Allowed

Synopsis: AB 2011 creates the “Affordable Housing and High Road Jobs Act of 2022,” which is set to expire on January 1, 2033. Given the need for additional affordable housing in the State, this new law creates a ministerial, streamlined approval process for affordable housing projects in commercial zones, and for mixed-income housing projects along commercial corridors. One major benefit is that eligible projects will be exempt from the CEQA process because of the ministerial approval exemption.

SB 6, in short, creates new law that allows for residential development within a zone where office, retail, or parking are a principally permitted use, if specified conditions are met, without the local jurisdiction having to rezone the property.

Comments: Although these bills do not directly impact existing community associations, boards should be aware there could be additional housing developed in adjacent areas where previously it had not been permitted or approved.

Amended/New Sections: Government Code §§ 64500, 65913.4, 65852.24, 65585, and 65912.10 et seq.

Effective Date: January 1, 2023

AB 2221 & SB 897 - Easing the Process for Creating ADUs

Synopsis: These two bills create new provisions to existing ADU laws that associations should be aware of.

Comments:

- A detached garage can be an ADU now.
- Local agencies are required to use “objective standards” in reviewing ADU applications (the planning person can’t exercise personal/subjective discretion. Basically, health/safety is the only reason to withhold approval).
- Denied ADU applications by governmental agencies now have to provide a list of application deficiencies and how the application can be remedied. (Boards can find out more about **why** an ADU was allowed or not by the governmental agency). Local agencies are now prohibited from establishing limits (minimum and maximum) on front yard setbacks (minimum requirements of no more than 4 feet for side and rear yard setbacks are still allowed).

Amended/New Sections: Government Code §§ 65852.2, 65852.22, and 65852.23; Health & Safety Code § 17980.12

Effective Date: January 1, 2023

AB 1738 & AB 2075 - New Building Code Standards for Electric Vehicle Charging Stations

Synopsis: These bills will, commencing with the next triennial edition of the California Building Standards Code, require the State Energy Resources Conservation and Development Commission (Energy Commission), California Building Standards Commission, and Department of Housing and Community Development to research and develop, and authorize the Building Standards Commission and Department to propose for adoption, mandatory building standards for the installation of electric vehicle charging stations (EVCSs) with low power level 2 or higher electric vehicle chargers in existing multifamily dwellings, hotels, motels, and nonresidential development during certain retrofits, additions, and alterations to existing parking facilities, as specified. They also require the Department of Housing and Community Development and the Building Standards Commission to review those building standards every triennial code cycle and update those building standards until specified goals are met, as specified. These provisions are set to expire on January 1, 2033.

Comments: These new laws are worth a quick mention. Essentially, the State is updating Building Code standards to advance the use of EVCSs in developments. We don’t know what these standards will be yet until they’re published/adopted, but they will likely impact the future installation/construction of EVCSs in developments, for example, require upgrades to infrastructure to accommodate faster EVCSs.

Amended/New Sections: Health & Safety Code §§ 18941.10, 18941.11, 18941.17; Public Resources Code § 25233.5

Effective Date: January 1, 2023

EXISTING LAW: SB 326, aka the “Balcony Bill”

Synopsis:

- Governor Newsom signed Senate Bill No. 326 and the law became effective on January 1, 2020, as Civil Code § 5551. This law requires inspections at least once every nine (9) years by a licensed structural engineer of the load-bearing components and waterproofing aspects of balconies that are elevated more than six (6) feet above the ground level, designed for human occupancy or use, and that are supported in whole or in substantial part by wood or wood-based products.
- Associations must conduct inspections to determine whether the balconies are in a generally safe condition as measured by applicable standards. In order to meet the required standards, prior to the first visual inspection, the inspector must generate a random and statistically significant list of the locations of each balcony for which the association has repair or maintenance responsibility. The inspector will then perform visual inspections in accordance with the random and statistically significant list. If the inspector observes that water has passed through the waterproofing system, then the inspector may conduct a further inspection.
- The results of the inspection will be included in a written report verified by the designated structural engineer.
- The statute imposes a strict deadline on the Association to complete these inspections by January 1, 2025.

Amended/New Sections: Civil Code § 5551

Effective Date: January 1, 2020