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TEMPORARY RESTRAINING ORDERS AND PERMANENT INJUNCTIONS AT ASSOCIATIONS California Code Section Assists in Prohibiting Violence

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In response to escalating violence in the workplace across the country, on January 1, 2000, California enacted a statute that enables employers to better protect their employees in the workplace. Just as this law can protect traditional employees, California Code of Civil Procedure, Section 527.8 can and should be utilized to offer protection to “employees” of Community Associations in certain specific situations.

Purpose of the statute

The purpose of the statute is to provide employers with a fast, relatively inexpensive means of protecting its employees from people who are violent or who threaten acts of violence. In the Association context, this protection allows employees to perform association business free of the fear of violence from those who seriously disrupt an otherwise peaceful community.

Often tempers will flare and disagreements will occur within an Association when an unpopular decision is made. Residents sometimes show anger against board members, committee members, officers of the Association, management or maintenance people who are carrying out the decisions of the Board. These residents may try to stop a project or say inappropriate things to Association employees. When these actions or comments consist of a violent act or a credible threat of violence, CCP 527.8 can be used to protect the employees. Unless the conduct escalates into violence or threats of violence, however, mere anger or inappropriate language do not constitute the type of conduct which calls for court action under this new statute.

Who is defined as an “employee” under this statute?

An Association need not have traditional paid employees to obtain the benefit of the statute. The following people qualify as “employees” under CCP 527.8:

1. Board members, officers and committee members;
2. Paid employees of the Association, such as maintenance workers and grounds keepers;
3. Most independent contractors and vendors, including Community Association Managers and those who work for association management companies;
4. Anyone whose job it is to go onto association property to perform work of any kind, whether paid or on a volunteer basis; and
5. All household members of an “employee.” There does not have to be a specific threat or act of violence toward each family member to obtain this additional protection.

Prerequisites to obtaining the order:

1. There must be: (1) an actual violent act; (2) a credible threat of violence; or (3) stalking of the “employee.” Mere harassment cannot be enjoined under this statute. Often, the threatening conduct has gone on for months or years, but becomes increasingly more frequent and violent over time. One extremely violent act or episode, however, may be sufficient for an injunction to be granted.
2. The person to be protected must be an “employee” of the Association. Homeowners and tenants, who are not classified as employees under the statute, are not covered and must obtain their own restraining orders.

The process for obtaining the protective order

Obtaining a permanent order protecting the employee is a two-step process. First, the Association will obtain a Temporary Restraining Order. This order is what the name implies; it is temporary, is granted on very short notice and provides almost immediate protection to the employee. After the TRO is granted, the court will hold a hearing to determine whether to make the order permanent. This hearing is generally held two weeks after the TRO is granted. At that time the Association must be prepared to prove that the order should be made permanent (generally, “permanent” means for a specific period of time up to a maximum of three years).

What can these orders do for an Association and its employers?

The kinds of protection that can be included in these orders include the following:

1. All TROs and injunctions under this Code Section include the following standard language:

Violation of this order is a misdemeanor, punishable by a \$1,000 fine, one year in jail, or both, or may be punishable as a felony. This order shall be enforced by all law enforcement officers in the State of California. Any person subject to a restraining order is prohibited from obtaining or purchasing or attempting to obtain or purchase a firearm by Penal Code 12021. Such conduct may be a felony and punishable by a \$1,000 fine and imprisonment.

2. In addition to the automatic order, the orders often prohibit the defendant from:

- A. assaulting, battering or stalking the employee and other protected persons;
- B. attending any board meetings or annual meetings of the Association;
- C. following or stalking the employee to or from their place of work;
- D. following the employee during hours of employment;
- E. telephoning or sending communications to the employee by any means, including but not limited to, the mail, interoffice mail, fax or e-mail; or
- F. entering the workplace of the employee.

3. The orders will often require the defendant to “stay away” from the employee. For example, the orders may require that the defendant stay 100 to 300 yards away from: (1) the entire Association (if a non-resident); (2) the employee or the employee’s family members; (3) the employee’s place of employment; and (4) the school or employment of the employee’s family members.

Conclusion:

This legal tool should be utilized in appropriate cases after consultation with counsel. It is an important tool that can be used by an Association to stop violent and abusive people from intimidating and threatening employees within the Association. Utilizing this statute in the appropriate manner can assist in keeping the Association safe and allows both volunteer and paid employees to perform their duties without fear and with the knowledge that their Associations are doing everything in their power to provide a safe working environment.