

New Laws For 2009

By: Kelly G. Richardson

2008 was an extremely active year in the Legislature regarding common interest development issues. Bills proposed establishing a Bureau of Common Interest Developments, rewriting the Common Interest Development Act, encouraging board education and restricting limitations on renting, to name a few of the issues. These bills were all withdrawn or were vetoed by the Governor.

However, four new laws affecting CID's will take effect shortly.

Reserve Funding Plans. AB 2100, a bill sponsored by the California Association of Realtors, became law on January 1, 2007. The bill established a number of new disclosure requirements regarding association reserve funds. One last part of that law did not become effective until January 1, 2009. Many associations, managers and even attorneys may have forgotten this aspect of the law.

Associations are required by Civil Code Sections 1365 and 1365.2.6 to have in place a summary of its reserve funds, along with a disclosure of how each of its major components (something with a useful life of 30 years or less) are funded (or not funded). This summary must be given annually to all members, as well as to prospective buyers.

Civil Code Section 1365(b) requires associations to have a written funding plan. Starting January 1, 2009, associations must have in place a reserve funding plan, by which the association will meet its reserve funding needs. A summary of that plan must be provided annually to members and also to prospective buyers, and must contain a statement that the full funding plan is available upon request.

If your association has not yet started on its plan, it should begin immediately. Preparing this forecast will not be a simple task – planning assessments increases over the years, taking

into account inflation, draws on reserve funds as components are replaced or refurbished, and increasing funding to meet the association's projected reserve fund needs.

Foreclosure notification. One problem facing CID's particularly in these difficult times is that it may take months to find out who has taken over ownership of a foreclosed property, so that the association is unable to bill the correct owner for assessments. The Community Associations Institute sponsored a bill, SB 1511, to help in this regard. This bill will become law on January 1, and amends Civil Code Section 2924b, a law which governs how lenders foreclose upon properties. Under this law, an association can record on a property a request for notification of any Notice of Default and any Notice of Sale. The foreclosing party must within ten days after the Notice of Default and within twenty days of sale send a copy to the association. This will allow associations to immediately begin billing the correct party for assessments.

Your legal counsel and possibly your management company can help provide you the forms to record these requests for notification on properties in foreclosure proceedings.

Pool safety. On December 19, 2007, President Bush signed into law the "Virginia Graeme Baker Pool and Spa Safety Act." The law requires "public pools" to install certain type of drain covers, to prevent swimmers, especially children, from being trapped under water by the filtration flow suction at a drain. The deadline is December 19, 2008, which is just around the corner. This law includes CID pools within the definition of "public pool" under the Act: "...the term 'public pool and spa' means a swimming pool or spa that is... open... to residents of a residential real estate development or other multi-family residential area..." For helpful information on this law, see the Consumer Product Safety Commission guide at <http://www.cpsc.gov/businfo/vgpsa.pdf>

Pay then dispute. When homeowners dispute an assessment, all too often they simply refuse to pay. AB 2846 clarifies a means by which members may dispute an assessment without a major attorney fee risk, by adding Section 1367.6 to the Civil Code, allowing a member to

pay a disputed amount, and then pursue a small claims court action to recover it..

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