

FOR COMMON INTEREST DEVELOPMENT BOARD MEMBERS

MERIT

Property Management, Inc.

# Leader

FALL/WINTER 2011

CALIFORNIA  
**LEGISLATIVE**  
UPDATE



# Leader

## IN THIS ISSUE

- 3 Rental Restrictions
- 4 Open Meeting Act Revisions
- 6 Other Legislation
- 11 Messages from the Founder and the CEO

MERIT's annual review of California state legislation affecting community associations, provided as a service to MERIT-supported communities



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## Everything old is new again



Marybeth O. Green, CCAM®, MAED

As expected, this was a very busy year in Sacramento. Why? Because when there's a new sheriff (governor) in town, many bills that were vetoed by the prior governor resurface quickly. Vetoes occur after a bill is passed by both houses of the legislature, so there is usually built-in support for those bills a year or two after a veto. For legislators, reintroducing a vetoed bill is like picking the low-lying fruit - they can usually get the bill passed with minimum effort in the legislature and hope that the new governor will

approve what was previously denied.

Industry organizations such as the California Association of Community Managers (CACM) and the Community Associations Institute's California Legislative Action Committee (CAI-CLAC) tracked more than a dozen substantive bills this year where normally there are only two or three.

The most notable bill is SB 563 which will eliminate the ability for directors to act outside of a board meeting unless there is an emergency. SB 563 will also require associations to post their executive session agendas at least two days prior to an executive session meeting.

At Merit, we know transparency is important for good governance, and we will do everything within our powers to assist our clients with meeting the new requirements while still working to provide flexibility for our volunteer board members.

Marybeth O. Green, CCAM®, MAED  
Assistant Vice President of Education

These summaries are provided by Merit to inform you of the language of the new laws. We have received independent legal opinions on each issue from various law firm vendors. Actual interpretation of each new law must be left to your association's professional legal counsel. To receive a copy of your attorney's summary, contact your community manager. If you do not currently have an attorney under contract, we recommend that you interview professional law firms specializing in association law and choose one firm to consult with as issues arise.

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# SB 150 Rental Restrictions

Communities will face new obstacles when trying to impose rental restrictions.

Senate Bill (SB) 150 was introduced by Senator Lou Correa (D – 34th District: Santa Ana, Garden Grove, Anaheim) and was sponsored by the California Association of Realtors® (CAR). This was the third iteration of this bill, which was first proposed in 2008, vetoed in 2008, and vetoed again in 2010. It limits an association's ability to impose rental restrictions on members who purchased their properties prior to implementation of a rental restriction, even if the restriction was adopted by a membership vote.

CAR noted that placing a rental restriction on a unit after the unit was purchased could place a financial burden on several classes of owners: (1) those who want to rent their units to others and move to someplace more affordable because they can no longer afford to pay the mortgage; (2) active duty military personnel who are assigned elsewhere and must rent out their units during their service outside of the area; (3) and those who purchased the unit as an income property with the intention of renting it from the outset.

At the same time, economic forces have caused lenders to become more restrictive in their lending practices. The owner occupancy ratio in a project is one consideration a lender evaluates in determining whether to finance or refinance a loan within an association based on the theory that a higher owner-occupancy rate means the residents are more vested in caring for the property and thereby preserve the lenders security interest in the property. Owner occupancy is also a consideration to qualify for FHA financing. As a result, associations recently have sought to pass rental restric-

tions for their communities, usually via membership vote, in order to qualify for FHA financing.

This bill provides that the governing documents (or any amendments) of a common interest development (CID) may not "prohibit" unit owners from renting their units if that right existed at the time they purchased their properties. The bill becomes effective on January 1, 2012, so associations that have a prohibition against renting of units in place prior to the deadline can apply those restrictions to all owners. Associations that pass a prohibition against renting of units after the deadline can only apply the new prohibition to owners who purchase their units after the new prohibition takes effect. There is a provision in the bill that allows owners who would normally be "grandfathered" to subject themselves to new provisions adopted by the membership, if they so choose.

The bill also requires the association to disclose during the escrow process if the governing documents prohibit renting of units. Merit, through industry organizations, has been tracking this bill since its inception and is finalizing documentation of disclosure of rental prohibitions in conjunction with the new form required by AB 771 as these bills were passed predicated on each other's enactment.

The bill does not change the voting process to amend the governing documents, nor does it prohibit associations from restricting other lease terms such as minimum lease duration. If your association is contemplating a rental restriction, please work with your community manager and legal counsel for the best solution.

*Thank You*

SB 563

## **Open Meeting Act Revisions**

One of the hardest fought bills this year was SB 563, a bill drafted by the Senate Committee on Transportation and Housing to build more transparency into CID governance.

Thank you to everyone who contributed letters in opposition to the bill. Despite challenges from CACM, CAI, builder/developer representatives, and other industry professionals, Governor Brown signed the bill noting that it promotes transparency within associations.

# What does the bill do?

## SB-563

1. Eliminates many actions without a meeting
2. Posting executive session agendas
3. Delegation of duties via policy



### **1. Eliminates most opportunities to take actions outside of a board meeting.**

In the past, board members have been able to resolve association issues without a meeting in accordance with California Corporations Code Section 7211 – via unanimous, written consent. Section 7211 required all board members to agree in writing when an issue could not wait until the next regularly scheduled meeting.

The testimony presented in Sacramento was that too many boards of directors were conducting most of their business via e-mail, thus eliminating the opportunity for members to hear the deliberations as they would normally be able to at a meeting. The legislature's approach to eliminate this problem was to ban the use of actions without a meeting except under emergency circumstances.

The exact language of California Civil Code § 1363.05(j)(2)(A) is as follows:

**“Notwithstanding Section 7211 of the Corporations Code, the board of directors shall not conduct**

**a meeting via a series of electronic transmissions, including, but not limited to, electronic mail, except as specified in subparagraph (B).**

**“(B) Electronic transmissions may be used as a method of conducting an emergency meeting if all members of the board, individually or collectively, consent in writing to that action, and if the written consent or consents are filed with the minutes of the meeting of the board. Written consent to conduct an emergency meeting may be transmitted electronically.”**

The term “notwithstanding” is used throughout Civil Code to mean “regardless of what your documents say, this code will supersede/override them.” And emergencies are defined as “circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice as required [in Civil Code].”

### **2. Requires agendas be posted for all executive session meetings at least two days in advance.**

There is uncertainty in the legal community about how generic the agenda can or should be. Merit-managed community agendas will include the date, time, and location of the meeting and will call out headings of the items being discussed as allowed in Civil Code (approval of executive minutes; 3rd party contracts; member discipline/delinquency; litigation/potential litigation; or personnel matters).

The two-day notice for posting can be waived for emergency meetings, as defined. For ease of use, we recommend posting executive agendas at the same

*Continued on page 6*

SB 563

## Open Meeting Act Revisions

*Continued from page 5*

time as the regular agendas – at least four days in advance of the meeting – unless there will only be an executive session meeting.

### 3. Allows the board to “validly delegate” actions to “any other person or persons, managing agent, officer of the association, or committee of the board comprising less than a majority of the directors.”

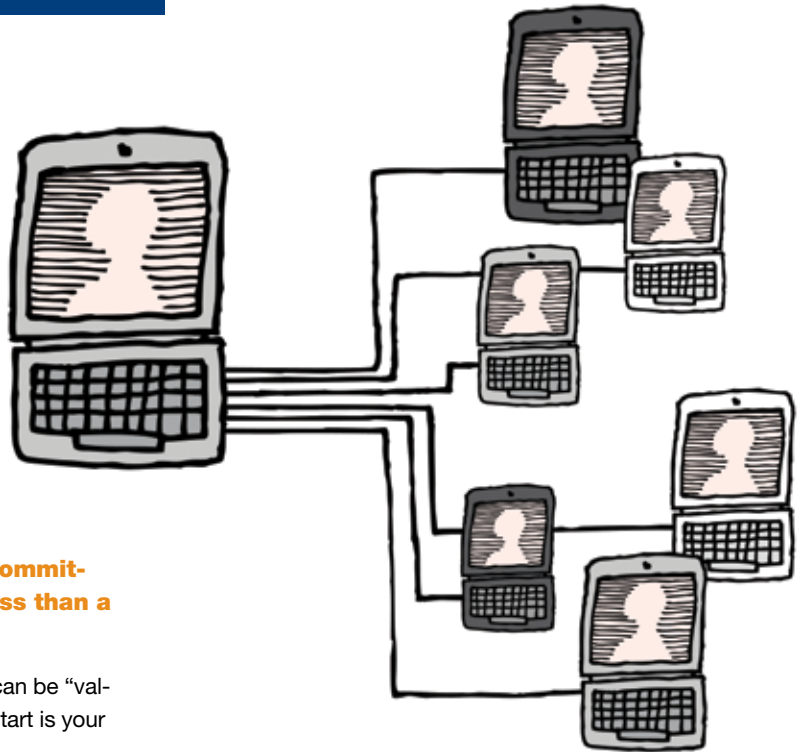
A question remains about what can be “validly delegated,” but a good place to start is your association’s bylaws.

Most bylaws have a section entitled “Powers and Duties of the Board of Directors.” In this section, the bylaws will call out that the board has the power, but not the duty to do certain things, such as create committees. The section also typically calls out that the board has the power and duty to do other things, such as levy assessments to meet the association’s financial needs, etc.

### 4. Allows the board to meet electronically via audio, video or both.

Any teleconferenced meetings must be set up to protect the rights of the individual members. Additionally, all open session meetings that are held via teleconference must identify at least one physical location where members can attend and at least one board member must be present at that location. The new law continues the previous language that all board members attending a meeting via teleconference must be able to hear each other as well as any community members addressing the board.

In addition to these new revisions, the bill also clarifies that an executive session meeting is not required to follow an adjournment of an open session meeting. This is a technical revision to the law.



## Delegation Authority

The opportunity to delegate certain actions to your managing agent or to an officer of the corporation was put into place by the legislature as a way to offset the circumstances that might arise as a result of the statute eliminating the board’s authority absent an emergency to take actions without a meeting.

For example, rather than having to call a special executive session board meeting every time the board is faced with a new short sale request, the board could set a policy and provide those “marching orders” to the manager for execution. Sample parameters may include (1) pre-authorization for the management company to forgive any interest and fines, but will require all other amounts to be collected through escrow, or (2) that the board will not negotiate away any funds owed to the association. Either policy works for the purposes of setting parameters for your manager to address non-emergency issues outside of a regular board meeting.

Merit is compiling sample policies for our clients to consider adopting over the coming months. The example of a short sale negotiation policy would be a simple directive from the board to management and does not require member input. Other policies, such as a drainage procedure policy or a construction damage policy, might need to be distributed to the membership for 30-day comment period as required by Civil Code.



## SB 209

### Electric Vehicle Charging Stations

SB 209 was introduced by Senate Majority Leader Ellen Corbett (D – 10th District: San Leandro, Pleasanton, Hayward) to “foster the growth of the electric vehicle industry by ensuring consumers living in common interest developments have access to charging stations.” SB 209 requires associations to allow the installation of electric vehicle (EV) charging stations on private property, common area, and exclusive use common area.

CACM and CLAC worked extensively with the author to include

provisions that require architectural approval first, allow the association to impose reasonable restrictions and require the owner to provide a \$1M umbrella liability policy naming the association as an additionally insured party. The Governor’s signing message included a request for the legislature to pass clean-up language next year to clarify the association’s common area rights. Language for the clean-up bill has already been presented to the trade groups and is likely to be adopted as an urgency statute early in 2012.

## AB 657

### Secretary of State Form Amendments

Assembly member Rich Gordon (D – 21st District: Palo Alto, Menlo Park) introduced this bill to allow a corporation to receive the annual notice of renewal of CID Statements and Statement of Domestic Non-Profit Corporations from the Secretary of State by electronic mail and provides other technical changes to how Statement of Information – Nonprofit (SI-100) and Common Interest Development (SI-CID) forms should be completed.



## AB 771

### Requests for Documents

Assembly member Betsy Butler (D – 53rd District: Hermosa Beach, Manhattan Beach, Redondo Beach) introduced Assembly Bill (AB) 771 on behalf of CAR to standardize the way fees that are charged by associations and/or management companies are presented during escrow. The bill created a new form as part of California Civil Code (section 1368.2) that is to be provided at both the opening of an escrow and when the requested documents are delivered.

In addition, AB 771 now requires an association to provide 12 months’ worth of open session minutes if requested by a seller or the seller’s agent through the escrow process. At Merit, we have been providing these minutes upon request for over ten years and are well prepared for the codification of this task.





## AB 75 Secretary of State Form Solicitations

For years, unscrupulous companies have sent official-looking notices to association boards requesting a fee (usually between \$150 - \$300) to “comply” with state-mandated requirements for minutes filing. Originally the unsolicited mailers looked just like standard Secretary of State forms (Statement of Domestic Non-Profit Corporation or CID Statement), but the legislature has placed more and more restrictions on the format and appearance of the forms to ensure that unsuspecting boards or managers do not accidentally pay

for unnecessary services.

AB 75 was introduced by Assembly Member Jerry Hill (D – 19th District: South San Francisco, San Mateo) to make the ersatz forms even easier to spot. Additionally this bill applies to companies that solicit individuals for “assessment reduction services.”

At Merit, we have had long-standing protocols in place to ensure that these urgent-looking notices are carefully reviewed so that the correct invoices are processed accordingly and the incorrect notices are discarded.

## AB 878 Roofing Contractor’s Worker’s Comp

In addition to the new restrictions imposed by SB 459, AB 878, introduced by Assembly Member Bill Berryhill (R – 26th District: Stockton, Modesto) requires all roofing contractors to carry Worker’s Compensation insurance regardless of whether the roofer claims to have no employees. This bill recognizes that roofers, almost by definition, cannot be independent contractors as it typically takes more than one person to work on a roof.



## SB 459 – Independent Contractors

Existing law sets minimum standards for wages, overtime compensation, and other benefits for employees working for an employer. Over the years, Workers Compensation insurance fraud has become more prevalent as employers seek to reduce their costs to stay competitive in today’s tough market. SB 459 was introduced by Senate Majority Leader Ellen Corbett (D – 10th District: East Bay, Pleasanton, Livermore) to prohibit the willful misclassification of individuals as independent contractors when such individuals are, in fact, employees. There are monetary penalties associated with this bill that would be imposed by the California Labor and Workforce Development Agency.

The bill does not penalize a board for hiring an independent contractor who may misclassify the status of individuals working for the independent contractor; however, it provides a good reminder for boards to consider the strength of the company providing the services.

## SB 337 Political Sign Restrictions for Tenants

Existing law prohibits an association from restricting the placement of political signs on an owner's property or exclusive use common area (subject to size and material restrictions specified in the bill). SB 337, introduced by Senator Christine Kehoe (D – 39th District: San Diego), specifically allows tenants to display political signs within the private property or the exclusive use common area of their owner and prohibits landlords from preventing tenants from displaying such signs that meet the requirements of existing law.



## AB 713 – Military Service Benefits

Assembly member Marty Block (D – 78th District: San Diego, Chula Vista, Lemon Grove) introduced AB 713 to aid military families with their potential debts. The bill provides that dependents of a military service member, upon application to the court, shall be entitled to the same benefit enjoyed by the military service member that limits interest charged to 6% per year under

certain circumstances.

At Merit, we salute the men and women of our armed forces and their dependents for the sacrifices they make for our freedoms and we will continue to work with our boards to find amenable compromises when delinquency issues arise with our military members and their dependents.

## SB 264 Skateboard Park Sunset Removal

Current Health & Safety Code § 115800 requires operators of skateboard parks to mandate the use of helmets, elbow pads and knee pads when using the park. This section of the Health & Safety Code was set to expire (sunset) on January 1, 2012, but SB 264, introduced by Senator Correa, removed the expiration of the law indefinitely.





AB 475

**Towing from Electric Vehicle Charging Stations**

This bill, introduced by Assemblywoman Butler, addresses “offstreet parking facilit(ies)” by permitting vehicles to be towed from electric charging stations if the vehicle is parked there but not connected to the station for charging purposes. Most associations do not meet the minimum requirements outlined in the Vehicle Code to qualify as “a local authority,” however, boards may consult with their associations’ legal counsel to see if restrictions adopted by the association for parking in EV stations can or should mirror the ordinance.



SB 24

**Electronic Data Breaches**

SB 24 was introduced by Senator Joe Simitian (D – 11th District: San Mateo, Santa Clara, Santa Cruz) to add a requirement of filing a report with the California Attorney General if there is a compromise of personal client data. Please know that Merit invests in and maintains an enterprise level IT infrastructure with a focus on creating efficien-

cies for our employees and clients but also ensuring appropriate security protocols are in place. Our emphasis on security has resulted in instituting a variety of web and network protocols ranging from secure socket layer to virtual private networks allowing Merit to leverage tools such as authentication, encryption, and key exchange.



SB 221 & SB 647  
**Small Claims Court**

SB 221 was introduced by Senator Simitian to increase the limits of personal small claims suits from \$7,500 to \$10,000 (except for auto accidents where there is an insurance policy with a duty to defend, which stays at \$7,500). CID’s are still limited to \$5,000 for any two claims and \$2,500 for each additional claim in a calendar year.

SB 647 was introduced by the Senate Committee on the Judiciary to make non-substantive amendments to several sections of law related to small claims court and other jurisdictions as part of an “omnibus” (dealing with multiple items at once) cleanup bill.



## **A Message from Melinda Masson, Founder of Merit**

After 32 years as CEO of Merit, the time is right for me to begin a new chapter in my life. In preparation for my departure I assembled what I believe to be the industry's strongest leadership team. It's been said that one should exit at the top of their game and Merit is at an all time strong position in the industry.

In recent years, I've organized the executive team to lead and manage company strategies and operations so that our clients and employees experience a seamless transition.

Bob Cardoza, now in his twenty-third year with Merit, has been appointed to take on the CEO responsibilities. Bob has been leading the company's growth initiatives as a key member of our executive team. He and I have worked very closely together over the years, and I have every confidence he is the right person to continue my legacy and lead Merit into the future.

## **A Message from Bob Cardoza, Chief Executive Officer of Merit**

It's been my great privilege to work closely with Melinda for the past 23 years and I am extremely grateful to her for the mentoring and growth opportunities she has provided me. Her coaching and our strong working relationship have prepared me for the challenges that come with leading Merit. I truly appreciate Melinda's confidence in my abilities as the new CEO of Merit.

Through the different roles I've held at Merit, I have developed a keen understanding of our business and what it takes for us to further differentiate ourselves in our industry. My vision is to execute a strategy that will grow and improve our customer service for the benefit of our clients and create opportunities for employee advancement.

I am honored to take on the responsibilities of leading Merit toward continued great partnerships with each of you as board members.



### **About Bob Cardoza**

During his tenure at Merit, he has held several senior executive level positions. In November 2008, Cardoza took on additional responsibilities as Merit's Executive Vice President of Business Development while keeping his role as President of Merit Association Services (MAS) which he assumed in November of 2007. His expertise includes community association budgeting, management programming, community service programming, staff and amenity planning and structuring

community governance models.

As President of MAS, Cardoza brought years of experience and knowledge in the common interest development industry having provided community association forward planning services for community developments. Most recently, he worked on The Ranch Plan and others that include Ladera Ranch, The Preserve, Santaluz and Central Park West. In addition, Cardoza has also worked with land development clientele to provide financial projections that assisted with the formation of community

facilities districts, commercial/ industrial corporations, community service corporations, private golf entities and mixed-use high rise condominiums.

Cardoza holds the professional designation of Certified Community Association Manager from the California Association of Community Managers. He is also a member of chapters of the Building Industry Association and a member of the Urban Land Institute. Cardoza also serves on various building industry committees and is a sought after speaker for numerous forums.

# MERIT

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## A Look Behind the Scenes

How can you as a board member know whether controls and processes at Merit are operating effectively? Are risks appropriately addressed? Is financial reporting reliable? Are laws and regulations complied with? What about information technology controls? How does Merit stack up?

To find out, we invite you to request a copy of *Internal Audit of Controls at Merit Property Management, Inc.* – the result of extensive testwork conducted by our parent company, FirstService, whose Internal Audit team dove in to examine the design and effectiveness of our key controls.

The value of a strong control environment is clear, and we hope that you enjoy having visibility to the nuts and bolts of our operations.

To receive your copy, simply email a request to [marketingpr@meritpm.com](mailto:marketingpr@meritpm.com).