



2024 Legislative Update

New Laws for California's Community Associations

Presented by
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Robert M. DeNichilo is the Managing Partner at Nordberg|DeNichilo, LLP, and represents community associations across the state of California.

Robert is an active member of the Community Associations Institute (CAI) and has been awarded Author of the Year on multiple occasions for his articles on community association issues.

He has served as the CAI Orange County Regional Chapter's delegate and liaison to CAI's Legislative Action Committee (CLAC) for over a decade and currently serves as its legislative co-chair. He regularly meets with state and federal legislators to discuss issues related to community associations.

Robert served on the Orange County CAI Chapter's Board of Directors and was the 2022 Chapter President. Additionally, Robert is a Fellow of CAI's College of Community Association Lawyers (CCAL). CCAL Fellows are recognized for committing themselves to high standards of professional and ethical conduct.

Robert also regularly speaks at educational and training events for industry organizations, property management companies, and board members.



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Community Associations

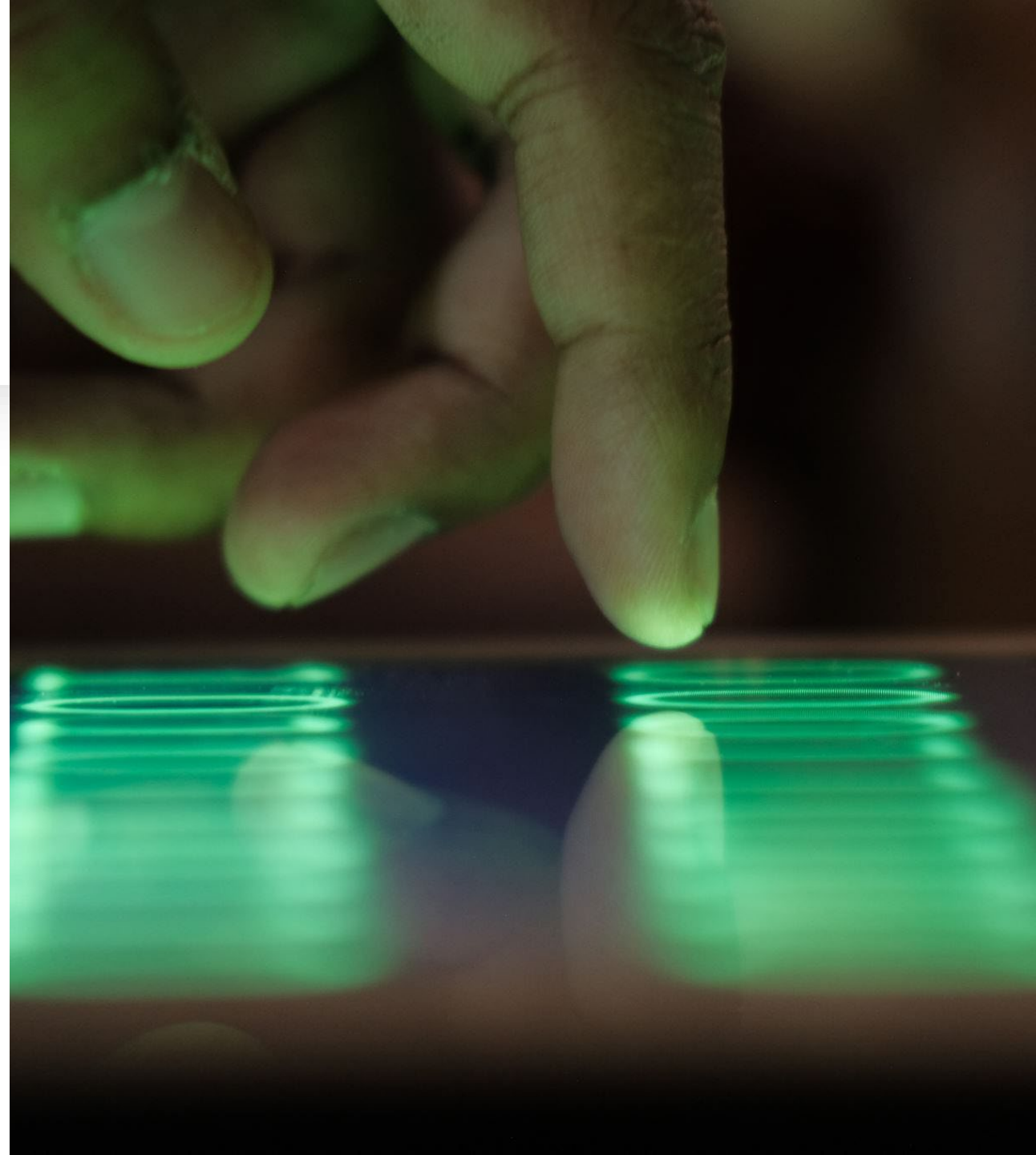
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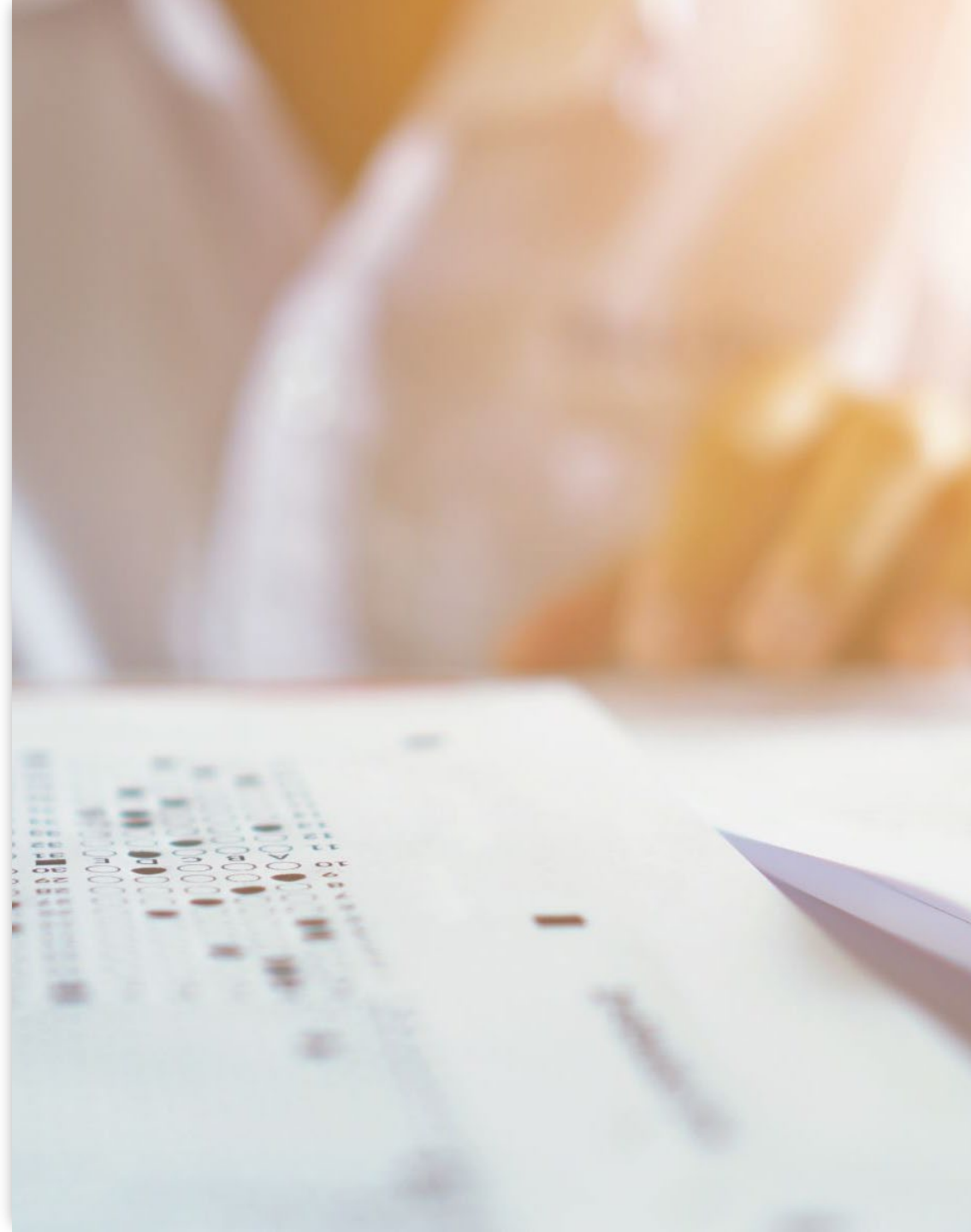
Electronic Voting is here!

- AB 2159 & AB 2460
- CLAC Sponsored Bills
- Applies regardless of other requirements in Governing Documents
- Allows for electronic voting in association elections



Electronic Voting

- Does not apply to elections relating to regular or special assessments
- Allows associations to decide if members will opt in or opt out of electronic secret balloting
- **Requires changes to:**
 - Election Rules
 - Annual Policy Statement
 - Voting List



Electronic Voting

Addition to Annual Policy Statement

Associations must include information on the procedures to either opt out of or opt into voting by electronic secret ballot, as applicable, in the annual statement prepared pursuant to Section 5310.

Electronic Voting

Addition to Voting List

Voting list must now also track if member votes via electronic or written ballot

Electronic Voting

CHANGES TO ELECTION RULES

Several Requirements – **Some Highlights**

- Allowing an association to utilize an inspector of elections to conduct an election by electronic secret ballot, except for an election regarding regular or special assessments.
- Require an electronic secret ballot and a written ballot to contain the same list of items being voted on.
- Prohibit nomination of candidates from the floor of membership meetings where electronic balloting is used.

Electronic Voting

Requirements for Members Who Wish to Vote by Electronic Secret Ballot:

- Must provide the association with a valid email address
- Must opt in/opt out by the associations deadline to notify of the preferred voting method

Electronic Voting

ELECTIONS TO AMEND GOVERNING DOCUMENTS

- May be conducted by electronic secret ballot
- Amendment may be sent to the members via electronic means
- Must still mail out the amendment if:
 - Member requests. Must be sent without charge
 - If a member votes by written secret ballot, text of the amendment must be mailed with the ballot



Electronic Voting

WHO GETS WHAT?

Where member is permitted to OPT OUT of voting by electronic secret ballot:

- Association only mails written ballot to:
 - Any member who has **opted out** of voting by electronic secret ballot or
 - To a member whom the association does not have an email address required to vote by electronic secret ballot.

Where member is permitted to OPT INTO receiving an electronic secret ballot:

- Association only sends an electronic secret ballot only to a member who has opted into voting by electronic secret ballot.

Electronic Voting

Process Designed to ensure Ballot Integrity and Secrecy

- Each member voting by electronic secret ballot shall be provided with all of the following:
 - A method to authenticate the member's identity to the internet-based voting system.
 - A method to transmit an electronic secret ballot to the internet-based voting system that ensures the secrecy and integrity of each ballot.
 - A method to confirm, at least 30 days before the voting deadline, that the member's electronic device can successfully communicate with the internet-based voting system.

Electronic Voting

New Inspector of Election Duties

Ensure that any internet-based voting system that is utilized shall have the ability to accomplish all of the following:

- Authenticate the member's identity.
- Authenticate the validity of each electronic secret ballot to ensure that the electronic secret ballot is not altered in transit.
- Transmit a receipt from the internet-based voting system to each member who casts an electronic secret ballot.
- Permanently separate any authenticating or identifying information from the electronic secret ballot, rendering it impossible to connect an electronic ballot to a specific member.
- Store and keep electronic secret ballots accessible to elections officials or their authorized representatives for recount, inspection, and review purposes.

Electronic Voting

NEW 120 DAY NOTICE

REQUIRED IN ELECTIONS WHERE MEMBER CAN **OPT OUT** OF RECEIVING AN ELECTRONIC SECRET BALLOT

- *At least 30 days before the deadline to opt out of voting by electronic secret ballot (deadline to opt out can be no later than 90 days before the election)*
- Individual notice
- The member's current voting method
- If the member's voting method is by electronic secret ballot and the association has an email address for the member, the email address of the member that will be used for voting by electronic secret ballot

Electronic Voting

NEW 120 DAY NOTICE

REQUIRED IN ELECTIONS WHERE MEMBER CAN OPT OUT OF RECEIVING AN ELECTRONIC SECRET BALLOT

- An explanation that the member is required to opt out of voting by electronic secret ballot if the member elects to vote by written secret ballot
- An explanation of how a member may opt out of voting by electronic secret ballot
- The deadline by which the member is required to opt out of voting by electronic secret ballot if the member elects to exercise that right, which shall be no later than 90 days before the election



Electronic Voting

30 DAY NOTICE

- Individual notice of the electronic secret ballot to each member
- **Must be sent at least 30 days before the election**
- Contain instructions on the following:
 - How to obtain access to the internet-based voting system
 - How to vote by electronic secret ballot
 - The date and time by which the ballot must be transmitted to the internet-based voting system
- The notice may be sent by electronic submission to an address, location, or system designated by the member

Electronic Voting



An electronic secret ballot may be accompanied by or contained in an electronic individual notice.



A vote made by electronic secret ballot is effective when it is electronically transmitted to an address, location, or system designated by an inspector or inspectors of elections.



A vote made by electronic secret ballot shall not be revoked.



For purposes of determining a quorum, a member voting electronically shall be counted as a member in attendance at the meeting.



Once the quorum is established, a substantive vote of the members shall not be taken on any issue other than the issues specifically identified in the electronic vote.

Electronic Voting

Still need a meeting to tally the votes and announce results

Can be at a meeting of the members or open session board meeting

Must provide a physical location for members to observe the tally

Balcony Bill – Additional Inspectors

AB 2114

CLAC Sponsored bill

Reminder: SB 326 required visual inspection at least every 9 years, of the exterior elevated elements for which the association has maintenance or repair responsibility.

Deadline for inspection is 12/31/2024

Balcony Bill – Additional Inspectors

Original law limited who could
conduct the inspection to licensed
structural engineer or architect

Under new law licensed civil engineers
now also authorized to conduct the
inspections

Urgency legislation - Effective as of
July 15, 2024

Balcony Bill – Additional Inspectors

MYTH

Deadline WAS NOT extended

The only extension of the deadline is the one that is already in the statute and which only applies to “buildings for which a building permit application has been submitted on or after January 1, 2020. As to those buildings, the inspection must be completed “no later than six years following the issuance of a certificate of occupancy.” (Civil Code sec. 5551(k).

Deadline for HOAs to complete the necessary inspection remains January 1, 2025.

The only extension of the deadline is the one that is already in the statute and which only applies to “buildings for which a building permit application has been submitted on or after



MYTH – Deadline for Inspection WAS NOT Extended

- AB 2579
 - Applies to apartment communities, NOT HOAs.
 - Amends the health and safety code, not Civil Code Section 5551
- The only extension of the deadline is the one that is already in the law and which only applies to “buildings for which a building permit application has been submitted on or after January 1, 2020
 - As to those buildings, the inspection must be completed “no later than six years following the issuance of a certificate of occupancy.” (Civil Code sec. 5551(k))

Member Election – Quorum Reduction

AB 2460

CLAC Sponsored Bill

Clean up bill to AB 1458 (Quorum reduction bill in 2023)

- Confusion as to who could reconvene a meeting
- Confusion about what applied if association's documents already had a reduce quorum that was over 20%

Member Election – Quorum Reduction

- New law clarifies:
 - So long as association follows notice requirements, quorum for reconvened meeting is 20% (unless docs call for lower quorum than 20%)
 - Association, not board, has power to reconvene a member meeting for election of directors
 - If association bylaws state quorum reduction less than 20% the lower percentage applies

Repair and Maintenance

SB 900

CLAC Opposed unless amended

Original bill required repairs to interruption of service of gas, heat, water or electric lines within 30 days

Bill was amended significantly

SB 900 - Repair and Maintenance

- Unless Declaration states otherwise:
- Requires association to **“commence the process” of repairs necessary to restore gas, heat, water or electrical services within 14 days of interruption of service**
- Some confusion as to whether the “interruption of service” must begin in the common area or if the utility lines must begin in the common
 - Significant difference and shift of responsibility
- Allows association to obtain a loan and levy a special assessment to pay for the loan if reserves are insufficient to pay for repairs without member vote

SB 900 - Repair and Maintenance

- If no board meeting within 14 days
 - At next board meeting for the Board to vote on the repairs the total number of directors present equals quorum for the vote
- Allows for board vote by electronic means, including email
- Electronic vote shall become association record and subject to inspection and retention

SB 900 - Repair and Maintenance

- Does not apply if in area of declared state of emergency
- Adds gas, water and electrical service to the definition of “major components” that are included in reserve study
- Adds health, safety **or other hazardous condition or circumstance** to emergency special assessment not subject to 5% cap

SB 428 – Workplace Restraining Orders

- Enacted in 2023, but takes effect on Effective 1/1/2025
- Expands grounds for workplace related restraining orders to include harassment



CORPORATE TRANSPARENCY ACT

- Federal law
- Goal is to track suspicious activity, money laundering and terrorist financing
- Applies to corporations with less than \$5 million in assets & fewer than 20 employees
- **Deadline to file is 1/1/2025**
- Changes must be reported within 30 days
- Noncompliance: civil penalties of \$500/day; criminal up to \$10,000 and/or 24 months in prison



CORPORATE TRANSPARENCY ACT

- HR 9045 pending in House of Representatives
 - The bill seeks to amend the CTA to expressly include those “homeowners associations” that file under section 528 of the Internal Revenue Code
- Alabama Federal Court found CTA unconstitutional
 - Only enjoined enforcement against trade group members
- CAI has filed suit on behalf of member HOAs
 - *Hearing on Preliminary Injunction set for Friday, Oct 11, 2024*





CASE LAW

Doskocz v. ALS Lien Services

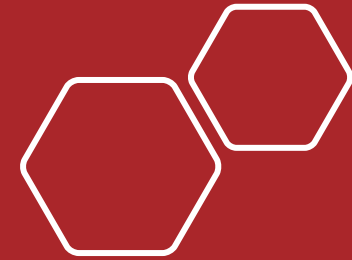
- Homeowner filed a class action lawsuit against ALS Lien Services
 - Hired by her association to collect delinquent assessments.
- Claimed that ALS violated the Fair Debt Collection Practices Act and California's unfair competition law by requiring waiver of Civil Code sec. 5655(a)
 - 5655(a) mandates that payments must first be applied to outstanding assessments before any other charges (i.e., collection costs)
- Courts reasoned that the primary purpose of Section 5655(a) is to protect homeowners from foreclosure by ensuring that payments are allocated to reduce their delinquent assessments promptly
- Waiver of this statutory protection would undermine the legislative intent and public interest served by the provision, rendering such waivers void as against public policy.

NEWS

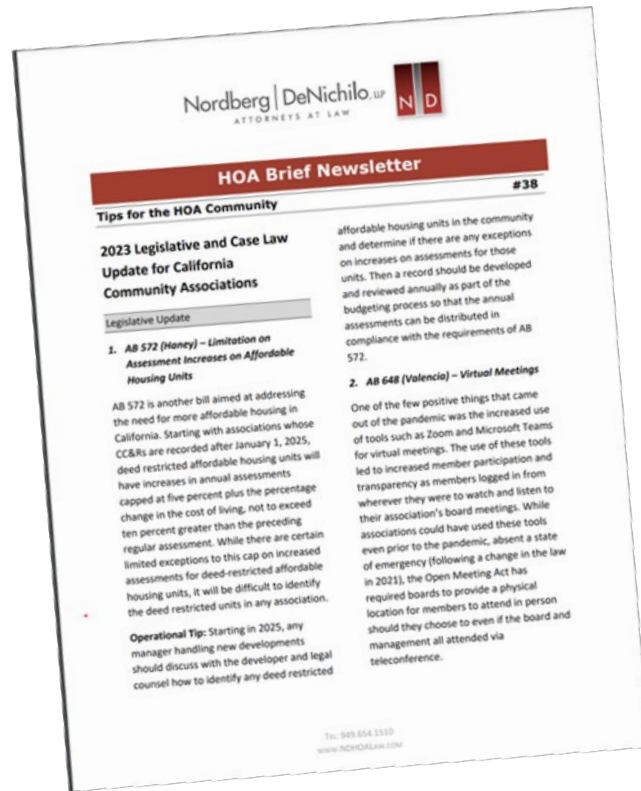
Jury awards \$9 million to disabled tenant who was denied parking at luxury condos



by **John Donegan**
Jul 24, 2024



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