MCLE Class - San Diego County Law Library

HOA BASICS AND RECURRING ISSUES

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1. RESOURCES

a. Miller & Star, California Real Estate

b. CEB, Advising California Common Interest Communities

c. Lifeline Community Services - legal clinic (www.nclifeline.org)

d. CAI (Community Associations Institute) www.caionline.org

2. SOURCES OF LAW

GOVERNING DOCUMENTS Declaration of Restrictions, Bylaws, Art of Inc., Rules & Regs

- Civil Code section 4000 et seq.
- Civil Code section 51 et seq
- Corporations Code
- Civil Code section 798
- City Codes
- Case Law

3. FUNCTION OF BOARD OF DIRECTORS

- Common Area Maintenance
- Exclusive Board Control
- Not a true democracy
- Investigate Complaints (document efforts)
- Budget CC 5300 et seq.

- Civil Code section 5600: "...the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents..."

- Reserves (CC 5510 et seq) - cannot be afraid to fund - breach of fiduciary duty if not funded?

4. **ENFORCEMENT OF GOVERNING DOCUMENTS**

- Nahrstedt (1994) 8 Cal. 4th 361 - look to effect on entire complex, not impact on individual

- Lamden (1999) 21 Cal.4th 249 - "Where a duly constituted community association board, upon reasonable investigation, in good faith and with regard for the best interests of the community association and its members, exercises discretion within the scope of its authority under relevant statutes, covenants and restrictions to select among means for discharging an obligation to maintain and repair a development's common areas, courts should defer to the board's authority and presumed expertise. Thus, we adopt today for California courts a rule of judicial deference to community association board decision making that applies, regardless of an association's corporate status, when owners in common interest developments seek to litigate ordinary maintenance decisions entrusted to the discretion of their associations' boards of directors. [(citation omitted) Lamden at 253]

- Recorded Declaration presumed reasonable(CC 5975(a))
- Member opportunity to be heard (CC 5000)
- Dispute Resolution (CC 5900 and §5925)
- Members may enforce declaration if Board refuses
- ASSESSMENTS (CC 5600 et seq)
- Owner cannot offset assessments because he doesn't like way HOA operated Park Place Estates HOA v. Naber (1994) 29 Cal.App.4th 427
- Liens (CC 5650 et seq)
- Owe assessments while on title

- Fines - May not be characterized as lien - go to Small Claims Court

- Pets - (CC 4715) (poop DNA)

5. **COMMUNICATION WITH MEMBERS**

- Notice of meeting (CC 4920)
- Minutes of meetings (CC 4950)
- Executive sessions (CC 4935) -
- Disclosure of Documents(CC 5200, Corp Code 8330-8338) -

6. **CURRENT ISSUES**

-insufficient reserves (aging condos - special assess and/or loan)

-prohibiting smoking (no right to smoke - nuisance)

-short term rentals

-neighbor nuisance issues (dogs, kids etc)

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COMMUNITY ASSOCIATIONS IN THE UNITED STATES

The number of community associations in the United States grew from 10,000 in 1970 and 222,500 in 2000 to 338,000 in 2015, according to results of CAI's National and State Statistical Review for 2015. While final 2016 data is not yet available, CAI estimates the year will end with between 342,000 and 344,000 associations.

National and State Statistical Review for 2015

U.S. community associations, housing units and residents

Year	Communities	Housing Units	Residents
1970	10,000	.7 million	2.1 million
2000	222,500	17.8	45.2
2015	338,000	26.2	68

The review found an estimated 68 million Americans—21.1 percent of the U.S. population in 2015—lived in common-interest communities, including homeowners associations, condominium communities and cooperatives. Homeowners associations account for 51 to 55 percent of the 338,000 associations, with condominiums representing 42 to 45 percent and cooperatives 3 to 4 percent.

States with the most associations are Florida (47,200), California (44,900), Texas (19,800) and Illinois (18,500).

See the National and State Statistical Review for 2015 for more information on homeowners associations, condominium communities, cooperatives and other common-interest communities.

The information in the review was developed by Clifford J. Treese, CIRMS, president of Association Data, Inc., in Mountain House, Calif., and a past president of both CAI and the Foundation for Community Association Research.

For even more detailed statistical data, see the Community Association Fact Book published by the Foundation for Community Association Research.