

# Kimball, Tirey & St. John LLP

## Updates to HOA Laws

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In 2014, the most prominent changes to the Davis-Sterling Common Interest Development Act stem from AB 805. AB 805 comprehensively reorganizes and recodifies the entire act, which can now be found under California Civil Code (“CC”) §§4000-6150. Sections have been divided and moved, language has been updated in an attempt use standardized terminology and sprinkled throughout the act are subtle changes to the law.

Adding to the changes (and confusion), after AB 805 was passed, AB 806 and AB 745 were implemented to clean up and clarify the revisions. There are also several other new laws that impact HOAs (SB752<sup>1</sup>, SB652 and SB454). While the new law does not expressly require you to update your governing documents, a thorough review and update is recommended.

Beyond the new packaging, here are **some** of the significant substantive changes that all HOAs should be aware of:

#### 1. Notices

- a. **Delivery of General Notices** - New CC §4045 states that “general delivery” or “general notice” to Members can be given via:
  - First-class mail, postage prepaid;
  - Registered or certified mail;
  - Express mail;
  - Overnight delivery by an express service carrier;
  - Email, facsimile, or other electronic means, (ONLY if the recipient has consented, in writing, to that method of delivery);
  - Inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided above;
  - Posting the printed document in a prominent location that is accessible to all members, (ONLY if the location has been designated for the posting of general notices by the association in the annual policy statement, prepared pursuant to Section 5310); or
  - Inclusion in the association’s broadcasted television programming for the purpose of distributing information on association business to its members.

However, if a member requests to receive general notices by individual delivery, all general notices to that member, must be delivered pursuant to CC §4040. The option for individual delivery must be described in the annual policy statement, prepared pursuant to CC §5310.

Also, pursuant to CC §5260, upon receipt of a request by a member identifying a secondary address for delivery of notices, the association shall deliver an **additional** copy to the secondary address.

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<sup>1</sup> SB 752 – Sets forth the Commercial and Industrial Common Interest Development Act, (California Civil Code Section §6500) which creates different rules for commercial and residential common area interest developments.

- b. **Notice of Board Meetings** – New CC §4920 – The new law sets forth notice and content requirements for all types board meetings. Notice of regularly scheduled board meetings is required and notice can be given pursuant to the general notice provisions of CC § 4045, as described above.
2. **Conflict Between the Law and Governing Documents** – New CC §4205 – The new law explains which law and/or document controls when there is a conflict amongst them. However, as clarified by SB 745, the new law does not define or explain when a conflict exists. If a conflict exists, the new law will prevail; there, it is possible that the governing documents are now in conflict with the new law and operating according to those documents could be a violation. As a result, HOAs may wish to have their governing documents reviewed and modified. When there is a conflict among the laws and the HOA's governing documents, first look to applicable law, then the CC&RS, follow then the articles of incorporation, then the bylaws and then the operating rules. For example, if the bylaws conflict with the CC&RS, the CC&RS should be followed to resolve the conflict. Of course, the best way to avoid any issue is to ensure that all governing documents are compatible with the new law and each other.
3. **Mandatory Abstention from Voting** – New CC §5350(b) – The new law states that a director or member of a committee must refrain from voting on the following matters: (1) Discipline of the director or committee member; (2) An assessment against the director or committee member for damage to the common area or facilities; (3) A request, by the director or committee member, for a payment plan for overdue assessments; (4) A decision whether to foreclose on a lien on the separate interest of the director or committee member; (5) Review of a proposed physical change to the separate interest of the director or committee member; and (6) A grant of exclusive use common area to the director or committee member. However, nothing in this law limits any other law or the governing documents that may apply to govern a decision in which a director may have an interest. Thus, this list is not exhaustive and the Board should check with legal counsel for any issue outside the list which may involve an actual or potential conflict.

There are also changes to Annual Policy Statements requirements (CC §§5310 and 5850), new hearing requirements before levying a reimbursement assessment for common area damages caused by an owner (CC §5855), and several other minor but important changes. See also, CC §§ 4035(delivery of documents), CC §4070 (voting quorum requirements), CC §4090 (board member or designated representative must be present at physical location of meeting), CC §4600 (granting of exclusive use), CC §5125 (custody of ballots), CC §5200 (defines association records), CC §5260 (written requests), and CC §5300(annual reports). In addition, the act establishes procedure to amend the CC&RS (CC §4270), expands certain rights of owners to make changes to separate interests and expands the requirements for release of liens recorded in error (CC § 5685).

If you have not done so already, contact an attorney to review the governing documents to update them and ensure they are in compliance with current law.

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