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**STATUTORY LAWS AND CASE LAW
AFFECTING HOMEOWNERS
ASSOCIATIONS IN 2010**

It was a "light" year for legislation having a substantial impact on homeowners associations, except for laws regulating mortgage loan foreclosures and loan modifications. Unfortunately, these laws came about a little too late to save associations thousands of dollars in cases where unscrupulous persons placed title to separate interests into the names of phony trusts, LLCs, or their own names, filed for Bankruptcy protection and otherwise stalled foreclosures by lenders and prevented collection of association assessments.

The following new laws affect common interest developments/associations. They are effective on January 1, 2010, unless otherwise stated.

CALIFORNIA STATUTES

1. ASSESSMENTS

AB 313 adds Section 1366.4 to the Civil Code to prohibit associations from levying assessments based on the taxable value of a separate interest (unit or single family home) unless prior to December 31, 2009 an association levied assessments on the basis of the taxable value, as determined by the tax assessor. Levying assessments based on taxable value would be a rare occurrence so that this bill has little impact on associations or managers.

2. CONSTRUCTION DEFECTS

AB 927 amends Section 1375 of the Civil Code concerning construction defects to extend the July 1, 2010 repeal date for the statute to July 1, 2017.

3. CONTRACTS

AB 1328 was vetoed by the Governor. It proposed to add Section 1353.9 to the Civil Code allowing directors to enter into contracts for a water or energy efficiency program for up to 5 years if the directors reasonably anticipate that the contract would result in verifiable savings to the association.

4. DISCLOSURE DOCUMENT INDEX

AB 899 amends Sections 1350.7 and 1365.2.5 of the Civil Code and adds Section 1363.005 to the Civil Code. Section 1350.7 is amended to provide that the association obtain the homeowner's consent to delivery of a document to a homeowner by e-mail, fax or other electronic means in accordance with Corporations Code Section 20. Prior to obtaining the consent to an electronic transmission from a homeowners, the association must provide a clear written statement to the homeowner as to any right of the homeowner to receive the record in paper or nonelectronic form, whether the consent applies to all transmissions or to a specified category of communications, and the procedures the homeowner must use to withdraw consent.

Section 1363.005 requires an association to distribute to its members, at their request, a Disclosure Documents Index.

Section 1365.2.5 requires that the Assessment and Reserve Funding Disclosure Summary include the interest rate earned on reserves and the assumed inflation rate applied to major component repair and replacement costs.

5. MORTGAGE LOANS

In part, SB 94 adds sections to the Business and Professions Code, Civil Code and Financial Code relating to the regulation of real estate licensees, attorneys, and loan brokers and creates a new crime by prohibiting any person from demanding or receiving any pre-performance compensation, requiring any collateral for final compensation, or taking a power of attorney from a borrower in connection with a loan or loan modification or other forms of mortgage loan forbearance. A violation of Section 10085.6 of the Business and Professions Code would constitute a misdemeanor punishable by imprisonment in county jail not to exceed one year and/or a fine not exceeding \$10,000 for a person and a fine not exceeding \$50,000 for a corporation. *This law takes effect immediately.*

6. UNLICENSED CONTRACTORS

AB 370 amends Sections 7028 and 7028.16 of the Business and Professions Code relating to contractors. Existing law makes it a misdemeanor to engage in business as a contractor without a license. The amendments to the law increase the amount of fines to be paid by unlicensed contractors. In addition to fines, a conviction can be punishable by imprisonment.

7. WATER EFFICIENT LANDSCAPES

AB 1061 repeals former Civil Code Section 1353.8 and adds new Section 1353.8 to the Civil Code. The new law makes any provision of the governing documents of an association void and unenforceable if it (1) prohibits or includes conditions that have the effect of prohibiting low water-using plants as a group, (2) has the effect of prohibiting or restricting compliance with a water-efficient landscape ordinance or any regulation or restriction on the use of water. An association is free to apply landscaping rules and regulations to the extent that they don't prohibit low water-using plants.

NEW CALIFORNIA CASE LAW

(The following is not an exhaustive list of new case law. It is a selective list of cases of interest.)

1. Starlight Ridge South Homeowners Association v. Stephanie K. Hunter-Bloor (2009) This case involved the interpretation of the CC&Rs concerning the obligation to maintain a v-ditch located within a maintenance easement on a homeowner's lot. The Court of Appeal reiterated the rule of interpretation of written documents that a specific provision controls over a general provision. In this case, the general provision stated the association's duty to maintain the aesthetic appearance of the maintenance easement over the owner's lot, while the specific provision required all homeowners to maintain that portion of the v-ditch which crossed their lots. The Court considered the historical conduct of the association as to the issue and concluded that for 20 years the association had enforced the obligation of owners to maintain and repair drainage devices existing on their lots at the owners' expense. The Court also considered other provisions of the CC&Rs which required owners to maintain other kinds of facilities within the development.

2. Tritek Telecom, Inc. V. Superior Court (2009) 2009 W 32861 - The Court of Appeal held that a corporate director does not have the absolute right to access documents covered by the attorney-client privilege that were generated in defense of a suit for damages that the director filed against the corporation.

3. Robert Ekstrom v. Marquesa at Monarch Beach Homeowners Association (December 2008) The Plaintiffs are homeowners whose views have been blocked by palm trees planted by the developer and some by other owners. The CC&Rs required trees to be trimmed so that they do not exceed the roof of the house on the lot if they impair other owners' views. The Board consistently took the position that palm trees were not included in this tree trimming because it would kill them. The Association received a legal opinion that the CC&Rs would have to be amended to exempt palm trees from trimming. The amendment did not succeed. The trial court concluded that the CC&Rs did not exempt palm trees from trimming and granted judgment for the Plaintiffs requiring the Association to enforce its CC&Rs to order the removal of palm trees which obstructed views. The Court of Appeal upheld the judgment.

FEDERAL CASE LAW

1. Hawn v. Shoreline Towers Phase I Condominium Association, Inc., et al. (2009) (Florida) - The Association had a no pet policy. Mr. Hawn knew about this restriction but adopted a puppy in 2005. He urged the Board to allow owners to have pets. A year later Mr. Hawn requested a reasonable accommodation to allow the dog because of a disability. Mr. Hawn presented a letter from a psychologist that the dog would help him with severe panic attacks and from a chiropractor that the dog would assist with mobility issues. The Board denied the request pending receipt of further information about the disability, how the pet was necessary, and whether there was something else that would serve the same purpose as the dog in overcoming the disabilities. Instead of providing further information, Mr. Hawn filed a complaint with the Florida Commission on Human Relations and then a lawsuit for discrimination for violation of the Fair Housing Laws. The Court found that the Board was within its right to ask for further information and that Mr. Hawn could not show that the Board wouldn't make an accommodation if he provided further information. A person is entitled to damages or injunctive relief if he/she shows:

1. The person is disabled and the housing provider knew or should have known of the disability,
2. An accommodation is necessary to give the disabled person equal opportunity to use and enjoy the dwelling,
3. The requested accommodation is reasonable,
4. The housing provider denied or refused to make the accommodation.

NEW FHA REGULATIONS RELATING TO LOANS FOR CONDOMINIUMS

The Federal Housing Administration (FHA) provides insurance to lenders on mortgages approved by the FHA. FHA has implemented a new approval process for condominium projects which was scheduled to take effect on November 2, 2009. The implementation of the new regulations has been *delayed until December 7, 2009* as the request of Community Associations Institute.

HUD maintains a list of Approved Condominium Projects. In order to become an Approved Condominium Project, associations must comply with several requirements, including, but not limited to:

1. No more than 10 percent of the units may be owned by one investor, including developers/builders.
2. No more than 15 percent of the total units can be in arrears more than 30 days in the payment of assessments.
3. At least 50 percent of the units of a project must be owner-occupied or sold to owners who intend to occupy the units.
4. A current reserve study must exist, not more than 12 months old.
5. No more than 30 percent of the total units may be encumbered with FHA insurance in a project with 4 or more units.

While the above requirements are not all requirements, condominium associations should be aware of the above.

Disclosure Documents Index		
Item	Description	Reference Code
1	Assessment and Reserve Funding Disclosure Summary (form)	Civil Code Sec. 1365.2.5
2	Pro Forma Operating Budget or Pro Forma Operating Budget Summary	Civil Code Sec. 1365(a)
3	Assessment Collection Policy	Civil Code Sec. 1365(e) and 1367.1(a)
4	Notice/Assessments and Foreclosure (form)	Civil Code Sec. 1365.1
5	Insurance Coverage Summary	Civil Code Sec. 1365(f)
6	Board Minutes Access	Civil Code Sec. 1363.05(e)
7	Alternative Dispute Resolution (ADR) Rights (summary)	Civil Code Sec. 1369.590
8	Internal Dispute Resolution (IDR) Rights (summary)	Civil Code Sec. 1363.850
9	Architectural Changes Notice	Civil Code Sec.1378(c)
10	Secondary Address Notification Request	Civil Code Sec. 1367.1(k)
11	Monetary Penalties Schedule	Civil Code Sec. 1363(g)
12	Reserve Funding Plan (summary)	Civil Code Sec. 1365(b)
13	Review of Financial Statement	Civil Code Sec. 1365(c)
14	Annual Update of Reserve Study	Civil Code Sec. 1365(a)