IN THIS ISSUE

CACM THE Law Journal

SPRING 2018

New Deck Inspection Requirements for Homeowners Associations

Proposed California Senate Bill 721

BY RACHEL M. MILLER, ESQ. – THE MILLER LAW FIRM

On Tuesday, June 16, 2015, thirteen college students attending a birthday party were standing on the fourth-floor balcony when it suddenly collapsed, leaving six dead and severely injuring seven. The cause was attributed to severe decay of the deck's support beams, which resulted in the deck tearing off from this six-year old building. As of January 9, 2018, the Senate has passed bill entitled SB 721, which will now go to the Appropriations Committee for review (and possible revision).

SB 721 proposes to mandate substantial inspection requirements for common interest developments in all buildings containing three or more units. There, boards shall arrange for an inspection of:

1. All "exterior elevated elements"
    a. Including load-bearing components;
    b. The waterproofing elements; and
    c. Would constitute a threat to the health or safety of the occupants.
2. By using methods that allow for
    a. "Direct visual evaluation,"; and
    b. A sample of "at least 15% of each type of each exterior elevated element."
3. By "a licensed architect, licensed civil/

Continued on page 2

THE Law Journal

A Practical Review of Community Management Law

Published by
California Association of Community Managers, Inc.℠
23461 South Pointe Dr., Ste. 200 • Laguna Hills, CA 92653
949.916.2226 • 800.363.9771 • www.cacm.org

The CACM *Law Journal* is distributed four times annually to members, affiliates and supporters of the California Association of Community Managers.

New Committees, New Opportunities

At CACM, we want to bring more opportunities to a wider variety of attorney authors and manager members. A goal of the reimagining initiative is to tap into the wealth of talent and experience available throughout our membership.

Following considerable discussion with the Legal Advisory Steering Committee (LASC) members and CACM staff, we decided to create more member opportunities by dividing what was formerly known as the Legal Advisory Steering Committee into two separate committees:

The Law Journal Editorial Committee will have both manager and attorney members. This make-up will assist us in identifying the needs of manager members as journal topics are chosen. The content of each issue will address industry trends, providing managers with information, strategies and tools that they can implement as needed.

The Law Seminar Advisory Committee will include managers and attorneys who will lead the development of the annual Law Seminar & Expo by contributing ideas, driving discussions and coordinating sessions at the industry's premier event.

If you're interested in joining a CACM committee, please review the opportunities at www.cacm.org/resources.

New Deck Inspection Requirements...
Continued from page 1

structural engineer, or an individual certified as a building inspector or building official from a recognized state, national, or international association, as determined by the local jurisdiction." Your last reserve study inspection will not meet this requirement.
4. At least once every six years;
5. To be completed by January 1, 2024.

Definitions: It's Not Just for Decks

Inspectors will now have to sign-off on all of the following:

1. "Exterior elevated elements" means: balconies, decks, porches, stairways, walkways, entry structures and their supports and railings that extend beyond exterior walls of the building and that rely on wood or wood-based products for structural support of stability of the exterior elevated element;
2. "Load-bearing components" are those that extend beyond the exterior walls of the building to deliver structural loads to the building; and
3. "Associated waterproofing elements" include flashings, membranes, coatings, and sealants that protect the load-bearing components of exterior elevated elements from exposure to water and the elements.

Emergency Repairs

If the inspector determines that a building assembly poses an immediate threat to the safety of the occupants:

1. The inspection report is to be delivered to the Association within 15 days of completion of the inspection;
2. The Association shall hire a contractor to perform required preventative measures immediately; and
3. Emergency repairs would be considered an "emergency situation" as defined in California Civil Code § 5610.

Non-Emergency Repairs

Where an inspector determines there is no immediate threat to the safety of the occupants:

1. The inspection report is to be presented to the association within 45 days of the inspection.
2. The association has 120 days from receipt of the report to apply for a permit.
3. Then the association shall have 120 days to make the repairs.

Some Exceptions

1. New Buildings: If a building permit application has been submitted on or after January 1, 2019, the inspection shall occur no later than six years following issuance of a certificate of occupancy.
2. Recent Inspections: If the property was inspected within three years prior to January 1, 2019, and a report was issued, no new inspection is required for another 6 years.
3. The bill does not apply to an individual owner's separate interest.
4. The bill does not apply to planned developments.

Liability Protection Specifically for Managers

CACM fought for and obtained a mandate that although the association is responsible for complying with the requirements of this law, "nothing required herein shall be the responsibility of the association's managing agent or its employees." CACM also suggested language providing the Association an access easement

through separate interests as necessary to accomplish the required inspections and repairs.

How Much is this Inspection Going to Cost the Association?

According to a survey of independent experts, "these requirements are significant and will require on-site destructive testing of exterior elevated elements to satisfy the direct visual examination requirement of the bill. Association Boards can anticipate testing costs of $2,500-$5,000 each per deck/balcony/exterior stair, depending upon the exterior elevated element location, building finish and market-area labor rates. For example: in a five-story, 100-unit complex with 75 exclusive-use decks, four elevated common walkways, and eight exterior stairways, the anticipated cost would range between $37,500 and $75,000. This would be a recurring cost to the association every six years. This cost does not include the cost of repair and/or reconstruction in the event substandard performance and/or an immediate life and safety threat is identified."[1]

1. Steven B. Norris, PE, AIA, President, Caltech Engineering Inc., DBA A&E Construction Forensic.

ABOUT THE AUTHOR

Rachel M. Miller, Esq., is a senior partner at The Miller Law Firm. Rachel is a Vision award recipient and member of the Legal Advisory Steering Committee.

HOA Assessment Collections

How I Learned to Stop Worrying and Love the Judgment Renewal

BY MAXWELL P. SKIPWORTH, ESQ. – THE JUDGE LAW FIRM, ALC

Managers are often asked during delinquent assessment meetings, "The bank foreclosed a few months ago – is this account a write-off?" or, "The delinquent homeowners moved out a couple years ago – is there anything we can do?" and occasionally, "We got our judgment six years ago and we've not yet collected. Should we give up?" Nearly every time, the correct answer to these questions is always the same – it's too early for a write-off!

California law allows an association to bring suit to collect on delinquent assessments even after a homeowner is no longer on title, and also provides multiple avenues for collection of delinquent assessments. Under Code of Civil Procedure § 336(b), an association may bring an action for violation of a restriction, including failure to pay assessments, within five years of the unpaid assessment. To best protect the association, when possible, lawsuits for collection of delinquent assessments should be brought as a personal action against the delinquent homeowner and as a foreclosure action against the underlying property based upon a delinquent assessment lien. This ensures that the association may still pursue personal satisfaction against a delinquent, former homeowner

Continued on page 4

GUEST EDITOR'S NOTE

Please join Scott Mourer, CCAM, my manager guest editor, and I in exploring the latest information on financial issues for community associations. In this issue, community association experts distinguish the approval requirements for each type of assessment, and discuss revisiting the gold mine that may be found in older judgements. They examine whether clubhouse rental income will be lost under the new political activities bill and suggest cost-saving rules for implementing the new solar bill.

Whether navigating new collections challenges under the FDCPA or preparing for the coming balcony inspection bill, every minute of education here will pay dividends when working with your communities in the future.

Don't forget to answer the test questions online to get CEUs for recertification, and to help reinforce the subtleties of these items firmly in your mind.

Mark T. Guithues, Esq., founding partner of Community Legal Advisors Inc., provides general counsel and assessment collection services to community associations in Orange and San Diego Counties.

Continued from page 3

even following a later bank foreclosure.

As experienced community managers know, obtaining a judgment and particularly where the former homeowner is no longer on title, is only the first step in the long but successful collection process. Fortunately, a judgment is enforceable for ten years from its date of entry. Fortuitously, time and resources expended during post-judgment collections are not lost. Interest accrues at a statutorily fixed rate of 10 percent per year while a judgment remains outstanding, and an association may seek to secure the costs it incurs in enforcing a judgment simply by regularly filing memorandums of costs with court and seeking those amounts (in addition to post-judgment interest) from the judgment debtor.

At the end of its ten-year life, an association may renew the judgment for an additional ten-year period by taking affirmative steps as outlined by the Code.

During the initial ten years of judgment enforceability, a board might wonder if it is appropriate to temporarily halt collection efforts on a judgment. Before doing so, most collection professionals recommend completing an exhaustive search of a judgment debtor's assets to confirm indigence before quitting. This may involve hiring a private investigator to survey judgment debtor's assets, as well as completing a judgment debtor examination with the debtor before a court under penalty of perjury.

If a judgment debtor has no assets and the board votes to place a file on hold, the board should periodically revisit the file. How often may depend upon a variety of factors including the judgment debtor's age, profession, health, and conspicuousness. While a given debtor may have limited to no assets at any given point, especially immediately following a bank foreclosure, it is uncommon for a debtor to go a decade without acquiring any assets. In almost all cases, they will get that job, open and put money in a bank account, and even buy more real property. Associations are losing a lot of money by not revisiting these "write-offs." The interest on a judgment (10%) alone justifies it. If collected with interest, a judgment can turn out to be the best investment going!

At the end of its ten-year life, an association may renew the judgment for an additional ten-year period by taking affirmative steps as outlined by the Code. Most notably, the association must file a request with the court, inclusive of pertinent information pertaining to the judgment and collections efforts. In deciding whether to renew a judgment, the board should again consider the previously mentioned factors, including a debtor's age, profession, health, conspicuousness, and available assets. As a decade has elapsed since the market crash of 2007-2009, many boards and property managers acting on behalf of associations may find it beneficial to renew soon expiring judgments and seek advice about mining those assets.

The bottom line: Thinking assessments are not collectible forever, or because a homeowner has moved, or has lost the property to foreclosure is short-sighted. Associations have many chances to collect what was once regarded as uncollectible. That means money! Don't lose out: Ask your collection professional to tell you all the ways to pursue association money from non-payers, now and in the future!

ABOUT THE AUTHOR

Maxwell Paul Skipworth, associate attorney with The Judge Law Firm, has two years of experience in HOA and general collections law in the greater Southern California region.

Solar Energy: The Do's and Don'ts Under California's New Law

BY JEFFREY A. BEAUMONT, ESQ. & A.J. JAHANIAN, ESQ. – BEAUMONT TASHJIAN

Solar energy consumption has increased seventeen-fold since 2008, while the average cost of Solar Energy Systems ("SES's") has dropped by about fifty percent (50%) since 2010. California's new law (Assembly Bill 634) addresses SES installations within community associations. This article outlines some of the many do's and don'ts under AB 634 and how associations should handle SES installation requests.

Initially, this new law prohibits community associations from effectively banning the installation or use of an SES. Associations also cannot require other members of the association to vote or approve said installation. However, associations can enact "reasonable restrictions" that owners must comply with before installation.

What are Reasonable Restrictions?

Civil Code Section 714(b) provides that "reasonable restrictions" are those that "do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and conservation benefits." "Significantly" is defined to mean an amount exceeding ten percent of the cost of the system, but in no case more than one thousand dollars ($1,000), or decreasing the efficiency of the solar energy system by an amount exceeding ten percent, as originally specified and proposed.

This means that a board of directors has a delicate line to walk: preserving and protecting the community and the property and financial interests of all the owners, while not imposing unreasonable restrictions on an owner who seeks to install an SES.

Adopting a Solar Energy Policy: Five Reasonable Restrictions

In accordance with the governing documents, the board can and should adopt a policy with reasonable restrictions pertaining to SES's.

1. Architectural Approval: The board can require an owner to apply for approval of an SES installation from the board or the architectural committee. The board or committee should treat such applications as it would treat any architectural modification, as provided for in the governing documents. This includes rendering a decision regarding the owner's request within 45 days, or the request is deemed approved. Most notably,

Continued on page 6

CACM REGIONAL FORUMS

The Future of Fair Housing in California Associations

The New D.F.E.H. Regulations and What You Need to Know

Explore common scenarios and learn how to implement the new regulations:

- Reasonable Accommodations to Persons with Disabilities
- Requests for Assistance Animals
- Liability for Discrimination
- And more

Orange County Luncheon
May 22
11:00 am – 1:30 pm
Courtyard Santa Ana Orange County
Santa Ana

Coachella Valley Breakfast
June 5
8:30 am – 11:00 am
Bellatrix/Classic Club
Palm Desert

Register now at cacm.org

Solar Energy: The Do's and Dont's...
Continued from page 7

the board or committee also may not prohibit owners from installing an SES on the common area roof of a multi-family building in which the owner resides, or a garage or carport adjacent to the building that has been assigned to the owner for exclusive use.

2. Application Requirements: In applying for approval of a SES installation, a board can require owners to provide certain documentation in their application to ensure the installation will comply with applicable health and safety standards, such as: a) manufacturer's specification sheet of solar panels; b) a solar site survey; c) engineering drawings; and d) solar installation warranty. The solar site survey should show the placement of the system, the suitable solar roof area, and an equitable allocation amongst all owners sharing the same roof, garage or carport.
3. Owner Assurances: The board can require the installing owner to promise to meet certain requirements, including, but not limited to: a) conforming with applicable state and local ordinances, as well as the California Electrical Code, etc.; b) promising to complete the installation in a manner that will not materially harm or damage the common area, or any other individual unit or lot or exclusive-use common area; c) promising to secure the SES in a manner that will not jeopardize the safety of residents or soundness of any structure; d) agreeing to be held liable for any damage to building elements, unit or lot interiors or harm to other owners as a result of the installation; and e) agreeing to be responsible for all replacement, repair, maintenance, moving and/or removal of the SES.
4. Insurance: The board can require installing owners to have insurance coverage that meets minimum requirements, including worker's compensation with minimum coverage required by California law and contractor's general liability insurance. The board can require the owner to provide certificates of said insurance naming the owner and the association as additional insureds, prior to installation.
5. Notification Requirement: Finally, the installing owner in a multi-family building must notify each owner in the building on which the installation is going to be located.

Every association will be confronted with its own unique challenges with respect to SES installations. The key to successfully navigating AB 634 is to consult with legal counsel and discuss reasonable restrictions that will protect and preserve the association and its members.

ABOUT THE AUTHOR

Jeffrey A. Beaumont, a senior partner with Beaumont Tashjian, has devoted his practice to representing common interest developments for nearly 20 years and has offices throughout Southern California.

Distinguishing the Uses and Approval Requirements of Regular, Special and Emergency Assessments

Using assessments to accomplish major projects

BY JENNIFER M. JACOBSEN, ESQ. – BAYDALINE & JACOBSEN, LLP

Imagine you are the general manager for Montecito Vineyard Estates (the "Estates"), an age-restricted, common interest development in Montecito, California. In January 2018, Montecito is plagued by winter storms, causing mudslides on unstable hillsides that were previously stripped bare of vegetation in December 2017 by the largest wildfire in California's history. The Estates' clubhouse, built in 1980, is swept away during the event.

The Estates' general counsel is contacted to advise the board of directors regarding options to fund the rebuilding and replacement of the clubhouse. The board examines with counsel whether the building can be enlarged and upgraded to provide better amenities and improved accessibility for the community's aging residents. Discussions are had as to whether these upgrades might constitute a "capital improvement" triggering member approval under the governing documents. Financing options including bank loans and borrowing from reserves are examined. The discussion then turns to whether the project might be funded solely from increases in regular assessments and whether a special assessment might be warranted.

Counsel advises the board that under Civil Code § 5605(b), regardless of any other restrictions in the governing documents, the board may annually increase the Estates' regular assessments not more than twenty percent (20%) greater than the regular assessment for the association's preceding fiscal year without seeking

Continued on page 8

Distinguishing the Uses and Approval Requirements
Continued from page 7

approval of the membership. Additionally, counsel advises the board that they may impose special assessments in a fiscal year provided that such special assessments, in the aggregate, do not exceed five percent (5%) of the budgeted gross expenses for the Estates for that fiscal year. The board is advised by counsel that regular assessments and special assessments in excess of these thresholds require the approval of a majority of a quorum of members voting on the matter with the quorum set at more than fifty percent (50%) of the members under Civil Code § 5605(c).

The board then asks counsel if there is an "emergency" exception to these rules. Counsel advises that Civil Code § 5610 permits emergency assessments without member approval in situations where extraordinary unforeseeable expenses need to be made by the board in an expeditious manner and in situations that could not have been previously foreseen by the board when creating its budget. Counsel states that these circumstances are set forth in the statute and specifically include those times when an association must make immediate repairs to the common area due to a threat to personal safety. Thus, counsel suggests that the board's imposition of an emergency assessment would be proper for the costs necessary to clear and secure the clubhouse area for eventual reconstruction. Once the assessment is calculated, counsel indicates she will draft a board resolution to be distributed to all owners with notice of the emergency assessment to explain the circumstances surrounding the need for the assessment.

As to the actual reconstruction itself, the board decides to go out to bid and determine what the actual costs and construction timeline might look like moving forward for reconstructing the existing facility "as is" to current building codes, as well as reconstructing the facility with substantial upgrades in size and amenities. Counsel suggests that if a membership vote is required to complete the chosen project in one fiscal year, and due to the historically low turnout for quorum in director elections, the board could opt to phase the project over two or more fiscal years to remove any member approval requirement so that voter apathy cannot delay the progression of the project. Additionally, counsel suggests that the board could analyze whether combining a regular assessment increase or imposition of a special assessment with a bank loan or borrowing from reserves might ameliorate the need for a member vote on the project.

Regardless of whether member approval is required or not, counsel suggests that, as a matter of good business practices, the board engage in an active public relations campaign with the membership to get their valuable input and gauge the members' support for the chosen version of the project. As part of this campaign, counsel recommends that the board initiate a dialogue with the community highlighting the benefits of the project and the positive effect it will have on property values within the community.

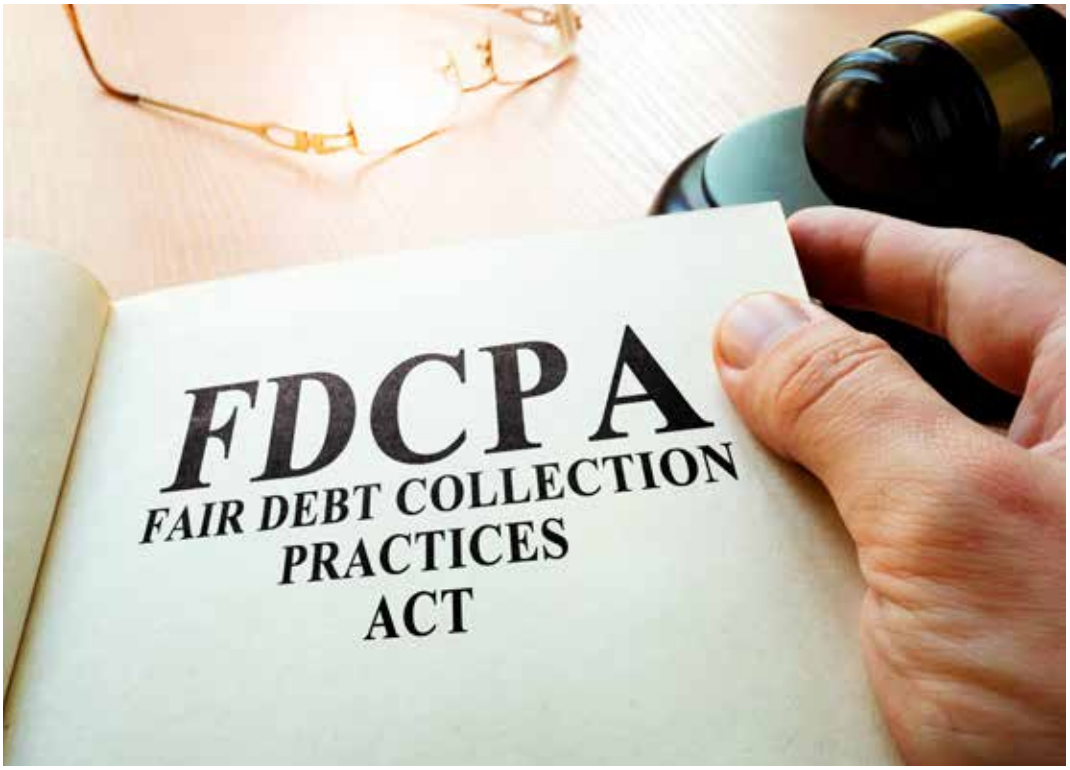
ABOUT THE AUTHOR

Jennifer Jacobsen is a founding partner of Baydaline & Jacobsen LLP and has been representing community associations as general counsel for over 25 years.

FDCPA Lessons Learned from the Ninth Circuit

Mashiri v. Epsten Grinnell & Howell, 845 F. 2d 984 (2017)

BY DEBORA M. ZUMWALT, ESQ. – EPSTEN GRINNELL & HOWELL, APC



This case began as many new assessment collection cases begin. The board of directors authorized the law firm to record a lien against a delinquent owner (the debtor). Civil Code Section 5660 requires that an association must notify the debtor in writing of certain information at least thirty days prior to recording a lien. The law firm sent such a letter to the debtor, which included a disclosure that, unless the debtor paid her assessment account in full within thirty-five days of the date of the letter, a lien would be recorded against her property.

In addition to the requirements of California's Civil Code, the Federal Fair Debt Collection Practices Act ("FDCPA") requires that, within five days of its initial communication with the debtor, the law firm must advise the debtor in writing that unless he or she disputes the validity of the debt within thirty days of receipt of the notice, the debt will be assumed valid. The notice must further advise the debtor that if within that thirty-day period the debtor notifies the debt collector that the debt is disputed, the debt collector will provide the debtor with verification of the debt. As this was the defendant law firm's initial communication to the debtor, the letter contained the pre-lien language required by the California Civil Code, and also the debt validation disclosures required by the FDCPA. The debtor argued that because the notice advised her that unless she paid her assessment account in full within thirty-five days of the date of the letter, a lien would be recorded, this overshadowed her right to dispute the debt within thirty days of receiving the notice. The lower court dismissed the debtor's claim, ruling that the statement that a lien would be recorded if payment was not received did not overshadow the debtor's right to dispute the debt. The court of appeal disagreed. Applying the "least sophisticated consumer" standard, the court of appeal determined that the debtor had stated a viable claim for violation of the FDCPA. The court of appeal stated that it is not enough to merely include the validation notice—the debtor's right to dispute the debt must be effectively conveyed to the debtor and not be overshadowed.

The court of appeal did not provide examples of how a debt collector might satisfy both the 30-day pre-lien requirements of California Civil Code Section 5660 while effectively conveying to the debtor the validation notice required by the FDCPA. In order to decrease the risk of liability, community association debt collectors may wish to consider first sending the FDCPA validation notice, and then, once the thirty-day validation period expires, if the debtor has not disputed the debt, sending the pre-lien letter required by the California Civil Code. This

> It's unfortunate that assisting association clients in enforcing the assessment obligation has become fraught with the additional risk of liability under the FDCPA.

Continued on page 10

Notice Required!

New Requirements for Community Associations Served with Mechanic's Liens

BY TIMOTHY P. FLANAGAN, ESQ. – GREEN BRYANT & FRENCH, LLP

A new law which went into effect on January 1, 2018 clarifies owner's rights concerning releasing or bonding around a mechanic's lien, but places an additional burden on community associations to provide notice of the mechanic's lien to the owners.

Contractors who provide services or materials, or perform work on a property are entitled to record a lien on the property in an effort to collect for any monies owed by the property owner. This is known as a mechanic's lien. The contractor can foreclose on the lien if they have not been paid for their services. A contractor has to meet many requirements in order for the lien to be valid, including providing a preliminary notice of lien, and a notice of the claim of lien. If the contractor does not meet the many requirements outlined in the Civil Code, then the lien may be void or voided.

An issue often arises when a community association requests that a contractor perform work on a common area. In many community associations, especially condominium projects, the common area is owned by all of the owners as tenants-in-common. Previously, it was unclear whether the contractor had to provide notice of a claim of lien to all of the individual owners within the association, or whether providing notice to the community association itself would satisfy the notice requirements.

New Civil Code § 4620 clarifies this issue by requiring that, once an association is served with a claim of lien for a common area work, it shall provide individual notice to its members of the claim of lien within 60 days of receipt of that notice. Additionally, new Civil Code § 8119 provides that a community association will be deemed to be the agent of all of the owners with respect to all notices and claims by contractors about work performed in the common area. This section also allows contractors to satisfy their notice requirements by serving notice of the claim of lien on the Association.

This recently changed law also provides owners with protections from mechanic's liens recorded on their separate interest properties. Specifically, Civil Code § 4615 was amended to allow an individual owner to remove a mechanic's lien placed on the property by either paying the lien holder the fraction of the total sum of the lien attributable to the owner's separate interest, or by securing a lien release bond in an amount equal to 125% of the sum secured by the mechanic's lien.

When dealing with a dispute with a contractor about monies owed from work performed in the common area, an association should work with its attorney to avoid repercussions from the lien and to provide proper notice of the lien to the owners.

ABOUT THE AUTHOR

Timothy P. Flanagan, Esq., a partner with Green Bryant & French, LLP, has more than 8 years representing community associations in San Diego, Riverside and Orange Counties.

FDCPA Lessons Learned
Continued from page 9

procedure adds an additional thirty days to the pre-lien procedure and likely increases the costs of collection. However, it could reduce potential liability under the FDCPA by providing the debtor with a clear thirty-day validation period before sending the thirty-day notice required by the California Civil Code.

Another issue which arose was whether the law firm's liability was limited because it was merely taking steps to enforce a security interest. 15 U.S.C. 1692f(6) provides certain prohibitions for entities that are attempting to non-judicially foreclose a security interest in real property. Where an entity is engaged solely in the enforcement of a security interest, it is subject only to the 15 U.S.C. 1692f(6) (rather than the entire FDCPA). The defendant law firm argued that in sending the required pre-lien notice, it was merely attempting to establish a security interest, and its liability under the FDCPA is limited to violations of 15 U.S.C. 1692f(6). However, the court of appeal did not agree because (1) the pre-lien notice demanded payment from the debtor, and (2) a security instrument was not yet in place.

It's unfortunate that assisting association clients in enforcing the assessment obligation has become fraught with the additional risk of liability under the FDCPA. However, to reduce the risk of liability while performing this crucial service for community association clients, it is necessary to become familiar with this additional layer of legal requirements, as well as to follow the court opinions that are interpreting them.

ABOUT THE AUTHOR

Debora M. Zumwalt is a senior attorney with Epsten Grinnell & Howell, APC. Debora has been with the firm since 1994 and is Co-Chair of the firm's Assessment Recovery Practice Group.

Balancing Political Solicitors' Right to Free Speech with Residents' Right to Privacy Under SB 407

BY HANH T. PHAM, ESQ. – LAW OFFICES OF ANN RANKIN

In order to comply with a new law allowing political canvassing, community associations may want to adopt new rules that regulate door-to-door solicitations to protect other residents' right to privacy and to be free from undue annoyance.

As of January 1, 2018, community associations may no longer ban political solicitors who are residents and may no longer charge a resident for using its clubhouse for political or campaigning purposes under Senate Bill (SB) 407.

SB 407 adds new California Civil Code Section 4515, which states in relevant part:

(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.

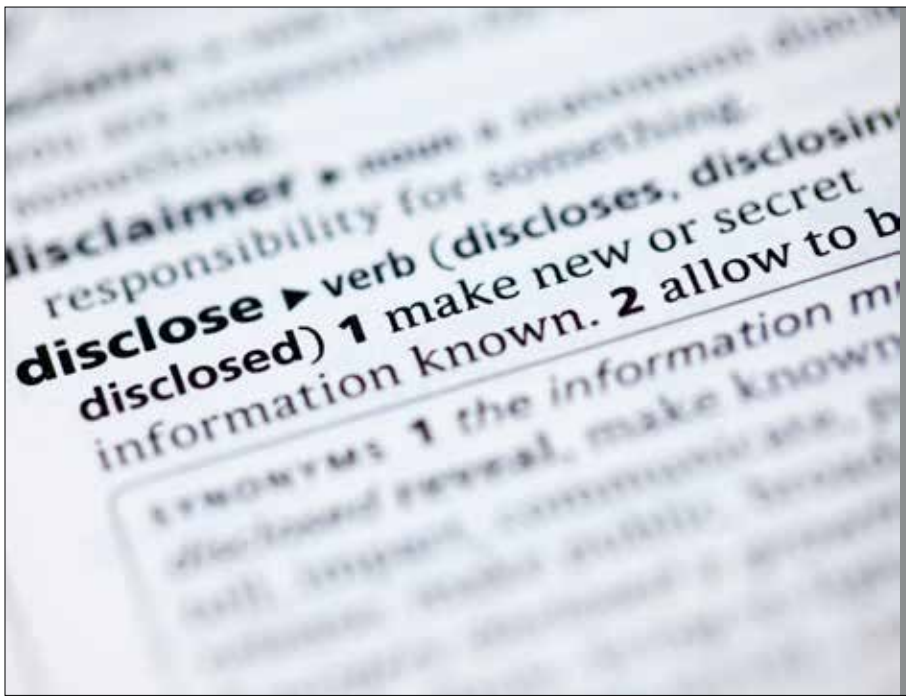
(c) A member or resident of a common interest development shall not be required to pay a fee, make a deposit, obtain liability insurance, or pay the premium or deductible on the association's insurance policy, in order to use a common area for the activities described in paragraphs (1), (2), and (3)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

This new law arose from the following political free speech violations within community associations:

- An Alameda County resident was fined and ordered not to approach her neighbors after she went door-to-door with information about a local elections bill that would have impacted homeowner voting rights.
- Another Alameda County resident received an association letter directing him to cancel a panel discussion on "Civil Rights in HOAs" to be held in a common area meeting room.
- One Orange County board supporting a local ballot measure blocked opponents from using a common area facility for a meeting.
- A Solano County homeowner was issued a cease and desist order for inviting neighbors to an event he was hosting with a candidate for mayor in an upcoming city election.

We believe this new law that protects political free speech will not significantly reduce the association's revenue from renting out their facilities because it only allows the assembly or meeting "when the facility is not otherwise in use." That means the

Continued on page 12



New Annual Certification Disclosure for Managers

Effective January 1, BPC 11500 - 11506 has been amended to include new information that must be disclosed to an association by a common interest development manager.

Get the new disclosure letter at cacm.org

Balancing Political Solicitors' Right to Free Speech...
Continued from page 11

association should honor prior bookings and consider charging for such reservations. Local elections occur every few years, and director elections occur every year. Despite this frequency, this author has found that none of the association's facilities are being rented out for political or campaigning purposes, after polling 18 managers in the San Francisco Bay Area. Rather, they are rented out for social clubs and for private parties such as birthdays, baby showers and bridal showers.

The takeaway from this new law is that the association cannot ban political solicitors and cannot charge a fee for political meetings in its clubhouse. In order to balance a resident's right to free speech with other residents' right to privacy, the association may adopt the following type of regulations:

- Allowing residents to post "No Solicitation" signs on their yard, door or front window.
- Requiring residents who are political solicitors to register their names and addresses with the association prior to solicitation and to limit solicitation hours to between 9 a.m. and 7 p.m.
- Allowing residents to go door-to-door in order to canvas, petition or distribute information on political matters such as an association ballot measure, legislation or election to local public office.
- Prohibiting door-to-door commercial solicitation, which attempts to sell any services, goods, wares or merchandise, newspaper or magazine subscriptions.
- Prohibiting door-to-door non-commercial solicitation, which asks for a gift or donation for the benefit of a non-profit organization such as scouts, religious groups and schools.
- Prohibiting personal delivery of a handbill or flyer advertising a commercial event, activity, good or service or advertising a not-for-profit event, activity, good or service.
- Not charging a fee or deposit for use of the association's facility (if any) to host a meeting concerning common interest development living, association elections, legislation, election to public office, or the initiative, referendum or recall process.
- If there is an association facility, clarify that residents wishing to reserve it for political or campaign purposes shall not have priority if another resident has previously reserved it.

Associations should have their legal counsel review their current rules and policies with respect to campaigning, solicitation and common area use. Rules or policies which violate the new law subject the association to court action and a civil penalty of $500 for each violation.

ABOUT THE AUTHOR

Hanh T. Pham, Esq. focuses her practice on common interest development law and real estate. She is with the Law Offices of Ann Rankin in Oakland and has 21 years of industry experience.

ASSESSMENT COLLECTION SERVICES

Allied Trustee Services
ASSESSMENT COLLECTION SERVICES & JUDGEMENT RECOVERY
Phillip Charest
Working Together To Improve Your Community - Your Premier Source Since 1993
990 Reserve Dr., Ste. 208, Roseville, CA 95678
(800) 220-5454 • Fax (877) 294-0601
pcharest@alliedtrustee.com • www.alliedtrustee.com

Alterra Assessment Recovery
ASSESSMENT COLLECTION
Steven J. Tinnelly, Esq.
Your Association's Assessment Collection Partner
27101 Puerta Real, Ste. 250, Mission Viejo, CA 92691
(888) 818-5949
ramona@tinnellylaw.com • www.alterracollections.com

Feldsott Lee Pagano & Canfield
COMMUNITY ASSOCIATION LAW
Stanley Feldsott, Esq., Jacqueline Pagano, Esq., Eric S. Canfield, Esq.
Laguna Hills | San Diego
23161 Mill Creek Dr., Ste. 300, Laguna Hills, CA 92653
(949) 729-8002 • Fax (949) 729-8012
ecanfield@cahoalaw.com • www.cahoalaw.com

Richardson Harman Ober PC
COMMUNITY ASSOCIATION LAW
Matt D. Ober, Esq.; Kelly G. Richardson, Esq.
Pasadena | Orange County | Inland Empire
(877) 446-2529
mober@rhopc.com • www.rhopc.com

Roseman & Associates, APC
COMMUNITY ASSOCIATION LAW & DELINQUENT ASSESSMENT COLLECTION
Steven A. Roseman, Esq.
OC | LA | Palm Desert | Inland Empire | Ventura
21650 Oxnard St., Ste. 2000, Woodland Hills, CA 91367
(866) 839-9400 • Fax (818) 380-6710
agnew@raattorneys.com • www.RAattorneys.com

United Trustee Services
TRUSTED PARTNERS IN ASSESSMENT COLLECTIONS
Lisa E. Chapman
Our success is your success!
696 San Ramon Valley Blvd., Ste. 353, Danville, CA 94526
(925) 855-8554 • Fax (925) 855-8559
info@unitedtrusteeservices.com • www.unitedtrusteeservices.com

ATTORNEYS

Adams Stirling PLC
COMMUNITY ASSOCIATION LAW, EMPLOYMENT LAW
Adrian J. Adams | Jasmine F. Hale | Cang Le | Nathan McGuire
LA | OC | IE | SD | SF | SAC | Stockton | Palm Desert | Ventura
2566 Overland Ave., Ste. 730, Los Angeles, CA 90064-5603
(800) 464-2817 • Fax (310) 945-0281
info@adamsstirling.com • www.adamsstirling.com

Angius & Terry LLP
CONSTRUCTION DEFECT LITIGATION & GENERAL COUNSEL
Bradley J. Epstein Esq. & Julie M. Mouser Esq.
Walnut Creek | Roseville | Manteca | Fresno
1990 N. California Blvd., Ste. 950, Walnut Creek, CA 94596
(925) 939-9933 • Fax (925) 939-9934
jmouser@angius-terry.com • www.angius-terry.com

Berding | Weil LLP
COMMUNITY ASSOCIATION COUNSEL | CONSTRUCTION DEFECT LITIGATION
Tyler Berding | Steve Weil | Chad Thomas | Andrea O'Toole
Community Association Counsel | Construction Defect Litigation
2175 N. California Blvd., Ste. 500, Walnut Creek, CA 94596
(925) 838-2090 • Fax (925) 820-5592
aotoole@berdingweil.com • www.berding-weil.com

Berding | Weil LLP
COMMUNITY ASSOCIATION COUNSEL| CONSTRUCTION DEFECT LITIGATION
Jakob Harle | Kathleen Janics | Karen Kannen | Dirk Petchul
Community Association Counsel | Construction Defect Litigation
575 Anton Blvd., Ste. 460, Costa Mesa, CA 92626
(714) 429-0600 • Fax (714) 429-0699
dpetchul@berdingweil.com • www.berding-weil.com

Chapman & Intrieri, LLP
GENERAL COUNSEL & CONSTRUCTION DEFECT LITIGATION
John W. Chapman, Esq.
2236 Mariner Square Dr., Ste. 300, Alameda, CA 94501-6468
(510) 864-3600 • Fax (510) 864-3601
jchapman@chapmanandintrieri.com • www.chapmanandintrieri.com

Community Legal Advisors Inc.
GENERAL COUNSEL & ASSESSMENT COLLECTION
Mark Guithues, Esq. & Edward Burns, Esq.
Inland Empire | Orange County | San Diego
509 N. Coast Hwy., Oceanside, CA 92054
(760) 529-5211 • Fax (760) 453-2194
mark@attorneyforhoa.com • www.attorneyforhoa.com

Epsten Grinnell & Howell, APC
COMMUNITY ASSOCIATION LAW, CONSTRUCTION DEFECT, LITIGATION & ASSESSMENT RECOVERY
Jon Epsten, Esq., & Susan Hawks McClintic, Esq.
San Diego | Inland Empire | Coachella Valley
10200 Willow Creek Rd., Ste. 100, San Diego, CA 92131
(858) 527-0111 • Fax (858) 527-1531
jepsten@epsten.com • www.epsten.com

Feldsott Lee Pagano & Canfield
COMMUNITY ASSOCIATION LAW
Stanley Feldsott, Esq., Jacqueline Pagano, Esq., Eric S. Canfield, Esq.
Laguna Hills | San Diego
23161 Mill Creek Dr., Ste. 300, Laguna Hills, CA 92653
(949) 729-8002 • Fax (949) 729-8012
ecanfield@cahoalaw.com • www.cahoalaw.com

Fiore Racobs & Powers, A PLC

COMMUNITY ASSOCIATION LAW AND ASSESSMENT COLLECTIONS

Janet L.S. Powers, Esq., Peter E. Racobs, Esq. & "Gen" Wangler, Esq.

The Recognized Authority in Community Association Law

Orange County | Inland Empire | Coachella Valley
(877) 31F-IORE • Fax (949) 727-3311
jpowers@fiorelaw.com • www.fiorelaw.com

Guralnick, Gilliland & Knighten, LLP

ASSOCIATION LAW, ASSESSMENT COLLECTIONS, GENERAL COUNSEL

Wayne S. Guralnick, Robert J. Gilliland Jr., Michael C. Knighten

Serving Community Associations for Over 30 Years

40004 Cook St., Ste. 3, Palm Desert, CA 92211
(760) 340-1515 • Fax (760) 568-3053
wayneg@gghoalaw.com • www.gghoalaw.com

Hickey & Associates, P.C.

COMMUNITY ASSOCIATION LAW

David E. Hickey, Esq.

6 Jenner, Suite 290, Irvine, CA 92618
(949) 614-1550 • Fax (949) 748-3990
dhickey@hickeyassociates.net • www.hickeyassociates.net

Hughes Gill Cochrane Tinetti, P.C.

COMMUNITY ASSOCIATION & CONSTRUCTION DEFECT LAW

Michael J. Hughes, Esq., John P. Gill, Esq., Amy K. Tinetti, Esq.

Complete representation of community associations

2820 Shadelands Dr., Ste. 160, Walnut Creek, CA 94598
(925) 926-1200 • Fax (925) 926-1202
atinetti@hughes-gill.com • www.hughes-gill.com

The Judge Law Firm, ALC

COMMUNITY ASSOCIATION LAW, GENERAL COUNSEL, COLLECTIONS

James A. Judge, Esq.

Orange County HOA Attorneys at Law

18881 Von Karman Ave., 15th Fl., Ste. 1500, Irvine, CA 92612
(949) 833-8633 • Fax (949) 833-0154
info@thejudgefirm.com • www.thejudgefirm.com

Kriger Law Firm

COMMUNITY ASSOCIATION LAW, GENERAL COUNSEL

Joel M. Kriger, Esq.

8220 University Ave., Ste. 100, La Mesa, CA 91942
(619) 589-8800 • Fax (619) 589-2680
jwilcox@krigerlawfirm.com • www.krigerlawfirm.com

Loewenthal, Hillshafer & Carter, LLP

COMMUNITY ASSOCIATION LAW, CONSTRUCTION DEFECT & GENERAL COUNSEL

David A. Loewenthal, Esq., Robert D. Hillshafer, Esq. & Kevin P. Carter

Woodland Hills | Santa Barbara | Westlake Village | San Luis Obispo

5700 Canoga Ave., Ste. 160, Woodland Hills, CA 91367-6579
(866) 474-5529 • Fax (818) 905-6372
info@lhclawyers.net • www.lhclawyers.net

Massie-Berman, APC

FULL SERVICE COMMUNITY ASSOCIATION LAW

Jonathan D. Massie, Esq., & Andrew E. Berman, Esq.

Full Service Community Association Law Firm

3588 4th Ave., Ste. 200, San Diego, CA 92103-4940
(619) 260-9010 • Fax (619) 260-9016
jmassie@massieberman.com • www.massieberman.com

Myers, Widders, Gibson, Jones & Feingold, LLP

COMMUNITY ASSOCIATION LAW, CONSTRUCTION DEFECT LITIGATION, GENERAL COUNSEL

Kelton Lee Gibson, Esq.

Ventura, Thousand Oaks, Valencia, San Luis Obispo & Mammoth Lakes

5425 Everglades Street, Ventura, CA 93003
(805) 644-7188 • Fax (805) 644-7390
kgibson@mwgjlaw.com • www.mwgjlaw.com

Neuland, Whitney & Michael, APC

BOARD CONSULTATION, LITIGATION, ENFORCEMENT & CONTRACT REVIEW

Fred Whitney, Esq. & Nancy Michael, Esq.

Helping Community Associations Find Their Way

22342-A Ave.Empresa, Ste. 100, Rancho Santa Margarita, CA 92688
(949) 766-4700 • Fax (949) 766-4712
fredwhitney@nwmapc.com • www.nwmapc.com

Peters & Freedman, L.L.P.

COMMUNITY ASSOCIATION LAW, GENERAL COUNSEL, COLLECTIONS, CONSTRUCTION DEFECT

David Peters, James McCormick Jr., Stephen Kirkland & Christina DeJardin

San Diego County | Inland Empire | Coachella Valley | Orange County

191 Calle Magdalena, Ste. 220, Encinitas, CA 92024-3798
(760) 436-3441 • Fax (760) 436-3442
smcknight@hoalaw.com • www.HOALAW.com

Law Offices of Ann Rankin

COMMUNITY ASSOCIATION LAW & CONSTRUCTION DEFECT LITIGATION

Ann Rankin, Esq. & Hanh T. Pham, Esq.

Prompt, affordable service to common interest communities for 31 years

3911 Harrison St., Oakland, CA 94611-4536
(510) 653-8886 • Fax (510) 653-8889
arankin@annrankin.com • www.annrankin.com

Richardson Harman Ober PC

COMMUNITY ASSOCIATION LAW

Kelly G. Richardson, Esq., Matt D. Ober, Esq.

Pasadena | Orange County | Inland Empire

(877) 446-2529
krichardson@rhopc.com • www.rhopc.com

Roseman & Associates, APC

COMMUNITY ASSOCIATION LAW & CONSTRUCTION DEFECT LITIGATION

Steven A. Roseman, Esq.

OC | LA | Palm Desert | Inland Empire | Ventura

21650 Oxnard St., Ste. 2000, Woodland Hills, CA 91367
(866) 839-9400 • Fax (818) 380-6710
agnew@raattorneys.com • www.RAattorneys.com

Russell & Mallett, LLP

COMMUNITY ASSOCIATION LAW & CONSTRUCTION DEFECT LITIGATION

Larry F. Russell, Esq. & G. Kevin Mallett, Esq.

All of your association's legal needs | Governing Docs | Enforcement | Litigation

1225 Alpine Road, Ste. 204, Walnut Creek, CA 94596-4400
(925) 947-4915 • Fax (925) 947-4920
larry@russell-mallett.com • www.russell-mallett.com

SwedelsonGottlieb

COMMUNITY ASSOCIATION LAW, CONSTRUCTION DEFECT, ASSESSMENT COLLECTION

David C. Swedelson, Esq. & Sandra L. Gottlieb, Esq., CCAL

Los Angeles | San Francisco | Orange County | Ventura | San Diego

11900 W. Olympic Blvd., Ste. 700, Los Angeles, CA 90064-1045
(800) 372-2207 • Fax (310) 207-2115
info@sghoalaw.com • www.lawforhoas.com

Tinnelly Law Group
COMMUNITY ASSOCIATION LAW
Richard A. Tinnelly, Esq., Steven J. Tinnelly, Esq.
Orange County | Los Angeles | Palm Desert | San Francisco | San Diego
27101 Puerta Real, Ste. 250, Mission Viejo, CA 92691
(949) 588-0866 • Fax (949) 588-5993
ramona@tinnellylaw.com • www.tinnellylaw.com

White & MacDonald, LLP
COMMUNITY ASSOCIATION LAW, CONSTRUCTION DEFECT LAW
Steven M. White, Esq., Rob D. MacDonald, Esq. & James P. Hillman, Esq.
COST EFFECTIVE SOLUTIONS BASED ON EXPERIENCE
1530 The Alameda, Ste. 215, San Jose, CA 95126
(408) 345-4000 • Fax (408) 345-4020
info@wm-llp.com • www.wm-llp.com

Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
COMMUNITY ASSOCIATION LAW
Daniel C. Shapiro, Esq., & Michael W. Rabkin, Esq.
11400 W. Olympic Blvd., 9th Fl., Los Angeles, CA 90064-1582
(310) 478-4100 • Fax (310) 478-6363
dshapiro@wrslawyers.com • www.wrslawyers.com

CONSTRUCTION DEFECT ANALYSIS

Fenton Grant Mayfield Kaneda & Litt, LLP
CONSTRUCTION DEFECT LITIGATION & CID EDUCATION
Charles R. Fenton, Esq. & Joseph Kaneda, Esq.
California & Nevada
2030 Main Street, Suite 550, Irvine, CA 92614
(877) 520-3455 • Fax (949) 435-3801
cfenton@fentongrant.com • www.fentongrant.com

McKenzie Rhody, LLP
CONSTRUCTION DEFECT ANALYSIS
Daniel R. Ryan, Esq.
Construction Defect Attorneys – Serving All of California
11620 Wilshire Blvd., 9th Fl., Los Angeles, CA 90025
(415) 637-4859
dryan@mrcdlaw.com • www.mrcdlaw.com

The Miller Law Firm
SB 800 AND CONSTRUCTION DEFECT CLAIMS
Thomas E. Miller, Rachel M. Miller & Matthew T. Miller
A 40 Year Legacy of Construction Defect Claims – Serving all of California
(800) 403-3332
rachel@constructiondefects.com • www.constructiondefects.com

The Naumann Law Firm, PC
CONSTRUCTION DEFECT LITIGATION
William H. Naumann, Esq.
Los Angeles | Orange County | San Diego | Riverside
10200 Willow Creek Road, Ste. 150, San Diego, CA 92131
(844) 492-7474 • Fax (858) 564-9380
elaine@naumannlegal.com • www.naumannlegal.com

Riley Pasek LLP
CONSTRUCTION DEFECT LITIGATION
Richard P. Riley, Esq., Melissa A. Pasek, Esq.
Serving All of California
1255 Treat Blvd., Ste. 300, Walnut Creek, CA 94597
(844) 775-5000 • Fax (415) 482-9939
rriley@rileypasek.com • www.rileypasek.com

Roseman & Associates, APC
COMMUNITY ASSOCIATION LAW & CONSTRUCTION DEFECT LITIGATION
Steven A. Roseman, Esq.
OC | LA | Palm Desert | Inland Empire | Ventura
21650 Oxnard St., Ste. 2000, Woodland Hills, CA 91367
(866) 839-9400 • Fax (818) 380-6710
agnew@raattorneys.com • www.RAattorneys.com

RESERVE STUDY FIRMS

Association Reserves
RESERVE STUDY FIRM
Paige Daniels
Reserve Studies for Community Associations
5000 N. Parkway Calabasas, Ste. 308, Calabasas, CA 91302
(800) 733-1365 • Fax (800) 733-1581
pdaniels@reservestudy.com • www.reservestudy.com

The Helsing Group, Inc.
RESERVE STUDY FIRM
Ryan Leptien
Serving All of California
4000 Executive Pkwy., Ste. 100, San Ramon, CA 94583
(925) 355-2100 • Fax (925) 355-9600
reservestudies@helsing.com • www.helsing.com

VENDOR COMPLIANCE

Association Services Network
VENDOR COMPLIANCE
David Jeranko
Collect – Vett – Asset Protect
24000 Alicia Pkwy., Ste. 17-442, Mission Viejo, CA 92691
(949) 300-3702
davidj@asn4hoa.com • www.asn4hoa.com

CACM
23461 South Pointe Drive, Ste. 200
Laguna Hills, CA 92653

Presorted Standard
U.S. Postage
PAID
Permit No. 400
Laguna Beach, CA

Law Journal Spring 2018 | New Legislation Affecting California Community Associations

The new California laws have passed. Now what?

Hit the ground running at the Spring Regional Forums, where you will hear the latest solutions to the new laws and leave equipped to plan the strategies you need in place for your communities.

Learn how to facilitate a smooth transition to the:

- New Conflict of Interest Disclosure Requirements
- Monetary Disclosures Requirement
- Non-Commercial Solicitation (Political Meetings and Access)
- Community Solar Policies

Forum Dates | CCAMs, CAFMs & MCAMs Earn 2 CEUs

Los Angeles Luncheon
11:00 am – 1:30 pm
Holiday Inn Los Angeles Gateway – Torrance
May 8

Pomona Luncheon
11:00 am – 1:30 pm
Mountain Meadows Golf Course
May 9

Ventura Luncheon
11:00 am – 1:30 pm
Wedgewood Wedding & Banquet Centers
May 10

Sacramento Breakfast
8:30 am – 11:00 am
Sacramento Marriott Rancho Cordova
May 15

East Bay Luncheon
11:00 am – 1:30 pm
Hilton Concord
May 16

South Bay Luncheon
11:00 am – 1:30 pm
San Jose Country Club
May 17

San Diego Luncheon
11:00 am – 1:30 pm
Hilton San Diego Mission Valley
May 23