

NEW AGENDA LAW (Civil Code § 1363.05)

Senate Bill 528 amended section 1363.05 of the Davis-Stirling Act. Presently, homeowners are entitled to four (4) days notice of a regular Board of Directors meeting unless the time and place of the meeting is fixed by the Bylaws. For Special Meetings, a four (4) day notice is also required (except for emergencies). Notices must be posted “in a prominent place in the common area” and mailed to owners who have requested notice by mail, mailed or delivered to every residence or published in a newsletter.

The new law requires that a four (4) day notice of a meeting contain the agenda for the meeting. It also provides:

1. The Board of Directors is prohibited from discussing or taking action on any item at a non-emergency meeting, unless that item appeared on the agenda included in the Notice.
2. However, non-Board members can speak on issues not listed on the agenda.
3. For non-agenda issues raised by a non-Board member, the Board or its agents may briefly respond to statements made by the non-Board member.
4. The Board can direct its manager to report back to the Board or add to the agenda for a subsequent meeting, or to place on a future agenda issues not specified in the agenda.
5. The Board of Directors may take action on non-agenda items if: (a) a majority of the Board present at the meeting determines that an emergency exists; (b) the Board determines there is need to take immediate action and that the need to do so became known after the agenda was posted and distributed; or (c) the item appeared on a previous agenda for a meeting that occurred not more than thirty (30) days earlier, and action on the item was continued to the current meeting.
6. Before the Board discusses any item at a meeting, it must openly identify the item to the members in attendance.

This is another example of the mistrust of homeowner association Boards in Sacramento. The intent is to prevent the Board from making a decision on an item without the membership knowing that such a decision is coming. In 2008, action items, with few exceptions, will be limited to those that are on the agenda for the meeting. The Bill is unclear as to whether an agenda is required for regular meetings of the Board for which no notice is necessary, if those meetings are held according to a set date and time in the Bylaws. Given the intent of this Bill, it would be good practice for the Association to publish an agenda at least five (5) days prior to all of its Board meetings.