

REPORT OF THE  
CALIFORNIA LAW REVISION COMMISSION ON  
CHAPTER 346 OF THE STATUTES OF 2004  
(ASSEMBLY BILL 2376)

Assembly Bill 2376, authored by Assembly Member Patricia Bates, implements the California Law Revision Commission recommendation on *Common Interest Development Law: Architectural Review and Decisionmaking*, 34 Cal. L. Revision Comm'n Reports \_\_\_ (2004). The new and revised Comments set out below supersede the comparable Comments in the recommendation and reflect amendments made to Assembly Bill 2376 in the legislative process.

**Civ. Code § 1357.120 (amended). Scope of operating rule requirements**

**Comment.** Section 1357.120 is amended to provide that the procedures for revising an association's operating rules apply to a rule that relates to the association's procedure for reviewing a proposed physical change to property. See Section 1378 (procedure for decision on proposed physical change to property). See also Sections 1351(b) ("common area" defined), 1351(i) ("exclusive use common area" defined), 1351(l) ("separate interest" defined).

**Civ. Code § 1378 (added). Procedure for decision on proposed physical change to property**

**Comment.** Section 1378 is new. Paragraphs (1) and (2) of subdivision (a) are consistent with case law. See *Ironwood Owners Ass'n IX v. Solomon*, 178 Cal. App. 3d 766, 772, 224 Cal. Rptr. 18 (1986) ("When a homeowners' association seeks to enforce the provisions of its CCRs to compel an act by one of its member owners, it is incumbent upon it to show that it has followed its own standards and procedures prior to pursuing such a remedy, that those procedures were fair and reasonable and that its substantive decision was made in good faith, and is reasonable, not arbitrary or capricious."). Nothing in this section is intended to shift the existing burden of proof as to the validity of an association's governing documents.

Subdivision (a)(1) requires that an association establish prompt deadlines for response to an application or a request for reconsideration and include those deadlines in its written procedure. The meaning of "prompt" will vary from association to association, depending on such factors as the frequency with which the decisionmaking body meets and the complexity of the review process. However, the period for response should not exceed the amount of time that is reasonably required to respond. An association could choose to establish different periods for review of different identified classes of improvement. For example, an association's procedure might provide 30 days for review of a landscaping plan, but 90 days for review of new construction.

The association's procedure for reviewing and approving or disapproving a proposed physical change should be flexible in addressing exigent circumstances. For example, an association should expedite review of a proposed change that is necessary to accommodate a disability or to protect against an imminent threat to public health or safety. Such flexibility is implicit in the requirement that the review and decisionmaking procedure be reasonable and expeditious.

Physical changes that might be subject to association approval requirements include additions or renovations, landscaping, choice of exterior paint colors, coverings, or roofing materials, changes to windows and balconies, and other such changes to the structure or appearance of the property.

An association decision on a proposed physical change must be consistent with governing law. For example, the Fair Employment and Housing Act prohibits discrimination "through public or private land use practices, decisions, and authorizations." Gov't Code § 12955(l). See also Gov't Code § 12927(c)(1) ("Discrimination" includes "refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the disabled

person, if the modifications may be necessary to afford the disabled person full enjoyment of the premises ... and includes refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.”).

Subdivision (a)(4) provides an applicant with the option to seek reconsideration of a disapproval decision, at an open meeting of the board of directors. If a separate interest is part of more than one association, a disapproval decision would be reconsidered by the board of the association that made the disapproval decision. Nothing in this subdivision is intended to imply that a board meeting required under another provision is not open. See Section 1363.05 (Common Interest Development Open Meeting Act). An applicant preserves other remedies whether or not the applicant seeks reconsideration. The right of reconsideration by the board only applies if the initial decision is made by an entity with a different membership than the board of directors or is made at a meeting that does not satisfy the requirements of Section 1363.05.

The requirements of this section apply regardless of any contrary provision in an association’s governing documents. Nothing in this section affects the limitation on director liability provided in Section 1367.5 or in Corporations Code Section 7231.

Subdivision (b) makes clear that this section does not authorize physical change to the common area in a manner that is inconsistent with an association’s governing documents or the governing law. In many associations the governing documents require a vote of the membership to approve a change to the common area. See, e.g., *Posey v. Leavitt*, 229 Cal. App. 3d 1236, 280 Cal. Rptr. 568 (1991). In other associations, the governing documents may permit changes to certain features of the common areas (such as common walls, ceilings, floors, and exclusive use common areas) with the approval of the association. See Civ. Code § 1351(i) (“exclusive use common area” defined). In all cases, the requirements of the governing documents control.

Nothing in this section prevents an association from adopting an operating rule, consistent with its governing documents, that provides for automatic approval of a specifically identified type of physical change.