MCLE Class - San Diego County Law Library

HOMEOWNER ASSOCIATION LAW: BASICS AND RECURRING ISSUES

(December 20, 2018)

Speaker: Jay J. Brown
FEIST, VETTER, KNAUF AND LOY, APC
5122 Avenida Encinas, Suite 100
Carlsbad, CA 92008-4384

1. **RESOURCES**

a. CEB, Advising California Common Interest Communities

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

2. **SOURCES OF LAW**

GOVERNING DOCUMENTS Declaration of Restrictions (CC&R's), Bylaws, Art of Inc., Rules & Regs, Election Rules

- Civil Code section 4000 et seq.(Davis -Stirling)
- Civil Code section 51 et seq (Unruh Civil Rights)
- Corporations Code
- Civil Code section 798 (mobilehome)
- Civil Code 714 (solar)
- City Codes
- Case Law

3. **BASIC GOVERNANCE**

- Common Area Maintenance (CC 4775)
- Exclusive Board Control
- Not a true democracy
- Investigate Complaints (document efforts)
- Budget CC 5300 et seq. (See Assembly Bill 2912 - review financials monthly, fidelity bond)
- Civil Code section 5600: "...the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this act."
- Reserves (CC 5510 et seq) - cannot be afraid to fund - breach of fiduciary duty if not funded? (Assembly Bill 2912 - prior Board Approval)

-Elections (CC 5100)

4. **BASIC 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]

- Member opportunity to be heard (CC 5000)-time limit
- Dispute Resolution (CC 5900 and §5925)
- ASSESSMENTS (CC 5600 et seq)
  Goudelock v. Sixty-01 Assoc 895 F.3d 633 - Ch 13 discharges post petition assessments
- 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)-FDCPA -atty debt collector
- Fines - May not be characterized as lien - go to Small Claims Court, need fine schedule
- Pets - (CC 4715) subject to reasonable rules (poop DNA)

5. **BASIC TRANSPARENCY IN GOVERNANCE**

- Notice of meeting (CC 4920)
- Minutes of meetings (CC 4950)
- Executive sessions (CC 4935) -
- Disclosure of Documents(CC 5200)

6. **TRENDING**

-short term rentals
Greenfield v. Mandalay Shores Comm Assn 21 Cal.App.5th 896; Coastal Commission authority
-emotional support animals
-prohibiting smoking (no right to smoke - nuisance)
-solar energy systems on multi unit building roofs