



# NEW MANDATES ON RENTAL RESTRICTIONS (AB 3182)

In 2011, the California legislature enacted Civil Code section 4740. This law provided that if an association enacted a prohibition on the rental of a separate interest it would not apply to the current owner unless the owner agreed to be bound by the rental prohibition. This allowed associations to amend governing documents to prohibit future owners from renting their homes.

The 2011 law also allowed rental prohibitions in existence before 2012 to be “grandfathered” so that the rental prohibition could be enforced against all owners, regardless of when the home was purchased.

This type of amendment was not widely used, but for associations that did amend their documents to prohibit future rentals, it provided a reprieve from an upward trend towards excessive rentals. The ability to control the number of rentals is important for associations that seek FHA approval and to make the properties more attractive to mortgage lenders.

Assembly Bill (AB) 3182 amends Civil Code section 4740 and adds Civil Code section 4741, effective January 1, 2021, to void most prohibitions and “unreasonable” restrictions on leasing. The new law applies to both pre-2012 grandfathered prohibitions, as well as amendments adopted in 2012 or later.

Most associations will not be affected by these changes. However, existing rental prohibitions and lease restrictions should be reviewed, and if necessary, consult with legal counsel to ensure compliance.

Associations may still retain provisions, or amend their provisions to conform, if the provisions fall within the following categories:

1. An association must allow at least 25% of the separate interests to be rented. A clause that limits rentals to less than 25% of the separate interests must be removed from the governing documents. Note the new law provides guidance on how ADUs and Jr.ADUs should be counted in determining whether the 25% limit has been met.
2. An association may require a minimum lease term of 30 days. It is unclear whether longer short-term rentals are prohibited or would be considered “unreasonable.” If your association requires a longer-term minimum lease, contact legal counsel.

As of January 1, 2021, rental prohibitions and unreasonable rental restrictions will be unenforceable. Perhaps more important is the law now provides that if an association has such provisions, they must be amended by December 31, 2021. Thereafter, a penalty of up to \$1,000 for violations could be imposed against associations that have not amended the governing documents to conform with the new law. The new law does not appear to provide an exception to the voting requirements set forth in the governing documents, and as such, the amendment process could take several months to complete.