



2024 Edition

NEW LEGISLATION FOR 2024 AND 2023 CASES HANDBOOK



Fiore Racobs & Powers

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Our Firm's ongoing mission is to "Provide quality legal services to our clients while setting the example for others to follow in the legal community. We are dedicated to the success of community associations through the practice of law, the education of our clients and industry professionals, and the advancement of public policy."

This handbook and other resources (including the Davis-Stirling Common Interest Development Act) are available for download on our website at FIORELAW.COM.

We sincerely hope that you find this handbook useful.

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877-31-FIORE

NEW LEGISLATION FOR 2024 & 2023 CASES

The Firm's Community Association Legal Webinar covering "New Legislation for 2024 & 2023 Cases" was held in December 2023. The following slides provide an outline of the legislation and cases affecting community associations, as presented at the webinar.

If you would like a link to the recorded webinar, please email Diane Weissberg, Manager of Client Relations, at dweissberg@fiorelaw.com.

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COMMUNITY ASSOCIATION LEGAL WORKSHOP

New Legislation for 2024
& 2023 Cases

PRESENTED BY:


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I. Updates to the Davis-Stirling Common Interest Development Act




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A. AB 572 (Haney). The imposition of assessments



Amends Civil Code § 5605:

This bill applies to:

- HOAs that record original declarations on or after January 1, 2025
- HOAs that have one or more deed-restricted affordable housing units (AHU)

Prohibits HOAs from increasing regular assessments for AHUs that exceed 5% plus the percentage change in the cost of living (but not to exceed 10% greater than the preceding regular assessment)

A. AB 572 (Haney). The imposition of assessments

- The added provisions only affect HOAs that record their original declarations on or after January 1, 2025
- Affects assessment increases for Deed-Restricted Affordable Housing Units



B. AB 648 (Valencia). Meetings by teleconference

Adds Civil Code § 4926 and amends Civil Code § 4090:

- Allows board and membership meetings to be held entirely by teleconference if statutory conditions are satisfied
- Does not apply to meetings where ballots are counted and tabulated



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B. AB 648 (Valencia). Meetings by teleconference (cont.)

To qualify, meeting notice must include:

- Clear technical instructions on how to participate
- Telephone number and email address of person who can provide technical assistance (before and during meeting)
- Reminder that members may request individual delivery of meeting notices (with instructions on how to do so)

Note: These are in addition to other required content for meeting notices

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B. AB 648 (Valencia) – Meetings by teleconference

- CLAC sponsored bill
- Be sure meeting notices include the required information and that votes by directors are taken by roll call (each director will need to state their vote after their name is called)



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C. AB 1764 (Housing Committee)

Amends Civil Code §§ 5103 and 5105 (among other various sections):

- Moves the language relating to term limits to clarify that term limit qualifications are enforceable for elections of directors
- Requires sitting directors to comply with the same requirements as candidates



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C. AB 1764 (Housing Committee).

- This bill removes any existing ambiguity regarding the enforceability of term limits for the elections of directors



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D. AB 1458 (Ta). Reduced Quorum for election of directors.

Amends Civil Code § 5115 and Corporations Code § 7512

- Reduces quorum requirement to 20% of the HOA's members for adjourned director elections
- If governing documents have a lower quorum requirement, the lower quorum requirement will prevail



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D. AB 1458 (Ta). Reduced Quorum for election of directors.

- Civil Code § 5115(b) pre-ballot notice must state that board of directors may utilize this reduced quorum option at the adjourned meeting
- Must adjourn the meeting for at least 20 days, but not more than 45 days
- Notice of adjourned meeting must be given at least 15 days prior to adjourned meeting



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D. AB 1458 (Ta). Reduced Quorum for election of directors.

This is good news for HOAs that have experienced a difficult time obtaining quorum



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II. Other California Legislation



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A. AB 231 (Chen). Shareholders' meetings: remote communication.

- Amends various sections of the Corporations Code relating to membership meetings held by remote communications
- For residential Davis-Stirling CIDs: There is no significance because Corporations Code § 7510 is overridden by the Davis-Stirling Act
- Timeshare associations and Commercial CIDs: Are permitted to hold remote member meetings until, at least, the end of 2025 if certain requirements are met

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B. AB 1332 (Juan Carrillo). Accessory dwelling units: preapproved plans

Adds Government Code § 65852.27

- Requires that local governments/agencies create pre-approved plans or provide a list of pre-approved designs for ADUs by January 1, 2025



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B. AB 1332 (Juan Carrillo). Accessory dwelling units: preapproved plans

- Provides that the local agency must accept ADU plan submissions for preapproval and then approve or deny those applications ministerially and without discretionary review within 30 days from the date the local agency receives a completed application
- ADU plans that are preapproved shall be posted on the local agency's website and shall include the contact information provided by the applicant

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B. AB 1332 (Juan Carrillo). Accessory dwelling units: preapproved plans

- Pre-approved ADU plans will streamline the local government's approval process
- HOAs may need to adjust their architectural guidelines to align with local requirements/public policy
- HOAs will be able to check local agency websites to verify preapproved ADU plans



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C. AB 1572 (Friedman). Potable water, non-functional turf

Amends Water Code §§ 10540, 10608.12, and 10608.22, and adds § 10608.14

Beginning January 1, 2029:

- Prohibits use of potable water to irrigate non-functional turf
- The exceptions include protection of the health of trees or other perennial non-turf plantings, and immediate health/safety needs



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C. AB 1572 (Friedman). Potable water, non-functional turf

What is "nonfunctional turf"?

"Any turf that is not functional turf, and includes turf located within street rights-of way and parking lots"

What is "functional turf"?

"A ground cover surface of turf located in a recreational use area or community space. Turf enclosed by fencing or other barriers to permanently preclude human access for recreation or assembly is not functional turf"



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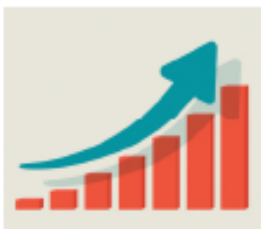
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D. SB 71 (Umberg). Small Claims and Limited Civil Case

Amends Civil Code § 2924j, and Code of Civil Procedure §§ 85, 86, and 86.1 (among other Sections)

Increases the jurisdictional limits of small claims actions to:

- \$12,500 per claim (was \$10,000) for "natural persons"
- \$6,250 per claim (was \$5,000) for a corporation or business



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D. SB 71 (Umberg). Small Claims and Limited Civil Case

- Still limited to two small claims actions for more than \$2,500 in the same calendar year
- Raises jurisdictional limit for limited civil cases from \$25,000 to \$35,000



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III. Fannie Mae and Freddie Mac new lender requirements

- Updates to project eligibility standards for condominiums and housing cooperatives effective September 18, 2023
- Changes include building inspections, reserve studies, insurance, pending litigation and more



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III. Fannie Mae and Freddie Mac new lender requirements

Links to new guidelines:

- **Freddie Mac Lender Bulletin**
<https://guide.freddiemac.com/app/guide/bulletin/2023-15>
- **Fannie Mae Lender Bulletin**
<https://singlefamily.fanniemae.com/media/36376/display>



NEW CASES - Published



**A. LNSU #1 LLC v. Alta Del Mar Coastal Collection
Community Association (2023) 94 Cal.App.5th 1050**

- Court of Appeal opinion interpreted Open Meeting Act as not prohibiting email discussions of HOA business involving quorum or more of Board
- The Board is not to take action on items outside a Board meeting



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**A. LNSU #1 LLC v. Alta Del Mar Coastal Collection
Community Association (2023) 94 Cal.App.5th 1050**

- The potential seems high for an email discussion between Board members to quickly move to a decision reached via email
- Better Practice:
 - Discuss and deliberate on matters of HOA business at noticed Board meetings



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B. River's Side at Washington Square Homeowners Association v. Sup. Ct. (Yolo) (2023) 88 Cal.App.5th 1209

- Plaintiff HOA filed suit for construction defects to recover damages for common areas, maintenance areas and in residential units
- The defendants contended the HOA lacked standing to pursue the claims for defects in the residential units



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B. River's Side at Washington Square Homeowners Association v. Sup. Ct. (Yolo) (2023) 88 Cal.App.5th 1209

- Court of Appeal held that under Civil Code § 945, an HOA's standing to enforce is limited to claims it has standing to pursue (Civil Code § 5980). This did not include standing for damage to the residential units
- An HOA may also have standing to pursue claims to individual residential units if such claims are assigned by the unit owners to the HOA



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C. Lauckhart v. El Macero Homeowners Association (2023) 92 Cal.App.5th 889

- Plaintiffs sought to cancel the CC&Rs due to fraud and prevent the HOA from accepting real property as common area or using assessments to fund its maintenance



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C. Lauckhart v. El Macero Homeowners Association (2023) 92 Cal.App.5th 889

- Attacks on recorded CC&Rs require that any allegations be pled with specificity
- A development that did not start out as a CID was able to become a CID that is subject to the Davis-Stirling Act by adopting recorded CC&Rs and acquiring common area



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D. Lake Lindero Homeowners Assoc. v. Barone (2023) 89 Cal.App.5th 834

- Recall petition called for a special membership meeting to recall the entire Board of Director and to elect a new Board if the recall was successful
- Board did not fix a time for the special meeting or give notice of the special meeting to the members within 20 days of receiving the petition. As a result, one of the petitioners sent their own notice and conducted the election



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D. Lake Lindero Homeowners Assoc. v. Barone (2023) 89 Cal.App.5th 834

- Quorum not met at initial recall meeting. At adjourned meeting, reduced quorum of 25% met. The Board was recalled, and new Board elected
- Old Board contended the recall was not valid because the Bylaws required "a vote of the majority of the votes held by the entire membership of record" to remove the Board



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D. Lake Lindero Homeowners Assoc. v. Barone (2023) 89 Cal.App.5th 834

- The Court of Appeal held that Corporations Code §§ 5034 and 7222 dictate that the recall of directors need only be approved by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum was present
- Contrary language in the HOA's Bylaws were superseded by the Corporations Code



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E. Takiguchi v. Venetian Condo. Maint. Corp. (2023) 90 Cal.App.5th 880

- 368-unit condominium failed to hold annual meetings which allowed father and son duo to control Board since 2009
- Father's seat was up for re-election and three candidates ran for one seat
- Inspector did not attend meeting in an effort to save money for the HOA
- Management conducted meeting virtually, did not take roll, and announced there was no quorum
- No meeting minutes



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E. Takiguchi v. Venetian Condo. Maint. Corp. (2023) 90 Cal.App.5th 880

- Owner took screen shots of attendees and determined quorum met if all attendees turned in ballot
- HOA failed to produce any contrary evidence
- Board member filed petition against the HOA requesting that the court order a meeting to be held to count the ballots pursuant to Corporations Code § 7510



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E. Takiguchi v. Venetian Condo. Maint. Corp. (2023) 90 Cal.App.5th 880

- HOAs should keep annual meeting minutes
- Procedures should be in place to document attendees



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F. Shetty v. HSBC Bank USA, N.A. (2023) 91 Cal.App.5th 796

- Shetty was the successful bidder at a trustee's sale
- HOA transferred the unit via a grant deed to Shetty
- Shetty attempted to reinstate senior deed of trust, but HSBC refused
- Court of Appeal held that Shetty did have standing
- Court held that anyone who acquires ownership through the chain of title may reinstate the loan



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F. Shetty v. HSBC Bank USA, N.A. (2023) 91 Cal.App.5th 796

The holding should make properties foreclosed upon by HOAs more marketable because it is clear that purchasers have a right to reinstate any default on the senior lien



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G. North Coast Village Condominium Assoc. v. Nancy Phillips (2023) 94 Cal.App.5th 866

- Phillips took pictures of President inside his unit, spread unsupported allegations that he was a pedophile, threatened him, etc. President lost his job, incurred legal fees, etc.
- Phillips harassed former onsite manager by repeatedly threatening to fire him, called him names, feigned physical assault, etc.



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G. North Coast Village Condominium Assoc. v. Nancy Phillips (2023) 94 Cal.App.5th 866

- Phillips was sent a cease and desist letter by the HOA's legal counsel
- HOA filed a workplace violence restraining order petition in support of President and 46 other employees and Board members



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G. North Coast Village Condominium Assoc. v. Nancy Phillips (2023) 94 Cal.App.5th 866

- Trial court denied the HOA's request. It then, on its own and absent a request, awarded President a civil harassment restraining order. Phillips appealed
- Court of Appeal held that:
 - Trial court denied Phillip's due process
 - Workplace violence restraining order could be entered against Phillips even though she was standing on public (and not HOA) property and President was not acting in his official capacity at time of incidents

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NEW CASES - Unpublished



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A. Danielle Manrodt v. David Albelo 2023 WL 4557605

- 6-unit HOA with approximately 12 residents
- Albelo (former Board member) filmed Mandrodt and her family constantly
- Albelo tried to say it was for enforcement of HOA rules
- Court issued a civil harassment restraining order against Albelo for 3 years



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A. Danielle Manrodt v. David Albelo 2023 WL 4557605

- Constant patrolling and policing of members may not serve a legitimate purpose and can be restricted if found to be harassing
- Filming/Photographing a current violation may serve a legitimate purpose
- Holding a position as a Board member does not grant the authority to participate in harassing conduct

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B. Lachtman v. Ocean Terrace Condominium Association 2023 WL 2236523

- Plaintiff was injured from a fight that took place at the HOA's "shared hot tub"
- Plaintiff sued HOA and management, among others, for negligence and premises liability



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B. Lachtman v. Ocean Terrace Condominium Association 2023 WL 2236523

- Trial court granted HOA's and management's motion for summary judgment
- Plaintiff filed a motion for new trial based on documents he "found" on top of furniture in common area in a closet which had been left "propped open"



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B. Lachtman v. Ocean Terrace Condominium Association 2023 WL 2236523

- HOAs should take complaints about residents threatening the safety of others in the common area seriously and investigate and take enforcement action if appropriate
- HOA records should be properly stored





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A Professional
Law Corporation

› Orange County Office

6440 Oak Canyon
Suite 250
Irvine, CA 92618
949-727-3111

› Coachella Valley Office

74-130 Country Club Drive
Suite 102
Palm Desert, CA 92260
760-776-6511

› Inland Empire Office

6820 Indiana Avenue
Suite 140
Riverside, CA 92506
951-369-6300

› San Diego County Office

380 S. Melrose Drive
Suite 330
Vista, CA 92081
760-707-1988

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