2022-2023 LEGISLATIVE UPDATE

DECEMBER 9, 2022

Dear Valued Client,

The 2022 California legislative year was unusually light. Many attribute this to recent legislative redistricting and the fact that 2022 was an election year. As such, in addition to the new legislation, this update also includes a couple of discussions related to pre-existing laws that, while not new, are particularly relevant for many of the communities we serve.

As always, if you have any questions or comments, please do not hesitate to reach out to me or any member of our team with whom you work. We are all here to work with you to protect and improve your community.

The entire team at Whitney | Petchul greatly appreciates your trust and support!

Fred Whitney

Dirk Petchul

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Digest and Detailed Educational Sheets

The following is a brief **digest** of the 2022-2023 legislation that will likely have the most significant impact on day-to-day operations of California community associations. We have also included a couple of discussions of pre-existing laws that, while not new, are particularly relevant for many communities.

In addition, we have attached separate **educational sheets** that take a deeper dive into each of the referenced subjects. Note: If you are viewing this document in .pdf format, the headnote for each topic in the digest is also a link to the corresponding educational sheet.

Digest

❖New Law: Room Rentals

New *Civil Code* §4739 invalidates any association governing document provision that prohibits the rental of a "portion" of any separate interest lot or unit (typically a room) as long as the owner also occupies a portion of that lot or unit and the association's restriction (e.g. a CC&R provision) requires a minimum rental term of 30 days or less (i.e. restrictions requiring a minimum rental term longer than 30 day are unenforceable). This law is not worded clearly and will likely cause some confusion. Thankfully, while it allows such rentals, it **DOES NOT** permit an owner or resident to violate any other provisions of the association's governing documents. This gives most associations the ability to mitigate the community impacts of such rentals through the rule-making process. For example, such rules could address parking restrictions, recreational facilities use, and renter registration. Importantly, this law **DOES NOT** require associations to amend their governing documents. That said, some associations may benefit from doing so. For more detail, see the attached document entitled "Room Rentals."

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❖New Law: Rule Enforcement During Emergencies

New *Civil Code* §5875 prohibits an association from pursuing an enforcement action for violations of the association's governing documents during a declared state of emergency if the nature of the emergency makes it unsafe or impossible for the member to prevent or fix the violation.

Thankfully, this law specifically excludes assessment enforcement actions so collection actions may proceed uninterrupted). Unfortunately, its broad language makes its impact difficult to predict. For more detail, see the attached document entitled "Enforcement During Emergencies."

❖Existing Law: Rule Enforcement Limitations During a Drought

Existing *Civil Code* §4735(c) provides, with minor exceptions, that an association may not impose a fine or assessment against an owner of a separate interest lot or unit for reducing or eliminating watering vegetation or lawns during a declared drought emergency.

Southern California is currently under a declared drought emergency. As such, the prohibitions of *Civil Code* §4735(c) are in effect.

Thankfully, this law **DOES NOT** prevent an association from requiring compliance with other governing document provisions that impose non-water–related maintenance requirements. Examples include rules that require removing dead plant material, mowing lawns (even if brown or dead), or requiring gardens to be properly weeded and groomed. For more detail, see the attached document entitled "Rule Enforcement Limitations during a Drought."

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❖ New Law: Mandatory Charging Stations?

New *Health and Safety Code* §4735(c) requires State agencies to develop building standards mandating installation of electrical vehicle charging stations ("EVCS") in existing parking facilities that serve multi-family dwellings, which will likely include condominium projects. The new law directs the agencies to create requirements that would apply when significant construction or repair takes place in those parking facilities.

The process of developing and adopting these new building standards will probably take a couple of years to complete. A regulation requiring installation of EVCS in existing multi-family parking facilities is probably inevitable. The only question is when it will go into effect. Communities that want to delay this required installation should consider accelerating their timeline for significant construction or repairs to the parking facilities and complete that work prior to adoption of the new building standards. For more detail, see the attached document entitled "Mandatory Charging Stations?"

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❖New Law: Accessory Dwelling Units

Effective January 1, 2023, portions of the California *Government Code* and *Health and Safety Code* were amended to eliminate obstacles that have been used by local governments to discourage Accessory Dwelling Units and Junior Accessory Dwelling Units ("ADUs") within their jurisdictions. The amendments prohibit local jurisdictions from imposing certain height restrictions, parking standards, and in some instances sprinkler requirements for proposed ADUs.

We have seen a significant misunderstanding of these amendments. These amendments apply ***only*** to local governments. They **DO NOT** apply to associations. The ADU-related provisions of the Davis-Stirling Act at *Civil Code* §4751 **HAVE NOT** been amended and continue to permit associations to impose "reasonable restrictions" on proposed ADUs. "Reasonable restrictions" are "restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct an ADU."

We anticipate that these amendments will have only a slight impact on associations and, importantly, will **NOT** require associations to amend their governing documents. However, associations whose governing documents already address ADUs are free to amend them. For more detail, see the attached document entitled "Accessory Dwelling Units."

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❖New Law: Social Media and Online Resources

A new amendment to the existing *Civil Code* §4515 establishes that an association may not prohibit members or residents from engaging in discussions on social media or other "online resources" even if the content is "critical of the association or its governance."

This new law will impact very few associations since governing document provisions limiting such speech are extraordinarily rare. This new law expressly states that it **DOES NOT** require an association to allow members to post content on the association's website and **DOES NOT** require that an association provide social media or other online resources for its members. Importantly, while this law creates a right to engage in this online speech, it **DOES NOT** prevent someone who has been defamed by this speech from seeking damages. For more detail, see the attached document entitled "Social Media and Online Resources."

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ROOM RENTALS – NEW LAW

The History and the New Law. For years, our legislators have been on a quest to increase the availability of residential rentals within the State. In 2020 this resulted in significant limitations upon the right of community associations to impose rental restrictions (*Civil Code* §4740 and §4741). However, those laws did not directly address the renting of portions of any given lot/unit (most commonly, rentals of single rooms). As such, several communities continued to prohibit individual room rentals based upon various governing document provisions including some that require that residential dwellings be occupied only by a single family.

This was viewed by our legislators as undesirable given the State's lack of affordable housing and homelessness crisis. As such, our legislators took action. **Effective January 1, 2023, new *Civil Code* §4739 directly addresses the rental of *portions* of a residence within a community association.** For ease of reference, a full copy of *Civil Code* §4739 is set out at the end of this document.

In a nutshell, §4739(a) expressly invalidates any governing document provision that prohibits the renting of a *portion* of any separate interest provided that:

- ☐ **the separate interest lot/unit is owner-occupied and,**
- ☐ **the term of the rental is more than 30 days.**

As such, effective January 1, 2023, a community association cannot outright prohibit the renting of individual rooms within a residential dwelling when the owner is an occupant.

Owner Occupancy. In general, the separate interest lot/unit should be considered owner-occupied if any portion of it is legally occupied by its owner. For example, in the case of a lot, even if the owner occupies only a permitted Accessory Dwelling Unit ("ADU") on the property, it will likely be considered owner-occupied by the California courts. On the other hand, if the owner is illegally occupying a portion of the lot/unit, it may not qualify. An example of illegal occupancy is living in a portion of the separate interest that is not intended for human habitation, such as an unpermitted bedroom created within a garage.

Mitigation of the Impacts. Thankfully, §4739(b) establishes that this new law **DOES NOT** permit an owner or resident to violate any provision of the community association's governing documents that governs conduct in the separate interest or common areas, or which governs membership rights and privileges (for example parking restrictions, guest access to common facilities, etc.). As such, even if rooms within a residence are separately rented, a community association will still likely have the ability to mitigate some of the detrimental impacts of those rentals through rule-making and enforcement.

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No Required Amendments. Unlike other recent rental legislation, this new law **DOES NOT** require a community association to amend provisions within its governing documents that do not comply with its terms. As such, even if a community association's governing documents contain provision(s) directly contrary to the requirements of this new law, there is no requirement to amend them. **HOWEVER**, it will be important that the community association's board (and future boards) remember that those provisions are no longer enforceable.

Take-Away. Community associations may wish to carefully review their governing documents to (a) ensure that they impose all permissible requirements for room rentals (that the property is owner-occupied and the lease is for 30 or more days), and (b) confirm that they contain rules and restrictions that will allow the association to efficiently address detrimental impacts of such rentals (parking rules, outdoor storage and camping rules, common area recreational facilities use rules, etc.) and, if not, properly amend them. Further, community associations may wish to evaluate whether their governing documents provide the power to adopt and enforce required registration of tenants and/or the power to require copies of leases.

Finally, this law addresses only rental restrictions imposed through a community association's governing documents. As such, an impacted community association may wish to determine what limitations the city, county or other governmental agencies may impose upon such rentals since, even in the absence of a community association right to restrict them, it could potentially look to those governmental agencies for enforcement.

Civil Code §4739 – Full Text (Effective January 1, 2023)

(a) Notwithstanding Section 4740, an owner of a separate interest in a common interest development shall not be subject to a provision in a governing document, or amendments thereto, that prohibits the rental or leasing of a portion of the owner-occupied separate interest in that common interest development to a renter, lessee, or tenant for a period of more than 30 days.

(b) Nothing in this section shall permit an owner of a separate interest or a resident renting or leasing a portion of the owner-occupied separate interest to violate any provision of the association governing documents that govern conduct in the separate interest or common areas, or that govern membership rights or privileges, including, but not limited to, parking restrictions and guest access to common facilities.

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ENFORCEMENT DURING EMERGENCIES

The New Law. Effective January 1, 2023, a new *Civil Code* §5875 provides that a community association may not pursue any enforcement actions for violation of the association's governing documents during a declared Federal, State, or local emergency if the nature of the emergency makes it *"unsafe or impossible"* for the homeowner to prevent or fix the violation. For ease of reference, a full copy of *Civil Code* §5875 is set out at the end of this document.

Assessment Collection Exemption. Thankfully, assessment collection is expressly exempted from this statute. As such, no matter what emergency is declared, this new law will not impair an association's pre-existing right and power to pursue the collection of properly imposed assessments.

"Impossible" and "Unsafe." Determining what is **"impossible"** is objective and a very high standard. As such, an association will likely be able to determine whether "impossibility" exists as it relates to any given emergency and potential enforcement action. In this context, a required action of the member that violates Federal, State, or local laws or ordinances should be considered "impossible."

On the other hand, whether something is **"unsafe"** is, in most conceivable scenarios, a subjective conclusion and different people (and different boards of directors) can easily come to differing conclusions in any given circumstance. This could potentially create challenges.

As examples, currently there are at least two declared emergencies impacting California: 1) the State drought emergency that was revived for southern California late in 2021 and 2) the Federal and State COVID-19 declarations of emergency, which remain in place at the time of this writing.

Drought will likely be easy to address because a body of law already exists that addresses association enforcement during drought emergencies (see *Civil Code* §4735 and the further references below).

On the other hand, application of this new law to a COVID-19-type emergency could be more challenging to address. As we have seen, during the entire time since the COVID-19 emergency was first declared, members of our California communities have had widely differing opinions as to what is "unsafe." During the height of the pandemic, a relatively common situation involved (a) an association seeking to enforce a governing document-based right of entry to investigate the source of an ongoing water release (the source of which could be, and often was, an association-maintained pipe) that was flooding and/or causing mold in contiguous units; and (b) an owner of that unit refusing to allow access because they felt it was "unsafe" to have contractors enter their unit for any reason due to the occupant's COVID-19-related health concerns.

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Scenarios like these have always been difficult. However, with this new law, the association now has additional challenges because *Civil Code* §5875 does not recognize the periodic need of an association to balance competing needs when determining what enforcement actions to pursue.

In this scenario, there is a need to consider not only the COVID-19-related health concerns raised by the occupant of the unit to which the association requires access, but also the health and habitability concerns of the contiguous owners impacted with water and mold conditions that could easily by viewed by others (including well-qualified industrial hygienists) as equally or more "unsafe." Yet, by its terms, this new law protects only the resident denying access since they are the only one whose "unsafe" condition relates to a declared emergency and the only one against whom the association would need to enforce its right of entry.

Despite the heroic educational efforts of various industry advocacy groups, the challenges and fundamental unfairness created by this new law reveals Sacramento's lack of understanding of the complexity of enforcement actions in common interest developments. This situation is particularly tragic because an association cannot simply abandon the residents impacted by water intrusion and mold. As such, this new law could tend to increase the amount of litigation (particularly for condominium projects), as well as association enforcement costs.

The Drought Emergency. In 2015, California adopted *Civil Code* §4735 to address drought-related issues. Among other things, it provides that, during a declared drought emergency, an association may not impose a fine or assessment against an owner for reducing or eliminating the watering of vegetation or lawns. *Civil Code* §4735 is separate and distinct from the more recent *Civil Code* §5875, discussed above. As such, in cases of enforcement relating to landscape and drought issues during the drought emergency, the terms of both *Civil Code* §4735 and *Civil Code* §5875 should be evaluated prior to initiating enforcement action. Our separate commentary on *Civil Code* §4735 is available upon request.

Take-Away. It is impossible to know what emergencies will be declared in the months, years, and decades ahead. As such, it is difficult to predict what proactive steps an association can take to potentially minimize the adverse impacts of *Civil Code* §5875.

With respect to the COVID-19 scenario referenced above, it presently appears that there is little that can be done to minimize the potential adverse impacts on the association (and, frankly, the potential adverse impacts on owners emboldened by the existence of *Civil Code* §5875). The good news here is that of the hundreds of associations this firm represents, our best estimate is that the scenario referenced above arose only about 5 to 10 times during the height of the pandemic. As such, it may adversely impact only a relatively small number of associations.

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Unfortunately, we anticipate that this adverse impact will fall almost exclusively upon condominium communities, many of which already face budget shortfalls for a number of reasons outside their control. These reasons include increasingly onerous requirements imposed upon them by the State legislature and the massive insurance premium increases for those condominium communities in or near wildfire-prone areas.

Civil Code §5875 – Full Text (Effective January 1, 2013)

An association shall not pursue any enforcement actions for a violation of the governing documents, except those actions relating to the homeowner's nonpayment of assessments, during a declared state or local emergency if the nature of the emergency giving rise to the declaration makes it unsafe or impossible for the homeowner to either prevent or fix the violation.

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RULE ENFORCEMENT LIMITATIONS DURING A DROUGHT

Existing Law. *Civil Code* §4735(c) provides, with a minor exception (addressed below), that an association shall not impose a fine or assessment against an owner of a separate interest for reducing or eliminating watering vegetation or lawns during a declared drought emergency.

Drought Emergency. Late in 2021, Governor Newsom issued a Proclamation of a State of Emergency extending the pre-existing drought emergency (previously declared for Northern California counties) to Southern California counties, including L.A., Orange, Riverside, San Bernardino, and San Diego. As of this date, that drought emergency remains in place and recent indications are that it may be in place for quite some time.

This means that the terms of *Civil Code* §4735(c) are currently active and enforceable. For the duration of this emergency, an association member may not be fined or assessed for allowing their yard to turn brown due to reduced watering.

Alternative: Non-Water-Related Requirements. However, *Civil Code* §4735(c) **DOES NOT** prevent an association from requiring compliance with other governing document provisions that impose non-water-related maintenance requirements. For example, rules may require removal of dead plant material, mowing lawns to maintain a neat appearance (even if brown or dead), and/or proper grooming of gardens.

Exception: Recycled Water. The enforcement limitations of *Civil Code* §4735(c) **DO NOT** apply to owners of separate interests who have access to recycled water but do not use it for landscaping irrigation. It is rare for an individual owner to have access to recycled water, but if they do, and refuse to utilize it for landscaping, an association may enforce landscape maintenance rules that require watering even during a drought emergency.

Fines and Assessments. *Civil Code* §4735(c) expressly prohibits imposing a fine in response to the reduction or elimination of watering. It is unclear whether an association may still impose other disciplinary measures, such as suspending recreational or voting privileges if allowed by the association's governing documents. However, given the severity of California's drought and the policy/basis for its existing drought-related laws, we do not recommend attempting to discipline a member ***by any means*** for reducing or eliminating watering during a drought emergency. In the current legislative and judicial climate, such an attempt is very likely to lead to an undesirable result for the board and/or the association.

Take-Away. Associations should consider reviewing their non-water related rules and requirements and amend them as necessary to ensure that yards and gardens are kept as neat, safe,

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and clean as possible, even without water. Also, all ongoing enforcement actions related to the maintenance of landscaping elements, should be reviewed considering the requirements of *Civil Code* §4735(c)**.**

CIVIL CODE §4735 (Emphasis Added)

(a) Notwithstanding any other law, a provision of the governing documents or architectural or landscaping guidelines or policies shall be void and unenforceable if it does any of the following:

(1) Prohibits, or includes conditions that have the effect of prohibiting, the use of low water-using plants as a group or as a replacement of existing turf.

(2) Prohibits, or includes conditions that have the effect of prohibiting, the use of artificial turf or any other synthetic surface that resembles grass.

(3) Has the effect of prohibiting or restricting compliance with either of the following:

(A) A water-efficient landscape ordinance adopted or in effect pursuant to subdivision (c) of §65595 of the Government Code.

(B) Any regulation or restriction on the use of water adopted pursuant to §353 or 375 of the Water Code.

(b) This section shall not prohibit an association from applying landscaping rules established in the governing documents, to the extent the rules fully conform with subdivision (a).

(c) Notwithstanding any other provision of this part, except as provided in subdivision (d), an association shall not impose a fine or assessment against an owner of a separate interest for reducing or eliminating the watering of vegetation or lawns during any period for which either of the following have occurred:

(1) The Governor has declared a state of emergency due to drought pursuant to subdivision (b) of §8558 of the Government Code.

(2) A local government has declared a local emergency due to drought pursuant to subdivision (c) of §8558 of the Government Code.

(d) Subdivision (c) shall not apply to an owner of a separate interest that, prior to the imposition of a fine or assessment described in subdivision (c), receives recycled water, as defined in §13050 of the Water Code, from a retail water supplier, as defined in §13575 of the Water Code, and fails to use that recycled water for landscaping irrigation.

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MANDATORY CHARGING STATIONS?

The New Law. Effective January 1, 2023, new §18941.11 will be added to the California Health and Safety Code.

In a nutshell, §18941.11 requires the California Department of Housing and Community Development to research, develop, and propose for adoption (to the California Building Standards Commission), mandatory building **standards requiring the installation of electrical vehicle charging stations in existing parking facilities serving, among other things, multi-family dwellings.** These standards will apply to certain (as yet undefined) additions and alterations of existing parking facilities when:

(a) a building permit is required and
(b) other significant construction or repair (as yet undefined) is taking place.

Mandatory Outreach. As part its research and development of these standards, §18941.11 requires the Department of Housing and Community Development to "consult with" interested parties (including commercial buildings, apartment owners, and the building industry). Additionally, it is required to invite the "participation" of the public at large in the process of developing these standards.

Take away. This is a law that mandates a state department to create building standards that it will propose for adoption by a California commission. The good news is that this process is expected to take a few years. The less-than-good news is that, while the new standards are to apply to "multi-family dwellings," there is no explicit requirement that the Department of Housing and Community Development "consult with" the community association industry or existing common interest developments. This is unfortunate, given that common interest developments are usually considered multi-family dwellings. We anticipate that common interest development industry organizations will be working hard during the next few years to ensure that the comments and concerns of our industry are considered.

Stay tuned and look for CID industry "calls to action" in the coming months and years.

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ACCESSORY DWELLING UNITS

Definition. Accessory Dwelling Units ("ADUs") are additional living units on single family lots. These fully functional living units can be different sizes (smaller versions are referred to as Junior ADUs or "JADUs") and take various forms (detached, attached, or located entirely within the primary living unit on the lot). ADUs are often referred to as granny flats or mother-in-law suites.

History and 2023 Amendments. For several years, the California State legislature has been pressuring (if not strong-arming) local jurisdictions to allow ADUs to increase the availability of affordable housing. That pressure continued this year through the passage of SB-897, which, effective January 1, 2023, amended portions of the *Government Code* and the *Health and Safety Code* to eliminate obstacles used by local governments to discourage ADUs within their jurisdictions. The new amendments require that local jurisdictions impose only "objective standards" on proposed ADUs. They also prohibit local jurisdictions from imposing certain height restrictions, parking standards, and in some instances fire sprinkler requirements for ADUs. **IMPORTANT:** These laws apply ***only*** to local governments, ***not*** individual common interest developments ("associations"), so they will probably have only a slight impact on ADUs within associations.

Impact Upon Community Associations. Historically, the above-referenced Statewide efforts did not significantly impact local associations because State law allowed an association's governing documents to prohibit them. However, that changed in January 2020 with the adoption of *Civil Code* §4751.

***Civil Code* §4751.** Civil Code §4751 provides, among other things, that **any provision of an association's governing documents that either effectively prohibits or unreasonably restricts the construction or use of an ADU or a JADU on a lot zoned for single-family residential use is void and unenforceable.** In other words, in 2020 the door opened to increased ADUs within associations.

Reasonable Restrictions. Thankfully, *Civil Code* §4751 allows associations to impose "reasonable restrictions" on ADUs, which it defines as **"restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct"** an ADU. There is no bright-line test as to what is or is not a "reasonable restriction" in this context (see discussion below).

No Protection for Non-ADUs. The protections of *Civil Code* §4751 **DO NOT** apply to structures that are not qualified ADUs or JADU's. Unfortunately, the determination of whether a proposed improvement is an ADU or JADU requires a technical review that includes (a) **research** regarding the applicable local ordinances (city or county, as applicable) and (b)

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technical evaluation of both State law (*Government Code* 65852.2 and 65852.22) AND the applicable local ordinances as applied to the proposed improvement.

This research and evaluation will likely require the services of a licensed architect or a qualified construction consultant. Such evaluations can be costly and may need to be completed quickly. For these reasons, an association concerned about ADU/JADU construction might consider the following:

1. Establish a working relationship in advance with an architect and/or qualified consultant and consider having that service provider research and identify the local ADU ordinances of the applicable city or county.

2. Review the association's architectural authority and rules to ensure that any right the association has to pass the cost of evaluation by an architect or consultant to the applicant owner is adopted.

ADU Review Process. The decision-making process for an association faced with an architectural application for what could potentially be an ADU could be as follows:

1. Is the proposed improvement approvable under the association's current governing documents?

a. If YES, the new law will have no impact and the application should be approved.
b. If NO, go to no. 2, below.

2. Is the proposed improvement an ADU or a JADU as defined by the applicable ordinances of the local jurisdiction?

a. If YES, the proposed improvement must be approved BUT see no. 3, below.
b. If NO, the association can deny the proposed improvement since it is not a protected ADU or JADU.

3. Are the association's restrictions "reasonable" as defined by Civil Code §4751?

a. If YES, they may be imposed.
b. If NO, they may not be imposed.

Determining Whether an Association Restriction is "Reasonable." As explained above, *Civil Code* §4751 allows an association to impose "reasonable restrictions" on an otherwise protected ADU or JADU, including restrictions that do not "unreasonably increase the cost" to construct it.

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As an example, in a high-end rural association with one-acre lots and a median home value of $3,000,000, it may be reasonable to impose a condition that the ADU be made to look like a barn for an increased cost of $60,000. On the other hand, imposing a condition that increases the cost of an ADU by $60,000 in an association with lower home values may not be considered reasonable.

Parking Pressure and Other Burdens. More residents will likely result in more vehicles. ADUs in garages or areas previously available for parking will increase use of other parking facilities. This will likely be the most immediate impact for most associations. If the association has public streets, more congested parking may need to be addressed by the city or county. If the association has private streets, the most viable remedy may be a parking permit and patrol system, since it is unlikely that an association will be compelled to allow greater private street parking for residences with ADUs.

Other examples of added burdens and costs created by introducing ADUs and additional residents into a community include the following:

- **Increased Private Road Traffic** - Increased roadway congestion and shorter roadway life expectancy is possible due to heavier use by both the additional residents and service vehicles (added trash truck trips/weight, additional deliveries, etc.).
- **Greater Burden on Gates** – Increased gate use in gated communities will cause greater wear and tear, shorter life expectancy for gate systems and facilities, and increased gate-related personnel requirements (both for manned gates and increased gate access administration).
- **Recreational Facilities** – If additional residents are permitted to use recreational facilities (an issue not addressed by our legislators), pools, parks, workout rooms, tennis courts, etc. will all see heavier use, heavier wear, and shortened life expectancies.
- **Utility Costs** – Some Associations share commonly metered utilities (e.g. water) that is paid by the Association.
- **Mail Box Facilities** – Associations are far more commonly required to incorporate clustered mailboxes, which are commonly designed with a finite number of boxes that cannot easily be changed.

Unfortunately, none of these issues or the burdens and costs they will cause for associations are addressed in the 2020 law or 2023 amendments. The impacts will differ with each association. At

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the moment there is no one-size-fits-all solution. Potential solutions may include carefully crafted operating rules, or, for more heavily impacted communities, CC&R amendments, special fees and fines, or, in some limited circumstances, increased assessments for lots with ADUs.

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SOCIAL MEDIA and ONLINE RESOURCES

Use of Social Media and Other Online Resources. As of January 1, 2023, *Civil Code* §4515(b)(6) establishes that an association's governing documents (including the bylaws and operating rules), **shall not prohibit a member or resident of a common interest development from using social media or "online resources" to discuss any of the following even if the content is critical of the association or its governance:** (i) development living; (ii) association elections; (iii) legislation; (iv) election to public office; (v) the initiative, referendum, or recall processes; or (vi) any other issues of concern to members and residents.

Limited Impact. Very few associations have governing documents that address (much less "prohibit") speech by members/residents on social media or other online resources. As such, the practical impact of this new law is quite limited.

Subject Matter of the "Discussions." By its terms, *Civil Code* §4515(b)(6) applies only to discussions of the subjects listed above. When read as a whole, however, the scope of the subject matter is extraordinarily broad. This is exemplified by item (vi), which broadly and vaguely encompasses *"**any other issues of concern to members and residents**."* For this reason, it is unlikely that the list of subjects provides any meaningful limitation to the applicability of this provision.

Applies to Members and Residents. The protections of *Civil Code* §4515(b)(6), by their own express terms, apply not only to members, but also to non-member residents of the community.

The Association's Website and Online Resources. Thankfully, *Civil Code* §4515(b)(6)(C) establishes that this law **DOES NOT** require that an association allow members to post content on the association's website. Further, *Civil Code* §4515(b)(6)(B) establishes that this law **DOES NOT** require that an association provide social media or other online resources to members.

No Retaliation. *Civil Code* §4515(e) establishes that an *association shall not retaliate against a member or a resident for exercising the online/social media rights protected by Civil Code §4515*. This could potentially give rise to interesting allegations (*e.g.*, "They did not prohibit my comments on Next Door but because of those comments they called me to a hearing for my blue front door."). However, if that occurs, we anticipate that most associations will easily be able to defend themselves by establishing that the conduct being alleged as retaliatory was, in fact, even-handed enforcement of the rules with no connection to the member's online activities.

Enforcement – Small Claims. A member or resident of a common interest development may bring a civil or small claims court action to prevent the enforcement of any association governing

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document provisions that violates *Civil Code* §4515. If the court finds that there was a violation by the association, it is empowered to assess a civil penalty up to $500 for each violation.

No Liability Protection From Defamation. *Civil Code* §4515(b)(6) protects the rights of a member or resident to participate in online discussions. However, it DOES NOT protect them from potential liability if their communications in those online discussions are legally defamatory.

***Civil Code* §4515 – Full Text (Emphasis Added)**

(a) It is the intent of the Legislature to ensure that members and residents of common interest developments have the ability to exercise their rights under law to peacefully assemble and freely communicate with one another and with others with respect to common interest development living or for social, political, or educational purposes.

(b) The governing documents, including bylaws and operating rules, shall not prohibit a member or resident of a common interest development from doing any of the following:

(1) Peacefully assembling or meeting with members, residents, and their invitees or guests during reasonable hours and in a reasonable manner for purposes relating to common interest development living, association elections, legislation, election to public office, or the initiative, referendum, or recall processes.

(2) Inviting public officials, candidates for public office, or representatives of homeowner organizations to meet with members, residents, and their invitees or guests and speak on matters of public interest.

(3) Using the common area, including the community or recreation hall or clubhouse, or, with the consent of the member, the area of a separate interest, for an assembly or meeting described in paragraph (1) or (2) when that facility or separate interest is not otherwise in use.

(4) Canvassing and petitioning the members, the association board, and residents for the activities described in paragraphs (1) and (2) at reasonable hours and in a reasonable manner.

(5) Distributing or circulating, without prior permission, information about common interest development living, association elections, legislation, election to public office, or the initiative, referendum, or recall processes, or other issues of concern to members and residents at reasonable hours and in a reasonable manner.

(Continued)

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§4515 ***(cont.)***

(6) (A) Using social media or other online resources to discuss any of the following, even if the content is critical of the association or its governance:

(i) Development living.

(ii) Association elections.

(iii) Legislation.

(iv) Election to public office.

(v) The initiative, referendum, or recall processes.

(vi) Any other issues of concern to members and residents.

(B) This paragraph does not require an association to provide social media or other online resources to members.

(C) This paragraph does not require an association to allow members to post content on the association's internet website.

(c) A member or resident of a common interest development shall not be required to pay a fee, make a deposit, obtain liability insurance, or pay the premium or deductible on the association's insurance policy, in order to use a common area for the activities described in paragraphs (1), (2), and (3) of subdivision (b).

(d) A member or resident of a common interest development who is prevented by the association or its agents from engaging in any of the activities described in this section may bring a civil or small claims court action to enjoin the enforcement of a governing document, including a bylaw and operating rule, that violates this section. The court may assess a civil penalty of not more than five hundred dollars ($500) for each violation.

(e) An association shall not retaliate against a member or a resident for exercising any of the rights contained in this section.

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