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LEGAL UPDATE FOR 2021: AB 3182

Due at least in part to Covid-19, the California legislature has been very quiet this year, but it did enact one bill that heavily impacts common interest developments. Assembly Bill 3182 was signed into law and will take effect on January 1, 2021. This bill imposes restrictions on a common interest development's ability to enact or enforce leasing restrictions. It modifies the Davis-Stirling Act by revising Civil Code Section 4740 and adding Civil Code Section 4741. If a California homeowners association's governing documents do not comply with these new restrictions, the association is required to delete the noncompliant provision before December 31, 2021.

AB 3182 is very poorly drafted, which has resulted in much confusion over what it requires, what it allows, and what it prohibits. I recommend taking a very conservative approach. If it's not clear whether a particular leasing provision is allowed or if it is prohibited, the association should consider it to be prohibited. Here is a summary of this new law.

Rental Caps
The new Section 4741 allows associations to impose a cap on the number of rental properties if the cap allows 25% or more of the project's homes to be leased. This implies that rental caps of less than 25% are prohibited as of January 2021.

Minimum Lease Terms
Section 4741 allows associations to prohibit lease terms of 30 days or less, implying that associations cannot require longer lease terms. Many newer governing documents have one-year minimum lease terms that will, apparently, no longer be enforceable.

Other Rental Restrictions
Section 4741 voids any restriction that "prohibits, has the effect of prohibiting, or unreasonably restricts" the rental or leasing of any lots, units, accessory dwelling units, or junior accessory dwelling units. AB 3182 does not define which restrictions "prohibit" or "have the effect of prohibiting" or "unreasonably restrict" leasing, but associations should err on the side of caution. The rental cap and minimum lease term listed above are allowed, but all other restrictions that would bar anyone from leasing their property at any time should be considered void. Some examples of void restrictions are prohibitions against owners leasing their property within one year of purchase, or prohibitions against owners renting out more than one of their properties at a time, or prohibitions against delinquent owners leasing their property until their account is brought current. Other leasing restrictions may also be voided by Section 4741 if they "unreasonably restrict" leasing, although AB 3182 gives no guidance on which leasing restrictions may be unreasonable.

Grandfathering Provision
Currently, Section 4740 provides that owners are not subject to rental prohibitions that were enacted after they purchased their property. But up until now, that only applied to rental prohibitions that were adopted on or after January 1, 2012, when Section 4740 was first enacted. Section 4740 has now been revised to remove the January 2012 limit. This will affect associations that adopted a rental cap of 25% or more in 2011 or earlier. Through the end of 2020 their rental caps apply to everyone regardless of when they bought their property, but as of January 1, 2021, if the association's rental cap was adopted in 2011 or earlier, owners who bought their unit before that rental cap took effect are now grandfathered in. They may lease their units at any time regardless of the cap.

This law only applies to leasing "prohibitions" but it does not clarify what constitutes a prohibition. I take the position that any leasing restriction that would prohibit any owner from leasing their unit whenever they wanted to lease it, such as a rental cap, is a "prohibition." On the other hand, no owner is grandfathered in on leasing restrictions that do not prohibit any owner from leasing, such as a minimum lease term, unless the restriction in the governing document specifically says so.

Accessory Dwelling Units
Another provision in Section 4741 applies to owners who lease their accessory dwelling units or junior dwelling units. It bars associations from treating them as being leased or rented if the owner lives in the attached home, the ADU, or the JADU.

Revising the Governing Documents to Comply
Any association with a provision in its governing documents that does not comply with Section 4741 must stop enforcing the noncompliant provision as of January 1, 2021. In addition, it is required to revise the governing document to comply with Section 4741 within one year, by December 31, 2021.

If the restriction is in the rules, the Board can make the revision without owner approval. But the new laws do not explain whether the Board can approve and record a CC&R amendment to comply with Section 4741 without a vote of the owners. Or what happens if the revision is put to the owners for a vote and they do not approve it? It would be logical to assume that the Board could delete a CC&R restriction that Section 4741 requires be deleted without an owner vote, to the extent needed to comply with the new laws. But can the Board approve a CC&R amendment, for example, to reduce a longer lease term to 30 days, or would that need owner approval? AB 3182 leaves us with no guidance.

Violations
If an association violates the new Section 4741, an owner or other party can sue for actual damages plus a penalty of up to $1,000.

Associations should have legal counsel review their governing documents to check for compliance with AB 3182, prepare any necessary revisions, and advise on adopting the revisions.