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July 2019 Summer Recess Report

Below are significant bill summaries as provided by the State Legislature. While some bills are lengthy and cover a multitude of issues, these summaries hit the highlights. Many bills are hotly contested by HOA advocate organizations, “anti-HOA” groups, YIMBY & NIMBY organizations, renters, and real estate interests. This information is meant to inform you of their most current provisions; the bills will be heard in various committees in August. Some bills will fail to muster the requisite number of “AYE” votes and may therefore become “2 year” measures, meaning that they will be heard in January 2020. This web site will offer you an update before September.

While affordable housing is the most pressing issue, and are addressed in more than 150 bills, a consensus among landlords, HOA and non-HOA property owners, city and county planners, zoning commissions, renters, and a coalition of persons in need of “accessory dwelling” small housing, one cannot predict the final resolution by September. Certainly, the Governor has made it one of his primary concerns.

So, let’s begin...

AB 68 (Ting) Accessory Dwelling Units: The Planning and Zoning Law authorizes a local agency to provide for the creation of accessory dwelling units in single-family and multifamily residential zones and sets forth required standards, including lot coverage. This bill would delete the provision authorizing the imposition of standards on lot coverage.

AB 670 (Friedman) Accessory Dwelling Units in HOAs: The Davis-Stirling Common Interest Development Act, governs the management and operation of common interest developments. Current law prohibits the governing document of a common interest development from prohibiting the rental or leasing of any separate interest in the common interest development, unless that governing document was effective prior to the date the owner acquired title to their separate interest. This bill would make void and unenforceable any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit (ADU) or junior accessory dwelling unit (JADU) on a lot zoned for single-family residential use that meets the minimum standards established for those units.

SB 13 (Wieckowski) Housing Supply. The bill authorizes the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. It would also revise the requirements for an accessory dwelling unit by providing that the accessory dwelling unit may be attached to, or located within, an attached garage, storage area, or other structure, and that it does not exceed a specified amount of total floor area.

SB 330 (Skinner) Housing Supply. Perhaps the most detailed bill on affordable housing. Here are broad opinions:

Author's Statement. According to the author, "California is experiencing an extreme housing shortage. We now rank 49th in the number of housing units per capita and are home to 33 of the 50 US cities with the highest rents. SB 330 is designed to address our housing crisis by asking local governments to hold off on actions that would decrease or delay housing and to process permits for housing that is already allowed under their existing rules, but to do it faster and not change the rules once the housing application is submitted. By requiring timely processing of permits and relaxing a limited set of rules, SB 330 employs the same approach that cities have used to help recover from fires or other disasters. Lastly, to help keep tenants and low-income families in their homes, SB 330 also includes anti-displacement measures."

Arguments in Support. According to the California Chamber of Commerce, "Many cities and counties – while likely well intentioned – have exacerbated the housing shortage by creating barriers to new housing construction. We believe SB 330 takes meaningful steps to re-establish good government standards for permitting zoning compliant housing projects. This bill would streamline the development of more housing in California by amending local land use approval processes and the PSA for certain defined local jurisdictions by requiring the timely processing of permits, preventing unreasonable delays in the approval of new housing projects, providing a more fairer playing field by preventing local governments from imposing new fees or exactions in excess of the amounts that would have been applicable at the time the initial application was submitted, and ensuring that residential housing applicants are consistent with city general plans."

Arguments in Opposition. The League of California Cities writes that this bill essentially bans project-specific fees, after the submittal of a preliminary application, because these fees cannot be determined until a city fully analyzes the project. The California State Association of Counties and Urban Counties of California are concerned that the information required to be submitted via the preliminary application may be insufficient to determine the development's impacts at the local level, especially in new growth areas located in counties, where new development may require project-specific fees under the Mitigation Fee Act to ensure that essential community services can be provided to new residents.

SB 323 (Wieckowski) Elections. Undoubtedly, this is the most controversial bill involving HOAs. There are 20 changes being made to the HOA election current laws. Please see the Senator's and Opponents' arguments which are very general in nature as the bill does contain specific candidate eligibility and rights, etc. More specifics to come in August. Senator's bill last session on this topic was vetoed by Governor Brown saying "one size doesn't fit all" in his veto message.

Arguments in Support: This bill is sponsored by the Center for California Homeowner Association Law and is supported by a coalition of housing advocates. Representative of the supporters, the Center for California Homeowner Association Law writes:

Elections in California's 52,000 associations are no small matter. They are the training ground for broader civic engagement and civic education of American voters. Any attempts to undermine the "Fairness and Integrity of Association Elections" should be rejected. Training homeowners to believe that it's legitimate to deny them the right to vote and the right to run for office in association elections only erodes the trust of voters in democratic institutions in general. We think SB 323 makes it harder for associations to manipulate HOA elections and goes a long way toward restoring confidence in this essential democratic process.

Arguments in Opposition: This bill is opposed by a coalition of homeowners associations and community managers. Representative of the opposition, the Community Associations Institute's California Legislative Action Committee writes:

SB 323 will significantly increase the costs and time associated with conducting an election. While these costs seem minimal, nearly 70 percent of the associations in California are 50 units and more than half have a budget of \$100,000 or less, so the additional requirements and expenses created by this bill will have a significant impact on a large number of communities. The approach proposed by SB 323 is far too drastic and is not supported by most associations in California.

SB 754 (Moorlach) Elections by acclamation was previously attempted in a prior session where it which failed. In HOAs with 6,000 separate interests or more, this bill would all an election to be made by acclamation. Once the nominations for the board of directors are complete, if the total number of nominees equals the number of open board seats, the election could be conducted by acclamation. This would bypass the election procedure in existing law. The HOA would be required to provide notice to the members 30 days prior to the nominations of the procedure for nominating candidates and all qualified candidates would be permitted to run. HOAs are required to adopt operating rules that govern the elections including qualifications for candidates for the board of directors. This bill would require an HOA to disqualify a candidate for the board if he or she is not a member of the HOA or if the person has been convicted of a felony in the last 20 years. HOAs would allowed to disqualify a candidate who has owned in the CID for less than one year. An HOA could also disqualify a person or board member who is delinquent on regular and special assessments, except that the person has to have been offered a payment plan, the person may pay the assessment under protest, and the person must be given an opportunity to participate internal dispute resolution.

According to the author, "Elections are very expensive for large HOAs. Laguna Woods Village, the sponsor of this bill, serves more than 18,500 members, the vast majority of which are of modest means, living on fixed incomes. When an election is uncontested, it is a terrible and unnecessary drain on people with limited incomes. Laguna Woods Village has spent \$60,000 on uncontested elections each year in the last two years alone. Most of Laguna Woods Village elections are uncontested, despite the best efforts of HOA leadership to recruit candidates. Yet the HOA board must hire elections officials, print and mail ballots, and conduct costly elections, shifting precious resources away from other important community needs."

Arguments in Support: According to the sponsor of this bill, Laguna Woods, "SB 754 allows for election of board members by acclamation when the number of available director nominees does not exceed the number of vacant positions. Even on occasions when not enough members have the time or inclination to fill available board seats, we are still required to conduct a full election. Board election costs for Laguna Woods Village from 2016 to 2018 there were nine board elections costing a total of \$116,760. Four of the nine elections were for uncontested seats and cost more than \$70,000 to conduct, a significant budgetary hit that would no longer be necessary under SB 754."

Arguments in Opposition: The Community Associations Institute's California Legislative Action Committee is supportive of giving HOAs the option of voting by acclamation when the number of candidates equals the number of open board seats; however, they are opposed to establish qualifications for board members in statute and believe it should be left up to individual HOAs to determine those qualifications.

SB 434 (Archuleta) Records and Property. Would require a managing agent whose management agreement has been terminated to produce an HOA's property and records within 30 days of termination in a format that the association can reasonably use, whether on paper or in digital form.

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