

BAY AREA PROPERTY SERVICES  
BOARD MEMBER SEMINAR  
October 22, 2016

**NEW LAWS THAT AFFECT HOAS**

Michael J. Hughes, Esq.

**HGC** | HUGHES GILL  
COCHRANE P.C.  
ATTORNEYS AT LAW

# INTRODUCTION

Laws come from two sources

- Elected legislative bodies
  - Federal – Congress
  - State legislature
  - County Board of Supervisors
  - City Council/Supervisor
- Courts
  - Appellate decision
  - Supreme Court
    - Federal
    - State
  - Courts of Appeal
    - Federal
    - State
  - County Superior Courts
    - Decisions not published
    - Decisions not binding

# **SACRAMENTO FOLLIES FOR 2017**

**Five new statutes**

**SB 918 – Member Contact Information**

**SB 944 “Omnibus”**

**SB1431 – Access to Gated Communities**

**AB 1963 – Extend Calderon**

**AB 2362 – Do It Yourself Pesticides**

# SENATE BILL 918

## Annual Reporting of Owner Contact Information to Association

- Each year owners shall provide their association in writing:  
Address or addresses to which association notices are to be sent

Alternate or secondary address to which notices are to be sent

The name and address of legal representative, power of attorney or other person to contact *in the event of owners' extended absence*

Whether the property is

- Owner-occupied
- Rented out
- Developed but vacant
- Parcel is undeveloped

# SENATE BILL 918 (cont.)

- The association shall solicit the above from each owner annually
  - 30 days prior to annual disclosures, i.e. October
- If owner does not comply, notices shall be delivered to the property address within the association

# **SENATE BILL 944 “OMNIBUS”**

“Omnibus” means everything that we forgot to include in other laws

- This law changes the State Contractors License Law, the Mobilehome Residency Law, the California Fair Employment and Housing Act, Planning and Zoning Law, California Building Standards Law, and laws pertaining to Water Closets and Urinals, among other things

# SENATE BILL 944 “OMNIBUS” (cont.)

- Impact on Davis-Stirling is minimal
  - Clarifies alternative procedures for approving, certifying or recording an amendment to CC&Rs
  - Changes an erroneous statutory reference to the definition of “Major Component for Reserve Funding Purposes”
  - Non-substantive changes to restrictions on clotheslines or drying racks
- “Nothing of interest here folks, move along”

# SENATE BILL 1431

## Process server access to gated communities

- Existing law requires that licensed process servers be given access to gated communities
  - For a limited period of time
  - In order to serve subpoenas/complaints
- This law expands rights of access to
  - The Attorney General's office
  - County Counsel
  - City Attorney
  - District Attorney
  - Public Defender

Must show proper identification

# ASSEMBLY BILL 1963

Extends “sunset” of calderon act

- The Calderon Act (Civil Code §6000 – 6150) established requirements prior to suing developers for construction defects
- Preceded SB800 but was not superseded by SB800
- Current expiration date of July 1, 2017, has been extended to July 1, 2024, and July 1, 2025 (repeal date)
- Construction defect claims should follow both “Calderon” and SB800

# ASSEMBLY BILL 2362

(adds new section 4777 to Davis-Stirling)

## Do It Yourself Pesticide Application

- CID associations that apply pesticides to separate interests or common areas using a non-licensed pest control operator must provide written notice to owners and/or residents which contain the following:
  - The pest or pests to be controlled
  - The name and brand of the pesticide to be used
  - The following statement:

# ASSEMBLY BILL 2362

(cont.)

CAUTION – PESTICIDES ARE TOXIC CHEMICALS. California Department of Pesticide Regulation and the United States Environmental Protection Agency allow the unlicensed use of certain pesticides based on existing scientific evidence that there are no appreciable risks if proper use conditions are followed or that the risks are outweighed by the benefits. The degree of risk depends upon the degree of exposure, so exposure should be minimized.

If within 24 hours following application of a pesticide, a person experiences symptoms similar to common seasonal illness comparable to influenza, the person should contact a physician, appropriate licensed healthcare provider, or the California Poison Control System (1-800-222-1222).

For further information, contact any of the following: For Health Questions – The County Health Department (telephone number) and for The Regulatory Information – The Department of Pesticide Regulation (916-324-4100).

# ASSEMBLY BILL 2362

(cont.)

- The approximate date, time and frequency of the application
- The following notification: “The approximate date, time and frequency of this pesticide application is subject to change.”
- This notice must be provided at least 48 hours prior to the application and
  - The above notice must be provided to owners and tenants
- The notice must also be posted in a conspicuous place in the common area

# ASSEMBLY BILL 2362

(cont.)

- The required notices shall be provided by  
First Class Mail or  
Personal Delivery to an occupant 18 years or older or  
Email if an email address has been provided by the  
resident
- If the pest poses an immediate threat, spraying can  
proceed without notice as long as notice is posted within  
an hour of the application
- Residents can agree orally to immediate treatment or  
treatments sooner than 48 hours
- The notice form should be attached to minutes of the  
next meeting following the application

# ASSOCIATION RECOVERY OF ATTORNEYS' FEES

*Rancho Mirage Country Club Homeowners Association v. Hazel Baker*, August 9, 2016

- Association and owner mediated dispute over ongoing architectural modifications
  - Settlement reached
- Owners breach the settlement
  - Association sues
  - Owners complete modifications acceptable to association

Dispute over who pays attorneys' fees prevents settlement
- Trial goes forward and association awarded attorneys' fees
  - Owners appeal
- Appellate court confirms the award of attorneys' fees based on Civil Code §5975(c)
  - “In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorneys' fees and costs”
- Good decision. Remember, attorneys' fees are a double-edged sword.

# SCOPE OF SB800

*McMillin Albany LLC vs. Tassell, et al.*

- A group of homeowners sue builder (McMillin) for construction defects
- McMillin asked the Court to stay the litigation because owners have not yet complied with SB800
  - The Court denied the motion
  - This denial was appealed with the appellate court holding that the legislature intended all claims for construction defect in residential housing to be brought under SB800
- POINT: if you have a defect claim against your developer, follow the SB800 procedure

# ASSOCIATION IN CONTEMPT FOR BANKRUPTCY CLAIM (Federal Court)

## *Desert Pine Villas Homeowners Association vs. Kabling*

- Association filed a lien against owners for delinquent assessments
  - Owners filed Chapter 7 bankruptcy
  - Discharged June 28
- Association non-judicially foreclosed on the lien
  - For “pre-petition and discharged assessments”
- Bankruptcy Court found the association in contempt stating that the discharge prevented recovery of pre-petition obligation
- POINT: pay careful attention to assessment collection procedures involving bankruptcy and accept that obligations discharged in bankruptcy cannot be collected by the association in any fashion