

Don't be caught napping on notices for addresses; your rights at risk

BY KELLY G. RICHARDSON

Some well-intentioned ideas can boomerang and hurt those who are intended to be helped. Such is the new Civil Code 4041, created by last year's SB918.

Section 4041 appears intended to protect homeowners by requiring annual reminders to keep their mailing addresses current with their associations. It requires each owner to annually notify the homeowners association of the address(es) and any secondary address for HOA notices, the name of the owner's legal representative or holder of a power of attorney or someone who can be contacted if the owner is on an "extended absence" from the home, and whether the home is owner-occupied or rented.

At least 30 days before the Annual Budget Report is sent out each year, the HOA must solicit this information. If the owner does not respond, the HOA must use the home's address as the address for notices.

The greatest trap for unwary homeowners is that last requirement of 4041 (c) - that the HOA, if it receives no update from an owner, must use the property address as the official address for the residence. This would mean that future notices need not be sent to the owner's off-site address, with potentially disastrous

consequences to the off-site owner. The property could be fined or foreclosed upon without the owner knowing of the problem, because the tenant never forwarded notices to the landlord.

Owners who rent their units or who often are away for extended periods of time must be very careful about their annual updates to the HOA. Owners who for many years had a written notification on file with the HOA listing their secondary address can no longer rely on that one-time notification. Notifications must be given by owners each year, or notifications from the HOA will start going to the wrong address.

Another question is whether this statute effectively negates Civil 4040 (a) (2), which allows a member to file a written statement with the HOA consenting that future notifications may be delivered by email. Would 4041 (c) mean that owners now need to also annually update that information? The safe bet is that owners should do so to make sure they continue to receive electronic notices instead of postal mail.

Civil 4040 (b) allows owners to designate in writing a secondary address for the HOA to send Annual Budget Reports, Annual Policy Statements, and notices relating to assessment delinquencies. Owners who have in the past

designated a secondary address to their HOA should beware the impact of Civil 4041 (c) and make sure they respond each year.

Another question unanswered regarding the new statute is how long HOAs must wait until they change the notification address after owners fail to update their information. Is it two weeks, 30 days or 60? Without any clear guidance on this issue, and given the potentially severe consequences, associations and managers may find themselves sending multiple copies of notices - one to comply with 4041 (c) and another to the last known other address on file.

The extra record-keeping update work and extra mailing cost required by this statute may result in associations being charged more by their management.

Hopefully in coming months the state Legislature will fix this law, but until then, off-site owners should be careful to annually and promptly provide their off-site addresses.

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