AB 3182 Q&A

On September 28, 2020, Governor Gavin Newsom signed into law Assembly Bill 3182 ("AB 3182"). AB 3182, among other things, amends Civil Code section 4740 and adds new Civil Code section 4741. AB 3182 may substantially change the way in which community associations address rentals. These changes take effect on January 1, 2021.

The ultimate effects of AB 3182 are currently unknown and the community association legal community is grappling with how to interpret this new law and its impacts.

Our firm, however, endeavors to provide timely information on such important legal matters impacting community associations so we are sending this update now although the full implications of this new law are presently unknown.

As such, we have prepared the below Q&A as an educational tool only. Please note:

- **Nothing below should be construed as legal advice.**
- **Discussions surrounding AB 3182 are ongoing and as our understanding of this new law evolves the answers below are subject to change.**
- **Contact your community association's legal counsel for further information.**

Q1. If my community association has a minimum rental period of 30 days or less in its governing documents, what must we do in light of the new law?

A. Nothing. A minimum rental period of 30 days or less does not violate the new law. Section 4741(c) specifically states, "This section does not prohibit a common interest development from adopting and enforcing a provision in a governing document that prohibits transient or short-term rental of a separate property interest for a period of 30 days or less."

Q2. If my community association has a minimum rental period of more than 30 days in its governing documents, does the new law require us to amend our governing documents?

A. Section 4741(c) is ambiguous on this point. The community association legal community is currently split as to how to interpret this provision. The most conservative reading of subsection (c) is that minimum rental periods longer than thirty (30) days are unenforceable. If your community association's governing documents contain a provision which has a minimal rental period longer than 30 days, please contact your legal counsel for additional guidance.

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Q3. What if my community association has a rental cap of less than 25% of the separate interests?

A. If your community association's governing documents place a limit on the total number of separate interests that may be rented at one time, and the limit is less than 25% of all separate interests, then that governing document must be amended to comply with the new law. If the document is not amended, the rental cap would be completely unenforceable.

Q4. What if my community association has a rental cap of 25% or more of the separate interests?

A. If your community association's governing documents place a limit on the total number of separate interests that may be rented at one time, and the limit is 25% or more of all separate interests, then that governing document complies with the new law and no amendment is necessary.

Q5. If my community association has a percentage rental cap, does a rented ADU or JADU count towards the rental cap?

A. No. The rental cap refers to "separate interests" which section 4741(d) makes clear does not include ADUs or JADUs. This means that if an owner resides in either the primary residence, ADU, or JADU none of these may be counted as rented or leased for purposes of the community association's rental cap (Civil Code section 4741(e)).

Q6. If my community association's CC&Rs do not comply with the new law, do we have to amend the CC&Rs?

A. Amending the CC&Rs is the most conservative approach. However, there is a split in the legal community as to whether adopting a rule to comply with the new law would suffice (see question 9 below for further discussion on this point). Please contact your legal counsel for additional guidance.

Q7. If my community association must amend its CC&Rs in light of the new law, does that amendment require a membership vote, or can our board record a CC&R amendment without the consent of the members?

A. If our firm prepared your community association's restated CC&Rs, it is possible those documents already include language that permit a board to record CC&R amendments to comply with the new law without the consent of members. However, in the absence of such language in your CC&Rs giving the board the power to make amendments, we believe the members would have to vote to approve the CC&R amendments.

Q8. If a membership vote is held to approve CC&R amendments, what happens if the members and/or lenders (if required) reject amendments to the CC&Rs to conform with the new law?

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A. Under certain circumstances a community association may seek court approval of those proposed amendments through Civil Code section 4275 or Corporations Code section 7515 based on the actual outcome of the vote (although, seeking court approval might not be necessary). Civil Code section 4741(g) states, "A common interest development that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars ($1,000)." If a community association puts the matter up for a vote of the members and the members do not approve it, arguably the association will not have willfully violated the law. If a community association does not seek judicial approval of the amendment, see #9 below for a possible option.

Q9. Could my community association simply adopt rules that comply with the new law instead of amending the CC&Rs?

A. It's unclear. It would appear that existing rental provisions which violate the new law would become unenforceable under the new law. There is an argument that the board could simply enact a rule to clean up the existing provisions to regulate rentals in compliance with the new law, however, section 4741(g) states that an amendment is required. We believe boards should attempt a membership vote to approve any required CC&R amendments. Then, if that fails, boards could enact rules that comply with the new law. Whether a rule is sufficient to comply with the law is questionable. There is a body of law that suggests that members must vote on the issue of rental restrictions, so a rule might not be sufficient (and the association could not enact new rental restrictions without member consent). Further, existing law (Civil Code section 4740(a)) might make those new rental restrictions inapplicable to existing members.

Q10. If members approve amendments to conform with the law, which members are bound by the amended provisions?

A. It's unclear. The answer to this question may depend upon whether language in the current document "prohibits" or "unreasonably restricts" rentals in violation of either Civil Code section 4740 or 4741. If an existing rental provision (e.g., a cap of 25% or less) is construed as either a prohibition or an unreasonable restriction, it would be unenforceable and an amendment would be necessary to conform to the new law. In that case, it is possible the amendment may only apply to new purchasers after adoption of the amendment. Hopefully, the Legislature will adopt clean-up legislation next year to address this issue. In the meantime, please contact your legal counsel for additional guidance.

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