



FIORE RACOBS & POWERS

—A PROFESSIONAL LAW CORPORATION—

NEW LEGISLATION & CASE LAW REVIEW FOR 2011

This year was a busy and active year for new legislation impacting Common Interest Developments. While we anticipate the complete rewrite of the Davis-Stirling Common Interest Development Act ("Act") to be passed by the Legislature in 2012, and to be effective in 2014, there were still several changes to the Act in 2011.

The Courts of Appeal also decided many cases affecting associations, and we expect 2012 to also provide us with decisions from the California Supreme Court on additional association issues.

I. **Amendments and additions to the Davis-Stirling Common Interest Development Act, Civil Code Section 1350, et seq. ("Act")**

A. **Bills which passed and were signed by the Governor.**

1. **Board Meetings and Votes (SB 563 – Senate Committee on Transportation and Housing) – Amends Civil Code Sections 1363, 1363.05 and 1365.2 of the Act.**

This Bill made several changes in the manner that boards may conduct votes and meetings. First, the Bill clarifies that the board does not need to adjourn from regular open session into a closed executive session board meeting, and can simply meet solely in closed executive session. (Civil Code Section 1363.05(b).) The Bill confirms existing law that four days' notice must be given to homeowners of any board meeting, except for an emergency meeting or an executive session board, unless the Bylaws specify a longer time period. (Civil Code Section 1363.05(f).)

The Bill changes the Act to now require that two days' notice be given to homeowners of any executive session board meeting, except for an emergency meeting of the board. (Civil Code Section 1363.05(f)) The notice/agenda for an executive session board meeting must now also be posted in a prominent place or places in the common area at least two days prior to the meeting. (Civil Code Section 1363.05(f)) Even though owners still cannot attend closed executive session board meetings, the law now requires they be given general notice of executive sessions.

We do not know the level of detail that the Legislature envisioned would be contained in agendas and notices of closed executive session board meetings. The agendas need to be prepared in

such a manner so as to protect members' privacy and confidentiality, as well as to preserve any attorney client confidential communications or information. At a minimum, the matters shown on the executive session agenda and notice should be "generally noted." This practice would be consistent with current law which requires that any "matter discussed in executive session be generally noted in the minutes of the immediately following board meeting that is open to the entire membership."

If a member consents to receive electronic notice of board meetings, the association may also give notice of executive session board meetings electronically to that member. (Civil Code Section 1363.05(f).) The Bill also now allows members to inspect and copy executive session board meeting agendas.

The most significant change made by SB 563 is that board may no longer take action on any item of business outside of a board meeting. (Civil Code Section 1363.05(j)(1).) The board may not conduct business by a series of electronic transmissions, including email, except if the electronic transmissions are used as a method of conducting an emergency board meeting. (Civil Code Section 1363.05(j)(2).) This will now effectively prohibit actions by unanimous written consent/actions without a meeting by the board except as part of an emergency board meeting by email vote.

SB 563 provides that written consents to conduct an emergency meeting may be transmitted electronically. (Civil Code Section 1363.05(j)(2)). This means that the board president or any two members of the board other than the president may call an "emergency meeting" if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impractical to provide notice as required by the Act.

The new law can be interpreted in several ways:

- (A) The first is that all directors must agree by email or written consent to the emergency email "meeting"/vote, and then also agree unanimously by email or written consent to the emergency action which is the subject of the emergency email "meeting"/vote.
- (B) Alternatively, the statute may mean that only a majority of the board needs to consent to have an emergency email "meeting"/vote, and that unanimous consent of all board members is needed to approve the "emergency" action which is the subject of the emergency "meeting"/vote.
- (C) Another interpretation is that the board must unanimously agree by email or written consent to the emergency email/"meeting"/vote, and then approve the action that is the subject of the vote by a majority.

The Bill also modifies the current definition of a board meeting to now include:

1. A congregation of a majority of the board members at the same time to hear, discuss, or deliberate upon any "**item of business**" that is "within the authority of the board."

2. A teleconference meeting in which a majority of the board members, in different locations, are connected by electronic means, through audio, video or both. Such teleconference meetings are to be conducted in a manner to protect the rights of the homeowners and also comply with the requirements of the Act.

Homeowners are entitled to attend any open session board meeting that is held by teleconference, and that meeting shall be audible to the homeowners in at least one physical location which must be specified in the notice of the board meeting. (Civil Code Section 1365.05(b).) For any teleconference meeting, at least one board member must actually be present in person in the physical location stated in the notice.

Participation by board members in a teleconference meeting constitutes that board members presence at a meeting, as long as all board members participating in the teleconference meeting are able to hear one another and are able to hear the members of the association who are speaking on matters before the board.

The Bill also adds a definition of "item of business" to mean any action within the authority of the board, except those actions that the board has validly delegated to any other person, managing agent, officer of the association or an executive committee (committee of the board) comprised of less than a majority of the board.

2. Rental Restrictions/Commercial CIDs (SB 150 - Correa) – Amends Civil Code Section 1373, and adds Civil Code Section 1360.2 to the Act.

SB 150 creates new Civil Code Section 1360.2 which provides that, effective January 1, 2012, an owner of a separate interest in a Common Interest Development (CID) shall not be subject to any governing document provision or amendment that prohibits rental or leasing of that owner's separate interest unless the restriction was effective before that owner took title.

Under SB 150, an owner may expressly consent to be subject to a rental restriction or prohibition in governing documents.

An owner who is relying on this new statute as exempting him or her from a rental prohibition has the burden of providing the association with verification of the date the owner acquired title to his/her separate interest, and the name/contact information of the prospective tenant or the tenant's representative.

The exemptions put in place by this Bill do not apply to those prohibitions in place prior to January 1, 2012.

Lastly, this Bill amends Civil Code Section 1373 to add Civil Code Sections 1360.2 and 1368 to the existing list of Code Sections of the Act that do not apply to commercial/non-residential CIDs.

3. Electrical Vehicle Charging Stations (SB 209 - Corbett) – Adds Civil Code Section 1353.9 to the Act.

SB 209 provides that an association's Governing Documents cannot prohibit or unreasonably restrict installation or use of electrical vehicle charging stations. While an association may

impose reasonable restrictions on charging stations, the approval process must be the same as for other types of architectural modifications. In order to install the charging station on common area or exclusive use common area, the homeowner must first obtain prior approval from the association for the charging station. The new law requires that the association approve the charging station if the homeowner agrees in writing to do all of the following:

1. Comply with the association's architectural standards.
2. Engage a licensed contractor to install the station.
3. Within 14 days of approval of the station, provide a certificate of insurance that names the association as an additional insured under the homeowner's insurance policy.
4. Pay for the electricity usage associated with the station.

The owner and each successive owner of the parking space on which or near the charging station is located, shall be responsible for all of the following:

1. Costs for damage to the stations, common areas, exclusive use common areas or adjacent unit resulting from installation, maintenance, repair, removal or replacement of the station.
2. Costs for the maintenance, removal, repair or replacement of the charging station until it has been removed from the common area or exclusive use common area.
3. Costs of electricity associated with the station.
4. Disclosing to potential buyers the existence of any electrical vehicle charging station and related responsibilities of the owner.
5. The installing owner and each successive owner, at all times must also maintain an umbrella liability insurance policy in the amount of \$1,000,000 covering obligations (1)-(4) above, and shall name the association as an additional insured under the insurance policy, with a right to notice of cancellation of the policy.

If plans are submitted by an owner for a charging station and are not denied by the Association within 60 days, the plans are deemed automatically approved. Civil penalties of up to \$1,000 may be sought against the association for violation of this new law. Further, the prevailing party in an action to enforce this section will be entitled to an award of reasonable attorneys' fees.

We anticipate that, as the number of electrical vehicles increases, the number of applications which will be submitted to associations for common area electrical vehicle charging stations will also increase.

4. Requirements to Provide Association Documents/Billing Disclosure Form (AB 771 - Butler) - Amends Civil Code Section 1368 and adds Civil Code Section 1368.2 to the Act.

AB 771 amends Civil Code Section 1368 regarding the documents that must be provided to prospective purchasers by the owner/seller of a separate interest in an association. It also amends the requirements for associations to provide documents to owner/sellers upon request.

The "preliminary" list of defects is now called the "initial" list of defects in Section 1368(a)(6).

AB 771 adds Section 1368(a)(9), which provides that if there is a provision in an association's governing documents that prohibits the rental or leasing of a separate interest to a renter, lessee or tenant, a statement must be provided by the association which describes the rental the prohibition and its applicability.

This Bill also adds Section 1368(a)(10) which provides that if requested by a prospective purchaser, the seller/owner must provide a copy of board meeting minutes, excluding closed executive session meeting minutes, for the previous twelve months, that were approved by the board of directors.

Section 1368(b) now requires the association to provide the owner/seller or any other recipient authorized by the owner with the documents specified in Section 1368(a)(1) - (10) within 10 days of the delivery of the request.

The documents required to be made available may be maintained in electronic form by the association and may also be posted on the association's internet website. The requesting parties may still have the option of receiving the documents in electronic form, if the association maintains the documents in electronic form.

Upon receipt of a written request, the association must now provide an estimate of the fees that will be assessed for providing the requested documents. This estimate must be provided on the new billing disclosure form created by Civil Code Section 1368.2.

The association may collect a reasonable fee "based upon the association's actual cost for the procurement, reproduction and delivery of the documents requested...." But the association may not charge an additional fee specifically for electronic delivery of the documents requested. Fees for any documents required under Section 1368 (by the seller/owner from the association) must be distinguished from other fees, fines or assessments billed as part of the transfer or sales transaction.

The association cannot withhold delivery of documents for any reason nor subject to any condition except payment of the fee to the association.

An association may contract with any person or entity, such as a management company, to facilitate compliance with the new requirements on behalf of the association.

The association is also now required to provide the recipient authorized by the owner/seller (whether that is the owner/seller, prospective purchaser or owner/seller's designated representative) with a copy of the completed billing disclosure form, required by new Civil Code Section 1368.2, at the same time the required documents are delivered.

5. Articles of Incorporation, Statement of Information Form (SI-CID & SI-100), Other Corporate filings (AB 657 -Gordon/Buchanan) - Amends Civil Code Sections 1363.5 and 1363.6 of The Act and amends Corporations Code Sections 6210, 6810, 8210, 8810, etc.

AB 657 makes several changes to various Corporations Code Sections regarding the documents which must be filed by associations. The Bill amends Civil Code Section 1363.5 to no longer require the 9 digit zip code in any articles of incorporation for a CID or in the SI –CID form.

Currently Civil Code Section 1363.5 requires that the articles of incorporation include a statement identifying the corporation formed to manage a CID under the Act. AB 657 amends this section to now require that the Statement by Domestic Non-Profit Corporation/ Statement of Information (Form SI-100) also include this same statement.

The Bill amends Civil Code Section 1363.6 to change the SI-CID Statement form to require the association to provide the street address of the business or corporate office of the association, as well as the street address of the association's onsite office if there is one, or the street address of the responsible officer or managing agent if there is no onsite office.

The SI-CID Statement may now be filed even if the corporation/ association is suspended for not filing the SI-CID form or is suspended under the Revenue and Taxation Code. Upon the filing of the SI-CID form by a corporation that was suspended for failure to file the SI-CID form, the Secretary of State shall certify that fact to the Franchise Tax Board. The corporation may then be relieved from suspension, unless the corporation is also suspended by the Franchise Tax Board for failure to file tax returns, etc.

Corporations Code Section 8210 currently requires that every corporation file the Statement of Information/Statement by Domestic Non-Profit Form (SI-100) every two years after filing the articles of incorporation. The SI-100 Form currently requires the name of the corporation, and will now also require the Secretary of State's file (corporate) number.

One positive change for associations is that Corporation Code Section 8210 will now allow a corporation to receive renewal notices and any other notifications from the Secretary of State by electronic mail instead of by U.S. Mail if the corporation includes a valid email address for the corporation or the corporation's designee to receive those notices on the Statement of Information when filed.

If a corporation provides an email address to receive notification by email from the Secretary of State, the Secretary of State will send a notice to the corporation approximately three months prior to the deadline date for filing of the Statement. (Previously the Secretary of State mailed this notice by U.S. mail) But be aware that the Secretary of State's office is currently several months behind in processing corporate documents, and it may not timely send such a notice by U.S. mail or by email. The best practice is to calendar when the Statements must be filed for the association, and send in the documents regardless of whether notice is received from the Secretary of State.

B. Bills that passed but were vetoed by the Governor

1. Artificial Turf (SB 759-Lieu)

This Bill would have amended Civil Code Section 1353.8 to prohibit restrictions on use of artificial turf, synthetic grass. We anticipate that there will be similar bills introduced in the future to require associations allow artificial turf to be installed within the association.

C. Two year Bills

1. Rewrite of Davis-Stirling Common Interest Development Act (AB 805/AB 806 – Torres) – Comprehensive rewriting and simplification of the Act.

a. This legislation was based upon the investigation and recommendations of the California Law Revision Commission ("C.L.R.C.") over the past few years. These Bills will reorganize and rewrite the entire Act, and will be worked on by the Legislature during 2012. The current expectation is the this legislation will pass, and the rewrite of the Act will become effective January 1, 2014.

II. New Cases in 2011

Bear Creek Planning Committee v. Ferwerda (2011) 193 Cal.App.4th 1178

Bear Creek Planning Committee (which, we infer, is not a common interest development under the Davis-Stirling Act) prevailed in an action to block homeowner Ferwerda's construction of a home on his lot. The recorded CC&Rs contained no attorneys' fees provision, but did allow the Committee to adopt "procedures and standards." The Committee adopted an architectural review manual, setting forward architectural standards which included an attorneys fee's provision. The trial court awarded attorneys' fees to the Committee, pursuant to the Committee-adopted architectural guidelines/procedures, but the Court of Appeal reversed. The Court of Appeal held that the CC&Rs (a recorded document) did not authorize an award of attorneys' fees. Even though the architectural guidelines/rules were reasonable as to the architectural standards, the Court of Appeal determined that the Committee could not create a right to attorneys' fees by rule. The CC&Rs must be amended to provide for an award of attorneys' fees. It made no difference that homeowner also sought an award of attorneys' fees in his pleadings.

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

In this anti-SLAPP case, Plaintiff Cabrera sued Defendant Alam for defamation based on Defendant's statements, at an Association annual meeting, that Plaintiff had stolen money and defrauded the Association. Defendant was running for re-election to the Board. Plaintiff, a former Board member who no longer owned units in the Association, was campaigning on behalf of Defendant's opponent. The Court of Appeal (in Orange County) reversed the trial court's denial of the anti-SLAPP motion. Relying on Damon v. Ocean Hills Journalism Club (2000) 85 Cal.App.4th 468, the Court of Appeal found that the annual meeting was a public forum and that the Association serves a function similar to that of a governmental entity, even though the Association in this case is far smaller and less sophisticated than the Ocean Hills association. Similarly, the statements concerned an issue of public interest. Alam's statements challenged Cabrera's credibility, and Cabrera was present at the meeting as an official representative of another candidate. Allowing Cabrera's lawsuit to proceed would discourage participation in ongoing controversies. Finally, Cabrera failed to demonstrate a probability of

prevailing. She became a limited purpose public figure, having thrust herself into the election controversy, yet failed to produce evidence of malice.

Country Side Villas Homeowners Association v. Ivie (2011) 193 Cal.App.4th 1110

In this anti-SLAPP case from the 6th District (in San Jose), the Court of Appeal upheld the trial court's order striking the complaint. Homeowner Ivie complained about Association's interpretation of its governing documents as to maintenance of wood siding and balconies, and requested financial documents. The Association sued the homeowner for declaratory relief regarding interpretation of its governing documents. Following a demurrer by other parties, the Association filed an amended complaint, including a certification that ADR had been attempted. Fifty-nine days later, Homeowner Ivie filed her anti-SLAPP motion. The Court of Appeal held that the motion was filed within the 60 day period for doing so, because the amendment to the complaint was substantive. The lawsuit arose from the homeowner's protected activity, and followed the Association attorney's threat to sue if homeowner continued to ask for documents. The Court also held that the Association's declaratory relief action had no probability of success, because homeowner has no authority to enforce any declaratory judgment regarding the interpretation of the governing documents.

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

Yan Sui had a beat-up old van that was not operational which he parked in his parking space at his condominium association. Sui sued Price, the Association president, after the association had the van towed from Sui's exclusive use parking space. The Association's towing of a van was specifically authorized by a rule change which had been adopted by the Association's board of directors pursuant to the operating rules process set out at Civil Code Section 1357.100, et seq.

Both the trial court and Court of Appeal rejected Sui's claims. The majority of the opinion discussing those claims is unpublished. The main benefit of the Yan Sui v. Price opinion is the holding that the reasonableness of an association rule is determined by reference to the development as a whole, not to its effects on a particular homeowner. The Court rejected the homeowner's assertion that a rule against parking inoperable vehicles in the project was discriminatory, because, when it was enacted, his was the only inoperable vehicle in the project. The Court found there is nothing unreasonable about prohibiting long term parking of inoperable vehicles in parking spaces within a community association.

Cadam v. Somerset Gardens Townhouse HOA (2011) 132 Cal.Rptr. 3d 617

Somerset Gardens is a recently build 93 unit Association in Santa Maria. In September 2006, the Association's President did a walk through with the landscaper, and he tripped over a sidewalk separation that was @1/2 inches deep. He instructed the landscaper to put up a warning flag near the separation. The President also knew about two other sidewalk separations that required repair, but did not request warning flags be put up on those areas. The President directed the manager to notify the developer of the problems, and the developer later did perform repairs to those sidewalk areas.

On October 19, 2006, Barbara Cadam, a 63 year old tenant who leased a unit in the Association tripped on a cement walkway leading from the driveway to her front door. She was wearing high heeled shoes and her foot caught in a walkway separation. She suffered injuries to her hands, wrists, elbows and right knee. She had six surgeries over two and a half years. She later filed suit against the Association, management company and the developer for her injuries. The matter went to trial, and at the end of the Plaintiff's case, the Defendants moved for a non-suit on the bases that the walkway separation was trivial as a matter of law, which the trial court denied. The jury found in Cadam's favor and awarded her \$1,336,197.00, and found that the Association and the management company were each 50% responsible for her injuries. The Defendants filed a motion for a Judgment Notwithstanding the Verdict (JNOV) or, in the alternative, a new trial. The trial judge granted the JNOV finding that "no reasonable person could find this was not a trivial defect looking at the photographs...the height, [and] the surrounding circumstances." The trial court also granted the motion for a new trial to be limited to the issue of whether Cadam was negligent in any manner. Cadam appealed, and Defendants filed cross-appeals on the amount of the damages awarded.

The Court of Appeal affirmed the JNOV. The Court of Appeal found that the walkway defect of 3/4th to 7/8ths of an inch in depth was trivial as a matter of law, and that property owners are not liable for damages caused by minor, trivial, or insignificant defects on their property. Cadam tripped at noon on a sunny day. There were no jagged separations, shadows or debris obscuring the separation. No other persons had fallen on this area. Cadam testified she didn't see the separation because she was not looking at it.

The Court of Appeal held that the persons who maintain walkways are not required to maintain them in absolutely perfect condition, since the duty of care imposed on a property owner, even one with actual notice of the defect, does not require repair of minor defects. Minor defects such as crack in a walkway inevitably occur and the continued existence of such cracks without warning or repair is not unreasonable.

Balvage v. Ryderwood Improvement and Service Association, Inc. (9th Circuit, 2011) 642 F. 3d 765

Plaintiffs/Appellees were residents/homeowners in Defendant/Appellant Association of 270 single family homes located in an association in Washington State who challenged the association's age restrictions, claiming that the association did not satisfy some of the requirements under the Federal Fair Housing Laws. Specifically, Plaintiffs challenged the fact that the association failed to take a census to verify that at least eighty percent of the residences are occupied by one person aged 55 or older. The HUD Regulations require that an association determine and verify the ages of the residents, have ongoing age verification procedures, and that the age verification information be updated at least once every two years.

The association argued that it met the 80 percent requirement and that it verified the ages of the residents by a survey done in September 2007 which showed that 90% of the residences were occupied by persons age 55 or older. The 9th Circuit Court of Appeal found that even though the association did not qualify until September 2007, that upon taking the survey, it established its compliance with the 80% requirement. The 9th Circuit confirmed that the verifications must take place every two years, and that the compilation of the data may be done "through surveys or

other means." The court also found that the association's past actions did not preclude it from currently qualifying. Taking the survey in 2007 allowed the association to be an age-restricted association as of that time, but the association could still be liable for discrimination against families with children for the time period it was not in compliance with federal laws.

Salehi v. Surfside III Condominium Owners' Association, 2011 WL 5517087

Salehi was an attorney who purchased a condominium in 2004. Representing herself, she sued the Association in 2008 for alleged violations of the CC&Rs, and other claims. Shortly before trial, she dismissed all but two of her claims. The Association (its insurance carrier) incurred over \$250,000 in defending the case and sought attorneys' fees from Salehi. Salehi argued that she dismissed the claims since her expert in the case was unavailable for trial because of heart surgery, and she did not believe she would be granted a trial continuance by the court.

The trial court found the Association was not the prevailing party under Civil Code Section 1354, and denied the motion for attorneys' fees. The Association appealed and the Court of Appeal reversed the trial court decision. The Court of Appeal held that "A party contemplating litigation to enforce the [CC&Rs] of a condominium project should get their 'ducks in a row.' That is to say, such party should be ready to go forward procedurally and prove its case substantively. Failure to do so subjects the losing party to an award of attorney fees." The Court of Appeal also determined that, based on faulty reasoning, Salehi dismissed eight of the ten causes of action on the eve of trial. She prevailed on no level whatsoever, let alone on a "practical level." The Court of Appeal concluded that the trial court abused its discretion, held that the Association was the prevailing party, and remanded the case to the trial court to determine the amount of attorneys' fees that should be awarded to the Association.

Tesoro Del Valle Master Homeowners Association v. Griffin (2011) 200 Cal.App.4th 619

The Association's CC&Rs and Design Guidelines required prior architectural approval before any construction or modification by an owner and also required that plot plans drawn to scale, a detailed description of materials, landscape plans and other plans be submitted along with any application. On October 2, 2007, the Griffins submitted an application for installation of solar energy system on a slope area located outside of a perimeter wall on their lot, and included a handwritten drawing, by walking the application into the management company's offices. At that time, the manager looked at the application and told the owner that it was not likely to be approved, since it was incomplete in several areas and there were no other solar energy systems located outside of perimeter walls. Per the CC&Rs, the Architectural Committee ("ACC") had 45 days from the submission to review and rule or the plans would be automatically approved.

Based on the manager's negative comments, on October 10, 2007, the Griffins sought another proposal from the solar energy company to install 36 solar panels on the roof of their residence, and 22 panels on the slope. They did not amend their pending application, but on November 8, 2007, they signed a contract for \$97,000 with the solar energy company.

On November 8, 2007, the ACC sent a letter denying the 10/2/2007 application, and specifying the reasons for the denial. The letter was misaddressed and the Griffins did not receive the letter until November 17, 2007, 46 days after 10/2/2007. After receiving the letter, the Mr. Griffin

attended a Board meeting and told the Board that because the letter was not received within the 45 day limit, he had hired the solar contractor and intended to proceed with his project. The Association had its attorney send a letter to the Griffins on December 18, 2007, instructing them to not proceed with construction, and also sent a follow up letter in January 2008.

Griffins proceeded with construction anyway and, in January 2008, after some meetings to try to resolve the situation were unsuccessful, the Association filed a lawsuit against Griffins, who filed a cross complaint against the Association (alleging, among other things violation of the California Solar Rights Act, Civil Code Section 714). The case went to trial in November 2009, and the jury found in favor of the Association, against the Griffins, and the trial court required the Griffins to remove the 22 panels installed on the slope. The court determined the Griffins did not prevail on their cross complaint and that the Association was the prevailing party. The Griffins appealed.

The Court of Appeal affirmed the trial court finding that the Association did not violate Civil Code 714, and that the Association's CC&Rs and Design Guideline restrictions were reasonable restrictions on solar units. The Court found that the 22 solar panels on the slope could have been installed in another location and yield the same performance efficiency, and be less expensive to install. The Court also determined that Civil Code Section 714 did not prohibit the ACC from considering the aesthetic impact of the panels, nor did the statute require the Association to propose a comparable alternative system at the time it denied the application.

The Court of Appeal also upheld the jury's determination that the Association's denial was timely sent within 45 days from receipt of the application, and that the Association did all or substantially all of the significant things it was required to do under the CC&Rs. Moreover, the Court of Appeal determined that the denial adequately advised the Griffins of the reasons for the denial and that the CC&Rs/Design Guidelines adequately notified Griffins of their appeal rights.

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