

The Rules We Live By: Understanding Your Rights and Alternatives in an HOA

By Hugh A. McCabe

A Homeowner's Association (HOA) is typically a legal entity created by a real estate developer for the purpose of developing, managing and selling homes within a community, but may also be a voluntary association of homeowners to protect their property values and improve the neighborhood. An HOA is given the authority to enforce the covenants, conditions and restrictions (CC&Rs) and to manage the common amenities of the development. In either case, the residents within a community are often frustrated with the action or inaction of their association, and the seemingly arbitrary restrictions, fees and penalties they assess. This article outlines several important rights and alternatives available to homeowners when dealing with HOAs.

In 1985, the Legislature consolidated the laws that govern HOAs into the Davis-Stirling Common Interest Development Act into one area of the Civil Code. Davis-Stirling contains the statutory provisions "respecting the creation and essential attributes of common interest developments" in California. Davis-Stirling also simplified aspects of CID governance. Instead of alternative schemes of management, all common interest developments must now be governed by an association.

Today, roughly twenty-five percent of Californians live in HOA communities. These associations provide services, regulate activities, levy assessments and impose fines and penalties. Association boards are comprised of volunteers from the community who are elected by owners at annual meetings to represent the interests of all homeowners. The boards in turn appoint corporate officers, and may create subcommittees to perform special functions such as neighborhood watch. One critical focus of an association's function is its ability to levy assessments and issue fines to homeowners. HOAs can compel homeowners to pay a portion of common expenses, usually arising from common property. This amount can vary considerably depending on the types of amenities offered. Some communities may only have a swimming pool, while others may include community buildings, clubhouses, private roads and even schools. These assessments provide residents with shared neighborhood values, and access to a maintained pool, gym, tennis courts, walking trails and other amenities the residents may otherwise be unable to afford or maintain on their own.

However, many residents are becoming increasingly concerned about the power of their associations to issue assessments as they endeavor to stretch their income in today's mercurial economy. Nevertheless, there are limits to an association's powers. In California, Civil Code section 1366 limits regular assessments to not more than 20% in any fiscal year without approval of the members, requiring a majority of a 51% quorum. Moreover, without similar approval, it may not impose a special assessment that exceeds 5% of the budgeted gross operating expenses.

HOAs can levy fines against homeowners for violating the pre-existing rules established through the CC&Rs. Additionally, the board will often adopt other restrictions in a document titled along the lines of “The Rules We Live By.” These rules often implement community safety precautions such as speeding, or ensure the quiet enjoyment of residents by prohibiting noise or dumping garbage in community dumpsters.

Many residents are often unaware of the rules, and don’t know they are in violation until they are fined. To add insult to injury, these fines often appear baseless and homeowners are unaware of their rights under these circumstances. As an initial matter, if a homeowner receives a fine he or she feels is arbitrary or unjust, it is imperative to first review the association’s “Rules.” Not surprisingly, many HOA boards are too busy or complacent, and do not understand or abide by their own governing documents. Knowing their procedural guidelines and restrictions are an important first step to preserving your rights as a homeowner. Several key rights are worth noting:

Ensure your HOA is following its own procedures. California has severely curtailed the prerogatives of boards by requiring hearing before fines can be levied. Moreover, the amount of the fine to be levied is limited if the homeowner does not appear at the hearing. For example, many associations impose a mandatory “warning” for any first offense. This warning will often come in a letter from the association detailing the offense and requesting abatement. Subsequent offenses are progressive, but often limited to, for example, \$100 for the second similar offense.

You have time. In extreme cases in the past, homeowners associations could foreclose on homes to collect unpaid association dues and fines. However, as of 2006, California now provides special protection to the property owners where the delinquent assessments are less than \$1,800. In these instances, HOAs are not permitted to record a lien or initiate foreclosure until the unpaid assessment exceeds \$1,800 or the assessment is more than 12 months delinquent. In both instances, the HOA must offer the property owner both internal and alternative dispute resolution before proceeding to foreclosure.

Small claims court is an option. Small claims court can be a valuable enforcement tool for the homeowner. It is inexpensive, readily available, and cases can often be heard in a matter of weeks instead of years (which is often the case if the homeowner sues in Superior Court.) Homeowners throughout the state have had a high rate of success in small claims court obtaining injunctive relief to require associations to open up their books. Additionally, homeowners have also filed in small claims court in order to challenge election procedures and election results.

In many cases, Judges have even awarded homeowners damages. In California, an individual can ask for damages of up to \$7500 in small claims court, ask for fines of up to \$500 each for many violations, and seek reimbursement for attorney’s fees for assistance preparing a case.

On the other side of the coin, Homeowners need to pay assessments and homeowners associations need legal tools to collect them. Newly amended Code of Civil Procedure section 116.540 authorizes an “agent, management company representative, or bookkeeper” for a community association to appear in small claims court. A Board can ask for up to \$5000 in damages (\$2500 if more than 2 claims are filed in a year).

In short, there are many alternatives available to the homeowner when dealing with an adversarial or unscrupulous association. Similarly, there are efficient and cost-effective means for an association to adopt and enforce community rules. On both sides, an important first step is to understand your rights as a member of an HOA community.

This article appeared in the October 2008 issue of The San Diego Business Journal

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