

OMNI Board Member Leadership Summit

2019 Legal Update

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Assembly Bill 2912—Association Finances

- ✓ Financial Reviews CC 5500 –
Review monthly
 - ✓ By all directors, or use alternative method
 - ✓ Must now include the check register, monthly general ledger and delinquent assessment receivable report.

Assembly Bill 2912—Association Finances

- ✓ CC 5380 and 5502
 - ✓ Prohibits transfers of funds greater than \$10k or 5% of the association's total combined reserve and operating account deposits, whichever is lower, from the association's reserve or operating accounts without prior board approval.
- ✓ New Requirement for fidelity insurance bond

Operations and Governance – SB 261

- ✓ Consent to notices by email must be in writing – emailed consent is in “writing.”
- ✓ Review and comment period for rules is going from 30 days to 28 days.

Electric Vehicle Charging Stations – SB 1016

- ✓ Amends Civil Code Section 4745 and adds Section 4745.1.
- ✓ Extends protections for electric vehicle charging stations, including discussing individual meters.
- ✓ Adjusts insurance requirements for stations.

Mediation Confidentiality – SB 954

- ✓ New requirement to sign a statutory acknowledgment form regarding mediation confidentiality before agreeing to go to mediation.
- ✓ Nothing about mediation confidentiality is changing.
- ✓ Impacts the timing of the ADR process with enforcement.

*Artus v. Gramercy Towers Condominium
Assn. (2018)*
19 Cal.App.5th 923.

- ▶ Owner (who was elected to the Board three times when cumulative voting was in place) sues claiming Board improperly amended the Bylaws and election rules to eliminate cumulative voting.
- ▶ Trial court grants preliminary injunction against rule enforcement. Before final ruling issued, Association holds a second election to correct errors complained of by Owner.

*Artus v. Gramercy Towers Condominium
Assn. (2018)*
19 Cal.App.5th 923.

- ▶ Court affirms trial court ruling that second election removed the case's actual controversy.
- ▶ Court also affirms trial court's decision to not award the Owner attorney's fees because the case never reached the conclusion of litigation. Despite having interim success in the form of the preliminary injunction, court finds Owner was not a “prevailing party” entitled to an attorney’s fee award.
- ▶ *Takeaway:* It is important to hold proper elections as outlined in Association governing documents and California law, but mistakes happen. Sometimes the best defense is a “redo”.

Alert - New Election Bill Pending – SB 323

- ▶ Similar to last year's proposed legislation, a new bill has been introduced to further regulate elections.
- ▶ Excludes companies paid by association from serving as the Inspector, including managers and CPAs.
- ▶ Additional restrictions regarding director qualifications and disqualifying a person from serving as a director.
- ▶ Election rules must be included with ballot.
- ▶ Broader voting material inspection rights.
- ▶ Will require new election rules.

Staats v. Vintner's Golf Club, LLC (2018) 25 Cal.App.5th 826.

- ▶ Golfer injured by swarm of yellow jackets sues golf course for premises liability.
- ▶ Court rules in favor of the golfer finding it was reasonably foreseeable that yellow jackets could be located in an underground nest on the golf course and would injure a player if agitated because they had been regularly observed on the course by the groundskeepers.
- ▶ *Takeaway:* Associations have a general duty of care to protect members and their guests from foreseeable risks of harm, particularly within common areas and common facilities.

Eith v. Ketelhut (2018) 31 Cal.App. 1

- ▶ Owners installed vineyards on their Lot and harvested the grapes which were shipped off property to be made into wine. Owners had a registered business and an alcohol license for their Lot.
- ▶ Court upholds Board's decision that the vineyard did not disturb the residential character of the Development and therefore did not constitute a prohibited business activity. One judge dissented finding that the winemaking business violated the plain language of the business use restriction in the Declaration.
- ▶ *Takeaway*: This case illustrates the importance of the business judgment rule. Judges may disagree with actual board decision but uphold it applying BJR standards.

THANK YOU!
Questions?

