

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1410 (Rodriguez)
Version: June 6, 2022
Hearing Date: June 21, 2022
Fiscal: No
Urgency: No
TSG

SUBJECT

Associations: declared emergency: protected uses: regulation

DIGEST

This bill proposes a series of updates and revisions to the laws governing the respective rights and duties of homeowner associations and their members.

EXECUTIVE SUMMARY

A significant and growing proportion of Californians reside in common-interest developments, better known by the acronym for the organization that governs them: HOAs.¹ Each HOA is a private community that operates according to its own governing documents and bylaws, but all of them are subject to the Davis-Stirling Common Interest Development Act (Davis-Stirling Act), a comprehensive set of state laws that set forth the respective rights and duties of HOAs and the people who live in them. This bill proposes a small series of updates and revisions to the Davis-Stirling Act in response to issues recently brought to the attention of the author. Specifically, the bill proposes to: (1) prohibit HOAs from censoring the social media and other online content of members and residents; (2) guarantee that HOA members can rent out a portion of their home to others as long as the member continues to reside there; (3) require HOA directors and employees to affirm their intent to act in accordance with their fiduciary duty to the members and to refrain from unlawful harassment; (4) prevent HOAs from imposing fines on members for violations during states of emergency if the emergency makes it unsafe or impossible to fix; and (5) require HOAs to make available any physical evidence that the HOA intends to rely on for the purpose of imposing a monetary fine on a member.

The bill is author-sponsored. There is no support on file, though a homeowner advocacy group has formally expressed support provided some revisions are made. Opposition comes from community managers who contend that aspects of the bill would make it more difficult to recruit volunteer directors and otherwise conduct community operations. The bill passed out of the Senate Housing Committee by a vote of 6-1. If the bill passes out of this Committee, it will next be heard on the Senate Floor.

¹ Because it is the term most often used in common parlance, HOA will be used throughout this analysis.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Davis-Stirling Common Interest Development Act which provides rules and regulations governing the operation of a residential common interest development and the respective rights and duties of the homeowner association and its members. (Civ. Code §§ 4000 *et seq.*)
- 2) Prohibits that the governing documents of an HOA, including bylaws and operating rules, of a common interest development from restricting a member or resident of a common interest development from doing any of the following:
 - a) peacefully assembling or meeting with members, residents, and their invitees or guests during reasonable hours and in a reasonable manner for purposes relating to common interest development living, association elections, legislation, election to public office, or the initiative, referendum, or recall processes;
 - b) inviting public officials, candidates for public office, or representatives of homeowner organizations to meet with members, residents, and their invitees or guests and speak on matters of public interest;
 - c) using the common area, including the community or recreation hall or clubhouse, or, with the consent of the member, the area of a separate interest, for an assembly or meeting described in (a) and (b), above, so long as the common area is not in use;
 - d) canvassing and petitioning the members, the association board, and residents for the activities described in (a) and (b), above; and
 - e) distributing or circulating, without prior permission, information about common interest development living, association elections, legislation, election to public office, or the initiative, referendum, or recall processes, or other issues of concern to members and residents at reasonable hours and in a reasonable manner. (Civ. Code § 4515(b).)
- 3) Provides that an owner of a separate interest in a common interest development is not subject to a provision in a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in that common interest development to a renter, lessee, or tenant unless that restriction was effective prior to the date the owner acquired title to their separate interest. (Civ. Code § 4740(a).)
- 4) Specifies that an owner of a separate interest in a common interest development is not subject to a provision in a governing document or an amendment to a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests, accessory dwelling units, or junior accessory dwelling units in that common interest development to a renter, lessee, or tenant. (Civ. Code § 4741(a).)

- 5) Authorizes the Governor to proclaim a state of emergency in an area affected or likely to be affected thereby when:
 - a) the Governor finds that existence of conditions of disaster or of extreme peril to the safety of persons and property within the state presently exist;
 - b) the Governor is requested to do so in the case of a city by the mayor or chief executive or in the case of a county by the chairman of the board of supervisors or the county administrative officer; or
 - c) the Governor finds that local authority is inadequate to cope with the emergency. (Gov. Code § 8625.)

- 6) Provides that a local emergency may be proclaimed only by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body. Provides that a local emergency status must be reviewed by the local governing body at least once every 60 days until the governing body terminates the local emergency. (Gov. Code § 8630.)

This bill:

- 1) Makes a series of findings and declarations regarding:
 - a) the effect of states of emergency on homeowners' ability to comply with HOA rules;
 - b) the public policy interest in allowing homeowners to invite tenants into their homes; and
 - c) the public policy interest in ensuring that those with fiduciary duties receive training about the nature of those duties.

- 2) Prohibits governing documents of a common interest development from preventing a resident from utilizing social media or other online resources to discuss development living, association elections, legislation, election to public office, or the initiative, referendum, or recall processes even if such discussions are critical of the association or its governance.

- 3) Provides that an owner of a separate interest in a common interest development is not subject to any provision in a governing document that prohibits the owner from renting out a portion of that separate interest to a tenant for more than 30 days, provided that:
 - a) the owner continues to occupy the separate interest; and
 - b) the owner and the tenant abide by any association bylaws and operating rules that govern conduct in common areas.

- 4) Requires any person serving as a director or employee of a homeowner's association to be provided with a code of conduct with the following content:
 - a) when they must recuse themselves from votes or discussion;

- b) when they must maintain the confidentiality of members regarding disciplinary and investigatory matters;
 - c) what constitutes unlawful discrimination, harassment and retaliation, who is protected by these laws, and what liability may be incurred for a violation;
 - d) fiduciary ethics and responsibility to the community and its homeowners in order to prevent fraud;
 - e) the requirement to allow members to voice their opinions on association matters; and
 - f) the requirement to hold open, honest, and fair elections.
- 5) Requires directors and employees of an association to attest in writing that they have reviewed and understood the code of conduct described in (4), above, within 30 days of being elected or hired.
- 6) Prohibits an HOA from pursuing any enforcement actions for violations of the governing documents during a declared state or local emergency if the nature of the emergency which led to the declaration makes or made it unsafe or impossible for the homeowner to either prevent or fix the violation.
- 7) Requires an HOA to make available to a member any physical evidence it has relied upon to determine that that the member has committed a violation of the governing documents if the association seeks to impose a monetary penalty against a member.
- 8) Requires any photographic evidence provided pursuant to (6), above, to contain a visible time and date stamp or be accompanied by digital metadata clearly stating the time and date the photograph was taken.
- 9) Contains a severability clause.

COMMENTS

1. Background on HOAs in California and the state law that governs them

HOAs are self-governing groups of dwellings that share common spaces and amenities. They come in a wide variety of physical layouts: condominium complexes, apartment buildings, and neighborhoods of detached, single-family residences, for example. Some consist of thousands of units. Others are made up of just a handful. According to the California Association of Homeowners Associations, homes within HOAs currently account for over a third of the state's overall housing stock, meaning that the laws governing such developments have a large impact on the population.² In California, HOAs are primarily governed by the Davis-Stirling Act. (Civ. Code §§ 4000-6150.)

² *Homeowner Association Data & Statistics*. California Association of Homeowners Associations <https://www.calassoc-hoa.com/ABOUT-US/Our-Objective-HOA-DATA-STATISTICS.aspx> (as of May 29, 2022).

The Davis-Stirling Act sets forth a system for HOA self-governance. The owners of the separate properties within the HOA are the members of the HOA. Association members vote for the board of directors of the association that oversees operation of the HOA.

The board manages the HOA, frequently by hiring an individual or entity – the property manager – to do so on its behalf. The board determines the annual assessments – much like taxes – that members must pay in order to cover communal expenses. The board enforces the community rules and can propose and make changes to those rules. If members do not pay their assessments in full or on time, or if members violate the community rules, the board has the power to fine the members, place liens on the offending member’s property, and, if ultimately necessary, the power to foreclose. This array of responsibilities and powers has led multiple courts to observe that HOAs function in many ways almost “as a second municipal government, regulating many aspects of [the homeowners’] daily lives.” (*Villa Milano Homeowners Ass’n v. Il Davorge* (2000) 84 Cal.App.4th 819, 836 [citations omitted].)

2. Modifications to the Davis-Stirling Act proposed by this bill

This bill can be characterized as a mini-omnibus in the field of HOA governance. It addresses a variety of distinct issues within that general rubric. Each issue, the bill’s proposed solution, and any related policy considerations are discussed in turn, below. Overall, the bill seeks to strengthen HOA member’s rights to due process, expression, and the use of their separate property. The bill also requires HOAs to be more lenient about enforcement of rules during a state of emergency and tries to ensure that HOA directors and employees are fully aware of their responsibilities to act in the members’ best financial interests as well as to refrain from unlawful harassment.

a. Protecting HOA members’ rights to expression online

As discussed in Comment 1, above, HOAs operate as mini-democracies and their elected boards wield considerable power over the daily lives and property of the members. Accordingly, even though an HOA is technically a private entity, California heavily restricts the power of an HOA to restrain its members’ freedom of expression and association, among other rights. (Civ. Code § 4515(a).) Rather than broadly protecting members’ rights in the manner of the First Amendment, however, the Davis-Stirling Act spells out relatively specific circumstances in which an HOA may not prohibit members from gathering or expressing themselves (Civ. Code § 4515(b).) Right now, that law is silent with respect to online communication.

To fill the gap, this bill adds a provision stating that HOAs cannot prohibit their members from using online resources, including social media platforms, to communicate about life at the HOA, association elections, legislation, election to public office, the initiative, referendum, or recall processes, or any other issues of concern to members and residents. To underscore the key point, the bill language goes on to say

that HOAs cannot prohibit these online communications even if the discussions are critical of the HOA or its governance.

The concept behind this language – that members should be free to express their views online free from HOA censorship or retaliation – is consistent with the general principles regarding free expression within HOAs that the Legislature has previously endorsed, as expressed in Civil Code Section 4515(a).

From the point of view of the bill’s opponents, however, this aspect of the bill sweeps too broadly and could, as the Community Associations Institute’s California Legislative Action Committee (CAI-CLAC) puts it: “allow anyone to approach the association and require certain items to be posted to the association’s website or social media platforms.” CAI-CLAC takes the view that “websites or social media platforms controlled or managed by the association should be protected.”

With these considerations in mind, the author proposes to offer amendments in Committee clarifying that while an HOA may not censor its members’ online content generally, the HOA is under no obligation to open up its website to commentary or other posting by members.

- b. Guaranteeing that homeowners residing in HOAs can rent out a portion of their property to tenants*

In the past, HOAs often chose to prohibit members from renting out their separate property within an HOA. Recently enacted California laws have greatly curtailed HOAs’ power to enforce such prohibitions (AB 3182, Ting, Ch. 198, Stats. 2020) yet HOAs still retain the authority to prevent members from renting out their homes in limited circumstances. For example, an HOA is authorized to maintain an overall 25 percent cap on the percentage of properties at any one time. (Civ. Code § 4741(b).) The purpose of that cap is to ensure that HOA’s can maintain the owner-occupancy threshold required eligibility for certain federal mortgage benefits. (Sen. Floor Analysis of Assem. Bill No. 3182 (2019-2020 Reg. Sess.) as amended Aug. 27, 2020 at p. 5.) Recognizing that owner-occupancy rates can be maintained if an owner-occupant rents out just a portion of the unit to a tenant, this bill requires HOAs to allow homeowners to rent out part of their separate property so long as the owner continues to reside there, too, and so long as both the homeowner and tenant abide by the community rules.

- c. Making sure that HOA directors and employees are fully aware of the fiduciary obligations to members and their duty not to engage in unlawful harassment*

HOA directors have a fiduciary duty to act in the best interests of the HOA. (*Frances T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 513.) As housing providers, HOAs have a legal duty not to engage in unlawful discrimination or harassment. (Gov. Code § 12955.) In spite of these laws, there are recurring reports of embezzlement and other financial malfeasance at HOAs. (*See* Sen. Com. on Judiciary Analysis of Assem. Bill No. 2192 (2021-2022 Reg. Sess.) as amended Feb. 16, 2018 at p. 6.) The author asserts that

incidents of discrimination and harassment by HOA directors and employees have also taken place.

To try to remind HOA directors and employees of the nature and scope of their obligations to act in the best interests of the HOA and to refrain from unlawful harassment, this bill requires HOA directors and employees to review and sign a code of conduct within 30 days of assuming their positions. While the bill does not specify the exact content of the code of conduct, it sets forth some of the key principles that must be included, such as what constitutes unlawful discrimination, directors' fiduciary duty to the members, and the importance of conducting HOA elections fairly.

d. Requiring HOA leniency about rule enforcement during states of emergency

HOAs are notorious for having extensive rules and enforcing them zealously. For some, this strict adherence to community norms is a large part of the appeal of living in an HOA. As the COVID-19 pandemic has demonstrated, however, in times of emergency, rigid compliance with all rules may be dangerous or simply unfeasible. With that in mind, this bill prohibits HOAs from pursuing enforcement actions for violations of the HOA's governing documents during any officially declared state of emergency, if the emergency itself makes compliance unsafe or impossible.

e. Ensuring members have access to physical evidence used against them when an HOA imposes fines

Though they are not state actors, common law principles still obligate them to provide due process to their members when imposing discipline for violations. (*Kurz v. Federation of Petanque U.S.A.* (2006) 146 Cal. App. 4th 136, 150.) However, as in other judicial doctrine about what constitutes due process, the common law provides minimal direction and leaves much to the particular circumstances:

Whether a procedure is "fair" under the common law doctrine depends on the particular circumstances and the purpose and nature of the organization. The panoply of due process is elastic and must be understood in the context of the organization, its membership, the discipline to be imposed, and the member's valuable interest affected by the action. To be informed of the charges, the proposed disciplinary action, and an opportunity in some manner to present countervailing evidence may satisfy the twin due process requirements of being substantively rational and procedurally fair, as opposed to a full-blown adversarial process with the right to counsel and cross-examination. (*Ibid.* Internal citations omitted.)

Currently, the Davis-Stirling Act offers specifics about the content of the notice that an HOA must provide to a member on whom it proposes to impose discipline or a fine (Civ. Code § 5855(b)), but it does not say anything about how evidence is to be handled.

This bill would affirm that, in any scenario involving imposition of a fine for the violation of community rules, the member facing the fine has the right to examine any physical evidence that the HOA is relying on for its determination that the member committed the violation. In the case of photographic evidence, the bill further specifies that the photograph must come with data purporting to show when the photograph was taken, either in the form of a date and time stamp on the photograph print, or in the form of digital metadata.

As it appears in print, the bill does not state when or how the physical evidence must be made available to the member. In keeping with general due process principles, a court would presumably conclude that the bill requires an HOA to make the evidence available to the member far enough in advance of the member's deadline to respond to the allegation against the member that the member has reasonable time to examine the evidence thoroughly and prepare any response to it. Still, it would avoid future disputes if the bill simply expressed a hard deadline by which the evidence must be made available to the member. With that in mind, the author proposes to offer an amendment in Committee that would set the deadline at five business days before the hearing or the member's deadline for submitting a response to the allegations. In addition, because it is relatively easy to manipulate a date or time stamp on a photo, such a stamp has minimal probative value. As a result, the author proposes an amendment to remove that alternative to presenting the metadata associated with a photo.

3. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- specify that an HOA is not required to allow members to post content on the HOA's website;
- tie the general principles covered in the code of conduct to the relevant statutory sections for precision; and
- specify that physical evidence that will be used against a member must be made available to the member at least five business days before the hearing or the deadline for the member to submit a response.

A mock-up of the amendments in context is attached to this analysis.

4. Arguments in support of the bill

According to the author:

CIDs are a cost-effective way for many to achieve the American Dream and enter the housing market. As such, that investment deserves to have a homeowner association that is ethical, working toward the best interest of the property owners and not going out of their way to harass, fine, or limit the enjoyment of the homeowners' property. As cities and counties struggle to meet state housing goals, CID's are becoming more and more prevalent. We must assure these homeowner community leaders know their legal responsibilities in order to mitigate future issues. If not, we will not just see disharmony in these communities but increases in lawsuits, harassment, public safety calls, and a host of other unforeseen issues that will increase costs to homeowners and to the public.

5. Arguments in opposition to the bill

In opposition to the bill, the Community Associations Institute's California Legislative Action Committee writes:

AB 1410 [...] makes several unnecessary and overly broad changes to the Davis-Stirling Act. [...] Our main concern with the current language is it could read to allow anyone to approach the association and require certain items to be posted to the association's website or social media platforms. It is our opinion websites or social media platforms controlled or managed by the association should be protected. [...] Most associations have difficulty finding candidates for the Board. Requiring these volunteer members to take a training course, which would likely cost them or the association money, will only result in fewer people willing to serve. Such a result would run counter to the public policy to incentivize volunteer participation on non-profit Boards.

SUPPORT

Two individuals

OPPOSITION

California Association of Community Managers
Center for California Homeowner Association Law
Community Associations Institute's California Legislative Action Committee
HOA Community Reinvestment Fund of Orange County

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 391 (Min, Ch. 276, Stats. 2021) allowed HOAs to conduct board meetings using teleconference procedures during a declared state of emergency, subject to specified requirements.

AB 3182 (Ting, Ch. 198, Stats. 2020) allowed the owner of separate interest in a CID to rent or lease out any separate interest, accessory dwelling unit, or junior accessory dwelling unit, but permits an HOA to cap the overall percentage of rental units in an HOA at 25 percent.

SB 1343 (Mitchell, Ch. 956, Stats. 2018) required employers who employ five or more employees to provide sexual harassment training for its employees.

AB 2912 (Irwin, Ch. 396, Stats. 2018) heightened the financial oversight duties of HOA directors, including periodic review of HOA financial records, and required HOAs to obtain fidelity bonds against financial malfeasance by directors, officers, and employees.

SB 407 (Wieckowski, Ch. 236, Stats. 2017) allowed residents or members of a CID to peacefully assemble, distribute information, canvas, among other activities

PRIOR VOTES:

Senate Housing Committee (Ayes 6, Noes 1)

Assembly Floor (Ayes 54, Noes 17)

Assembly Judiciary Committee (Ayes 7, Noes 3)

Assembly Housing and Community Development Committee (Ayes 5, Noes 2)

Amended Mock-up for 2021-2022 AB-1410 (Rodriguez (A))

Mock-up based on Version Number 95 - Amended Senate 5/17/22

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

- (a) During an unprecedented pandemic and resulting economic crisis, homeowners have struggled in a variety of ways to maintain their homes.
- (b) It is in the interest of homeowners that special protections be put in place against enforcement actions and fines by an association in times of emergency.
- (c) It is counter to the interest of the state, its residents, and its housing and homelessness policy to prohibit homeowners from inviting a tenant into their home.
- (d) It is in the best interest of the state to ensure those with fiduciary responsibilities with regards to homeowners receive appropriate training.

SEC. 2. Section 4515 of the Civil Code is amended to read:

4515. (a) It is the intent of the Legislature to ensure that members and residents of common interest developments have the ability to exercise their rights under law to peacefully assemble and freely communicate with one another and with others with respect to common interest development living or for social, political, or educational purposes.

(b) The governing documents, including bylaws and operating rules, shall not prohibit a member or resident of a common interest development from doing any of the following:

(1) Peacefully assembling or meeting with members, residents, and their invitees or guests during reasonable hours and in a reasonable manner for purposes relating to common interest development living, association elections, legislation, election to public office, or the initiative, referendum, or recall processes.

(2) Inviting public officials, candidates for public office, or representatives of homeowner organizations to meet with members, residents, and their invitees or guests and speak on matters of public interest.

(3) Using the common area, including the community or recreation hall or clubhouse, or, with the consent of the member, the area of a separate interest, for an assembly or meeting described in paragraph (1) or (2) when that facility or separate interest is not otherwise in use.

(4) Canvassing and petitioning the members, the association board, and residents for the activities described in paragraphs (1) and (2) at reasonable hours and in a reasonable manner.

(5) Distributing or circulating, without prior permission, information about common interest development living, association elections, legislation, election to public office, or the initiative, referendum, or recall processes, or other issues of concern to members and residents at reasonable hours and in a reasonable manner.

(6) (A) Using social media or other online resources to discuss any of the following, even if the content is critical of the association or its governance.

(i) Development living.

(ii) Association elections.

(iii) Legislation.

(iv) Election to public office.

(v) The initiative, referendum, or recall processes.

(vi) Any other issues of concern to members and residents.

(B) This paragraph does not require an association to provide social media or other online resources to members.

(C) This paragraph does not require an association to allow members to post content on the association's website. ~~to online resources owned or controlled by the association unless subparagraph (D) applies.~~

~~(D) Notwithstanding paragraph (A), if an association allows members other than a member or entity designated by the board for that purpose to post content to an online resource created, administered, edited, moderated, owned, or controlled by the association, then the association may moderate the content by prohibiting, rejecting, redacting, or removing content posted by members to that online resource provided that the association meets all of the following requirements:~~

~~(i) The association permits all members to post content to the online resource, except when a member has been suspended or expelled from use of the online resource for~~

~~continuing to violate the association's content moderation rules after being asked to stop.~~

~~(ii) The association's rules for content moderation, if any, are provided to members upon initial use of the online resource and are accessible at any time through the online resource or disclosed to the members as part of an association's annual policy statement prepared pursuant to Section 5310.~~

~~(ii) The association's rules for content moderation are neutral as to any viewpoint expressed even if the content is critical of the association or its governance.~~

~~(iii) The prohibition, rejection, redaction, or removal of the member's content complies with the association's rules.~~

~~(iv) The association provides a mechanism for appeal of the prohibition, rejection, redaction, or removal of content from the online resource or the suspension or expulsion of a member from the use of the online resource pursuant to subclause (i). The mechanism for appeal may be the same as the mechanism for internal dispute resolution pursuant to Sections 5900 through 5920.~~

~~(E) Notwithstanding paragraph (A) an association may take action to prohibit, reject, redact, or remove any content, or discipline the posting of content, if that content violates state or federal law.~~

(c) A member or resident of a common interest development shall not be required to pay a fee, make a deposit, obtain liability insurance, or pay the premium or deductible on the association's insurance policy, in order to use a common area for the activities described in paragraphs (1), (2), and (3) of subdivision (b).

(d) A member or resident of a common interest development who is prevented by the association or its agents from engaging in any of the activities described in this section may bring a civil or small claims court action to enjoin the enforcement of a governing document, including a bylaw and operating rule, that violates this section. The court may assess a civil penalty of not more than five hundred dollars (\$500) for each violation.

(e) An association shall not retaliate against a member or a resident for exercising any of the rights contained in this section.

SEC. 3. Section 4739 is added to the Civil Code, to read:

4739. (a) Notwithstanding Section 4740, an owner of a separate interest in a common interest development shall not be subject to a provision in a governing document, or amendments thereto, that prohibit the rental or leasing of a portion of the homeowner

occupied separate interest in that common interest development to a renter, lessee, or tenant for a period of more than 30 days.

(b) Nothing in this section shall permit an owner of a separate interest or a resident renting or leasing a portion of the owner-occupied separate interest to violate any association governing documents ~~bylaws and operating rules~~ that govern conduct in common areas, including, but not limited to, parking restrictions, guest access to common facilities, and voting eligibility requirements.

SEC. 4. Section 5101 is added to the Civil Code, to read:

5101. (a) Any person serving as a director or employee of an association, upon election or employment, shall be provided with a code of conduct that includes an explanation of all of the following:

(1) What constitutes a conflict of interest and when a director must recuse themselves from voting due to a conflict, as provided in the California Civil Code commencing with Section 5350.

(2) ~~That~~ Directors' and employees' legal duty to ~~must~~ maintain the confidentiality of members regarding investigatory and disciplinary matters.

(3) What, ~~by law,~~ constitutes unlawful harassment, discrimination, and retaliation pursuant to the Unruh Civil Rights Act (Section 51) and the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code,) ~~and as well as the liability that the association, directors, or staff could incur if they engage in such unlawful harassment, discrimination, or retaliation.~~ information explaining that if violation of the preceding law occurs, the association, its directors or staff may be liable. This portion of the code of conduct shall include a reference ~~refer~~ to the statutory definitions of discrimination and harassment and who is protected by these laws as set forth in Government Code § 12927 and Cal. Code Regs. tit. 2 § 12120.

(4) ~~The~~ Fiduciary ethics and the directors' responsibility to the common interest development and its members ~~in order~~ to prevent incidents fraud and embezzlement, as provided in ~~the California Civil Code commencing with~~ Sections 5500 and 5806.

(5) Members' rights ~~The requirement to allow members~~ to voice their opinions on association matters, as provided in ~~the California Civil Code commencing with~~ Section 4515.

(6) The requirement to hold and conduct ~~fair~~ elections in compliance ~~with the California Civil Code commencing~~ with Section 5100.

~~Director~~

~~(b) Directorss and employees of an association shall, within 30 days of being elected or hired, sign a statement that the director or employee has read the content of the code of conduct described in subdivision (a), understands it, and agrees to abide by it. ~~attest, in writing within 30 days of being elected or hired, that they have read and understood the code of conduct.~~~~

~~(c) The association shall retain aA copy of the code of conduct and signed attestation statement described in this section shall be retained by the association until two years following after the end of the director's term or the employee's expiration of the term or employee separation, whichever is applicable.~~

~~(d) The requirements of this section shall not apply to an employee who is licensed under the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code).~~

SEC. 5. Section 5875 is added to the Civil Code, to read:

5875. An association shall not pursue any enforcement actions for violations of the governing documents during a declared state or local emergency if the nature of the emergency giving rise to the declaration makes it unsafe or impossible for the homeowner to either prevent or fix the violation.

SEC. 6. Section 5880 is added to the Civil Code, to read:

5880. (a) If an association seeks to impose a monetary penalty against a member for violation of the governing documents, the association shall make any physical evidence used to determine a violation of the governing documents has occurred, including, but not limited to, photographs or video or audio recordings, available to the member at least five business days before the hearing or the deadline for the member's response.

(b) (1) ~~If the association intends to rely on a~~Any photographs ~~used~~ in determining a violation of the governing documents has occurred, then the association shall make any digital metadata associated with the photograph available to the member together with the image. shall have a visible time and date stamp or shall be accompanied by digital metadata clearly stating the time and date the photograph was taken.

(2) For purposes of this subdivision, "metadata" means data bearing the record of, and not the content of, a digital photograph, including, but not limited to, the time, date, and location of the image.

SEC. 7. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

