

**WHAT’S HAPPENING IN SACRAMENTO:**

**SENATE BILL 209 AND ELECTRIC CHARGING STATIONS**

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A bill that strongly encourages homeowner’s associations to allow and install electric vehicle charging stations upon a member’s request garnered the signature of Governor Brown in July, but lobbyists from the Community Associations Institute’s California Legislative Action Committee, of which GBF attorneys Elizabeth French and Holly Amaya are part, have convinced the governor to agree to fix certain glaring flaws in the legislation.

Senate Bill 209 will add Section 1353.9 to the Civil Code. It provides that any covenant, restriction, or condition in the governing documents of a common interest development that effectively prohibits or restricts the installation or use of an electrical vehicle charging station is void and unenforceable. The bill also allows an association to impose reasonable restrictions (defined as those that do not significantly increase the cost of the station or decrease its efficiency or specified performance) on those stations, and outlines an approval process associations must follow for applications for such stations. Such applications must be handled in the same manner as applications for architectural modifications, and an application not denied in writing within 60 days shall be deemed approved unless the delay is a result of a reasonable request for additional information. An association that violates the bill’s provisions would be liable for damages and a civil penalty not to exceed $1,000.00.

Notably, the bill also imposes considerable restrictions and requirements on homeowners who apply for such stations. First, if a station would be placed in a common area or exclusive use common area, the requesting homeowner must first seek approval from the association, and is then required to pay the various costs associated with maintaining and repairing the station. The homeowner is further responsible for costs for damage to common areas and adjacent units resulting from installation and maintenance of the station, and must pay for electricity usage associated with the station. Significantly, the homeowner must maintain an umbrella liability coverage policy of $1,000,000 that names the common interest development as an additional insured (which will likely dissuade many owners from applying for such stations). Finally, the owner must disclose these conditions to prospective purchasers of their separate interest.

However, the bill as currently drafted and signed violates the California constitutional provision guarding against the “taking” of real property. Essentially, the legislation as codified could permit individual homeowners to unreasonably use, occupy, or otherwise “take” an association’s common area or portions thereof. Additionally, the law conflicts with existing provisions of the Civil Code which require a two-thirds vote of an association’s membership to grant exclusive use of the common area for such installations. Upon the urging of CAI-CLAC, Governor Brown made note of these flaws in a special signing message to the California State Senate in July. In that message, Governor Brown noted that the bill’s author has assured him that she will pursue additional legislation – colloquially known as a “fix” bill – that “clearly protects” the right of common interest developments to establish reasonable rules for any use of common areas for charging stations.

We will continue to closely monitor the status of legislation addressing these issues. Should you have further questions, please do not hesitate to contact the attorneys at Green Bryant & French, LLP.

*Holly Amaya, Esq., is an attorney with Green Bryant & French, LLP. She specializes in homeowner’s association law. Ms. Amaya is a member of the California Legislative Action Committee of the Community Associations Institute and serves as a writer and editor for CLAC’s quarterly newsletter, which outlines proposed legislation affecting common interest developments in California. She can be reached at (619) 239-7900, extension 114, or at hamaya@gbflawyers.com.*