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BILL LOCKYER
Attorney General

OPINION	:	No. 01-310
of	:	September 26, 2001
BILL LOCKYER Attorney General	:	
CLAYTON P. ROCHE Deputy Attorney General	:	

THE HONORABLE BRUCE McPHERSON, MEMBER OF THE STATE SENATE, has requested an opinion on the following question:

With respect to a resident-owned mobilehome park with covenants, conditions, and restrictions in effect prior to January 1, 2001, that prohibit the keeping of pets by owners, is the prohibition applicable to owners who purchase their spaces after January 1, 2001?

CONCLUSION

With respect to a resident-owned mobilehome park with covenants, conditions, and restrictions in effect prior to January 1, 2001, that prohibit the keeping of pets by owners, the prohibition is applicable to owners who purchase their spaces after January 1, 2001.

ANALYSIS

A resident-owned mobilehome park has adopted and recorded a declaration of covenants, conditions and restrictions ("CC&R's") that prohibit the keeping of pets except in a limited number of spaces in a particular area. These CC&R's were adopted prior to January 1, 2001. In light of recent legislation (Civ. Code, § 1360.5)[1] enacted in 2000 (Stats. 2000, ch. 551, § 2) and effective January 1, 2001, may these CC&R's be enforced with respect to owners who purchase spaces in the mobilehome park after January 1, 2001? We conclude that they may.

Section 1360.5 provides:

> "(a) No governing documents shall prohibit the owner of a separate interest within a common interest development from keeping at least one pet within the common interest development, subject to reasonable rules and regulations of the association. This section may not be construed to affect any other rights provided by law to an owner of a separate interest to keep a pet within the development.
>
> "(b) For purposes of this section, 'pet' means any domesticated bird, cat, dog, aquatic animal kept within an aquarium, or other animal as agreed to between the association and the homeowner.
>
> "(d) If the association implements a rule or regulation restricting the number of pets an owner may keep, the new rule or regulation shall not apply to prohibit an owner from continuing to keep any pet that the owner currently keeps in his or her separate interest if the pet otherwise conforms with the previous rules or regulations relating to pets.
>
> "(e) For the purposes of this section, 'governing documents' shall include, but are not limited to, the conditions, covenants, and restrictions of the common interest development, and the bylaws, rules, and regulations of the association.
>
> "(f) This section shall become operative on January 1, 2001, and shall only apply to governing documents entered into, amended, or otherwise modified on or after that date."[2]

In interpreting the language of section 1360.5, particularly subdivision (f), we may apply

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[1] All references hereafter to the Civil Code are by section number only.

[2] Section 1360.5 does not contain a subdivision (c).

well-established principles of statutory interpretation. "When construing a statute, we must 'ascertain the intent of the Legislature so as to effect the purpose of the law.' [Citation.]" (*Wilcox v. Birtwhistle* (1999) 21 Cal. 4th 973, 977.) "'Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining legislative intent.' [Citations.]" (*Kerollis v. Department of Motor Vehicles* (1999) 75 Cal.App.4th 1299, 1304.) "The words of the statute must be construed in context, keeping in mind the statutory purpose . . . ." (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.) Finally, "a practical construction is preferred" (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1147); we are to "avoid an interpretation that would lead to absurd consequences" (*People v. Jenkins* (1995) 10 Cal.4th 234, 246).

Applying these principles of construction, we find that section 1360.5 is part of the Davis-Stirling Common Interest Development Act (§§ 1350-1376) applicable to a variety of residential developments. Such developments have a "declaration" (§ 1352, subd. (a)) setting forth "the restrictions on the use or enjoyment of any portion of the common interest development that are intended to be enforceable equitable servitudes" (§ 1353, subd. (a)). The restrictions in the declaration are "restrictive covenants" and form a part of the development's "governing documents." (§ 1352.5.)[3] Subdivision (a) of section 1354 provides with respect to the enforcement of CC&R's:

> "The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both."

In *Cutujian v. Benedict Hills Estates Assn.* (1996) 41 Cal.App.4th 1379, 1384-1385, the court summarized the enforcement procedures regarding CC&R's:

> "Unless they are unreasonable, the CC&R's in the declaration governing a common interest development may be enforced as equitable servitudes and as covenants running with the land. [Citations.] The CC&R's benefit and bind the owners of all separate interests in the project. [Citation.] Unless the declaration provides otherwise, CC&R's may be enforced by any owner of a separate interest, by the association or by both. [Citations.] A party who is damaged by a violation of the CC&R's may seek money damages. [Citations.] The statute of limitations for such an action is that for an action arising from a written instrument and is four years. [Citation.]"

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[3] The "governing documents" include "the declaration and any other documents such as the bylaws, operating rules of the association, articles of incorporation, or articles of association which govern the operation of a common interest development." (§ 1351, subd. (j).)

The right to enforce CC&R's has been considered in a number of different circumstances. (See, e.g., *Lambden v. La Jolla Shores Clubdominium Homeowners Assn.* (1999) 21 Cal.4th 249, 262-263; *Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 375-376; *Villa Milano Homeowners Assn. v. Il DaVorge* (2000) 84 Cal.App.4th 819, 826-828, 833-834; *Dolan-King v. Rancho Santa Fe Assn.* (2000) 81 Cal.App.4th 965, 975; *Barrett v. Dawson* (1998) 61 Cal.App.4th 1048, 1052-1054.)

Section 1360.5 clearly prohibits CC&R's from being enforced to prevent the keeping of "at least one pet" by an owner. (§ 1360.5, subd. (a).) However, the statutory prohibition applies only to CC&R's that are "entered into, amended, or otherwise modified on or after [January 1, 2001]." (§ 1360.5, subd. (f).) In this context, the phrase "entered into" reasonably means "adopted" by formal action in the same manner that the governing documents are "amended" or "modified." The term "entered into" is explained by reference to these other words of the statute in light of the legislative purpose.

Here, we are given that the CC&R's in question were adopted and in effect prior to January 1, 2001. They have not been amended or modified on or after January 1, 2001. We reject the suggestion that they are to be considered "entered into" each time an owner purchases a space in the mobilehome park. Purchase of a space does not change the terms of the CC&R's. Any purchaser takes ownership of the space subject to the CC&R's that have been previously adopted. While the purchaser may be said to "enter into" the sales transaction itself, the existing CC&R's are not "entered into" at that time, but rather at the time of their adoption.

This commonsense construction of subdivision (f) of section 1360.5 effectuates the Legislature's intent and avoids absurd results. Allowing any purchaser of a space after January 1, 2001, to keep a pet would be unfair and infringe upon the rights of those owners who purchased their spaces prior to January 1, 2001.

We find support for our conclusion in the legislative history of section 1360.5. When the legislation was first proposed, it did not contain the "shall only apply to governing documents entered into, amended, or otherwise modified on or after that date" language. As noted in the report of the Assembly Committee on Housing and Community Development for its hearing on May 12, 1999:

> "This bill specifies that the governing documents of a common interest development shall not prohibit a homeowner from keeping a pet after July 1, 2000. The author has indicated that this requirement is to apply to governing documents entered into, amended, or otherwise modified on or after this date, not those in existence prior to this date. The author may wish to propose language that will clarify this." (Assem. Com. on Housing & Community Development, Rep. on Assem. Bill No. 860 (1999-2000 Reg. Sess.) Feb. 24, 1999, p. 3.)

After the proposed legislation was amended in the Senate on July 6, 2000, the Assembly's analysis of the amendments stated in part:

> "SUMMARY: Allows mobilehome park residents and homeowners in common interest developments (CIDs) to keep pets subject to reasonable rules and regulations.
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> "The Senate amendments add to the Assembly version as follows:
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> ". . . . . .
>
> "4) Apply the provisions of this bill to CID governing documents entered into, amended, or modified after January 1, 2001.
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> ". . . . . .
>
> "COMMENTS: The purpose of this bill is to allow mobilehome owners and homeowners in CIDs the right to keep pets subject to reasonable rules and regulations.
>
> "This bill is similar to AB 2020 (Thomson) of 1998, which was vetoed by Governor Wilson. The veto message indicated that the resolution of this matter should come through the homeowner's association.
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> "A CC&R in a CID is a contract between the owner of a unit in the development and the homeowner's association . . . They are, in effect, the rules by which the homeowner agrees to abide while living in the unit, provided the rules do not violate public policy, or impose a burden that substantially outweighs the restriction's benefit. CC&Rs often address pet ownership.
>
> "Supporters believe that this bill is needed to allow pet ownership. They argue that CC&Rs have become a form of private government that is undemocratic. However, a homeowner signs a copy of CC&Rs prior to taking title of the unit he or she is purchasing, and CC&Rs typically include a provision allowing CC&Rs to be amended and provide a process that allows the tenants to vote on the proposed amendment." (Assem. Concurrence in Senate Amendments analysis of Assem. Bill No. 860 (1999-2000 Reg. Sess.) as amended July 6, 2000, pp. 1-3.)

It is evident from the legislative history of section 1360.5 that "entered into" in subdivision (f) refers to the adoption of the CC&R's. If a prohibition against pet ownership is to be changed after January 1, 2001, the CC&R's may be amended or modified in the authorized manner. Accordingly, if the CC&R's were adopted and in place prior to January 1, 2001, they may continue to prohibit the keeping of animals after such date unless

changed by the owners.[4] On the other hand, any CC&R's adopted after January 1, 2001, may not "prohibit the owner of a separate interest within the common interest development from keeping at least one pet . . . ." (§ 1360.5, subd. (a).)

We conclude that with respect to a resident-owned mobilehome park with covenants, conditions, and restrictions in effect prior to January 1, 2001, that prohibit the keeping of pets by owners, the prohibition is applicable to owners who purchase their spaces after January 1, 2001.

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[4] The Mobilehome Residency Law (§§ 798-799.9), applicable to residents who have tenancies in a mobilehome park under rental agreements (§§ 798.9, 799.1), operates in a different manner (see § 798.33).