



COMMUNITY ASSOCIATION *Law Bulletin*

2004 LEGISLATIVE UPDATE

AB 512 - RULE MAKING PROCEDURES

Adds Civil Code §1357.100

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AB 512 develops procedures for drafting and adopting "operating rules". An "operating rule" is defined as "a regulation adopted by the Board of Directors of the association that applies generally to the management and operation of the common interest development or the conduct of the business and affairs of the association." This definition is broad enough to cover what most everyone would normally think of as a "rule", but also what some Boards refer to as "housekeeping policies".

The rule will only be enforceable if:

1. The rule is in writing;
2. The rule is within the authority of the Board of Directors of the association conferred by law or by the declaration, articles of incorporation or association, and bylaws of the association;
3. The rule is adopted, amended or repealed in good faith and in substantial compliance with the requirements of the code; and

4. The rule is reasonable.

These requirements are not particularly shocking, as they are already set forth in California case law. So this portion of the legislation should not alter the practice of managers or Boards.

But, as to certain types of rules, the procedures will change. For, what we will call "special rules", the board must provide written notice of the proposed rule change to the members at least 30 days before making the rule change, which includes the text of the rule change and description of the purpose and effect of the proposed rule change. This

notice requirement is waived if the rule change was an emergency rule, which would mean it was "necessary to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the association."

For the "special rules", the decision on the proposed rule change must be made at a Board meeting, after consideration of any comments by members. If the rule is adopted, the board must deliver to the members a notice of the rule change within 15 days after adoption. If the rule was an "emergency rule", the notice of the rule change must include the text of the rule, a description of the purpose and effect of the rule change, and the date that the rule change expires.

The date of expiration is, of course, odd as rules usually do not expire, but are instead repealed. However, under this section, emergency rules are only effective for 120 days or less and may not be readopted without going through the process for adoption of rules set forth in the section.

"Special rules" requiring the notice and comment period described above include rules which relate to any of the following topics:

1. Use of the common area or of an exclusive use common area;
2. Use of a separate interest, including aesthetic or architectural standards that govern alteration of a separate interest;
3. Member discipline, including a schedule of monetary penalties for violation of the governing documents and any procedure for the imposition of penalties;
4. Any standards for delinquent assessment

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AB 512 RULE MAKING PROCEDURES (PART 2) METHODS OF DELIVERY

Adds Civil Code §1350.7

AB 512 includes a section which explains how a document can be delivered, which is required to be delivered by the membership in other provisions in the Davis-Stirling Act. Thus, unless a specific provision in the Davis-Stirling Act specifies the manner of delivery of a document, this new section will control.

A document may be delivered by one or more of the following methods:

- (1) Personal delivery.
- (2) First-class mail, postage prepaid, addressed to a member at the address last shown on the books of the association or otherwise provided by the member. Delivery is deemed to be complete on deposit into the United States mail.
- (3) E-mail, facsimile, or other electronic means, if the recipient has agreed to that method of delivery. If a document is delivered by electronic means, delivery is complete at the time of transmission.
- (4) By publication in a periodical that is circulated primarily to members of the association.

(5) If the association broadcasts television programming for the purpose of distributing information on association business to its members, by inclusion in the programming.

(6) A method of delivery provided in a recorded provision of the governing documents.

(7) Any other method of delivery, provided that the recipient has agreed to that method of delivery.

A document may be included in or delivered with a billing statement, newsletter, or other document that is delivered by one of the methods listed above, as well.

And lastly, the new code states that an unrecorded provision of the governing documents providing for a particular method of delivery does not constitute an agreement by a member of the association to that method of delivery. Thus, the Association may not establish a rule or for that matter amend any document aside from the recorded document (usually the CC&R's), that comes up with a method of delivery not listed above. [n](#)

AB 1191 PROPERTY INSURANCE RATES AND DISCLOSURE

Operative until March 1, 2004. Amends Insurance Code §678

Existing law requires an insurer under certain property insurance policies to deliver to an insured, within 45 days prior to policy expiration, an offer of renewal or a notice of non-renewal, as specified. This bill requires an insurer under property insurance policies to also inform an insured in writing of:

- (1) any increase or decrease in an annual premium as compared to the previous year,
- (2) the reasons for the change, and
- (3) specified telephone numbers and information regarding consumer complaints.

The telephone number must be displayed prominently in a font size consistent with the other text of the renewal offer. A brief statement should also be included which indicates that if the consumer has contacted the insurer to

discuss the non-renewal and remains unsatisfied, he or she may have the matter reviewed by the department. The statement shall include the telephone number of the unit within the department that responds to consumer inquiries and complaints.

In the event an insurer fails to give the named insured either an offer of renewal or notice of non-renewal as required by this section, the existing policy, with no change in its terms and conditions, shall remain in effect for 45 days from the date that either the offer to renew or the notice of non-renewal is delivered or mailed to the named insured. A notice to this effect must be provided by the insurer to the named insured with the policy or the notice of renewal or non-renewal. [n](#)

SB 1022

DEBT COLLECTION

***Operative on July 1,
2004.***

Existing law prohibits certain actions by debt collectors in connection with the collection of consumer debts. If you have any doubt as to what those acts are, please contact our office for copies of previous articles relating to collection of past due assessments and the Federal and State Fair Debt Collection Practices Act.

Beginning July 1, 2004, 3rd-party debt collectors (e.g. management companies and law firms) are required to provide notice to debtors, with the first written notice sent to a California address of the debtor in connection with the collection of a debt, that sets forth the debtor's rights, as specified, under the federal Fair Debt Collection Practices Act. For most associations, this notice will be placed on the pre-lien letter (a.k.a. the Notice of Intent to Lien letter).

The type-size used in the disclosure shall be at least the same type-size as that used to inform the debtor of his or her specific debt, but is not required to be larger than 12-point type. The notice to debtors should include the following description of debtor rights:

"The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov."



The notice shall be included "with" the first written notice initially addressed to a California address of a debtor in connection with collecting the debt by the third-party debt collector. The use of the word "with", instead of "in" suggests that the notice may be a separate attachment, rather than included in the letter itself. However, if it is used as a separate attachment, we would recommend that a footer be included on the first page indicating that it is attached so that there is no dispute later as to whether or not it was included.

Also, if a language other than English is principally used by the third-party debt collector (the manager or the law firm) in the initial oral contact with the debtor, a notice shall be provided to the debtor in that language within five working days. This ultimately gives debt collectors less incentive to be helpful and speak in a language other than English. Thus, debt collectors may want to consider an English-only policy when speaking to debtors.

The exact language specified above must be used. However, the statute does state that the notice required may be changed only as necessary to reflect changes under the federal Fair Debt Collection Practices Act that would otherwise make the disclosure inaccurate. Of course, the language is not exactly reassuring because it requires everyone to sit and wait for changes to the federal statute (which is ridiculously long) and then to wait for the lawyer to analyze whether that change makes this notice inaccurate. To say that debt collection has become ridiculously micro managed is a gross understatement.

A debt collector who fails to provide the notice would be liable for actual damages and a civil penalty under specified provisions of existing law.

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AB 1423
MANAGER
CERTIFICATION
EMERGENCY
LEGISLATION

Goes into effect
immediately

AB 1423 is what is called a "clean-up bill." Last year AB 555, the Common Interest Development Manager Certification Titling Act went into effect, and this bill clarifies and expands last year's bill. Both bills are disclosure statutes, requiring that those acting as community managers disclose certain facts about their credentials to the Board of Directors. The contents of the new bill are as follows:

SECTION 1. Section 11500 of the Business and Professions Code is amended to read:

11500. For purposes of this chapter, the following definitions apply:

(a) "Common interest development" means a residential development identified in subdivision (c) of Section 1351 of the Civil Code.

(b) "Community association" means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development. A community association is an "association" as defined in subdivision (a) of Section 1351 of the Civil Code.

(c) "Financial services" means an act performed or offered to be performed for compensation for a community association including, but not limited to, the preparation of internal unaudited financial statements, internal accounting and bookkeeping functions, billing of assessments, and related services.

(d) "Management services" means an act performed or offered to be performed in an advisory capacity for a community association including, but not limited to, the following:

(1) Administering or supervising the financial or common area assets of a community association or common interest development, at the direction of the community association's governing body.

(2) Implementing resolutions and directives of the Board of Directors of the community association elected to oversee the operation of a common interest development.

(3) Implementing provisions of governing documents, as defined in Section 1351 of the Civil Code, which govern the operation of the

community association or common interest development.

(4) Administering a community association's contracts, including insurance contracts, within the scope of the community association's duties or with other common interest development managers, vendors, contractors, and other third-party providers of goods and services to a community association or common interest development.

(e) "Professional association for common interest development managers" means an organization that meets all of the following:

(1) Has at least 200 members or certificants who are common interest development managers in California.

(2) Has been in existence for at least five years.

(3) Operates pursuant to Section 501(c) of the Internal Revenue Code.

(4) Certifies that a common interest development manager has met the criteria set forth in Section 11502 without requiring membership in the association.

(5) Requires adherence to a code of professional ethics and standards of practice for certified common interest development managers.

SECTION. 2. Section 11502 of the Business and Professions Code is amended to read:

11502. In order to be called a "certified common interest development manager," the person shall meet one of the following requirements:

(a) Prior to July 1, 2003, has passed a knowledge, skills, and aptitude examination as specified in Section 11502.5 or has been granted a certification or a designation by a professional association for common interest development managers, and who has, within five years prior to July 1, 2004, received instruction in California law pursuant to paragraph (1) of subdivision (b).

(b) On or after July 1, 2003, has successfully completed an educational curriculum that shall be no less than a combined 30 hours in coursework

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A B 1423

“ In order to be called a certified common interest development manager, the person shall meet one of the following requirements...” ”

described in this subdivision and passed an examination or examinations that test competence in common interest development management in the following areas:

(1) Instruction in California law that is related to the management of common interest developments, including, but not limited to, the following courses of study:

(A) The topics covered by the Davis-Stirling Common Interest Development Act, contained in Sections 1350 to 1376, inclusive, of the Civil Code, including, but not limited to, the types of California common interest developments, disclosure requirements pertaining to common interest developments, meeting requirements for community association Boards of Directors and members, financial disclosure and reporting requirements, and access to community association records.

(B) Personnel issues, including, but not limited to, general matters related to independent contractor or employee status, issues related to types of harassment, the Unruh Civil Rights Act, fair employment laws, and the Americans with Disabilities Act.

(C) Risk management as it pertains to common interest development, including, but not limited to, required insurance coverage and preventative maintenance programs.

(D) Property protection, including, but not limited to, general matters relating to hazardous materials such as asbestos, radon, and lead, the Vehicle Code, local and municipal regulations, family day care homes, energy conservation, Federal Communications Commission rules and regulations, and solar energy systems.

(E) The business affairs of community associations, including, but not limited to, necessary compliance with all required local, state, and federal laws and treatises.

(F) Basic understanding of governing documents, codes, and regulations relating to the activities and affairs of community associations and common interest developments.

(2) Instruction in general management that is

related to the managerial and business skills needed for management of a common interest development, including, but not limited to, the following:

(A) Finance issues, including, but not limited to, budget preparation, management, and administration of community association financial affairs, bankruptcy laws, and assessment collection activities.

(B) Contract negotiation and administration.

(C) Supervision of common interest development employees and staff.

(D) Management of common interest development maintenance programs.

(E) Management and administration of rules, regulations, parliamentary procedures, and architectural standards pertaining to community associations and common interest developments.

(F) Management and administration of common interest development recreational programs and facilities.

(G) Management and administration of owner and resident communications.

(H) Training and strategic planning for the community association's Board of Directors and committees, and other activities of residents in a common interest development.

(I) Risk management as it pertains to common interest development properties, activities, and emergency preparedness.

(J) Implementation of community association policies and procedures.

(K) Ethics for common interest development managers.

(L) Professional conduct and standards of practice for common interest development managers.

(M) Current issues relating to common interest developments.

SECTION. 3. Section 11502.5 is added to the Business and Professions Code, to read:

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“ This act
is an urgency
statute...and
shall go into
immediate
effect. ”

11502.5. The course related competency examination or examinations and education provided to a certified common interest development manager pursuant to Section 11502 by any professional association for common interest development managers, or any postsecondary educational institution, shall be developed and administered in a manner consistent with standards and requirements set forth by the American Educational Research Association's "Standards for Educational and Psychological Testing," and the Equal Employment Opportunity Commission's "Uniform Guidelines for Employee Selection Procedures," the Civil Rights Act of 1991, and the Americans with Disabilities Act of 1990, or the course or courses that have been approved as a continuing education course or an equivalent course of study pursuant to the regulations of the Real Estate Commissioner.

SECTION. 4. Section 11504 of the Business and Professions Code is amended to read:

11504. On or before September 1, 2003, and on an annual basis thereafter, a person who either provides or contemplates providing the services of a common interest development manager to a community association shall disclose to the Board of Directors of the community association the following information:

(a) Whether or not the common interest development manager has met the requirements of Section 11502 so he or she may be called a certified common interest development manager.

(b) The name, address, and telephone number of the professional association that certified the common interest development manager, the date the manager was certified, and the status of the certification.

(c) The location of his or her primary office.

(d) Prior to entering into or renewing a contract with a community association, the common interest development manager shall disclose to the governing board of the community association whether the fidelity insurance of the community manager or his or her employer covers the operating and reserve funds of the community association. This requirement may not be

construed to compel or require a community association or common interest development manager to require fidelity insurance.

(e) Possession of an active real estate license, if applicable. This section may not preclude a common interest development manager from disclosing information as required in Section 1363.1 of the Civil Code.

SECTION. 5. Section 1363.5 of the Civil Code is amended to read:

1363.5. (a) The articles of incorporation of a common interest development association filed with the Secretary of State on or after January 1, 1995, shall include a statement, which shall be in addition to the statement of purposes of the corporation, that does all of the following:

(1) Identifies the corporation as an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act.

(2) States the business or corporate office of the association, if any, and, if the office is not on the site of the common interest development, states the nine-digit ZIP Code, front street, and nearest cross street for the physical location of the common interest development.

(3) States the name and address of the association's managing agent, as defined in Section 1363.1, if any.

(b) The statement of principal business activity contained in the annual statement filed by an incorporated association with the Secretary of State pursuant to Section 1502 of the Corporations Code shall also contain the statement specified in subdivision (a).

SECTION . 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are: In order to revise the requirements for a certified common interest development manager as soon as possible in order to better protect the public, it is necessary that this act go into immediate effect. n

AB 104 AVAILABILITY OF FINANCIAL DOCUMENTS

Adds Civil Code

§1365.2

Assumed to be

effective 1/1/04

In 2001, the Davis-Stirling Common Interest Development Act was amended to require that members must be given access to association records in compliance with California nonprofit mutual benefit law (Cal. Civ. Code §1363(f)). This statute, which must be read along with the Corporations Code §8333, states that a community association must provide the (1) articles of incorporation, bylaws, and all of their amendments; (2) adequate and correct books and records of account; (3) minutes of the proceedings of its members, Board and committees of the Board ; and (4) a list of names and addresses of its members. The documents must only be furnished after receipt of a proper request.

AB 104 elaborates on these issues, as follows:

Designation of Representative

AB 104 allows a member to designate, in writing, another person to inspect and/or copy the books, records, and minutes on the member's behalf.

Location of Inspection

The books, records, and minutes must be available for inspection and copying in the association's business office within the CID. If there is no business office within the development, the association must make the books, records and minutes available for inspections and copying "at a place that the requesting member and association agree upon."

If the association and the requesting member cannot agree upon a place for inspection and copying, or if the member submits a written request for copies, the association can satisfy the requirements of the code by mailing the requested copies to the member by first class mail within 10 days of receiving the member's request. The association may bill the requesting member for its actual, reasonable costs for copying and mailing requested documents. But, the association must inform the member of the amount of the copying and mailing costs before sending the requested documents.

Redacting the Documents

Often times, managers and board members try to discourage the dissemination of these documents because there is private or sensitive matters described within the documents. The code provides that the books, records, and minutes may be redacted for certain reasons. Redacting literally is the act of crossing out or filtering the documents. The documents may be redacted if:

1. The release of the information is reasonably likely to lead to identity theft. Identity theft is defined as the unauthorized use of another person's personal identifying information to obtain credit, goods, services, money or property;
2. The release of the information is reasonably likely to lead to fraud in connection with the association;
3. The information is privileged under the law.

Compensation and Vendor Information

The code also specifically states that except as provided by the attorney-client privilege, the association may not withhold or redact information concerning the compensation paid to employees, vendors, or contractors.

Employees of larger associations can take comfort in the fact that the compensation shall be set forth by classification or title of the employee, not by the name of the employee, social security number or other personal identifications. But, if you are like most employees of homeowners associations, this does not do much good since only one or two people occupy a certain position or job title. Thus, if there is one manager on-site, everyone is going to find out exactly how much the manager makes for a living.

Use of Records for Commercial Purposes

For some odd reason, the legislature is under the impression that the association's records and minutes include information that someone might actually want to purchase. So, it is now unlawful for the information to be sold, or used for commercial purposes, or any purpose which does

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payment plans; or

5. Any procedures adopted of resolution of assessment disputes.

The notice and comment requirements specifically do not apply to:

1. A decision regarding maintenance of the common area;
2. A decision on a specific matter which is not intended to apply generally;
3. A decision setting the amount of a regular or special assessment;
4. A rule change that is required by law, if the Board of Directors has no discretion as to the substantive effect of the rule change; or
5. Issuance of a document that merely repeats existing law or governing document.

Rule Reversal

The new section also sets forth a mechanism for reversing a rule change. Members owning 5 percent or more of the separate interests may call a special meeting by delivering a request to the president or secretary. The Board must then send out a notice of the meeting, similar to a notice that would be sent out for any other kind of special membership meeting. The Board may also opt to have a vote by written ballot, instead of calling a meeting.

A rule change may be reversed by the affirmative vote of a majority of the votes

represented and voting at a duly held meeting at which a quorum is present, unless the CC&R's or Bylaws require a greater number of votes. The members must receive written notice of the outcome of the vote within 15 days of the close of voting.

However, the members may not make the written request more than 30 days after the members are notified of the rule change, which suggests that if the Board adopts a rule and the members fail to timely act, the members can only try to change the CC&R's (in order to create a conflict with the new rule, thus nullifying the new rule) by special meeting and not the rules. Notice of the new rule is deemed to be the date of delivery of the rule change, or the first date of enforcement of the rule change, whichever is sooner.

A rule which is reversed by the membership may not be readopted for a period of one year after the date of the meeting reversing the rule. But the subject of the rule is not off limits, just the actual rule that was reversed.

It is important to note that the section specifically states that a rule change which is commenced before January 1, 2004 is not affected by the new legislation. A rule change is considered commenced "when the Board of Directors of the association takes its first official action leading to adoption of the rule change." n

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not relate to the member's interest. The one time this may come up is when an association enters into a contract with a large scale provider, like a cable company. Occasionally, you will see a clause that states that the company may make direct solicitations to the owners regarding new features. This would be a commercial purpose.

Penalties

A member may bring a lawsuit against the association in order to enforce the member's right to inspect and copy the accounting books and

records of the minutes. The court shall award the member reasonable costs and expenses, including reasonable attorneys fees, and may assess a civil penalty of up to five hundred dollars (\$500) for each violation. Unfortunately, the code does not specify how you determine how many violations have been committed and does not affirmatively state that the association may receive its fees if it is found not to violate this section, although it is likely that a court would apply this standard to both parties. n

AB 1086 TRANSFER DISCLOSURES

Amends Civil Code

§1368

Existing law requires that an owner of a separate interest in a common interest development provide certain items to a prospective purchaser prior to transfer of title, and prohibits an association from imposing a fee in connection with a transfer of title greater than the association's actual costs to change its records and a specified charge for providing certain information upon request.

The seller of the property is required, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, to provide the following to the prospective purchaser:

- (1) A copy of the governing documents of the

“ Any person or entity who willfully violates this section is liable to the purchaser...”

common interest development, including a copy of the association's articles of incorporation, or, if not incorporated, a statement in writing from an authorized representative of the association that the association is not incorporated.

(2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3.

(3) A copy of the most recent documents distributed pursuant to Section 1365, which is the association's annual disclosures.

(4) A true statement in writing obtained from an authorized representative of the association as

to the amount of the association's current regular and special assessments and fees, any assessments levied upon the owner's interest in the common interest development that are unpaid on the date of the statement, and any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement. The statement obtained from an authorized representative shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest. Also, any change in the association's current regular and special assessments and fees which have been approved by the association's Board of Directors, but have not become due and payable as of the date of disclosure must be furnished.

(5) A copy or a summary of any hearing notice for violations previously sent to the owner that sets forth any alleged violation of the governing documents that remains unresolved at the time of the request.

(6) A copy of information relating to a construction defect suit, where the suit is pending or has recently been settled.

When requested by the seller in writing, an association has 10 days from the mailing or delivery of the request to provide the owner of a separate interest with a copy of the requested items specified.

The association may charge a fee for this service that may not exceed the association's reasonable cost to prepare and reproduce the requested items, but it is limited to an amount not to exceed the association's actual costs to change its records.

Any person or entity who willfully violates this section is liable to the purchaser of a separate interest that is subject to this section for actual damages occasioned thereby and, in addition, must pay a civil penalty in an amount not to exceed five hundred dollars (\$500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees. n



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Celebrating 30 Years of Service to the

COMMUNITY ASSOCIATION INDUSTRY

AB 1525

SIGNS

Adds section Civil

Code §1353.6

Assumed to go into

effect 1/01/04

This bill provides that the governing documents of a common interest development may not prohibit posting or displaying of non-commercial signs, posters, flags, or banners, as defined, on or in an owner's separate interest, except for the protection of public health or safety or if the posting or display would violate a local, state, or federal law. The bill does permit a common interest development association to prohibit signs, posters, flags, or banners which exceed specified sizes.

The idea behind the bill is that homeowners should be able to engage in constitutionally protected free speech traditionally associated with private residential property and should therefore be protected from unreasonable restrictions on this right in the governing documents.

Under the new statute, a non-commercial sign, poster, flag, or banner may be made of paper, cardboard, cloth, plastic, or fabric, and may be posted or displayed from the yard, window, door, balcony, or outside wall of the separate interest, but may **not** be made of lights, roofing, siding, paving materials, flora, or balloons, or any other

similar building, landscaping, or decorative component, or include the painting of architectural surfaces.

In terms of size restrictions, an association may prohibit non-commercial signs and posters that are more than 9 square feet in size and noncommercial flags or banners that are more than 15 square feet in size.

If the Board of Directors wishes to exercise its right to place size restrictions, as allowed under the statute, it may wish to do so before the new year in order to avoid the new notice and commentary requirements which will go into effect regarding the adoption of rules on January 1, 2004, pursuant to the terms of AB 512.

The Board may also want to consider that the words "posted" and "displayed" were used to describe how the signs or flags would be attached to the structure. The Board may want to adopt very reasonable restrictions regarding destruction of areas maintained by the association. The special considerations should be addressed by legal counsel. [n](#)