

Legislative Update

New Laws for 2023

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Robert M. DeNichilo is the Managing Partner at Nordberg|DeNichilo, LLP, and represents community associations across the state of California.

Robert is an active member of the Community Associations Institute (CAI) and has been awarded Author of the Year on multiple occasions for his articles on community association issues.

He has served as the CAI Orange County Regional Chapter's delegate and liaison to CAI's Legislative Action Committee (CLAC) for over a decade, and regularly meets with state and federal legislators to discuss issues related to community associations.

Robert served on Orange County CAI Chapter's Board of Directors and was the 2022 Chapter President. Additionally, Robert is a Fellow of CAI's College of Community Association Lawyers (CCAL). CCAL Fellows are recognized for committing themselves to high standards of professional and ethical conduct.

Robert also regularly speaks at educational and training events for industry organizations, property management companies, and board members.



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AB 1410

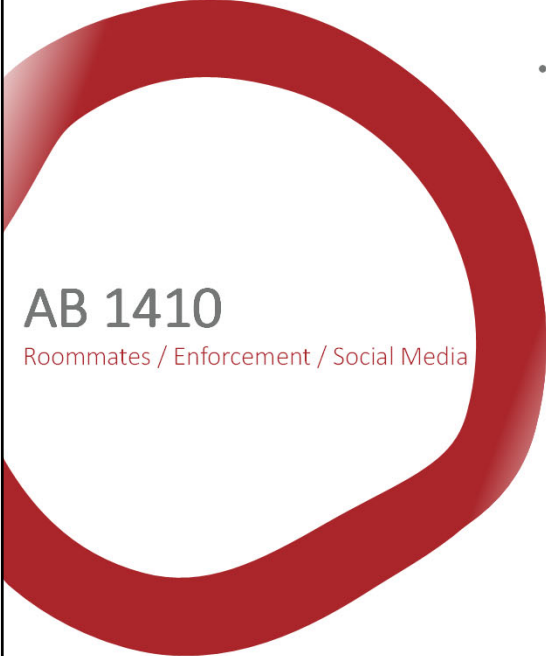
Roommates / Enforcement / Social Media

- Bans enforcement of any restriction in Governing Documents that prohibits the rental or leasing of a portion of an **owner-occupied** separate interest for a period of more than 30 days.
 - *Essentially*: permits roommates when the rental is for at least 31 days
 - Does *not* impact ability to restrict rentals where non-owner occupied
 - *Not* contingent on whether the restriction already existed when owner purchased

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AB 1410
Roommates / Enforcement / Social Media

- Prohibits taking any enforcement action during a declared state or local emergency
- ***IF*** the nature of the emergency makes it impossible for the owner to either prevent or fix the violation
- *Excludes* assessment collection actions
- *Takeaway:* California almost always in some form of declared state of emergency, but not many make compliance unsafe or impossible

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AB 1410
Roommates / Enforcement / Social Media

- Prevents an Association from prohibiting an owner or resident from using social media or other online resources to discuss any of the following:
 - Development living
 - Association elections
 - Legislation
 - Election to public office
 - The initiative, referendum, or recall processes
 - Any other issues of concern to members or residents.
- Protects peaceful assembly, using the common areas or separate interests for meetings, canvassing and petitioning, and circulating the above information
- Prohibits retaliation against a member or resident for exercising rights to peacefully assemble and freely communicate
- **But** makes clear that Associations are **not** required to provide owners access to or allow them to post content on Association websites or social media

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Operational Takeaways

- *How does this affect associations? What should you do?*

Roommates

Check the association's Governing Documents to determine if they contain restrictions that prohibit the rental or leasing of a portion of any owner-occupied separate interest for a period of more than 30 days. If yes, work with the association's legal counsel.

Social Media

While the law doesn't really change protects rights to gather in common areas, petition residents, distribute materials and use online media to discuss association living, elections, & other political and association matters - even if the content is critical of the association - it doesn't condone harassment, defamation or other speech not protected by the First Amendment. Involve counsel if you or your board believe what's been said could constitute harassment or defamation.



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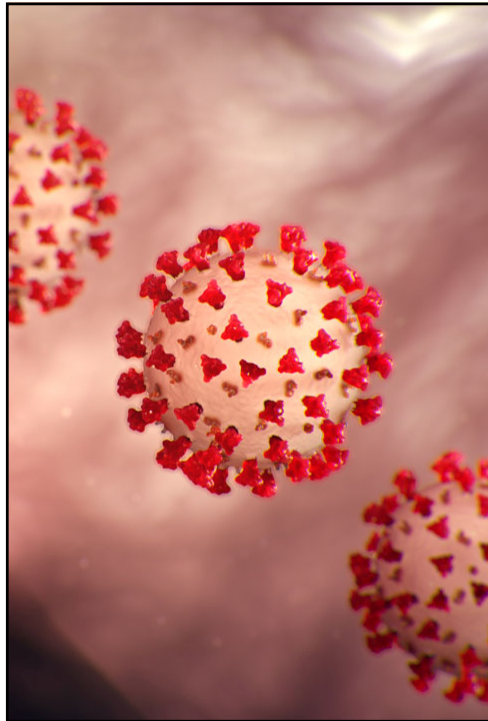
SB 392 Solicitation of Members' Delivery Preferences

- Requires associations to solicit members' preferred delivery method at least 30 days before sending out annual budget **and** policy statements.
- Any document or notice required to be sent by "individual delivery" must be sent according to the member's preferred delivery method, or by first-class mail, registered or certified mail, express mail or overnight delivery if none provided.

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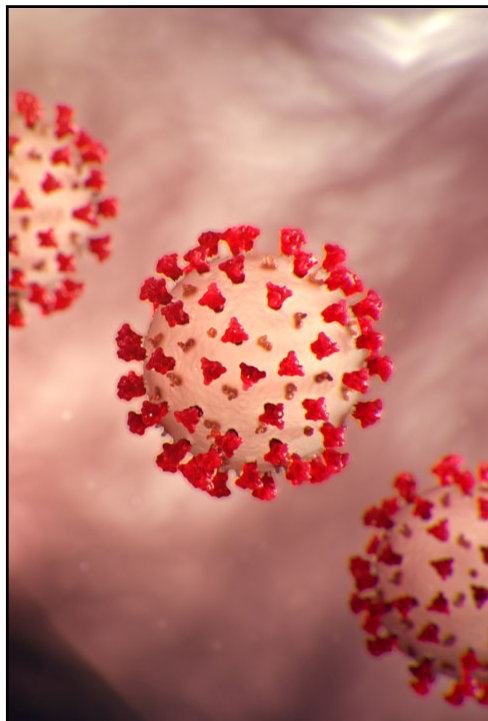
End of Covid State of Emergency

- Board or membership meeting may be conducted entirely remotely (without a physical location) if gathering in person is unsafe or impossible because a local, state or federal emergency order is in effect
- Both California and Federal States of Emergency have ended
- If no emergency order is in effect that makes it unsafe to gather, must have a physical location for members to attend where at least one director or person designated by the board is present
- *Pending legislation to allow for virtual only meetings*

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End of Covid State of Emergency

- Can you still meet via Zoom? YES!
 - But must provide physical location and a person designated by the board must be present.
 - Can be the same person present for multiple meetings (does not need to be a manager).
 - Check bylaws to determine where physical location must be located (on property, in the county or wherever the board deems it appropriate).

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Drought Restrictions

Check state website:

<https://drought.ca.gov/state-drought-response/statewide-emergency-water-conservation-regulations/>

- Restrictions apply to HOAs
- Decorative grass should not be watered*
- Give all **trees** just what they need: avoid overwatering
- Follow the local requirements of your water supplier

Note: Unless otherwise allowed in the regulation



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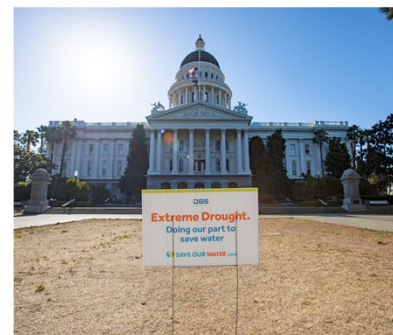
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Drought Restrictions

Check state website:

<https://drought.ca.gov/state-drought-response/statewide-emergency-water-conservation-regulations/>

- Turn off decorative water fountains
- Turn off/pause your irrigation system when it's raining and for two days after rain
- Use an automatic shutoff nozzle on your water hose
- Use a broom, not water, to clean sidewalks and driveways



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What current water use restrictions apply to all Californians?

State Water Board water conservation requirements are listed in the table below. There are also requirements not listed here. Column A lists prohibitions on the use of **potable** water that apply to all Californians. Column B lists additional requirements for urban water suppliers. This table was updated on June 5, 2023.

WHEN IN EFFECT	A. PROHIBITED FOR ALL CALIFORNIANS	B. ADDITIONAL REQUIREMENTS FOR URBAN WATER SUPPLIERS
[1] Effective until December 2023	<ul style="list-style-type: none"> Outdoor watering that lets water run onto sidewalks and other areas (except incidental runoff) Washing vehicles without an automatic shutoff nozzle Washing hard surfaces like driveways or sidewalks that don't absorb water Street cleaning or construction site preparation Filling decorative fountains, lakes, or ponds without a recirculation pump Outdoor watering within 48 hours after at least 1/4 inch of rainfall Watering decorative grass on public medians 	<ul style="list-style-type: none"> Follow all prohibitions in column A If needed, exercise authority to adopt more stringent local conservation measures
[2] Effective until June 2024	<ul style="list-style-type: none"> Watering decorative grass in commercial, industrial, and institutional areas, including common areas of homeowners' associations (HOAs) <p>Note: You may also be a customer of a local water supplier that adopted different and/or stricter water conservation measures; check with your supplier about its current restrictions.</p>	<ul style="list-style-type: none"> Follow all prohibitions in column A If needed, exercise authority to adopt more stringent local conservation measures
Enforcement	<ul style="list-style-type: none"> All water use prohibitions in column A are "infractions," and any organization or public entity that already has the authority to enforce infractions may do so; this may include local water suppliers and cities. Public entities include: a city, whether general law or chartered, county, city and county, special district, agency, authority, any other municipal public corporation or district, or any other political subdivision of the state. Violations may be punishable by a fine of up to \$500 per day. Before imposing monetary penalties, the Board directs staff and encourages other entities to provide one or more warnings; monetary penalties should be based on an ability to pay determination, consider allowing a payment plan of at least 12 months, and shall not result in a tax lien; and Board enforcement shall not result in shutoff. To report a potential water use violation, go to SaveWater.CA.Gov on your phone or computer. 	

[1] = These requirements are from the water conservation emergency regulation to prohibit wasteful water uses that was readopted in December 2022 and is in effect for one year from the effective date, unless the State Water Board modifies, readopts, or ends it before then. Find regulation documents below.

[2] = These requirements are from the water conservation emergency regulation to ban decorative grass watering that was readopted and became effective in June 2023 and is in effect for one year from the effective date, unless the State Water Board modifies, readopts, or ends it before then. Find regulation documents below.

https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/regs/emergency_regulation.html

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What are HOA requirements during drought emergencies, especially the ban on watering decorative grass?

The ban on using potable water to irrigate decorative grass applies to property a homeowners' association (HOA) owns or maintains, and not the grass of individual residences (or separate interests). While an individual's property is considered residential, property owned or maintained by an HOA is treated the same as other landscapes owned by commercial or institutional entities. The regulation does not ban watering grass with recycled water, watering grass regularly used for recreation or community activities, or watering trees or other plants.

An HOA should review areas of grass that it maintains, consult with residents, and determine whether the grass is decorative ("non-functional"). Water suppliers may defer to HOAs' determinations that specific areas of grass are used for recreation or community events. However, water suppliers also retain the authority to enforce the watering ban if there is a documented violation.

According to the Davis-Stirling Act, an HOA may not impose a fine for reducing watering of lawns or vegetation during a drought emergency that was either declared by the Governor or local government. Additionally, homeowners may remove their lawns and replace them with water-wise plants. If a homeowner installs water-efficient landscaping during the drought, an HOA cannot prevent them from maintaining it or require them to remove it when there is no longer a drought state of emergency. An HOA also cannot prohibit, or include conditions that have the effect of prohibiting, the use of low water-using plants as a group or as a replacement of existing grass. Please refer to the documents and links below for more information on HOAs and drought emergency resources:

- [Letter to HOAs regarding emergency water conservation regulations \(6/6/2022\)](#)
- [Davis-Stirling Act \(specifically Civil Code section 4735\)](#)
- [HOA Fact Sheet](#)
- [Resources for saving water in the SaveOurWater.com Homeowners Association Toolkit](#)

https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/regs/emergency_regulation.html

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AB 2119 Veterans Medical Foster Home

Creates program for licensed medical foster homes for veterans no sooner than July 1, 2024

Veteran Medical Foster Homes considered residential use

Associations may not prohibit medical foster homes for veterans in the community



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NEW LAWS NOT DIRECTLY AIMED AT HOAs

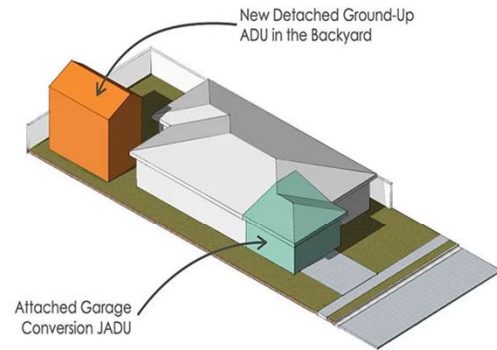
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SB 897 & AB 2221 ADUs & JADUs

- **Applies to Local Municipalities**
- **Prior law:** allows local municipalities to impose **subjective** standards on parking, height, setback, landscape, architectural review, and size
- **SB 897:** requires **objective** standards = no personal or subjective judgment by public official and uniformly verifiable and knowable prior to submittal
- Prohibits a local agency from denying a permit to create an ADU due to correction of nonconforming zoning conditions, building code violations, or unpermitted structures that do not present a threat to public health and safety
- Increases maximum height limitation a municipality may impose on an ADU, modifies setback requirements, and prohibits imposition of parking requirements in certain specific instances
- **Takeaway:** aimed at local municipalities, but likely expect future similar bill to apply to Associations



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AB 2097 Parking

- Prohibits a municipal agency from requiring minimum parking requirements on new housing developments with over 20 units if within ½ mile of public transit
- **Exception** if public agency makes written findings that not imposing or enforcing minimum parking requirements on the development would have substantially negative impact on the agency's ability to meet its share of specified housing needs or existing residential or commercial parking within ½ mile of the development
 - Must be issued within 30 days of receipt of completed application
 - Supported by preponderance of evidence in the record
- **Exception** if housing development project:
 - Dedicates a minimum 20% of total number of housing units to very low, low-, or moderate-income households, students, elderly, or persons with disabilities;
 - Contains fewer than 20 housing units; or
 - Is subject to parking reductions based on any other applicable law.
- **Takeaway:** While not directly impacting existing Associations, the bill will significantly impact parking in new developments in coming years

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AB 2863 Bicycle Parking

- Aimed at California Building Standards Commission
- Requires state to develop minimum mandatory bicycle parking standards for multifamily residential buildings
- Likely face mandatory bicycle parking in the future

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AB 2075 & AB 1738 Electric Vehicle Charging Stations

- Development of mandatory building standards for the installation of EV charging stations in new and retrofitted multifamily residential buildings.
- Mandatory EV charging station standards will only apply when there are additions or alterations to parking facilities that would require a building permit.

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Fire Insurance Costs

- Non-Admitted Carriers
- Special Assessments
- Amend Governing Documents



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PENDING LEGISLATION


New Laws in 2024?

- None have been signed as of yet
- May or may not become law in 2024

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AB 572 (Haney): Limits Assessment Increases

- Would limit increases in annual assessments on **Below Market Rate Units** to
 - no more than 5%, **or**
 - the percentage change in the cost of living,
 - whichever is larger, not to exceed 10 percent.
- Would apply only to new associations (those built after Jan. 1, 2024)
- Exception:
 - Would not apply to a development where 30 percent or more of the units, exclusive of a manager's unit or units, are occupied by, or available at affordable housing cost to, lower income and moderate-income households

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AB 648 (Valencia): meetings by teleconference

- Would authorize a board meeting or a meeting of the members to be conducted entirely by **teleconference** if the following conditions are met:
 - A requirement that the notice for the meeting provide clear instructions on how to participate by teleconference; and
 - Require each director and member to have the same ability to participate that would exist if the meeting were held in person.
- Only permitted at meeting where ballots are counted and tabulated, if meeting is conducted by **video conference** and the **camera is placed in a location** such that members can witness the inspector of elections counting and tabulating the votes.



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AB 1458 (Ta): Member Election (Quorum)

- In the absence of a quorum would authorize a common interest development to adjourn a membership meeting to a date at least 20 days after the adjourned proceeding, at which time the quorum required for purposes of a membership meeting shall be 20% of the voting members present in person, by proxy, or by secret written ballot received.
- Exception: a lower quorum is authorized by an association's governing documents



"Well, let's get started now we've got a quorum."

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AB 1033 (Ting): ADUs – separate conveyance

- Would authorize a local agency to adopt a local ordinance to allow the separate conveyance of the primary dwelling unit and accessory unit or units as condominiums.
- A lienholder may refuse to give consent.
- Would require filing of a new condominium plan
- If an accessory dwelling unit is established as a condominium, the local government shall require the homeowner to notify providers of utilities, including water, sewer, gas, and electricity, of the condominium creation and separate conveyance.



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Questions



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