

Drought Legislation:

Say Goodbye to Your Green Lawns; New Law Blocks Fines During Drought Emergencies

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What Does the New Law Say?

On July 21, 2014, the Governor signed AB 2100 into law. The new law, which became effective immediately, amended Civil Code section 4735. Because the Governor has already declared a state of emergency due to drought,[1] the new law now prohibits associations from fining owners for failing to water their plants and lawns. We may also see more drought-related legislation in the near future, so stay tuned for updates.

Does This Mean That We Can No Longer Enforce Landscaping Restrictions?

Even though Civil Code section 4735 already blocked restrictions that prohibited low water-using plants as a group, the amendment of this statute does not prevent associations from adopting and/or enforcing other landscape restrictions. Thus, associations may still impose restrictions regarding landscape design, the placement of trees, bushes and turf, topography, hardscape, and general aesthetics. In addition, associations may still enforce the owners' obligation to maintain their lots in a neat and attractive condition. And, owners who choose to alter their landscaping are still required to obtain architectural consent.

While an association may no longer fine an owner for failing to water his lawn, we believe that an association may still fine an owner for failing to mow his lawn, remove weeds, trim bushes and trees, remove or replace dead and dying vegetation, prevent erosion of slopes, or for otherwise allowing his lot to become a nuisance and an eyesore.

Although the law addresses only fines and monetary assessments, associations should probably seek legal advice before attempting to impose other forms of discipline upon a member for failing to irrigate landscaping.

What Can My Association Do To Protect Itself?

Because associations can no longer rely on their members to irrigate their landscaping sufficiently, associations should probably consider adopting or amending their landscape rules or guidelines to allow for plants that use less water. In addition, associations should consider encouraging landscape designs that incorporate less turf, well-planned irrigation zones, the proper use of irrigation timers, the use of forest mulch to reduce evaporation and runoff, the use of heartier vegetation and drought tolerant plants, the use of shade from taller plants to reduce evaporation, and the smart use of topography to reduce runoff.

[1] <http://gov.ca.gov/news.php?id=18368>

When considering applications for changes to the landscaping or when considering adopting or amending any landscape guidelines or rules, associations may wish to consult professional landscape architects or designers to minimize the negative impact of the drought upon the aesthetic appeal of the community. Associations should seek legal advice before adopting an immediate rule change without a thirty-day comment period, in light of the state of emergency.

In addition, associations may wish to educate their members regarding the increasing cost of water and local programs that may be available to buy back turf or provide rebates to offset the cost of converting to water efficient landscaping.

Bottom Line?

While the new law eliminates one method of enforcing landscape restrictions, associations should not be afraid to enforce an owner's obligation to maintain his lot in a neat and attractive condition. Associations should consider amending their landscaping rules and guidelines to protect the value of the properties in their communities in anticipation of limited irrigation.