

2010/2011 NEW LAW UPDATES

The following is a brief summary of recently enacted, pending and failed legislation, and decided case law, which may impact common interest developments.

ENACTED LEGISLATION

AB 1263 (Strickland) Unlawful Detainer - Service of Notice

Effective January 1, 2011, this bill changes and clarifies the required method of serving notice of unlawful detainers (i.e. evictions) upon commercial tenants and removes the requirement that eviction notices be served by mail to the "residence address" of the tenant, which for commercial tenants is not always practicable. This bill does not make any changes to service of such notices upon residential tenants. While having little impact on residential association managers, those with commercial properties should take note of this change to the eviction notice requirements. Amends Civil Code Section 1162 relating to unlawful detainer.

AB 2016 (Torres) Requests by Association for Recorded Notices and Default

Effective January 1, 2011, this bill allows associations to record a single request for title information where there are notices of default (i.e., foreclosure proceedings) regarding all properties within the association, rather than having to record such a request for each separate interest in the project. While the wording of the request must be specifically drafted by "defining" the notice as a request "not for a document affecting title," due to interplay with other statutes, at least associations with foreclosures can become better aware of this issue. This change will help reduce costs to associations and enable them to be promptly notified when lenders commence foreclosure on properties in associations. Amends Civil Code Section 2924b relating to recorded notices of default and common interest developments.

SB 294 (McLeod) Certification of Common Interest Development Managers

This bill makes numerous changes to professional certification statutes, including Business & Professions Code Section 11506 which relates to manager certification standards. The Sunset provision was originally due to expire January 2012. This bill amends the Sunset provision in B&P Section 11506 to extend the sunset provision to January 1, 2015. By doing so, manager certification standards have been preserved.

SB 1128 (DeSaulnier) Governance of Common Interest Developments

Effective January 1, 2011, this bill amends the law pertaining to document disclosures for associations and will also apply to “any nonprofit entity that provides

services [to an association] under a declaration of trust.” Many master planned communities have a master or umbrella “association” or other nonprofit entity that provides administrative services for the sub-associations within the community. Previously, these master administrative “associations” did not have to comply with the disclosure requirements set forth in the Davis-Stirling Common Interest Development Act because they did not technically qualify as associations. While infrequent in its applicability, this bill will require that the document disclosure laws applicable to associations themselves will also apply to any nonprofit organizations created to carry out association responsibilities. Amends Civil Code Sections 1365.2 & 1368 relating to common interest developments.

SB 1149 (Corbett) Residential Tenancies and Foreclosure

Effective January 1, 2011 (with some provisions to sunset on January 1, 2013), this bill pertains exclusively to unlawful detainer actions following foreclosure of property. Due to the high numbers of foreclosures on rental properties, this law seeks to provide some protections to unsuspecting renters that may not be aware of the impending foreclosure and likely eviction (which will impact them, not the owner). Accordingly, this bill changes the notice period of eviction requirements for post-foreclosure evictions which is equal to the length of the tenancy, but not to exceed 30 days, as well as requiring a special notice for terminated tenancies within a year after foreclosure. The bill also requires that any notices to quit (i.e. the start of an eviction proceeding) served within one year of the foreclosure must be served on any tenants within the unit as well as upon the owner. Finally, the bill also alters public access to unlawful detainer records and changes the time within which the court clerk can make records available. Some communities that implement foreclosure to collect unpaid assessments end up owning units after foreclosure and renting same to attempt to recoup some of the outstanding debts owed. Such associations need to take careful note of these increased tenant protections in order to ensure full compliance with this bill. Amends Code of Civil Procedure Sections 1161.2 and 1166, adds a new Section 1161c relating to foreclosures.

SB 1427 (Price) Foreclosures and Property Maintenance

Effective January 1, 2011, this bill will modify the existing law that imposes fines of up to \$1,000.00 per day on entities or individuals who purchase homes at a public auction (i.e. foreclosed property) for their failure to maintain the property. This bill will provide an opportunity to cure the violation before fines can be imposed, unless the violation poses a public threat. Further, the bill provides that any nuisance abatement costs cannot exceed the actual and reasonable costs related to same, where the prior law had no such limitation. This bill seeks to strike a reasonable balance between a community’s right to have well-maintained properties and no fear of public safety threats

(e.g. “green” pools and mosquito infestations), with an owner’s (typically a bank) right to be able to remedy any such issues prior to being fined. Adds Civil Code Sections 2929.4 & 2929.45 relating to foreclosures.

LEGISLATION DIED IN COMMITTEE OR PENDING

AB 300 (Caballero) Subdivisions and Water Supply

If passed, this bill would apply to new subdivisions with over 500 residential units to incorporate voluntary water conservation measures and provide for follow up five years after its creation to determine their efficacy. Furthermore, these conservation measures would be implemented through amendments to recorded covenants and enforceable by public agencies (i.e. forced water conservation). This bill would add compliance with water conservation measures to the list of concerns that association members, managers, and boards must monitor and comply with, and potentially add another facet to the relationship between developers and associations.

AB 350 (Lieu) Debt Management and Settlement

If passed, this bill proposes to regulate debt consolidation companies to require certain consumer disclosures, certain record keeping, and that service providers be bonded. This bill represents the fourth attempt in recent years to further regulate this industry and seeks to provide increased consumer protections. While likely rare in its potential impact on associations, it would indirectly impact associations where a delinquent owner employs a debt consolidation company to negotiate their assessment debt and the association agrees to work with the company.

AB 2301 (Logue) Fire Protection and Defensible Space (Public Lands)

If passed, this bill would create a new permitting process to make it easier for owners and communities subject to fire mitigation requirements to facilitate these obligations. Existing law requires certain homeowners or communities to maintain a one hundred foot defensible fire mitigation space from each side, front and rear of a structure, even if the area falls within public lands. This bill would likely have only indirect effects on associations, except where it is the association seeking approval to increase defensible space beyond its own parcels and into public lands. In such cases, the greatest effect may be in securing contracts with landscapers and other vendors to work on public lands, and there may be collateral requirements that arise in that regard.

AB 2502 (Brownley) Associations and Delinquencies

If passed, this bill would substantially alter payments from delinquent owners and provide much needed clarity on this all too important issue. First, the bill clarifies that any payments received, whether by the association itself or its collection agent, must first be applied to unpaid assessments, and only then to fees, collection costs, late charges, and interest. Second, this bill would require associations to accept partial payments of the debt, but only if the partial payments are part of a written payment agreement. Third, this bill would require forty eight hours prior notice to all parties if an attorney (for the owner or the association) will be present at any meeting to discuss payment plans. Finally, this bill would require a copy of the payment plan to be sent to the owner within seven days.

AB 2516 (Hill) Housing Accessibility - Accessible Housing Task Force

If passed, this bill contains two separate parts. The first part would be the creation of a "task force" to develop and attempt to increase access to housing for disabled and elderly persons that is close to public transportation. The second part would be a modification to the Fair Housing and Employment Act ("FEHA", Government Code Section 12955.1) to amend "discrimination" to include the failure to construct certain multifamily dwellings located one half mile or less from public transit to meet certain "accessibility" requirements for disabled residents. These requirements include that at least ten percent of units in certain buildings without elevators (including townhouse units) must be accessible and include a bedroom and kitchen on the ground floor. It appears the legislature is attempting to take a forward-looking approach to require that a portion of new housing near public transportation hubs be specifically accessible to disabled and elderly residents as the population ages.

SB 1171 (McLeod) Regulatory Boards - Operations

If passed, this bill will make changes to the laws governing state regulatory boards that govern certain professions and industries (e.g. State Contractors License Board) with respect to their required "sunset review" periods. A "sunset review" is when the state reviews whether or not continued regulation is necessary for these regulated professions and agencies. If continued regulation is deemed unnecessary, the laws pertaining to same will "sunset" or expire.

Under existing law, if a regulatory board "sunset," then the Department of Consumer Affairs ("DCA"), which is a part of the executive branch of government, assumes its responsibilities and the regulatory board is then turned into a "bureau" of the DCA. The concern with this approach is that unlike the regulatory board that was required to conduct its business in the open, a succeeding DCA bureau could conduct the same business in a closed-door atmosphere. If passed, instead of automatically becoming a bureau of the DCA, regulatory boards that sunset would instead be succeeded by similar boards under an appropriate policy committee of the legislative branch, and continue to conduct business in open meetings. While the current application of this bill to common

interest developments and association managers is non-existent, it may propose certain changes to the voluntary certification program already in place.

SB 1394 (Kehoe) Removal of Unattended Vehicles (As Introduced)

Having died in committee, if passed, this bill would have addressed removal of unattended vehicles from private property, allowing a peace officer or other public employee to remove a vehicle illegally parked which obstructs access to the scene of any emergency, and also allowing peace officers to remove and impound a vehicle illegally parked so as to block the entrance to any driveway, including "public" driveways. As such, the bill would have had a substantial impact on associations.

FAILED LEGISLATION

AB 1155 (Strickland) Vehicles and Private Parking Facilities

Vetoed on July 15, 2010, this bill would have made specified provisions of the California Vehicle Code (including "open container" laws, child-restraint requirements, "throwing substance at a vehicle," and certain equipment regulations for off-road vehicles) enforceable on private off-street parking areas. Presently, Vehicle Code regulations are only enforceable on public streets and highways. The Governor feared the enactment of this legislation would unnecessarily tie up law enforcement resources.

AB 1726 (Swanson) Ballots and Quorums

Vetoed on September 30, 2010, this bill would have made substantial changes to the quorum and balloting requirements of Civil Code Section 1363.03. Most notably, this bill would have provided for an automatically reduced quorum requirement, to thirty three percent, in director elections that have been adjourned due to lack of quorum when the association's governing documents did not otherwise provide for such a reduced quorum. The Governor's opposition was mostly on the grounds that associations already possess the power to reduce quorum if desired.

AB 1793 (Saldana) Artificial Turf

Vetoed by Governor on September 30, 2010, this bill as proposed would have prohibited associations from enforcing any restrictive covenants prohibiting artificial turf. Despite widespread legislative support (it passed by a vote of 69-1), the Governor vetoed it on the grounds that associations already possess the power to amend recorded covenants to permit usage of artificial turf.

AB 1927 (Knight) Real Property

Vetoed by Governor on September 30, 2010, this bill would have amended the Davis-Stirling Common Interest Development Act to require that any provision of an association's governing documents that would prohibit the rental or lease of a separate interest must be passed with the approval of two thirds of the voting power, unless it provided otherwise. The Governor vetoed the bill on the grounds that it imposed too high a requirement on changes to property restrictions.

SB 1166 (Simitian) Personal Information Security

Vetoed by Governor on September 29, 2010, existing law requires certain organizations (including associations) to issue notifications whenever a "security system breach" results in the unauthorized release of computer data containing personal information. This bill would add to these required notifications, and would require that the notifications to be sent to certain state agencies. This bill was identical to Senate Bill 20, vetoed by the Governor last year on the grounds that the additional notifications are "unnecessary" in the absence of evidence that existing notifications are deficient. The Governor's basis for veto of this bill was identical.

For associations and management, data security is an issue that is not often discussed, but it is important to be aware that the personal information of owners which is often obtained in the course of collections and other activities is highly sensitive and if released inadvertently will subject the association, and its agents, not only to notification requirements but also potentially liability claims.

CASE LAW - PUBLISHED & UNPUBLISHED

Adams v Newport Crest Homeowners Association

(2009) - Not Officially Published - May Not be Cited (Not Law) - 2009 WL 2875361 (Cal.App.2 Dist.)

The association and an owner (Adams) entered into a settlement over water intrusion and mold related claims. The settlement agreement provided for, among other things, the parties to submit any disputes regarding the settlement agreement to a mediator. Despite the mediation provision, Adams filed her motion to enforce the settlement with the court as opposed to the mediator. The court ordered the parties to mediation and when Adams did not comply, the court dismissed her claim and determined the association had complied with the terms of the settlement. This case provides a good reminder that parties must follow their agreements (especially pre-litigation dispute procedures) to the letter, or risk the potential of their claims being dismissed.

Affan v. Portofino Cove Homeowners Association

(2010) 2010 WL 4262059 (Cal.App. 4 Dist.)

Owner (Affan) sued the association for negligence and breach of CC&R provision requiring association to maintain common area pipes, after severe damage to condominium caused by sewage backups. During multiple backups over a ten-year period, the association had repeatedly snaked drains, but never investigated source of chronic problems until finally hydrojetting the main drain line, which did not solve the problem. The association invoked "business judgment rule" of judicial deference (Lamden v. La Jolla Shores Clubdominium Homeowners Ass'n) and obtained a favorable judgment on most claims. The Court of Appeal reversed, holding that the Lamden rule is an affirmative defense requiring the association to prove that the board, "upon reasonable investigation, in good faith and with regard for the best interests of the community association and its members, exercises discretion within the scope of its authority under relevant statutes, covenants and restrictions to select among means for discharging an obligation to maintain and repair ... common areas...." (Lamden, 21 Cal.4th 249, 253.) The court found that there was no evidence that the board had conducted a reasonable investigation, or that it had exercised discretion to choose from various means of performing the maintenance - in fact, the court of appeal stated that the board had simply failed to perform maintenance at all, which is not a deliberative exercise. Ultimately, this case does not limit the "business judgment rule," but does reaffirm that all decisions of a board are not automatically entitled to judicial deference. Only "reasoned" decisions by a board to select among different methods of meeting its obligations are entitled to deference; furthermore, the case reaffirms that only the association and its board are entitled to judicial deference, not their community managers.

Bridgeport Community Association, Inc. v. Martin

(2010) Not Officially Published - May Not be Cited (Not Law) - 2010 WL 731585 (Cal.App.2 Dist.)

In an architectural violations lawsuit against an owner (Martin), Martin claimed the association's failure to offer alternative dispute resolution ("ADR") before filing the lawsuit should bar its award of summary judgment. The court held that despite the fact the association failed to offer to participate in ADR, the association's efforts to informally resolve the underlying architectural violation and its seeking of a preliminary injunction did not violate the CC&Rs and Civil Code which otherwise require ADR. Essentially, when seeking enforcement of architectural violations, if an association seeks an injunction as part of its remedy, it may not otherwise have to comply with the standard ADR offer requirements. That said, while the specifics of this case dispensed with the need for ADR in enforcement of architectural violations, this case should serve as an important reminder to always include a request for resolution (aka ADR) in compliance communications to owners regarding governing document violations.

Carolyn v. Orange Park Community Association

(2009) 177 Cal. App. 4th 1090

A non-member of an association who had a disability sued the association over his inability to use their common area horse trail system because the association erected entrance barriers that otherwise precluded his horse drawn carriage from being able to enter them. The typical rule of thumb is that association common areas are not “public accommodations” and thus not subject to federal (ADA) and state (Unruh Civil Rights Act) statutes that require reasonable access to all persons, including disabled persons. However, the statutes are drafted to provide broad latitude as to what constitutes a “public accommodation.” The court ultimately held the association’s trail system was not a public accommodation. Furthermore, simply because the association did not actively exclude the public did not serve to create the nexus otherwise making it public. Communities should take note, however, that common areas may be classified as “public accommodations” and subject them to ADA requirements if they actively permit members of the public to access and use common area.

Chapala Management Corporation v Stanton

(2010) 186 Cal. App. 4th 1532

In an action to enforce architectural restrictions against an owner (Stanton), the association obtained an injunction requiring architectural compliance and an award of its attorney’s fees and costs. The issue was whether attorney’s fees and costs awarded pursuant to the Davis-Stirling Common Interest Development Act (“Act”) are “ordinary or routine costs”. If such costs are ordinary, they are automatically stayed pending appeal. If they are not considered ordinary, an association can seek collection of them, despite any appeal by the owner of the case. The Court held awards of attorneys fees made pursuant to the Act are routine costs such that the judgment is automatically stayed pending appeal. Associations should take note that despite being the prevailing party, it may not receive actual payment of its attorney’s fees immediately if the case is appealed. It is also noteworthy that in this case, the parties were ordered to bear their own costs on appeal.

Clear Lake Riviera Community Association v. Cramer

(2010) 182 Cal. App. 4th 459

In an action to enforce compliance with architectural guidelines against an owner (Cramer) whose residence violated the community’s height restrictions, the association obtained an injunction requiring compliance (essentially tearing down his residence). Cramer argued that the architectural guidelines were never validly adopted, and that the injunction caused greater damages than the violation. The court determined that the height restriction had been enforced for approximately ten years and this longstanding enforcement was circumstantial evidence of valid adoption of the rule.

This case illustrates that an association's policies and guidelines are enforceable even without direct proof of enactment of the guidelines, so long as the circumstances demonstrate probable validity. Furthermore, because Cramer apparently knew the residence would violate the height restriction before the foundation was laid, but continued with construction anyway, this case illustrates the potentially devastating consequences to a member knowingly violating an association's restriction.

County of Los Angeles v. La Vina Homeowners Association

(2010) Not Officially Published - May Not be Cited (Not Law) - 2010 WL 1270391 (Cal.App.2 Dist.)

The County sued the association when the association unilaterally acted to prohibit public use of trails within the community. The court determined that the clear history and conditions of approval for the development contemplated public trails within the community. Thus, the association's prohibition constituted a nuisance and the court's award of nearly \$784,000.00 in attorney's fees to the County was within the court's discretion. While not all associations have amenities that are also provided to the public, those with such public amenities within their bounds should take careful note that any attempt to prohibit non-members from using intended public amenities can result in severe penalties.

Duclos v. Marina Pacifica Homeowners Association

(2010) Not Officially Published - May Not be Cited (Not Law) - 2010 WL 1078004 (Cal.App.2 Dist.)

In order to end a complicated and costly lease arrangement with the developers of the community, the association obtained a \$22 million loan in order to purchase the land upon which the association was situated. The association obtained member approval to obtain the loan, but not for the purpose the loan was to be used. The association's CC&Rs did not permit the association to purchase real property. An owner (Duclos) sued the association asserting multiple claims of unfair business practices, including whether the association usurped its authority under the CC&Rs by purchasing the property to begin with. Ultimately, the court held an association cannot encumber individual units without the members' approval to do so. Despite the fact that most of the case was dismissed in the association's favor, Duclos was the prevailing party as to the limited issue of association power. The court determined that the association's actions had prevented the full settlement of this case. Associations should take care when obtaining loans to not only obtain membership approval for the amount of the loan, but also for the purpose of the loan. This case also illustrates the importance of forthrightness in connection with litigation and settlements. The association's failure to be forthright with its members cost it a substantial attorney fee award.

Harrison v. Sierra Dawn Estates Homeowners Association, Inc.

(2010) Not Officially Published - May Not be Cited (Not Law) - 2010 WL 2543616 (Cal.App 4 Dist.)

Due to increased police reports, decreased volunteerism and a constant stream of governing document violations by renters, a senior-citizen mobile home park that was also a homeowners association sought to impose rental restrictions on its community. The amendment, among other things, imposed a twenty percent cap on the total number of rentals, provided that an owner could not rent more than three units at any given time, required leases be no more than one year and approved by the association, and that a new owner could not rent out their unit for the first year of ownership. The amendment did provide for an existing lease grandfather clause. Upon passage of the amendment, an owner of twenty three mobile homes in the community that primarily rented them out, filed a lawsuit claiming the amendment was unreasonable. During the case, the association presented substantial evidence and testimony that the amendment helped to achieve the basis upon which they were passed. Ultimately, the court upheld the rental restrictions as reasonable and awarded some costs to the association. While an unpublished decision, this case serves to uphold rental restrictions but serves as a cautionary tale that communities should take special care when seeking to adopt rental restrictions, such as holding town hall meetings, passing resolutions that outline the purpose of the restrictions, and providing ample information regarding the proposals. All these measures were taken by the association, which served as the basis the court used to uphold the amendment.

Mansouri v. The Superior Court of Placer County

(2010) 181 Cal. App. 4th 633

An association (Fleur du Lac Estates) filed a petition with the court to compel binding arbitration against an owner (Mansouri) who had enclosed her patio without prior architectural approval. The association's CC&Rs contained a provision that required the arbitration of disputes by a three party panel. While the association had requested a single-party arbitration with the owner, it did not offer nor request the three party panel provided for in the CC&Rs, nor did it cite the applicable provision of the CC&Rs. The trial court awarded the order for arbitration and Mansouri appealed. On appeal the court held that the association's failure to request arbitration pursuant to the CC&Rs and its inability to demonstrate Mansouri refused to so cooperate nullified its petition. This case serves as a very strong reminder that associations must follow the express provisions of the governing documents, including dispute resolution procedures, and that the failure to do so may render the association's actions void.

Osman v. Cyprus Shore Community Association

(2009) Not Officially Published - May Not be Cited (Not Law) - 2009 WL 1744570 (Cal.App. 4 Dist.)

An owner (Osman) living in an adjacent association (Cotton Point) erected a fence within what he believed to be his property line. His association (Cotton Point) had a maintenance easement with an adjacent association (Cyprus Shore) which covered part of the area where Osman erected his fence. Cyprus Shore filed a lawsuit against Osman, other owners within the easement area and Cotton Point seeking the removal of the fence. Ultimately, Cyprus Shore settled the case as to all parties in order to avoid the continued legal expenses. Thereafter, Osman filed a lawsuit for malicious prosecution against Cyprus Shore. The court held that because Osman did not, and presumably could not, demonstrate he would have prevailed had the case gone to trial, that his malicious prosecution claim should be denied. This case serves as an important reminder that settlements and their specific wording are critical and that when acting in connection with litigation, the reasons for taking actions are critical. When appropriate and in connection with advise from counsel, boards are well served to pass resolutions setting forth the basis for their decisions in connection with facilitating an outcome in litigation.

Pinnacle Museum Tower Association v. Pinnacle Market Development (US), LLC

(2010) 187 Cal. App. 4th 24

An association sued its developer for construction defects. The association's CC&Rs as well as the individual owner's purchase and sale agreements, which were prepared by the developer and could not be modified without its consent, required binding arbitration instead of jury trial. The developer moved to compel arbitration of the case. The court held that the binding arbitration provision of the CC&Rs was not enforceable to deny a jury trial, because the CC&Rs were not an "agreement" to waive the fundamental right to a jury trial. This is true even though CC&Rs are deemed a "contract" for purposes of resolving disputes among owners and associations, and for purposes of operation of the association; but in disputes between the association and developer, the developer is the only actual "party" to the agreement. This case essentially invalidates most binding-arbitration clauses in CC&Rs for disputes with developers.

Renezder v. Emerald Bay Community Association

(2010) Not Officially Published - May Not be Cited (Not Law) - 2010 WL 428000 (Cal.App. 4 Dist.)

An association's CC&Rs prohibited the building of more than one residence per "parcel," but did not explicitly prohibit subdivision of existing parcels. Although the association had adopted an operating rule to prohibit subdivision for additional construction, the association allowed one owner to subdivide because the CC&Rs simply did not prohibit it. Years later, another owner attempted to

subdivide and the association determined that it could not stop the owner for the same reason as before. On this basis, the association elected to rescind its rule. Certain members sued the association claiming the CC&Rs could be interpreted to prohibit subdivision. Other members joined with the association in opposing the lawsuit. The trial court held that the CC&Rs did not prohibit subdivision and that the rule was validly rescinded and thus awarded the association and members who joined its defense attorneys' fees. On appeal, the court determined that even though the subdivision issue was rendered moot by a recent amendment of the CC&Rs, the entire issue could still be challenged because the award of attorney's fees was disputed. While ultimately upheld the award of attorney's fees to both the association and the intervening members as prevailing parties, this case is an excellent example of how attorney's fees can continue to drive a case even after judgment, and also shows there are limitations on attorney fee awards where multiple parties are involved. Without such limitations, every member could potentially join a lawsuit on the prevailing side, which could result in virtually unlimited attorney fee awards.

Turner v. Vista Pointe Ridge Homeowners Association

(2009) 180 Cal. App. 4th 676

An association was sued by an owner (Turner) over its denial of an architectural variance, among other issues. The association, on the basis of earlier legal decisions, claimed its architectural review decisions are protected as "free speech," and filed an anti-SLAPP motion to dismiss the claim. Despite the fact that many prior cases held that statements in an association newsletter concerning management of the association were "free speech" and similarly that because architectural policies were a matter of public interest, statements made by an association while defending its policies were also protected as "free speech" and neither could constitute libel, the court determined that the architectural dispute in this case was not a "public issue." Consequently, the association's actions and statements were not protected as "free speech." This case shows that there are limits on the "free speech" protection for an association's architectural decisions.

Villa Europa Homeowners Association v. The Superior Court of San Diego County

(2010) Not Officially Published - May Not be Cited (Not Law) - 2010 WL 1619306 (Cal.App. 4 Dist.)

An association was sued by one of its directors as a result of water intrusion into the director's unit. While engaged in the discovery process, the director obtained a court order to "inspect and copy all books, records and documents" of the association under Corporations Code Section 8334 (which provides a director's right to unfettered access to association records). Soon thereafter, the membership voted to recall the entire board. The director obtained a court order to delay the effect of the recall vote. The court held that the lower court had no jurisdiction to deny a valid vote of the members, and further held that once the director was removed by the recall vote, her petition to inspect documents under Section 8334 was moot. This case confirms that courts will not interfere with

valid member votes. In addition, a board member's right to inspection of association records must be respected even when the director is involved in litigation against their association.

Worldmark, The Club v. Wyndham Resort Development Corporation

(2010) 2010 WL 3312607 (Cal. App. 3 Dist.)

A nonprofit mutual benefit corporation was alleged to engage in business practices which decreased the value of its "credits" (i.e., memberships). A member prepared a petition with proposals to address this issue during a membership meeting, but the board refused to distribute the petition via email. The member then invoked the right to inspect and copy certain records - including the names, addresses, telephone numbers, voting rights, and email addresses - of all of its 260,000 members. Corporations Code Section 8330 states that a member of a mutual benefit corporation has the right to inspect and copy the names, addresses and voting rights of the entire membership, and a right to obtain from the secretary a membership list with the same information. The corporation refused to disclose the email addresses, instead offering to contact the entire membership and send correspondence at the member's expense as a "reasonable alternative" under Section 8330. The court ultimately held that the term "address" as used in Section 8330 includes email addresses, and further held that the corporation's offer to mail correspondence on the member's behalf was not a "reasonable alternative" to disclosing the email addresses of its members. This case provides a strong reminder that associations, which are also subject to Section 8330, may be required to disclose contact information, including email addresses (if maintained by the association), in response to an owner's request for the membership list.