

## Late File 02-2013

### DIGEST

#### Civil Code: State's Water Conservation Efforts

Amends Civil Code section 1353.8 to allow homeowners in homeowners associations to replace existing landscapes with drought tolerant plants and lawns.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Civil Code section 1353.8 to allow homeowners in homeowners associations to replace existing landscapes with drought tolerant plants and lawns. This resolution should be approved in principle because it is consistent with state water policy to conserve water, and would prevent the board of directors in HOAs from denying homeowners the ability to replace existing landscapes with drought tolerant plants and lawns.

Much of California relies on water imported from the Colorado River, the Owens Valley and the Bay Delta. All of those water sources are currently experiencing persistent shortages as the urban populations that depend on them increase in addition to increased usage for agriculture and industry. It is the policy of the State of California to encourage water conservation efforts by all water users (domestic and commercial). Replacing water-intensive landscapes with drought tolerant landscapes is a proven method for homeowners to conserve water. Moreover, homeowners associations (HOAs), though not allowed to prohibit homeowners from using low water-using plants or lawns, can prevent a homeowner from using drought-tolerant plants and lawns by adopting rules that require homeowners to keep the existing water-intensive landscape, or deny them the ability to replace the landscape with drought-tolerant plants because it would not be consistent with the character of the neighborhood. These policies, rooted in aesthetics, discourage the wise use of a precious and increasingly scarce public resource for which there is increasing demand. It is well known that California regularly confronts water shortages that are a direct result of an increasing population, large-scale agriculture, and industrial demands (particularly in the energy sector). The state must take appropriate steps to promote water efficiency to preserve a challenged water supply. Permitting homeowners to change their current landscape to more efficient drought tolerant landscapes is consistent with the state's water policy. HOAs can and should adopt policies to protect the aesthetics of their communities that are consistent with this policy, rather than adopting policies that have the effect of discouraging water conservation.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Association recommends that legislation be sponsored to amend the Davis-Stirling Common-Interest Development Act, California Civil Code section 1353.8 to read as follows:

1 § 1353.8

2 (a) Notwithstanding any other law, a provision of any of the governing documents,  
3 architectural and/or landscaping guidelines or policy adopted by the board of directors, or  
4 specific decision regarding a resident made by the board of directors of a common interest  
5 development shall be void and unenforceable if it does any of the following:

6 (1) Prohibits, or includes conditions that have the effect of prohibiting, the use of low  
7 water-using plants as a group.

8 (2) Has the effect of prohibiting or restricting compliance with either of the following:

9 (A) A water-efficient landscape ordinance adopted or in effect pursuant to subdivision (c)  
10 of Section 65595 of the Government Code.

11 (B) Any regulation or restriction on the use of water adopted pursuant to Section 353 or  
12 375 of the Water Code.

13 (3) Prevents a resident or residents of the development from replacing existing turf with  
14 low water-using plants.

15 (b) This section shall not prohibit an association from applying landscaping rules and  
16 regulations established in the governing documents, to the extent the rules and regulations fully  
17 conform with the requirements of subdivision (a).  
18

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Contra Costa County Bar Association

### **STATEMENT OF REASONS**

The Problem (including Existing Law): California encourages water efficient landscaping through various statutes like A.B. 1881 and similar laws and local ordinances. For example, Civil Code section 1353.8 prohibits common interest developments (i.e. homeowners associations (“HOAs”)) from enforcing provisions in their governing documents (i.e. Covenants, Conditions, & Restrictions (“CC&Rs”)) that prohibit the use of drought-tolerant plants. Existing regulations further prohibit HOAs from enforcing architectural guidelines that prohibit the use of drought-tolerant plants. 23 C.C.R. 492.6(a)(1)(G). However, some HOAs have skirted these rules by: a) adopting less formal policies that have the same effect, e.g. requiring homeowners to keep existing water-intensive lawns or keep a certain percentage of their property covered by lawn; and/or b) denying individual homeowners’ requests for approval to install drought-tolerant plants on their properties or to replace existing water-intensive lawns with drought-tolerant plants on the grounds that it would not be consistent with the character of the neighborhood. Estimates are that 15-25% of California and U.S. residents live in common interest developments.

This Solution: This resolution would amend Civil Code section 1353.8 to: 1) apply to policies adopted by and specific decisions made by an HOA’s board of directors; and 2) make clear that HOAs cannot prevent homeowners from replacing their water-intensive lawns with drought-tolerant plants in order to conserve water.

**LEGISLATIVE HISTORY**

Not known

**IMPACT STATEMENT**

The proposed resolution does not affect any other law, statute or rule.

**AUTHOR AND/OR PERMANENT CONTACT:** Stephen Steinberg, Vasquez Benisek & Lindgren LLP, 3685 Mt. Diablo Blvd., Ste. 300, Lafayette, CA, 94549, (925) 385-0644, ssteinberg@vblaw.com

**RESPONSIBLE FLOOR DELEGATE:** Stephen Steinberg