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July 19, 2007

Honorable Sheila Kuehl
Room 5108, State Capitol

COMMON INTEREST DEVELOPMENTS: PETS - #0724635

Dear Senator Kuehl:

QUESTION

Under Section 1360.5 of the Civil Code, does the adoption of a rule by a common interest development to comply with the election requirements of Section 1363.03 of the Civil Code render unenforceable a provision of the governing documents of that development that prohibits the keeping of at least one pet?

OPINION

Under Section 1360.5 of the Civil Code, the adoption of a rule by a common interest development to comply with the election requirements of Section 1363.03 of the Civil Code renders unenforceable a provision of the governing documents of that development that prohibits the keeping of at least one pet.

ANALYSIS

The Davis-Sterling Common Interest Development Act (Title 6 (commencing with Sec. 1350), Pt. 4, Div. 2, Civ. C.; hereafter the act) constitutes a comprehensive body of law regulating common interest developments. A common interest development is created when a separate interest, coupled with an interest in the common area or membership in the association governing the development, is conveyed, provided that certain documents are recorded (Sec. 1352, Civ. C.).¹ The act requires that a common interest development be managed by an association, which may be incorporated or unincorporated (subd. (a), Sec. 1363).

¹ All further section references are to the Civil Code.



Section 1360.5, which governs the rights of owners of separate interests in a common interest development to keep pets, reads as follows:

“1360.5. (a) No governing documents shall prohibit the owner of a separate interest within a common interest development from keeping at least one pet within the common interest development, subject to reasonable rules and regulations of the association. This section may not be construed to affect any other rights provided by law to an owner of a separate interest to keep a pet within the development.

“(b) For purposes of this section, ‘pet’ means any domesticated bird, cat, dog, aquatic animal kept within an aquarium, or other animal as agreed to between the association and the homeowner.

“(c) If the association implements a rule or regulation restricting the number of pets an owner may keep, the new rule or regulation shall not apply to prohibit an owner from continuing to keep any pet that the owner currently keeps in his or her separate interest if the pet otherwise conforms with the previous rules or regulations relating to pets.

“(d) For the purposes of this section, ‘governing documents’ shall include, but are not limited to, the conditions, covenants, and restrictions of the common interest development, and the bylaws, rules, and regulations of the association.

“(e) This section shall become operative on January 1, 2001, and shall only apply to governing documents entered into, amended, or otherwise modified on or after that date.”

Thus, Section 1360.5 provides that the governing documents of a common interest development may not prohibit the owner of a separate interest from keeping at least one pet in that development, subject to reasonable rules and regulations of the association (subd. (a), Sec. 1360.5). The section makes this provision applicable only to governing documents entered into, amended, or otherwise modified after January 1, 2001 (subd. (e), Sec. 1360.5), and defines “governing documents” to include the covenants, conditions, and restrictions of the common interest development and the bylaws, rules, and regulations of the association (subd. (d), Sec. 1360.5).

Section 1363.03 governs the conduct of elections for membership on the board of directors of an association. That section requires an association managing a common interest development to adopt rules relating to those elections in accordance with specified requirements. Thus, the question presented requires a determination of whether the adoption of rules by an association to comply with Section 1363.03 constitutes an amendment or modification of the governing documents of that association that makes the provisions relating to pets contained in Section 1360.5 applicable.

To ascertain the meaning of a statute, we begin with the language in which the statute is framed (*Leroy T. v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 434, 438; *Visalia School Dist. v. Workers' Comp. Appeals Bd.* (1995) 40 Cal.App.4th 1211, 1220). When the language of a statute is clear, its plain meaning should be followed (*Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 38), unless a literal construction would be contrary to the legislative intent apparent in the statute (*People v. King* (1993) 5 Cal.4th 59, 69).

As discussed above, subdivision (e) of Section 1360.5 makes the provisions of that section applicable to governing documents entered into, amended, or otherwise modified after January 1, 2001. This language draws no distinction between amendments or modifications of governing documents made to comply with legislative acts, and amendments or modifications made for other reasons. Thus, in our view, the plain meaning of Section 1360.5 indicates that the restriction it imposes on the governing documents of an association relating to pets applies if the governing documents of the association are amended or modified to comply with the election provisions of Section 1363.03.

Further, it is a maxim of statutory construction that, in enacting any law, the Legislature is presumed to have had knowledge of existing statutory law pertaining to the same subject matter (see *Bailey v. Superior Court* (1977) 19 Cal.3d 970, fn. 10, at pp. 977-978). Section 1360.5 was in effect at the time that the bill adding Section 1363.03 was enacted.² Thus, it can be presumed that the Legislature had knowledge of the contents of Section 1360.5 at the time it added the election requirements of Section 1363.03. In our view, the Legislature's choice to require the adoption of rules relating to elections without exempting the adoption of those rules from the operation of Section 1360.5 indicates that it did not intend to create such an exemption.

Section 1363.03, as discussed above, requires an association to adopt rules relating to elections that meet specified requirements. Because the definition of "governing documents" in Section 1360.5 includes "bylaws, rules, and regulations of the association" (subd. (d), Sec. 1360.5), we conclude that the adoption of one or more rules to comply with the election provisions of Section 1363.03 would constitute an amendment or modification of the governing documents of an association for the purposes of Section 1360.5.

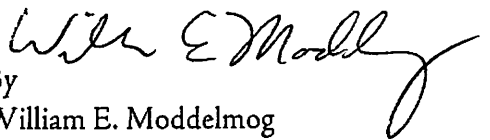
Accordingly, it is our opinion that, under Section 1360.5 of the Civil Code, the adoption of a rule by a common interest development to comply with the election requirements of

² Section 1360.5 was added to the Civil Code by Assembly Bill No. 860 of the 1999-2000 Regular Session, and took effect on January 1, 2001 (see Ch. 551, Stats 2000). Section 1363.03 was added to the Civil Code by Senate Bill No. 61 of the 2005-06 Regular Session, and took effect on January 1, 2006 (see Ch. 450, Stats. 2005).

Section 1363.03 of the Civil Code renders unenforceable a provision of the governing documents of that development that prohibits the keeping of at least one pet.

Very truly yours,

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By
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WEM:dlb