



## **2011/2012 NEW LAW UPDATE**

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 341 (Chesbro) Solid waste recycling.

Signed into law and chaptered October 7, 2011

This bill pertains to municipal recycling and solid waste programs. Existing law requires implementation of community and regional waste management plans, including waste reduction, recycling, and composting components. With certain exceptions, half of all solid waste must be diverted from landfills through such programs. This bill expands this to require that not less than 75% of all solid waste generated be source reduced, recycled, or composted by 2020.

AB 771 (Butler) Common interest developments: requests for documents; fees.

Signed into law and chaptered September 1, 2011.

This bill pertains to document disclosures by associations in connection with purchase and sale of the separate interests. Existing law requires owners in a common interest development to provide certain documents to prospective purchasers (including copies of the governing documents, association financial disclosures, etc.), and requires a homeowners' association to provide these documents to the owner within 10 days of request; the association is allowed to charge fees for providing the documents limited to the actual costs to prepare and reproduce the documents.

This bill specifically requires that the owner also provide, if requested by the prospective buyer, copies of minutes of the meetings of the board of directors (excluding executive session minutes) for the previous year. Again, the association is permitted to recover the actual cost for preparing and delivering the documents; however, additional fees for electronic delivery are prohibited. The law also requires the association to provide a form for billing disclosures, which is set forth in new Civil Code Section 1368.2.

**AB 818 (Blumenfeld) Recycling in multifamily dwellings: "Renters' Right to Recycle Act"**  
Signed into law and chaptered September 7, 2011.

This bill pertains to recycling in multifamily residential buildings, with the goal of extending the same degree of recycling services to apartment complexes as are now available to communities of single family dwellings. It requires "an owner of a multifamily dwelling" to arrange for recycling services consistent with local ordinances. While it does not specifically apply to common interest developments, it defines "multifamily dwelling" as "as residential facility that consists of five or more living units." Therefore, although this is titled a "renters' rights" law, there exists the potential that it, or a similar bill, may eventually be applied to condominium developments as well. The law does not require that recycling services be provided where there is inadequate physical space for recycling containers.

**AB 1211 (Silva) Nonprofit corporations: Interested/Common Directors; Quorum; Action**  
Signed into law and chaptered October 3, 2011.

This bill pertains to quorum requirements for boards of directors of nonprofit corporations, and amends numerous provisions of the Corporations Code. Under existing law, quorums requirements may be excused due to the death of a director, and a board may take action by unanimous written consent without the consent of an "interested" director. This bill would also provide that the unavailability by abstention of an "interested" director, or death of a director, also excuses such a director from a quorum requirement. This law also applies many rules that now apply to an "interested director" to any director who also holds a directorship in another organization with which the corporation is doing business (i.e., a "common director").

**SB 150 (Correa) Common interest developments: Rental prohibitions**  
Signed into law and chaptered July 8, 2011

Effective January 1, 2012, this law adds new Civil Code Section 1360.2 to govern rental prohibitions within residential common interest developments, and requires certain disclosures. This law provides that no residential owner shall be subject to any provision of the governing documents that "prohibits the rental or leasing of any of the separate interests", unless that provision was in effect at the time of acquiring title. Thus, starting January 1, 2012, any newly adopted restrictions having the effect of prohibiting renting or leasing will be unenforceable against current owners, and only enforceable against owners taking title thereafter. However, the law is vague in many of its terms, and as a result it is not clear whether a "condition" to, or "restriction" upon, rentals will constitute a "prohibition" on renting or leasing. As a result, many provisions, such as a limit on the number of rentals within a community, a requirement that leases be in writing, or minimum rental terms, could be subject to legal challenge by owners. An owner may expressly consent to the restriction, however.

SB 209 (Corbett) Electric vehicle charging stations.  
Signed into law and chaptered July 25, 2011

Effective January 1, 2012, this law adds new Civil Code Section 1353.9 to govern installation of electric vehicle charging stations ("EVC's") within common interest developments. The new law provides that any covenant, condition, or restriction that "effectively prohibits or restricts" installation of an EVC is void and unenforceable. The law permits associations to impose reasonable restrictions, such as architectural guidelines, placing the "burden of proof" on the association to show that any restriction does "not significantly increase the cost of the station or significantly decrease its efficiency or specified performance." If the EVC is to be installed upon common area or exclusive use common area, the owner is required to bear all costs for installation, maintenance and repairs, as well as the cost of electricity, and to bear costs of any damage. The EVC station (which may supply one or more electric vehicles) must meet all applicable safety standards and all local permitting requirements. The owner wishing to install an EVC on common areas must also carry liability insurance to protect the association. The association's approval process must move quickly: except for "reasonable" delays for information gathering, a request not denied within 60 days is deemed approved by law. An association that violates this law faces damages and a \$1,000.00 civil penalty, as well as attorney's fees.

The homeowner (and all successors in title) will be liable - whether or not agreed in writing - for all costs and damages arising from installation, operation, maintenance, repair, and removal or replacement of the EVC, as well as all costs of electricity. The homeowner (and successors in title) is also legally required to maintain a one million dollar umbrella liability policy, naming the association as additional insured, in perpetuity.

SB 221 (Simitian) Small claims court: jurisdictional amounts increased.  
Signed into law and chaptered July 8, 2011

This law increases the size of a monetary claim which may be pursued in small claims court. Existing law provides that small claims court jurisdiction includes any action with a monetary damage claim not exceeding \$7,500 for individual plaintiffs, with some exceptions. This law increases that limit to \$10,000, again with some exceptions. The law also allows the small claims court jurisdiction for actions brought for personal injury damages resulting from automobile accidents, not to exceed \$7,500, and only where the defendant is covered by an insurance policy that includes a duty to defend; this provision sunsets on January 1, 2015 if not extended. The bill would also delete a duplicate code section.

**SB 563 (DeSaulnier et al.) Board action between meetings prohibited.**

Signed into law and chaptered September 6, 2011

This new law amends multiple provisions of the Davis-Stirling Common Interest Development Act ("Act"), including Civil Code Sections 1363, 1363.05, and 1365.2 effective January 1, 2012. This law significantly modifies meeting requirements for community association boards, and modifies the notice and document disclosures required with respect to meetings held in executive session. The new law states, in short: (1) that boards cannot conduct business outside of meetings, except in emergency circumstances; and (2) that boards must provide notice, along with an agenda, for all meetings in executive session, except emergency meetings. Thus, starting January 1, 2012, boards generally may not discuss any item of business, whether by meeting personally or via teleconference, email, or otherwise, unless the membership has been provided notice (with an agenda) for that discussion at least two days in advance. However, boards need no longer meet in open session merely to "adjourn" to executive session - boards may now meet solely in executive session upon two days' written notice to the membership. Boards may discuss and act on association business via email, without notice to the membership, only if all board members unanimously consent to the emergency meeting, and the written consents must be filed with the minutes of meetings of the board.

The new law also defines the phrase "item of business," and requires associations to provide, upon request, agendas for meetings held in executive session to the same extent as agendas for open meetings. Finally, the new law deletes a portion of the Act which currently permits a board to take action on any "proper" item of business at a meeting, if not specified on the agenda.

**SB 837 (Blakeslee) Real property disclosures.**

Signed into law and chaptered July 1, 2011

This bill revises the form disclosures regarding water-conserving plumbing fixtures, which must be disclosed upon transfer and sale of real property. Existing law requires that a seller or transferor of real property (improved with one to 4 dwellings) provide the purchaser with a form disclosure of certain real property characteristics; this law revises the form for disclosure to include whether or not the property is equipped with water-conserving plumbing fixtures.

<b>LEGISLATION VETOED, DIED IN COMMITTEE OR PENDING</b>
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SB 759 (Lieu) Artificial turf.

Vetoed by the governor July 7, 2011.

This bill, which was vetoed earlier this year but is again under “consideration,” would void any provision of the governing documents of a common interest development if that provision prohibits, or includes conditions that have the effect of prohibiting, the use of artificial turf or any other synthetic surface that resembles grass. This bill would not prohibit an association from enforcing reasonable landscape rules and regulations established in governing documents, including design standards and quality standards for the installation of artificial turf or other synthetic grass, so long as the regulations do not prohibit the products. It is not yet fully known what environmental impacts or benefits would flow from use of artificial turf or similar surfaces, such as under fire conditions or when affected by other substances such as household or industrial chemicals.

A similar bill (AB 1793) failed last year, vetoed by Governor Schwarzenegger despite widespread support, having passed on the assembly floor by a vote of 69-1. The existing power to amend governing documents for such purposes was the primary basis for the Governor’s veto. However, California’s water crisis continues year after year, and as the population grows, this type of law may be inevitable if not resubmitted at this time. If this or a similar measure passes, boards and architectural and landscape committees must become educated about these measures, just as they must now with the water-efficient landscape laws and other laws that may not be well-known among the general public.

AB 19 (Fong) Water meters in multiunit structures.

Status: On the 2 year calendar

Since 1992, the Water Measurement Law has required, as a condition of new water service, installation of a water meter. That law also requires urban water suppliers to install water meters and to charge users based on the measured volume of water in accordance with a timetable. Beginning in 2014, this bill would also require, for every newly constructed multi-unit residential or mixed-use structure--including those within a common interest development--a water meter or submeter for each individual dwelling unit as a condition of new water service.

**AB 20 (Halderman) Construction defect actions: attorneys.**

Status: On the 2 year calendar.

Existing law, applicable to residences originally sold on or after January 1, 2003, specifies certain rights regarding actions for construction defects, requires associations to follow certain procedures when filing a claim for defects, and requires sellers of real property to disclose facts concerning defect actions. This bill would require an attorney working on an existing or potential construction defect action to provide written information to the client, such as a description of the duty to disclose. Failure of any attorney to comply with this requirement would be cause for discipline by the State Bar.

**AB 249 (Berryhill) Unlicensed Contractors**

Status: In committee.

This bill would expand liability for unlicensed contractors. Existing law requires the licensure and regulation of contractors by the Contractors' State License Board, and authorizes legal actions against unlicensed contractors for recovery of all compensation paid for any work or contract. This bill would increase the recovery for a person who sues an unlicensed contractor for residential work to recover double the compensation paid for those services. For lawsuits regarding work on property other than residential property, a successful plaintiff would recover all compensation paid to the unlicensed contractor for any work or contract during the time the contractor was not licensed.

**AB 265 (Ammiano) Tenancies: unlawful detainer.**

Status: On the 2 year calendar.

This bill would allow a residential tenant, who has defaulted in the payment of rent and received 3 days' notice to vacate, to redeem the tenancy and continue in lawful possession (essentially nullifying the breach of his or her lease) by paying the owner the amount of delinquent rent and any reasonable court costs and attorney's fees incurred. Existing law currently authorizes courts to relieve a tenant from forfeiture of a lease in cases of hardship.

**AB 275 (Solorio) Rainwater Capture Act of 2011.**

Vetoed by Governor October 19, 2011

This bill would have allowed landowners to install, maintain, and operate rain barrel and rainwater capture systems for specified purposes, subject to certain requirements. Local agencies would have been required to notify public water of any permitting program for rainwater capture systems, including a rainwater capture system connected to the public water system. This bill would also have allowed a licensed landscape contractor to construct a rainwater capture system solely for irrigation, so

long as components are not attached to a structure. This is an example of environmental legislation that may recur, and eventually be enacted, in response to future water crises confronting California.

AB 317 (Calderon) Mobilehomes: exemption from rent control ordinances.

Status: On the 2 year calendar.

This bill pertains to the application of local rent control ordinances and initiatives to mobilehome spaces, which are not the sole residence of the owner. Existing law exempts a rental agreement for a space within a mobilehome park from any local rent control ordinance, rule, regulation, or initiative, if the space is not the principal residence, as defined, of the owner, except in certain circumstances. This bill would revise the exemptions from local rent control, to make the exemptions applicable when the mobilehome space is not the *sole* residence of the mobilehome owner. The bill would also specify the evidence which a mobilehome park may rely upon to determine whether a mobilehome space is the owner's sole residence, including, evidence that the owner rents, leases, occupies, or has an ownership interest in another residence.

AB 805 and 806: Revision of Davis-Stirling Common Interest Development Act.

Status: On the 2 year calendar

These companion bills would comprehensively reorganize and recodify the Davis-Stirling Common Interest Development Act in 2014. The bill would also revise provisions regarding notices and their delivery, standardize terminology, establish guidelines on the relative authority of governing documents, and establish a single procedure for amendment of a common interest declaration. The bill would guarantee the right of an owner to make changes to the separate interest in a common interest development other than a condominium project, and would establish a list of conflicts of interest that may disqualify directors from voting on certain matters. The bill would also revise election and voting provisions, establish standards for recordkeeping, and broaden the requirement that liens recorded in error be released. Altogether, this represents a comprehensive and fundamental restructuring of the Davis-Stirling Act; it is now on the two-year calendar for consideration in 2012.

AB 929 (Wieckowski) Debtor exemptions: bankruptcy.

Status: In committee, suspended.

This bill has some effect on collection of money judgments, adjusting the value of property of a judgment debtor which is exempt from seizure or sale and modifying some of the exemptions available to judgment debtors. Under existing law, certain property of a debtor is exempt from enforcement of a money judgment. Every three years, the Judicial Council adjusts the value of these exemptions based on the California Consumer Price Index. This bill would revise those exemptions to increase the

exemption available for motor vehicles and other personal property such as jewelry, heirlooms, and tools used in the debtor's trade or profession. This bill would also modify the exemptions relating to household furnishings, life insurance policies, wrongful death and personal injury cases, unemployment payments, and cemetery plots and would add exemptions for workers' compensation benefits, public aid and relocation benefits, and education financing.

AB 1321 (Wieckowski) Mortgages and deeds of trust: recordation.

Status: On the 2 year calendar

This bill pertains to the deadlines and procedures for recording documents relating to mortgages, deeds of trust, and assignments thereof. This bill would specifically require that all such documents be recorded within 30 days of the execution of the document creating or assigning these security interests in real property, and would also require that evidence of the promissory note be attached to the document at the time of recordation.

SB 412 (Vargas) Mortgages: deficiency judgments.

Status: On the 2 year calendar

This bill is a hardship-relief measure pertaining to deficiency judgments in foreclosure and short-sale situations. Under this bill, in specified cases, a voluntary short sale with written consent of the holder of the first mortgage or deed of trust would be treated and determined as if the dwelling had been sold through foreclosure under a power of sale, as specified. The bill includes exceptions for certain parties, such as a trustor or mortgagor that is a limited liability company or partnership or if a public utility, and would prohibit any waiver of these provisions as against public policy.

SB 561 (Corbett) Third party collection of delinquent assessments.

Status: On the 2 year calendar

This bill would prohibit an association from assigning or pledging the association's right to collect payments or assessments to a third party, or to contract with a third party to collect delinquent assessments, unless that party agrees to comply with the same requirements imposed on the association. The bill would also prohibit such a third party from acting as a trustee in a foreclosure proceeding, and prohibit and void any waiver of an owner's rights or an association's responsibilities as contrary to public policy.

SB 890 (Leno) Debt buyers.

Status: On the 2 year calendar

This bill would apply many of the regulations applicable to debt collectors, to debt buyers. Under existing state and federal law, debt collectors (i.e., companies engaged in collection on behalf of the owners of a debt) are prohibited from engaging in threats or harassment, and from certain conduct related to debt that has been discharged in bankruptcy. This bill would similarly regulate the activities of a person or entity that has bought consumer debt. The bill would prohibit a debt buyer from attempting in writing to collect a consumer debt without evidence that the debt buyer is the sole owner of the debt, the amount of the debt, and the name of the creditor at the time the debt was charged off, and would require the debt buyer to provide this evidence to the debtor, without charge, within 15 days of a request. The bill would require all settlement agreements with a debt buyer to be in writing and would require a debt buyer to provide a receipt for payments or statement containing certain information. This bill contains many related provisions relating to initiating suit to collect such debts.

<b>CASE LAW - PUBLISHED &amp; UNPUBLISHED</b>
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Anders v Superior Court  
(2011) 121 Cal.Rptr.3d 465

Home builder's decision to enforce contractual pre-litigation procedures for home purchasers' construction defect claims precluded builder from compelling purchasers to participate in statutory, non-adversarial pre-litigation procedures, even though the trial court found the contractual pre-litigation procedures to be unconscionable and unenforceable, where the sales agreements for the homes elected alternative procedures in place of statutory procedures.

Cabrera v. Alam  
(2011) 197 Cal.App.4th 1077

In a defamation lawsuit arising from a board election campaign, the Court held that a homeowners' association meeting constituted a "public forum"; board member's alleged statements that past president stole money from the association and defrauded it concerned an issue of public interest; past president was a limited purpose public figure; and the past president produced no evidence of malice. As a result, individuals considered public figures or who place themselves into the public forum may be required to prove actual malice or endure statements that may otherwise be considered

slander. The Court found that the board members statements were protected as a matter of public interest and were made in a public forum.

Canterbury Woods Homeowners Association v Hernandez  
(December 2010) Not Officially Published - May Not be Cited (Not Law) - 2010 WL 5125504

The Court ruled that a breach of fiduciary duty by an association board member did not relieve a former property owner from his obligation to pay common area assessments.

Cassel v Superior Court  
(2011) 51 Cal.4th 113

California Supreme Court held that attorney-client discussions related to mediation were protected by law of mediation confidentiality and, therefore, were neither discoverable nor admissible in court – not even for purposes of proving claim of legal malpractice against attorney.

Coronado Cays Homeowners Association v. City of Coronado  
(2011) 123 Cal.Rptr.3d 90:

An association was granted declaratory relief in an action where there was no actual controversy between the parties. The Court found that the city, rather than the association, was responsible for maintaining a berm that laterally supported bulkheads located on property within the association. The bulkheads were adjacent to and acted as a retaining wall for a waterway belonging to the city.

Country Side Villas Homeowners Association v. Ivie  
(2011) 123 Cal.Rptr.3d 251

In an anti-SLAPP case, the court observed that an association's decisions were a matter of public interest, such that its decisions impacted a large number of people. Public interest within the meaning of an anti-SLAPP motion has been broadly construed to include not only governmental matters, but also private conduct that impacts a broad segment of society or a community in a manner similar to that of a governmental entity.

Diamond Heights Village Assn. v. Financial Freedom Senior Funding Corp.  
(2011) 126 Cal.Rptr.3d 673

Association successfully sued homeowners and trust deed beneficiary for foreclosure of a lien, and for fraudulent transfer, conspiracy, breach of contract, and injunctive relief. The Court found that the association's foreclosure judgment against

homeowners was not secured, even though it was enforceable, because the assessment lien merged into the judgment; the judgment itself was not recorded and there was no evidence that a levy occurred to create an execution lien. However, the trial court could not void the trust deed beneficiary's interest; judgment was found in beneficiary's favor, but the beneficiary was not entitled to recover attorney fees under the CC&Rs. As a result, the only way to secure an interest in the unit subject to the assessment lien is by recording an abstract of judgment.

Discovery at Cortez Hill Homeowners Association v. Noble  
(2010) Not Officially Published - May Not be Cited (Not Law) - No. D056397

A California appeals court overturned a trial court ruling that an association was entitled to a mandatory preliminary injunction to repair a plumbing leak in a residential unit because the association failed to show that it would suffer irreparable harm. The California Supreme Court has held that a mandatory injunction is not permitted except in clear and extreme cases where a showing is made that irreparable injury or interim harm will result unless an injunction is issued pending adjudication of the merits.

Discovery Bay Property Owners Association, Inc., v. Di Fate  
(2010) Not Officially Published - May Not be Cited (Not Law) - 2010 WL 3029040

Association claimed that homeowner's act of installing new driveway curb cuts violated the CC&Rs, and filed suit to enforce the CC&Rs. The trial court ruled that the CC&Rs did not apply to the sidewalk area and entered judgment in favor of the owner, and denied attorney fees as it had found the CC&Rs inapplicable. The Court of Appeal reversed the ruling as to the attorney fees, and required that attorney fees be awarded to the homeowner. Thus, even if the CC&Rs do not actually apply, if a lawsuit purports to enforce the CC&Rs, the prevailing party may be entitled to attorney fees.

Dover Village Association v. Jennison  
(2010) 191 Cal.App.4th 123

Condominium association sued unit owner, alleging that the owner was responsible for costs of repairing a sewer pipe located fifty feet outside the unit boundaries, on the grounds that the pipe was "exclusive use common area." The court held that the pipe was not an exclusive use common area appurtenant to unit; the CC&Rs defined only garage and patio areas, but not sewer pipes, as exclusive use common areas. The Court observed that the pipe was one piece of a system of interconnected sewer piping that was connected to every other piece of the system, not a self-contained system exclusively serving unit. Therefore, the Court concluded that the association, and not the unit owner, was responsible for costs of repairing the pipe.

Fridman v. Beach Crest Villas Homeowners Association  
(2010) Not Officially Published - May Not be Cited (Not Law) - 2010 WL 3028945:

To resolve litigation between homeowner and association regarding CC&Rs enforcement, the parties stipulated to binding arbitration. The arbitrator determined that neither party had proven its causes of action, but nonetheless found homeowners to be the prevailing party and awarded attorney fees. The association appealed the attorney fee award, but the Court of Appeal determined that the right to appeal was waived through the stipulation to arbitrate.

Iversen v. California Village  
(2011) 193 Cal.App.4th 951

Association hired an independent contractor to service air conditioner systems, but the contractor fell from a ladder and was injured. Contractor sued the association for premises liability and for "negligence per se," alleging the ladder failed to meet Cal-OHSA regulations. The court found that Cal-OSHA regulations do not apply to an independent contractor and therefore cannot be used to establish "negligence per se;" Cal-OHSA regulations are designed to ensure that *employers* provide a safe place of employment for *employees*. Thus, to invoke Cal-OHSA regulations, an employment relationship must be established, but the court observed that there is no authority holding that Cal-OHSA is applicable to independent contractors.

Lakeshore View Homeowners' Association v. Tu  
(2010) Not Officially Published - May Not be Cited (Not Law) - 2010 WL 3232245

The Court found that a homeowner's failure to ask for a jury trial was a waiver of that right, therefore the trial court's denial of a jury trial was not in error.

Schuman v. Ignatin  
(2010) 191 Cal. App. 4th 255

Pursuant to Code of Civil Procedure, the four year statute of limitations barred a claim to challenge the validity of an amendment made to CC&Rs. Legal challenges regarding the procedure to adopt amendments to recorded CC&Rs must be brought within four years of recording the amendment.

Sui v Price  
(2011) 196 Cal.App.4th 933

The Court held an association rule prohibiting inoperable and disabled vehicles from parking spaces was reasonable, and did not discriminate against resident, even if he was the only homeowner with a disabled vehicle at that time because the parking

rule did not single out the handicapped resident, but was equally applicable to all homeowners. The Court observed that the CC&Rs "should be enforced unless they are wholly arbitrary, violate a fundamental public policy, or impose a burden on the use of affected land that far outweighs any benefit." The Court reasoned that the rule applied to all homeowners, and association was perfectly reasonable in prohibiting an unsightly intrusion upon the aesthetics of their common interest development. Therefore, the Court extended this test for reasonableness to operating rules. As a result, the test for reasonableness for an operating rule (i.e. in the Rules and Regulations) should be the same as the test of reasonableness of a provision in the CC&Rs.

Telford v. Sagewood Homeowners Association  
(2010) Not Officially Published - May Not be Cited (Not Law) - 2010 WL 4619986:

Homeowners association breached its fiduciary duty to its membership by approving construction of improvements that violated architectural guidelines and failing to monitor the construction process. Homeowners sued association and another homeowner, who had begun construction on the exterior of his unit without prior approval from the architectural committee. The Court found that the association had a duty to ensure the construction project was carried out in compliance with the governing documents, and so as not to amount to a nuisance. Furthermore, the Court observed that the association had a duty to undertake a reasonable investigation into complaints that a homeowner was violating the CC&Rs and to determine, in good faith, whether a remedy was required. The Court held the association acted in bad faith for failing to enforce applicable provisions of the CC&Rs.

Tesoro Del Valle Master Homeowners Ass'n v. Griffin  
(Oct. 2011) 2011 WL 5142962 ( – Cal.Rptr.3d –)

Association sued homeowner for unauthorized installation of solar panels in their yard, contrary to board and architectural committee denials. The architectural application the homeowners submitted was incomplete, and although the rejection letter was received after the specified deadline, the jury and the Court of Appeal found that the Association had complied with the CC&Rs by responding within the deadline. Further, the Court held that whether a restriction is "reasonable" or not is to be determined by the jury, and is not a pure question of law. The Court extensively discusses the issue of "reasonable restrictions" on solar energy systems installed pursuant to *Civil Code* Section 714, and concludes that purely aesthetic restrictions are valid and enforceable.

Villa Vicenza Homeowners Association v. Nobel Court Development  
(2010) 110 Cal.Rptr.3d 149

The Court observed that CC&Rs were not an effective means of obtaining an

agreement to arbitrate a homeowners association's construction defect claims against a developer. The Court found that the recorded CC&Rs, standing alone, were not a contract between the developer and the association, which only came into existence after the CC&Rs were recorded, and thus no showing that the association entered into a binding arbitration agreement.

## **FEDERAL CASE LAW**

Astralis Condo. Assn. v Secretary U.S. Dept. of Housing  
620 F.3d 62 (2010):

United States Appellate Court found that an association discriminated against unit owners, based on their handicaps, in violation of Fair Housing Amendments Act (FHAA), by denying unit owners designated handicapped parking spaces. Federal law requires associations to provide reasonable accommodations to disabled persons. As a result, condominium statutes do not trump Fair Housing Acts.

Fair Housing Center of the Greater Palm Beaches, Inc. v. The Shutters Condominium Association  
389 Fed.Appx. 952 (2010) (UNPUBLISHED OPINION)

A condominium owner's daughter advertised her unit for rental, but specified "no pets or children." The association's CC&Rs prohibited minor children. Advertisement was discovered by civil rights organization, who filed charges with Federal and State equal opportunity agencies and filed federal action against association, its president, condominium owner and her daughter, for discrimination against familial status. The State agency found a violation of the Fair Housing Act ("FHA"). The case against the president was dismissed, and the jury found that neither the association nor the owner had violated FHA, because no evidence showed that any person had either responded to the advertisement nor been denied housing based on the "no children" restriction. The Court of Appeals refused to grant a new trial to the civil rights organization.

Hawn v. Shoreline Towers Phase I Condominium Association, Inc.  
347 Fed.Appx. 464 (2009)

A condominium owner kept a puppy in violation of the association's "no pets" regulation, and claimed the puppy was a service animal necessary for physical and psychological injury and limited mobility. The owner provided a service animal registration and letters from his psychologist and chiropractor in support of his request for an exemption from the policy. The association refused to grant an exemption, and the local civil rights agency found that association had discriminated against him. The Court found that the "no pets policy" did not violate state or federal fair housing acts. The Court observed that the association could not have actually known of owner's

disability and the necessity of a service animal, and that association did not discriminate by requesting further documentation to provide grounds for an exemption. Furthermore, the court reasoned that there was no evidence of discriminatory intent or impact from the association posting the "No Animals Allowed" sign.

Madura v. Lakebridge Condominium Association, Inc.  
382 Fed.Appx. 862 (2010):

The 11th Circuit held that an association was not a debt collector subject to the Fair Debt Collection Practices Act.