

2007 Legislative Update

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NEW STATUTORY LAWS FOR 2007

Senate Bill 1560

Amending Civil Code §1363.03 and §1365.2

Topic:

Election law and records clean-up

Timeline:

Rules required as of 7/1/06

Summary of the Basic Changes:

This new law is a “clean-up” bill amending Civil Code Sections 13603 and 1365.2. The amendments to §1363.03 modify balloting procedures, roles of the inspector and voting tabulation procedures. The amendments to §1365.2 address changes in methods of accounting, member protection from liability, electronic record transmission. The law also adds explicit language to clarify previous gaps and contradictions in the law. Associations should revise their election rules to reflect these amendments.

Changes to Civil Code §1363.03

Pursuant to Senate Bill 1560, the following changes are reflected by the amended portions of Civil Code §1363.03:

Secret Ballot System:

- 1) The secret ballot system must be used for voting on the removal of directors;
- 2) Once a secret ballot is received by the inspector of election, it is irrevocable;
- 3) Ballots must be mailed out to the members at least 30 days prior to the deadline for voting;
- 4) Ballots must be mailed with instructions on how to return the ballots, and two pre-addressed envelopes for use by the members to return the ballots to the inspectors;
- 5) Ballots may not include the voter’s name, address, lot, unit or parcel number;
- 6) Ballots must be filled out by the members, then inserted into inner envelope which contains no information identifying the voter;
- 7) The sealed inner envelope is then placed by the member into an outer envelope, which the member then signs, and indicates his/her name and address or separate interest identifier that entitles him/her to vote;
- 8) The member then mails or delivers the ballot envelopes to the inspectors, and may request a receipt for delivery;

- 9) The sealed ballots must remain in the custody of the inspectors or at a location designed by the inspectors until after the tabulation of the vote;
- 10) No person, including a member of the association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated;
- 11) The inspector or his independent third party designee may verify the member's information and signature on the outer envelope prior to the meeting at which the ballots are tabulated;
- 12) The secret ballot procedure is not required for votes cast by delegates or other elected representatives; only to votes cast directly by membership.

Establishing Quorum:

- 1) A quorum is required for elections only if so stated in the governing documents or other provisions of law;
- 2) Ballots received by the inspector of election may now be treated as members present at a meeting for the purpose of establishing quorum;

Proxy Voting

- 1) New changes include definition of proxy:
 - a) A written authorization signed by a member of the authorized representative of the member that gives another member or members the power to vote on behalf of that member;
- 2) 'Signed' means the placing of the member's name on the proxy (whether by manual signature, typewriting, telegraphic transmission or otherwise) by the member or authorized representative of the member;
- 3) Proxies shall not be construed or used in lieu of a ballot;
- 4) Use of proxies is permitted if permitted or required by bylaws, and if proxies meet the statutory requirements, but associations are not required to prepare or distribute proxies.

Cumulative Voting:

- 1) An association shall allow for cumulative voting using the secret ballot procedures if cumulative voting is provided for in the governing documents;
- 2) If governing documents provide for cumulative voting, but not otherwise, every member entitled to vote at any election of directors may cumulate his votes, but only if the candidate's name or names were placed in nomination prior to the voting, and a member has given notice at a meeting of his intention to cumulate votes.
- 3) For associations with cumulative voting, meeting is required to make announcement of intent to cumulate votes.

Membership Meetings

- 1) All votes shall be counted and tabulated by the election inspector in public at a properly noticed open meeting of the members or of the board of directors;
- 2) Except for the meeting to count votes, an election may be conducted entirely by mail unless otherwise specified in the governing documents;
- 3) If governing documents require annual meeting of the members, association must

- still hold such a meeting;
- 4) Business may be conducted at a meeting other than matters for which secret ballot is used (e.g., approval of minutes, reports by directors/committees, etc.)

After the Vote

- 1) The inspector of election or his or her designee may verify the member's information and signature on the exterior envelope prior to the meeting at which ballots are tabulated.
- 2) The changes impose a duty on inspectors, and not the association, to retain the ballots at a location designated by the inspector until the time allowed by the *Corporations Code* Section 7527 for challenging the election has expired. Once the challenge period has expired, custody of the ballots must be transferred from the inspector to the association and the ballots must be stored in a secure place for no less than one year after the date of the election.
- 3) If there is a recount or other challenge to the election process, the inspector of election must, upon written request, make the ballots available for inspection and review by an association member.
- 4) Within 15 days of the election, the board must publicize the tabulated results to the membership.

Nomination of Candidates:

The election rules adopted by associations pursuant to this section may provide for the nomination of candidates from the floor and write in candidates.

Changes to Civil Code §1365.2:

Pursuant to Senate Bill 1560, the following changes are reflected by the amended portions of Civil Code §1365.2:

Requires associations to prepare interim financial records in accordance with an accrual or modified accrual basis of accounting. Associations are not required to provide meeting minutes for all committees, but only those appointed by the board of directors pursuant to the *Corporations Code* Section 7212. Associations, their officers, directors and agents are not extended protection from liability from third parties, in addition to association members, as a result of identity theft due to failure to withhold or redact a member's information from its records. Finally, this section explicitly states that associations may deliver specifically identified records by electronic transmission or machine-readable storage as long as the records can be transmitted in a redacted format that prevents the records from being altered. Associations should ensure that their accounting books and records reflect the accrual or modified accrual basis.

Senate Bill 2100

New Requirements for Preparation and Distribution of Association Financial Documents

Amending Civil Code §1365; §1365.5; §1365.2.5; §1365.6

Summary:

Civil Code §1365

Summary: The amendment requires that the summary of reserve funds include the current deficiency (if any) in reserve funding, express on a per unit basis. In addition, the amendments require that the Association indicate, with the annual pro forma budget, the following disclosures/statements:

(1) Deferral of Work - whether the board of directors has determined to defer or not undertake repairs or replacement of any major component with a remaining life of 30 years or less, including a justification for the deferral or decision;

(2) Anticipation of Special Assessments - whether the board of directors anticipates levying special assessments (including the estimated amount, commencement date and duration of such assessment) in order to repair, replace or restore such major components or to provide adequate reserves for such components consistent with the 'reserve funding plan' now required to be adopted by the board, as discussed below; and

(3) Loan Information - whether the association has any outstanding loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired.

Civil Code §1365.5

Summary: The amendment requires boards of directors to adopt a 'reserve funding policy' every three years upon the reserve study being performed. The plan is required to indicate how the association intends to fund annual contributions estimated as necessary to defray the cost to repair, replace, restore and maintain the major components for which the association is responsible, excluding items the association has determined will not be replaced or repaired. The plan must include a schedule of the date and amount of any change in regular or special assessments needed to sufficiently fund the reserves funding plan, with any increase or levy being governed by existing Civil Code §1366.

Where: The plan is to be adopted at an open board meeting.

When: Commencing January 1, 2009, boards of directors will be required to distribute to members a summary of the 'reserve funding plan.'

Contents: This summary must include a notice to members that the full plan is available upon request, and the association must provide the full plan upon such request.

Civil Code §1365.2.5

Summary: The bill clarifies the Assessment and Reserve Funding Disclosure Summary in the reserve study set forth in this section of the code by adding a requirement that the form set forth:

1) The estimated amount required in reserves at the end of each of the next five budget years;

2) The projected reserve fund cash balance in each of those years; and

3) The balance if the reserve funding plan is implemented in each of those years.

In addition, the reserve study calculations must take into account all major components rather than just those major components identified during an inspection to be included in the reserve study.

When: Effective January 1, 2007, associations will be required to use the revised

Assessment and Reserve Funding Disclosure Summary in this section.

Assembly Bill 1881

Water Conservation in Landscaping Act

Affecting Government Code, Public Resources Code, and Water Code
Adds Civil Code §1353.8 to the Davis-Stirling Common Interest Development Act

Purpose of Legislation:

The purpose of the bill is to promote California's conservation and efficient use of water and prevent the waste of this 'valuable resource.'

Civil Code §1352.8:

This added language makes architectural guidelines for a common interest development that may not prohibit, or include conditions that have the effect of prohibiting the use of 'low water-using plants as a group.' The other parts of the bill related to the Water Conservation in Landscaping Act and require the Department of Water Resources to appoint an advisory task force to work with the Department to draft a model local water efficient landscape ordinance.

Assembly Bill 2210

Towing Regulations

Repeals Vehicle Code §22658.2
Amends Vehicle Code §22658

Repeals Vehicle Code §22658.2:

Formally provides the rules and requirements for the removal of vehicles from common interest developments.

Amends Vehicle Code §22658:

Now combines the rules and requirements for the removal of vehicles from common interest developments with the rules and regulations for the removal of vehicles from all types of private property.

Sign Requirements:

Past: Formally, §22658.2 prohibited removal of vehicles from association property unless a sign, measuring not less than 17x22 inches was posted at each entry to the common interest

development, containing a statement prohibiting parking by unauthorized vehicles and the telephone number of the local traffic law enforcement agency.

Now: Pursuant to §22658, the above requirements are retained in addition to adding the requirement that the sign also contain the name and number of each towing company which has a written general towing authorization agreement with the association.

Grounds for Towing:

Now: By including common interest developments in the amended §22658, associations may now tow a vehicle based upon additional grounds:

- 1) If the vehicle has been issued a notice of parking violation and 96 hours have elapsed since the issuance of that notice, the association may have the vehicle towed, even without a posted sign.
- 2) If a vehicle is parked on association property and lacks an engine, transmission, wheels, tires, doors, windshield or any other major component necessary to operate safely on the highway, the association may lawfully tow the vehicle if the association notifies the local traffic law enforcement agency, and 24 hours have elapsed since notification.

Notification Requirements:

Past: Vehicle Code §22658.2 previously required the president of the association to notify the registered vehicle owner, by first class mail, that the vehicle was towed.

Now: Vehicle Code §22658 makes three major changes.

- 1) It places responsibility with the tow truck operator for notifying the legal owner of the vehicle in writing that the vehicle has been towed, the reason why it was towed, and the location where the vehicle was towed;
- 2) Associations are now required to notify the local traffic law enforcement agency within one hour after authorizing the towing of the vehicle;
- 3) It requires that the association or the tow truck operator state the grounds for removal of the vehicle if requested by the registered owner of the vehicle.

Penalties:

Now: An association may be liable for double the storage or towing charges for failure to comply with these sign and/or notice requirements.

Authorization to Tow:

Now: Towing companies may not remove a vehicle from association private property without first obtaining written authorization from the association. An employee or agent of the association must be present at the time of removal and verify the alleged violation. This process requires the following:

- 1) The written authorization must include the make, model, vehicle identification number, and license plate of the vehicle, the grounds for removal, the time when the vehicle was first observed parked at the private property, and the time that authorization was given to tow the vehicle;
- 2) The authorization must also include the name, signature, job title, address,

- and phone number of the person authorizing the removal of the vehicle;
- 3) When the vehicle owner claims the vehicle, a copy of the written authorization must be provided to the owner along with a separate notice containing the telephone number of the local law enforcement agency for owners to contact if they believe that they have been wrongfully towed.

The towing company is not responsible in a situation relating to the validity of the tow where the tow is authorized by an association.

Associations may not give towing companies general authorization to remove a vehicle at the towing company's own discretion except if a vehicle is unlawfully parked within 15 feet of a fire hydrant or in a fire land, or in a manner which blocks an entrance to or exit from the private property. If a vehicle is towed under this general authorization, the towing company must take a picture of the parking violation before removal and provide a copy of the picture to the owner when that person claims the vehicle.

Release of Vehicle:

Now: Pursuant to Vehicle Code §22658, owners of a vehicle, or the owner's agent, are now allowed to request the towing company/driver immediately release his or her vehicle if the vehicle has not yet been removed from the private property and in transit. Once the vehicle is released, the owner must immediately move the vehicle to a lawful location. The Section also provides numerous new requirements for towing companies. Examples are provided below:

- 1) Towing companies who charge rates in excess of statutory guidelines now face increased fines or imprisonment;
- 2) Towing companies must now accept any valid credit card or cash for payment of towing and storage, display a sign stating the same, and have sufficient cash on hand to make change in cash transactions; and
- 3) Towing companies must also provide notice to the local law enforcement agency within 30 minutes after the tow.