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Legal Trends for Common Interest Developments: Drought and Environmental Legislation

1. <u>Drought Legislation</u>

As we are all well aware, water use concerns are not new to California. For a number of years, the California legislature has addressed the state's dire need to reduce water use. Further, on January 17, 2014, Governor Jerry Brown, declared a state of emergency in California. Since that time, the drought-related legislative activity in Sacramento has been almost non-stop. The following is an overview of the community association-related drought legislation that has come to fruition in 2015 in the context of the activity of the last few years.

Prior to this legislative year, *Civil Code* §4735 already provided that associations may not prohibit (or enforce conditions that have the effect of prohibiting) the use of low water-using plants to <u>replace existing turf</u> and prohibited associations from imposing a fine/assessment against a member for reducing or eliminating the watering of vegetation or lawns during any declared state of emergency due to drought.

This year, AB349 and AB786 have, cumulatively, resulted in additional amendments to *Civil Code* §4735 as follows:

i. **Artificial Turf.** Effective September 4, 2015, a new sub-section was added to *Civil Code* §4735 such that associations are no longer permitted to prohibit (or enforce conditions that have the effect of prohibiting) *the use of artificial turf or any other synthetic surface that resembles grass*.

As such, members who wish to install artificial turf (or any other synthetic surface that resembles grass) already have the right to do so. However, while the association cannot prohibit the installation, the association can continue to enforce its architectural controls, which may, among other things, require members to seek and obtain architectural approval prior to any such installation, and may require that all such installations comply with the conditions which are properly imposed by the association's architectural or landscaping guidelines (provided that such guidelines do not prohibit, or have the effect of prohibiting the installation of such artificial turf).

Consequently, associations may wish to consult with their landscaping professionals and consider immediate revisions/amendments to their architectural or landscaping guidelines to establish the specific type/range/palette of artificial turf products that will be permitted and, potentially, establish other requirements which may include the manner in which such artificial turf will be maintained/replaced, etc. Absent such revisions/amendments, it may be difficult for the association to enforce quality and aesthetic criteria that would be appropriate for the community.

ii. **No Low-Water Plant Removal Requirements**. Effective September 4, 2015, a new subsection was added to *Civil Code* §4735 which provides that a member cannot be required to remove water efficient landscaping measures (low water-using plants, artificial turf, etc.) that were installed in response to a declared state of emergency due to drought.

This is an apparent response to certain associations (who obviously do not like the look of water efficient landscaping measures) who have attempted to impose requirements that landscaping will need to be restored to higher water-using styles when the California emergency comes to an end.

2. Environmental Legislation - "Clotheslines"

In recent years environmental or "green" legislation has been popular in Sacramento. Last year we saw the creation of *Civil Code* §4750 which provides that an association may not prohibit or unreasonably restrict the use of a homeowner's "back yard" for "personal agriculture," and amendments to *Civil Code* §714 which significantly limited the right of associations to restrict the installation of solar energy systems.

Effective January 1, 2016, a new *Civil Code* §4750.10 will provide that associations may not prohibit (or unreasonably restrict) an owner's ability to use a clothesline or drying rack in the owner's back yard.

This provision defines "clothesline" and "drying rack" to include an apparatus or cord rope or wire from which laundered items may be hung to dry or air. Thankfully, it also provides that balconies, railings, awnings or other parts of a structure or building do not qualify as either a "clothesline" or "drying rack." As such, a member may not simply hang clothes over a balcony, a railing or building wall and claim a right to do so.

Civil Code §4750.10 applies only to back yards that are designated for the exclusive use of the owner. As such, it is clear that the use of clotheslines and drying racks on common area may still be prohibited. However, it does not expressly define the meaning of "back yards" in this context. Unfortunately, this is sure to raise difficult questions in a number of common situations.

Pursuant to the terms of this provision, an association may still impose "reasonable restrictions" upon an owner's back yard use of a clothesline or drying rack. However, it only vaguely defines a "reasonable restriction" as one that does not significantly increase the cost of using a clothesline or drying rack (if we eliminate the cost of purchase, what is the cost of "using" a clothesline or drying rack?).