



LEGISLATIVE UPDATE: AB 3182

RENTAL RESTRICTIONS

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Over the past few years, the State Legislature has been adopting laws that diminish the power of homeowner associations to determine what is best for their communities, and 2020 was no different. Assembly Bill 3182 (AB 3182) hampers the ability of associations to restrict rentals in their communities. AB 3182 took effect on January 1, 2021.

The good news is that associations may still impose certain rental caps and prohibit short-term rentals (30 days or less). The bad

news is that many other types of rental restrictions are now unenforceable, and associations must take immediate action to amend their governing documents to remove voided provisions, or face damages and penalties.

BACKGROUND AND OVERVIEW

Over the years, California courts have consistently upheld the authority of associations to reasonably regulate rentals in their communities. In 1981, a court recognized the need to promote the

health, happiness and peace of mind of homeowners, which is why “it is essential to successful condominium living and the maintenance of the value of these increasingly significant property interests that the owners as a group have the authority to regulate reasonably the use and alienation of the condominiums” (Laguna Royale Owners Assn. v. Darger (1981) 119 Cal. App.3d 670, 682).

AB 3182 chips away at this established authority of associations. It amends Civil

Code Section 4740 and adds a new Section 4741. Most notably, Civil Code Section 4741(a) voids any provision of a governing document that “prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests, accessory dwelling units, or junior accessory dwelling units in that common interest development.”

This means that associations may not prohibit or unreasonably restrict rentals in their communities and under Section 4741(c), there is an argument that minimum lease terms exceeding 30 days may be considered unreasonable.

SHORT TERM RENTALS

AB 3182 contains an exception that explicitly allows communities to prohibit short-term rentals with a term of 30 days or less. Short-term rentals (such as Airbnb vacation rentals) have been a problem throughout California. If the association desires to enact restrictions on short-term rentals and their CC&Rs are silent as to a minimum lease term, in that scenario, an association could simply adopt a rule banning them.

RENTAL CAPS

AB 3182 also allows associations to impose rental restrictions limiting the total number of rentals to 25% or higher of the homes in the community (i.e., a rental cap). This allows communities to remain eligible for loans from government agencies such as the Federal Housing Authority and Veterans Administration. Rental caps lower than 25% are void and unenforceable. Associations must amend their governing documents to remove voided rental caps (for example, a rental cap of 10%).

OTHER TYPES OF RESTRICTIONS

AB 3182 does not specifically state what other types of rental restrictions would be permitted under the new law. Some professionals in the industry believe that owner-occupancy restrictions (such as that a buyer must occupy the home for the first year) are now void. Likewise, an association can no longer require that an owner obtain board approval before renting. However, associations may continue to require

that renters and leases be subject to the governing documents, and make the owner responsible for remedying rule violations.

ADU/JADU

Last year, the Legislature passed AB 670 to remove barriers to constructing accessory dwelling units (ADU) and junior accessory dwelling units (JADUs) in HOAs (particularly planned developments). Now, AB 3182 states that ADUs and JADUs may not be counted as rented for purposes of a rental cap, as long as the owner continues to occupy the primary residence. Provisions relating to ADUs/JADUs should be considered as part of a review of governing documents.

AMENDING GOVERNING DOCUMENTS

Many communities will find that their CC&Rs do not comply with the new law, such as, arguably, where CC&Rs contain a 6-month or 12-month lease term requirement, or a rental cap below 25%. Besides voiding such provisions, AB 3182 requires that “a common interest development shall amend their governing documents to conform to the requirements of this section no later than December 31, 2021.” The failure to do so would subject an association to actual damages and a civil penalty of \$1,000.

AB 3182 does not explain how governing documents should be amended. The Legislature failed to acknowledge the challenges, costs, and time involved in obtaining the required approval of members and lenders for an amendment. If your CC&Rs do not already contain language allowing the board to unilaterally amend them to conform to changes in the law, some firms take the position that boards may still do so given the clear legislative directive – as long as the amendment is limited to revising the unenforceable language and does not impose any new restriction. Other firms are of the opinion that CC&R amendments must still undergo the typical membership approval process and a possible court petition if approval is not obtained. Since there is no consensus, the association should seek advice from their legal counsel before proceeding.

AVOID LEGAL CHALLENGES AND LIABILITY ASSOCIATED WITH LEASING

1. Immediately passing a new rule to address voided provisions
2. Amending the CC&Rs to correct conflicting provisions or impose those permitted by law.

RECOMMENDATIONS

It is imperative that boards immediately review rental restrictions in their CC&Rs and rules and have legal counsel assist in determining whether they remain enforceable or require amendment. If so, then AB 3182 requires you to update your governing documents. Depending on the situation, options include: (1) immediately passing a new rule to address voided provisions (short-term rentals usually can be regulated with a rule) and (2) amending the CC&Rs to correct conflicting provisions or impose those permitted by law. Doing so will help avoid legal challenges and liability associated with leasing.



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