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STATUTORY UPDATES FOR 2010

In 2009 the legislature enacted few bills directed specifically to homeowners associations, but a wide variety of bills will affect associations as well as others. Following are brief summaries of the most important of these statutory changes.

- Annual document disclosures.** Civ. Code § 1363.005 (AB 899)
A new form, called a “Disclosure Documents Index,” has been added to the paperwork that associations must keep and make available to owners. This index is a list of documents that must be distributed to the owners annually. If any owner requests a copy of the index, it must be provided to them. To download this index, please see www.jhmlawoffice.com.
- Reserve fund disclosure.** Civ. Code § 1365.2.5 (AB 899)
The “Assessment and Reserve Funding Disclosure Summary” has been amended. This document must be distributed to the owners each year. To download the revised form, please see www.jhmlawoffice.com.
- Electronic notices.** Corp. Code § 20; Civ. Code § 1350.7 (AB 285; AB 899)
Associations can deliver notices to Board members and owners by fax, email, or posting on their website if (1) the association gives the owners separate notice of the website posting, (2) the recipient has given consent to this means of notification (this should be in writing) and consent has not been revoked, and (3) record of the notice can be retained, retrieved, reviewed, and printed out.
Before getting the owners’ written consent for notice by email, fax or website posting, the association must (1) notify them that they have the option of getting hard copies instead, (2) clarify whether the owners’ consent will be on a one-time basis, for only certain categories of communications, or for all communications, and (3) notify the owners how they can revoke their consent.
Electronic distribution is allowed for the required annual disclosures listed on the “Disclosure Documents Index” form which you can download at www.jhmlawoffice.com (Civ. Code § 1363.005), notice to members of rules changes (Civ. Code § 1357.130), notice to members of membership meetings, and notice to directors of Board meetings.
- Water-efficient plants and the governing documents.** Civ. Code § 1353.8 (AB 1061)
Until 2010, California law prohibited associations’ architectural guidelines from prohibiting water-efficient plants. That language was made stronger: As of January 1, 2010, a provision in the CC&Rs or other governing documents is void and unenforceable if it prohibits water-efficient plants or plants that conform with water conservation laws or ordinances.

5. **Corporate Functioning.** (AB 1233)

This bill made multiple changes to statutes on officers, directors, committees, articles, and bylaws.

- **Amendments to Articles or Bylaws.** The Bylaws or Articles can state that they can be amended by a person or persons other than the Board or the members. As of 1/1/10, that approval requirement will not apply if, basically, it becomes impossible to fulfill, i.e. through death. Corp. Code §§ 7132, 7150.

- **Authorized number of directors.** Bylaws can now state how the authorized number of directors is to be determined, i.e. by Board resolution or Bylaw amendment. Corp. Code §§ 7151, 7211.

- **Reducing the number of directors.** Until January 1, 2010, a Bylaw amendment reducing the number of directors could not remove a current director from office until their term expires. Revised statute now allows the Bylaw amendment to name one or more specific directors who would be removed from office immediately on passage of the amendment. Corp. Code § 7222.

- **Quorum of the Board.** The Bylaws can now require a particular person to be present (such as the Board president) in order to have a quorum of the Board, as long as there actually is such a person. Corp. Code § 7211.

- **No director proxies.** Nothing at law or in governing documents ever allowed directors vote by proxy—only owners can use proxies for membership votes or membership meetings—but now this has been added to statute. Directors cannot vote by proxy. Corp. Code § 7211.

- **Automatic directors.** The articles and Bylaws can state that someone is automatically a director because of another position that they hold (i.e. the developer or the Board president). Corp. Code § 5047.

- **Committees.** Committees can have non-directors but those committees cannot exercise the authority of a director. This was always the case, but now it is specifically stated in statute. Corp. Code § 7212.

- **Reliance on committees.** In performing their duties, directors can rely on the opinions, reports or statements of committees, if the director is not a committee member. Statute has been revised to limit this to committees composed of (1) directors, (2) officers or employees whom the director believes to be competent, or (3) persons whom the director believes are acting within their professional or expert competence. Corp. Code § 7231.

6. **Emergency medical aid.** Health & Safety Code § 1799.102 (AB 83)

This “good samaritan law” protects individuals from liability for negligence in giving at-the-scene medical assistance in an emergency. They could still be held liable if they acted with gross negligence or with willful or wanton misconduct.

7. **Unlicensed contractors.** Bus. & Prof. Code §§ 7028, 7028.16 (AB 370)

It is a misdemeanor for a contractor to work without a valid license. The fine for doing so is increased from \$1,000 to \$5,000; repeat offenders can be fined up to \$10,000. If an unlicensed contractor is convicted of a misdemeanor, his customers are considered victims and the criminal court can award them damages; this now applies whether or not the customer knew that the contractor is unlicensed.

8. **Small claims court jurisdiction.** CCP § 116.220 (AB 712)

Until January 1, 2010, small claims courts were only able to award money damages; they could not award equitable relief. (Equitable relief includes (i) injunctions, which are court orders requiring a party to perform or refrain from performing some act, and (ii) declaratory relief, which determines the parties’ rights and obligations on a particular issue.) As of January 1, small claims courts can now award equitable relief, but only if allowed to do this by a particular statute. That includes small claims actions brought by owners against their association for improper election procedures and failure to make records available for inspection and copying. (Civ. Code §§ 1363.09 and 1365.2.)

9. **Pools and anti-entrapment devices.** Health & Safety Code § 18942, 116064.1, 116064.2 (AB 1020)
This is the state version of the federal Virginia Graeme Baker Pool and Spa Safety Act which was enacted last year, setting standards for pool and spa drain covers. California statute now contains additional safety requirements; failure to comply is a misdemeanor; and associations who did not retrofit their pools to comply with the federal Act must comply with the state requirements by July 1, 2010. By September 30, 2010, they must file a compliance form showing that the pool modifications were performed by a licensed contractor. The California Department of Public Health is to create a form and post it on its website, www.cdph.ca.gov.
10. **Disposal of personal information.** Civ. Code §§ 1798.80, 1798.81, 1798.84 (AB 1094)
Until January 1, 2010, California law required associations and management companies (and other businesses) to destroy records containing personal information when they were no longer needed. This amendment allows the association to dispose of the documents instead of destroying them. Still, the records must be “disposed of” by shredding them or otherwise making the personal information unreadable. “Personal information” includes owners’ names, signatures, social security numbers, physical characteristics or description, addresses, telephone numbers, passport numbers, driver’s license or state identification card numbers, insurance policy numbers, education, employment, employment history, bank account numbers, credit card numbers, debit card numbers, or any other financial information, medical information, or health insurance information.
11. **Water-conserving plumbing fixtures.** Civ. Code §§ 1101.3 – 1101.9, 1102.155 (SB 407)
For all residences and mixed-use residential and commercial buildings built before 1994:
Single family residences:
- By January 1, 2014, when making certain building alterations, owners must replace noncompliant plumbing fixtures with water-conserving fixtures.
 - By January 1, 2017, all noncompliant plumbing fixtures must be replaced with water-conserving plumbing fixtures. A seller or transferor of a unit must disclose in writing to the buyer or transferee whether the plumbing complies to water conservation requirements.
- Multi-family residential buildings:**
- By January 1, 2014, if the building is modified to increase the building’s floor space by more than 10%, all fixtures in must be replaced with water-conserving plumbing fixtures. If the multifamily building is making alterations with a total cost of over \$150,000, all noncompliant plumbing fixtures in the affected areas must be replaced. If any work requiring a permit is being done to a room in that building, any noncompliant plumbing fixtures in that room must be replaced.
 - By January 1, 2019, a seller or transferor of a unit in the building must disclose in writing to the buyer or transferee whether the plumbing complies to water conservation requirements.
- These requirements do not apply to registered historical sites or to buildings where a licensed plumber certifies that the replacement is not technically feasible.