

First Supplement to Memorandum 2005-9

2005 Legislative Program: SB 853 (Kehoe)

SB 853 (Kehoe) would implement the Commission's recommendation on *Preemption of CID Architectural Restrictions* (November 2004). The bill would amend Civil Code Section 1378(a)(3), as follows:

1378. (a) This section applies if an association's governing documents require association approval before an owner of a separate interest may make a physical change to the owner's separate interest or to the common area. In reviewing and approving or disapproving a proposed change, the association shall satisfy the following requirements:

...
(3) *A Notwithstanding a contrary provision of the governing documents, a decision on a proposed change shall be consistent with any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), or a building code or other applicable law governing land use or public safety.*

This is intended as a clarification of the law, rather than a substantive change. It specifically identifies the sources of law that are most likely to preempt a CID's architectural restrictions. It also makes clear, with the "notwithstanding" clause, that an association's governing documents must yield to conflicting law.

Unfortunately, this new language may conflict with existing Section 1378(b), which reads:

(b) Nothing in this section authorizes a physical change to the common area in a manner that is inconsistent with an association's governing documents or governing law.

The problem is that existing law may require a change to the common area that is inconsistent with the governing documents. For example, fair housing law may require that an association approve a proposal to construct an entry ramp for a home owned by a physically disabled person. Construction of the ramp may require encroachment into the common area (even if encroachment is not permitted by the governing documents).

The staff recommends that the conflict be eliminated by amending subdivision (b) as follows:

(b) Nothing in this section authorizes a physical change to the common area in a manner that is inconsistent with an association's governing documents ~~or governing~~ unless the change is required by law.

This harmonizes (a)(3) and (b), by recognizing that a governing document restriction on changes to the common area can be overridden by a statutory requirement.

Respectfully submitted,

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