Kriger LAW FIRM News
Fourth Quarter · 2019

SB 323 Elections-What You Need to Know

By Joel Kriger, Esq.

Senate Bill 323, which will become law January 1, 2020, implements fundamental changes in the way Associations conduct their elections. This article summarizes the key changes.

New Election Rules Mandatory - Civil Code 5105(a)

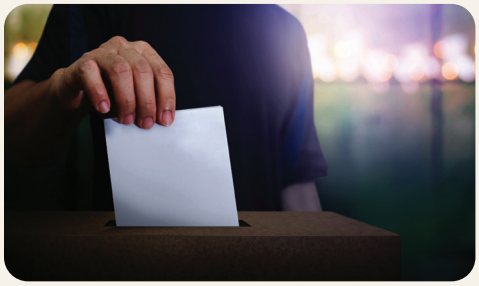
Adoption of election rules is mandatory. The new law changes and adds procedures for conducting an annual election. The election rules cannot be amended less than 90 days prior an election. Operating rules, such as election rules, require a 28-day notice to the membership prior to adoption.

Revised Timeline for Elections - Civil Code 5115

There are three mailings required as part of the new election process. First, at least 30 days prior to the close of nominations, the members must receive information explaining the nomination process. Second, at least 30 days before the ballots are distributed, notice containing the list of candidates along with additional information regarding the election process is sent. Third, at least 30 days prior to the voting deadline, ballots are required to be mailed to the membership.

Disqualification of Nominee - Civil Code 5105(b) and (c)

Some association bylaws and/or election rules contain qualifications required to run for the board. The new law limits the grounds for disqualification – one of which is mandatory and the others optional. Nonmembers may not run for the board; they are automatically disqualified. There is an exception for developer representatives and corporate representatives when the unit is owned by a corporation. The election rules or bylaws may provide for disqualification of a member who is (1) delinquent in assessment payments (exception for payment plans), (2) a joint owner with another board member, (3) a member for less than a year, or (4) an individual that has a past criminal conviction that disqualifies the association from obtaining the required fidelity bond coverage.



Right to Vote - Civil Code 5105(g)

Suspension of voting rights is no longer permitted. Most associations had been able to suspend voting rights of members who are delinquent in assessments or as disciplinary action. Now, members may not be denied the right to receive a ballot. Further, an individual holding a general power of attorney for a member must be provided a ballot.

Limit on Inspectors of Elections - Civil Code 5110(b)

Previously, associations were permitted to have their property management company or attorney count ballots so long as it was authorized in their election rules. The law now prohibits any person or entity under contract with the association for compensable services, including management companies, to count ballots (unless the contract for compensable services is for the sole purpose of serving as the inspector of election). Any disinterested member still may be appointed to count the ballots.

Election Challenges - Civil Code 5145

A member may challenge an election within one year for violation of election procedures. If the member proves that the election procedures were not followed, the court must void the results of the election unless the association proves by a preponderance of the evidence that the association's noncompliance with the election operating rules did not affect the results of the election. A $500 penalty for each violation may be imposed. The action may be brought in small claims court or Superior Court.

Elections Scheduled in Early 2020

The new law does not contain a "grace period." How can an association with an annual meeting scheduled in early 2020 comply? The election rules cannot be amended within 90 days of the annual meeting, plus the new procedure requires another 60 days to comply with the new notices to members for nominations and providing a list of candidates before ballots are even distributed. It is our recommendation that annual meetings scheduled for the first half of 2020 be rescheduled into July for the purpose of allowing the Board to adopt new election rules and comply with these new timelines. If that does not occur, then the election will be subject to challenge and a penalty of $500 per violation of the election law may be imposed.

Association Records Includes Email - Civil Code 5200(a)(9)

Existing law allowed members to obtain membership lists which included the name, property address, and mailing address of all owners. The membership list is now required to include email address of the owners.

Bylaws Updates/Revisions

The changes imposed by this new legislation may create conflicts in existing bylaws. It is our recommendation that counsel be requested to review existing bylaws in conjunction with recently adopted election rules to identify potential conflicts and recommend appropriate amendments.

Conclusion

The new election rules impose challenges for associations and management companies in creating new procedures for compliance. The first step in the process is updating election rules. Please contact us for a proposal to update your election rules, and we will provide a draft of the updated rules to the Board for approval within 14 days of acceptance. ■

In This Issue:

A Bird's-Eye View of the Balcony Bill

By Garrett Wait, Esq.

Senate Bill 326, approved by the Governor on August 30, 2019, will create new requirements for homeowners associations to inspect exterior elevated load-bearing elements by January 1, 2025. As you may suspect, the bill arose out of several high-profile balcony collapses, and ostensibly serves to protect public safety. The so-called "balcony bill" applies to condominium associations only and specifies that only load-bearing components six or more feet above ground must be visually inspected. Per the definitions in the new Civil Code Section 5551 created by the bill, those load-bearing components generally consist of balconies, walkways, decks, stairways, and their railings that are designed for human occupancy, and that are supported by wood or wood-based products.

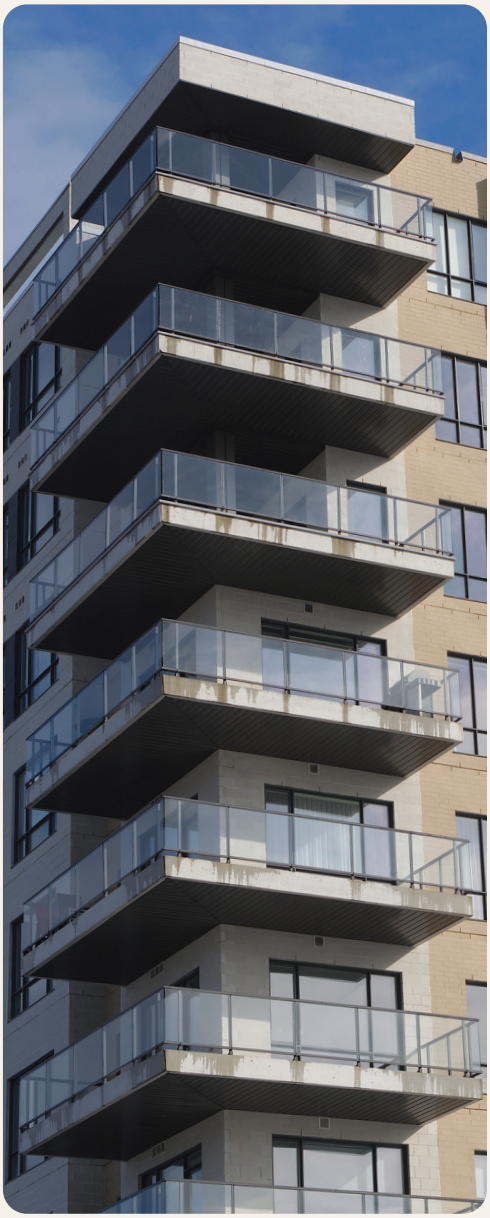
Critically, the visual inspection must be completed at least once every nine years by a licensed structural engineer or architect. The inspector must inspect a random and statistically significant sample of exterior elevated elements for the association to comply with the law. The findings from that inspection must be reduced to a written report that (i) identifies the building components comprising the load-bearing components and associated waterproofing system; (ii) states the current physical condition of the load-bearing components and associated waterproofing system, including whether the condition presents an immediate threat to the health and safety of the resident; (iii) states the expected future performance and remaining useful life of the load-bearing components and associated waterproofing system; and (iv) provides recommendations for any necessary repair or replacement of the load-bearing components and associated waterproofing system.

If the inspector determines that any exterior elevated element poses an immediate threat to safety, the inspector must provide a copy of his or her report to the local code enforcement agency, and the association must immediately prevent access to the exterior elevated element until completing the necessary repairs and having the repairs inspected and approved by the local enforcement agency.

The bill also creates Civil Code Section 5986 which voids any provision in developer-created CC&Rs that requires a vote of the membership to initiate construction defect litigation. The bill's language also prohibits restrictions on the board's right to obtain legal counsel or incur expenses in pursuing construction defect claims. The practical effect of that language is to disallow developers from creating unnecessary hurdles for an association to pursue construction defect claims. It grants and protects the rights of boards of directors that many developers try to restrict.

While the bill does not require the first inspection occur for another five years, associations should prepare to complete the required inspections well in advance. There are only so many licensed structural engineers and architects available and their calendars will begin to fill up quickly. We strongly recommend that associations begin scheduling visual inspections sooner rather than later. Naturally, this will need to be a new line item in the association's budget. Boards and managers should dedicate some time in 2020 to understanding the full cost of the visual inspections so that they can better prepare for potential necessary assessment increases.

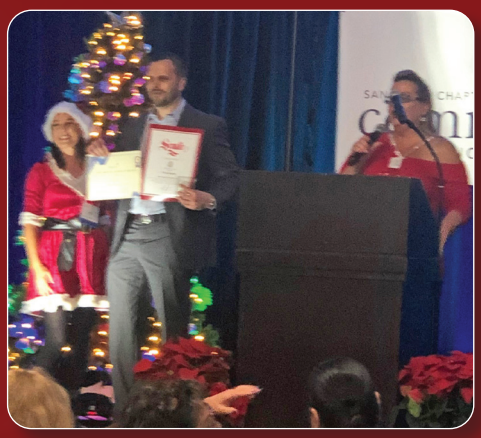
As always, if you have any questions about the effect of the balcony bill, do not hesitate to contact Kriger Law Firm. ■



What's happening at Kriger LAW FIRM

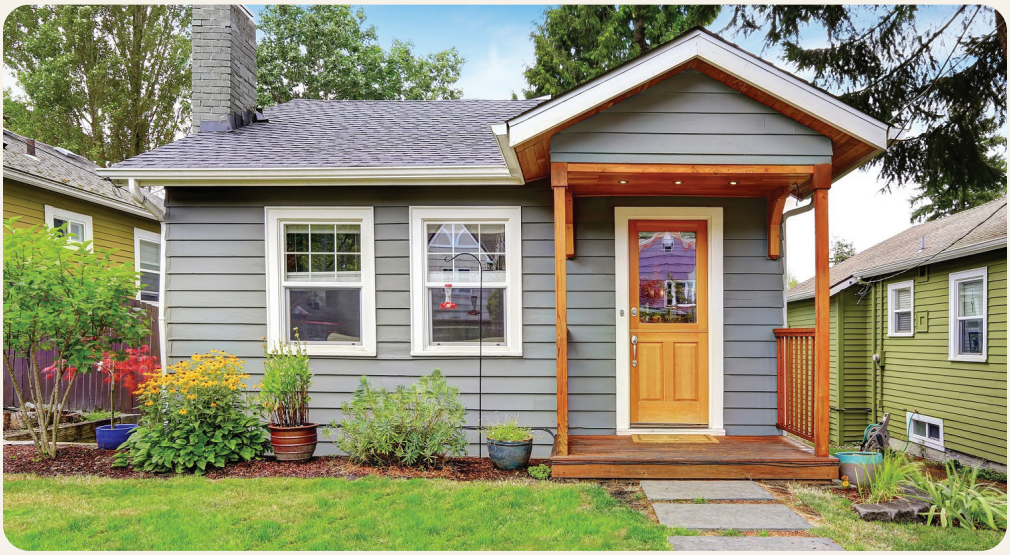
Committee Member of the Year for 2019

We are proud to announce that Kriger Law Firm's own Tyler Kerns received recognition as CAI-San Diego's Publications Committee Member of the Year for 2019. Tyler was also nominated for CAI Rising Star and Author of the Year for his work on Community Insider magazine. As everyone he works with already knows, his accolades are well-deserved. Congratulations, Tyler!



Much Ado about ADUs

By Steven L. Banks, Esq.



The California legislature was busy this year drafting legislation aimed at further easing restrictions on Accessory Dwelling Units ("ADUs"). ADUs, sometimes called "granny flats" or "guest houses," are additional living quarters located on the same lot as an existing dwelling. The legislature had already expanded the allowable areas where ADUs could be built and made it easier for existing ADUs to be brought into compliance with building codes. Changes in ADU-related laws taking effect on January 1, 2020 could see thousands of ADUs added to planned communities in coming years. As for community associations, it is important to note that these changes affect only "planned developments" involving single-family homes or townhomes where owners own individual lots, rather than condominiums.

Kriger Law Firm is ready to assist its clients in navigating this new ADU landscape, including helping to draft reasonable restrictions to address the issues associations are likely to encounter under the new laws.

Restrictions are being eased on setbacks, size, and location of ADUs. A so-called "junior" ADU ("JADU"; less than 500 square feet and contained within a single-family dwelling) and an ADU will now be allowed on the same lot, effectively resulting in a "triplex." Fortunately, ADUs may not be used for short-term rentals, although they may be rented for terms longer than 30 days.

These new laws will have a major effect on parking availability. When garages or carports are converted into ADUs, cars formerly parked in them will by necessity now be parked on the streets. But public agencies will now be prohibited from requiring replacement parking as a condition of allowing such conversions.

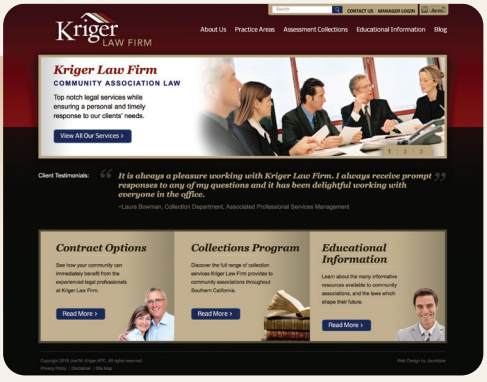
Community associations will now be specifically limited by Civil Code Section 4751, which makes void and unenforceable any association restriction that "prohibits or unreasonably restricts" the construction on single-family residential lots of ADUs or JADUs meeting certain minimum standards. Many associations have restrictions requiring that residents park in their garages, particularly before being permitted to park elsewhere. In planned communities subject to the new laws, such restrictions cannot be used to prevent garages or carports from being converted into ADUs.

Fortunately, as with solar energy systems, associations can still enact reasonable restrictions, so long as such restrictions do not effectively prohibit the construction of ADUs or JADUs, or unreasonably increase their cost. Of course, what this will mean in practice remains to be seen, since the legislature has provided no definition to assist in determining whether a given restriction is "reasonable," and since the new law does not specify that associations must follow the same restrictions as public agencies. Kriger Law Firm is ready to assist its clients in navigating this new ADU landscape, including helping to draft reasonable restrictions to address the issues associations are likely to encounter under the new laws. ■

Our Voice on the Web

VISIT US TO LEARN ABOUT OUR FULL RANGE OF SERVICES

krigerlawfirm.com



Note:

In the third quarter 2019 Kriger Law Firm Newsletter, an article was mistakenly reprinted from the CAI Law Reporter. The article printed under the headline "Association BEWARE: Don't Fall Prey to Another Automatic Renewal Clause" was incorrectly attributed to Tyler Kerns without his knowledge but was instead a CAI Law Reporter article not intended for reprint in the Kriger Law Firm Newsletter. We regret the error.

Kriger LAW FIRM News

Presort Standard
U.S. Postage
PAID
Permit 751
San Diego CA

Corporate Office
8220 University Avenue, Suite 100
La Mesa, CA 91942-3837
(619) 589-8800 · FAX (619) 589-2680

Servicing San Diego, Riverside,
San Bernardino and Los Angeles Counties

krigerlawfirm.com

email: hoalaw@krigerlawfirm.com

If you no longer wish to receive the Kriger Law Firm News, please call (619) 589-8800 and let us know.

Managing Editor
Joel M. Kriger, Esq.

Homeowners' Right to Display Religious Items on Doors/Entryways

By Niki Tran, Esq.

With the signing of Senate Bill 652, which barred associations from banning displays of religious items on doors and doorframes, the State of California adopted a new law that will protect the right of Californians to display religious items on their doors and doors frames. Under this new law, which is codified in California Civil Code Sections 1940.45 and 4706, associations may no longer prevent owners from displaying one or more religious signs, symbols, or items on their doors or doorframes. However, the new law does not bar associations from adopting reasonable restrictions and does not prevent associations from requiring owners to remove the religious item(s) to accommodate maintenance, repair, or replacement of the common area.

Effective January 1, 2020, associations can only restrict an owner's religious display on his/her door and doorframe if the religious display: (1) threatens public health or safety; (2) hinders the operation of the door; (3) violates any law; (4) contains obscene or otherwise illegal content; or (5) exceeds a total of 36 by 12 square inches (either individually or collectively). According to the state, a religious item is one that is "displayed because of sincerely held religious beliefs." (See Civil Code §1940.45(c)(2).) Therefore, even if the display may be offensive to some but was displayed out of sincerely held religious and does not violate any of the above five conditions, then associations must allow the homeowners to display or affix the religious item(s) on the owners' separate interest entry door or doorframe.

While religious items are protected all year long (provided they meet the established guidelines under the new law), holiday decorations are not. What's the difference between religious items versus holiday decorations? According to County of Allegheny v. American Civil Liberties Union, 492 U.S. 573 (1989), whether decorations are religious or not depends on whether an observer would perceive the decorations to be an endorsement or disapproval of an individual religious choice, to be judged by a reasonable observer standard.

The distinction between a religious display as opposed to a holiday display can be blurry, particularly during this time of year; therefore, associations should review their rules and regulations and evaluate the manner in which their community regulates holiday items. Governing document regulations regarding holiday decorations and/or architectural rules that would prohibit the display of religious items on front doors or doorframes should be reviewed by legal counsel and, if necessary, updated to comply with the new law. ■