BAYDALINE & JACOBSEN LLP

2023 COMMUNITY ASSOCIATION NEWSLETTER
NEW LAWS & CASES

BAYDALINE & JACOBSEN LLP
ATTORNEYS AT LAW

895 UNIVERSITY AVENUE
SACRAMENTO, CA 95825

4 EMBARCADERO CENTER,
SUITE 1400
SAN FRANCISCO, CA 94111

TEL 916.669.3500
TEL 415.677.4219

WWW.BAYJACLAW.COM

ROD A. BAYDALINE
JENNIFER M. JACOBSEN
DARREN M. BEVAN
JOHN D. HANSEN
RAIHANE A. DALVI
CHARLES H. HANSEN

NEW LAWS

As the new year begins, it is important to stay informed of new laws and cases affecting community associations. This newsletter summarizes many of these important new laws and court decisions.

Assembly Bill 1410 – Social Media, Rentals, State of Emergency

Amends Civil Code §4515 and adds §4739 and §5875

[Effective January 1, 2023]

This bill adds or amends three separate statutes, largely addressing three different issues. Each is summarized below.

Social Media. The amendment to Civil Code §4515 adds two subsections: §4515(b)(6), and §4515(e). Subsection (b)(6) does not allow governing documents to prohibit the use of social media or other online resources to discuss association living, elections, legislation, election to public office, the initiative, referendum, or recall process, and "any other issues of concern to members and residents." Subsection (b)(6) also clarifies associations are **not** required to provide access to social media or other online resources, including an association's internet website. Subsection (e) simply states an association may not retaliate against a member or a resident for exercising any of the rights contained in Civil Code §4515.

Rentals. Civil Code §4739 states owner occupied residences may rent portions of their lot or unit, which includes renting rooms, and these rentals shall not be subject to a provision that prohibits rentals "for a period of more than 30 days." We note, Civil Code §4741, which was not changed, already limits the maximum rentals restrictions to 30 days or less. Accordingly, associations must allow room rentals and may only prohibit transient or short-term rentals for a period of 30 days or less.

Enforcement During State of Emergency. Finally, Civil Code §5875 prohibits associations from pursuing any enforcement actions, except those relating to the nonpayment of assessments, during a declared state or local emergency if the nature of the emergency makes it unsafe or impossible for the owner to either prevent or fix the violation.

NEWSLETTER

Assembly Bill 1738 – Electric Vehicle Charging in Parking for Multifamily Dwellings

Amends Health and Safety Code §18941.11

[Effective January 1, 2023]

This amended statute is effectively the authorization and initial call for various government agencies to begin drafting regulations which will require the installation of electric vehicle charging stations in parking areas of condominium associations and other multifamily dwellings. We expect to see additional regulations from those government actors indicating the exact standards required within the next three years.

Senate Bill 897 – Further Restrictions on Local Governments dealing with ADUs

Amends Government Codes §§65852.2 and 65852.22, and Health and Safety Code §17980.12; adds Government Code §65852.23; and repeals Government Code §65852.2

[Effective January 1, 2023]

Existing law, both for local governments and the California legislature, has a host of restrictions on conditions under which an owner can construct an Accessory Dwelling Unit ("ADU"). The pattern over the past several years has been to lessen those restrictions through both caselaw and amendments to California law.

SB 897 continues this pattern, eliminating many of the restrictions on ADUs present in both state and local laws. This legislation only allows the imposition of objective standards regarding height, setback limits, minimum and maximum sizes, and other factors. As a result, local governments will have fewer restrictions on ADUs, and associations may see more applications for ADUs. While SB 897 does not limit an associations' ability regarding subjective standards, such as appearance or matching architecturally, this bill may be a harbinger of future legislation affecting associations aimed at further easing restrictions on ADUs.

New Case Law

The following is a summary of important published and unpublished cases affecting community associations in 2023. Unpublished cases cannot be cited, but offers a glimpse into how similar cases might be decided. Unpublished cases are marked with (UNPUBLISHED) and *asterisks* around the name of the case.

Olson v. Doe

A Condominium Association's President and an Owner had an extensive history of disputes, including alleged sexual battery. As a result of these issues, the Owner sought a civil harassment restraining order against the President. At a mediation specifically and solely relating to that civil harassment restraining order, the parties reached a settlement agreement in lieu of seeking a restraining order, which included an agreement not to disparage one another. By all accounts, the settlement agreement was somewhat informal, and did not contain many of the provisions placed on the standard form of agreement. The Owner later brought a lawsuit and HUD complaint against the President and the Association for a variety of causes of action arising from alleged conduct by the President. The President counter claimed for breach of contract, arguing that the lawsuit amounted to a disparagement barred by the settlement agreement.

The Trial Court found, and the Appellate Court upheld, that the settlement agreement did not amount to a waiver of the Owner's right to later bring a lawsuit for other causes of action. The Court found that the language in the mediation agreement and the context of the mediation agreement within a civil restraining order hearing required the Court to conclude that the parties did not intend the agreement to limit future litigation, and instead was aimed largely at conduct between them in person.

Artus v. Grammercy Towers

Owner brought a lawsuit against their Association alleging 5 causes of action as to various rules and guidelines the Association had enacted. Two of those causes of action were dismissed for procedural failings by Owner, and the final three were dismissed due to the Association amending its rules and guidelines to avoid Owner's claims. Importantly, however, the amended rules and guidelines were still likely to be challenged by Owner in the future under different bases. Both sides then moved for attorneys' fees as the prevailing party. The Court denied the Owner's request after concluding that the Owner was only successful in one of their four litigation objectives, namely a procedural victory in forcing the Association to change the way it provided notice of proposed rule changes. The Court also denied the Association's request after concluding that the amended rules would likely still cause litigation from the same Owner, though the amended rules did end the current litigation.

The Appellate Court upheld the order of the Court refusing to grant attorneys' fees to either party. Owner made that decision much easier by overexaggerating the importance of certain motions and causes of action in their motions, including referring to the appointment of a monitor over the Association as the "gravamen" of their complaint. This request for a monitor over the Association was the cause of action which fell to a demurrer, meaning that the Court found that the Owner failed to state a valid cause of action. The other causes of action contained similar exaggerations of importance. On the other hand, the Association was unable to obtain attorneys' fees through their unilateral amendment of the Association's rules, as the Association was largely avoiding a fight rather than proving that they were correct. As a result, both the lower and Appellate Courts were extremely reluctant to provide attorneys' fees to the Association, as the Association ended the litigation largely on their own unilateral actions which delayed the true dispute rather than resolving it.

****Emerson Maintenance Association v. Gorenberg**** (UNPUBLISHED)

Owner had sent several applications to the Association's ARC for approval to install several improvements on their lot. Some of these applications were approved, while others were denied. Eventually, Owner began constructing a number of unapproved improvements, including several on the Association's common area. Owner also applied for a building permit from the city. Association filed suit against Owner, alleging that both the construction without approval and the application for a building permit constituted a violation of the Association's governing documents. Owner filed an anti-SLAPP motion, alleging that the application to the city

was protected activity under the anti-SLAPP statute. As a vast oversimplification of a complex topic, an anti-SLAPP motion is a special motion to strike allegations which were brought to challenge a party's constitutionally protected speech. In order to succeed on an anti-SLAPP motion, the party bringing the motion must show that the speech in question is protected. The responding party must then show that they had a probability of prevailing on its claim; if they fail to do so, the claim will be struck.

The Association argued that, as the overall complaint was not regarding a protected activity but instead largely focused on the construction of unapproved improvements, the application itself should not be found as protected activity. However, the Court was persuaded that the inclusion of a specific allegation that the application itself violated the CC&Rs was separated enough to justify striking through an anti-SLAPP motion. The Court also found that the Association failed to establish a probability of success on their claim, largely because the Association failed to show that it took steps to follow its own dispute resolution procedures. As a result, the allegation regarding the application for a building permit from the city was struck. The remaining allegations could still be litigated.

Schwindt v. Omar (UNPUBLISHED)

Plaintiff Schwindt and Defendant Omar were neighboring homeowners within the same Association. Omar purchased the home approximately 10 years after Schwindt, and shortly afterwards began drafting plans for a room addition into an area on the rear portion of the home previously used as a patio. The Association eventually approved the addition after some back and forth and an appeal from the ACC to the Board by Schwindt to block the addition.

Schwindt claimed that the room was being constructed in an undefined Patio Area, within which Owners were not allowed to build. Schwindt further claimed that the room unreasonably interfered with Schwindt's view. The CC&Rs contained two separate provisions prohibiting both construction in the patio area and unreasonable interferences with views. However, The Trial Court found in Omar's favor. The court indicated that, although the Omars had constructed in a forbidden patio area, the Association's conclusion that it did not unreasonably interfere with Schwindt's view was not "clearly arbitrary and capricious" and therefore did not justify an injunction forcing the Omars to tear down the addition. The Court of Appeals upheld this decision. In particular, the Court pointed out that injunctions are always a balance of equities, and implies that strict violation of the CC&Rs will not always justify injunctive relief.