

# News

Joel M. Kriger, APC - Community Association Division



Assembly and Senate Bills, New for 2006

## Synopsis of Law Changes

BY KENNETH H. DILLINGHAM, JR., ESQ.



### 1. SB 853 — Architectural Changes, Standing to Sue

This law specifies that any decision on a proposed architectural change may not violate any law, regardless of contrary provisions in governing documents. It also makes nonsubstantive, technical changes to provisions of the law with regard to an association's standing to institute, defend, settle, or intervene in civil proceedings.

### 2. AB 662 — Construction Defects, County of San Diego, Fires

This law authorizes a homeowner and a contractor to agree by contract to be governed by the construction defect provisions applicable to new home construction with regard to the free rebuilding of residential homes destroyed in the Cedar Fire of October 2003.

### 3. SB 702 — Unincorporated Associations

This law adds provisions governing membership suspensions or terminations in unincorporated associations, as well as changes to member voting rights and procedures, amendments to the governing documents when the documents don't have those provisions, mergers, and dissolutions. It also expands upon existing liability of members, directors, officers, and agents, under certain conditions, for acts or omissions causing injury, damage, or harm.

### 4. AB 885 — Foreclosure Statutes

This law makes minor changes to statutes governing foreclosures, including modifying the definition of "last known address" for notices of default and notices of sale, and allows for postponements of the sale any time prior to completion of the sale.

### 5. AB 394 — Removal of Discriminatory Provisions in Recorded Documents

This law allows any owner of property which has restrictions recorded against it to change those restrictions to delete references to discriminatory provisions based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry.

### 6. AB 1754 — Reserves

This law makes nonsubstantive, technical changes to provisions of the law with regard to an association's reserve accounts.

### 7. SB 61 — Elections

This new law makes significant changes to the procedures and rights of homeowner associations and members with regard to elections in these corporations covering votes on assessments, election of directors, document amendments and grants of exclusive rights of use (see page 3 for more details).

### 8. SB 137 — Assessment Collection

This law makes significant changes to the assessment collection procedures for homeowner associations for debts that arise on and after January 1, 2006 (see page 2 for more details).

### 9. AB 1098 — Document Inspection Rights

This law makes changes to the documents that must be provided in response to inspection demands from members in homeowner associations (see page 4 for more details).

## Linking You with Legislators and Latest Legislation

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## New Homeowner Association Legislation for 2006

BY KENNETH H. DILLINGHAM, JR., ESQ.

In what seems to have become an annual “right of passage” ritual, homeowner associations are again becoming subject to more complex laws. Despite valiant efforts, negative publicity forced negotiations to focus on making the laws less troublesome, rather than making them go away.

The new laws with the greatest impact cover (1) assessment collections, (2) election procedures, and (3) member inspection rights, and will likely require procedure changes and the adoption of new rules.

### 1. Assessment Collection Procedures – SB 137

Remember last year’s effort against the bill to limit association’s rights to foreclose? Well, the bill was reintroduced, and this time was signed by the Governor. Effective for liens after January 2006, there are changes to the assessment collection procedures for associations.

**Threshold** – Chief among the changes is a requirement that assessment delinquencies cannot be foreclosed upon unless the principle assessment amount is \$1,800.00 or more than 12 months delinquent. Principle assessments mean assessments only; no late charges, no interest, no attorneys’ fees, and no “accelerated” assessments (assessments that are approved, but not yet due). Only assessments that are due and not paid count.

**Right to IDR/ADR** – Owners must be informed that they have the right to use dispute resolution for assessment disputes, not once, but twice; first at the pre-lien stage, and second, before beginning the foreclosure process. And, like dispute resolution laws, the owner has the option to refuse to participate; the association does not have that option, and must participate if the owner accepts or starts the process.

**Liens** – First, if an owner becomes delinquent, the board, and only the board, can make the decision whether to record a lien or not. The decision must be made at an open meeting by a majority vote of the board, and reflected in the minutes with the owners’ identity protected by reference to property parcel number. The decision cannot be delegated.

**Pre-lien notice** – You must send a pre-lien letter to the owner. In addition to required information in the pre-lien letter, you now have to include a statement about the right to dispute the assessment debt by submitting a written request for dispute resolution pursuant to Civil Code Sections 1363.810, et. seq., and a statement about the right to request alternative dispute resolution with a neutral third party pursuant to Civil Code Sections 1369.510, et. seq. before the Association may initiate

foreclosure. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

**Dispute resolution offer** – Sometime before recording the lien, the association must offer an owner a chance to “meet and confer” with the association pursuant to any dispute resolution program adopted under Civil Code sections 1363.810 et. seq. Even if you don’t have a program, you still must make this offer.

Once that is complete, the association can record the lien. In addition to all information required in the lien, you must include an itemized statement of the charges owed by the owner. Also, a copy of the recorded lien must be sent to every person whose name is shown as an owner of the home by certified mail no later than 10 calendar days after recording.

**After lien is recorded** – Nothing can be done with it until the principle assessment amount is \$1,800 or 12 months delinquent. The lien will just sit there, protecting the association’s position in the event of a bankruptcy, sale or refinancing. Once the delinquency crosses that threshold, the association may proceed with judicial or nonjudicial foreclosure to collect the delinquent payments after the following happens:

- At least 30 days prior to any sale, the board, and only the board, must make the decision to initiate foreclosure in executive session, reflected in the minutes of the next open meeting. This decision cannot be delegated to anyone else. Again, the owners’ privacy must be protected by referring to the property parcel number.
- Once the decision is made, you must give notice by *personal service* to an owner who occupies the home or to the owner’s legal representative. If the owner does not occupy the home, you must give notice by first-class mail, postage prepaid, to the most current address shown on the books of the association.
- Sometime before starting a foreclosure on an owner’s home, you must offer the owner to participate in dispute resolution pursuant to Civil Code Section 1363.810 et. seq., or alternative dispute resolution as set forth in Civil Code Section 1369.510 et. seq. The decision to pursue dispute resolution or a particular type of alternative dispute resolution is the *choice of the owner*, except that binding arbitration is not available if the association intends to initiate a judicial foreclosure.

If the owner, at any time in the process, agrees to participate in dispute resolution, the association must participate. The new law does not



reference how the costs of the dispute resolution are to be shared, unless it is found that the association has recorded a lien in error. If there is an error, the association must pay all the costs of the dispute resolution, as well as reverse all late charges, fees, interest, attorneys' fees, collection costs and other costs. Existing law says, "meet and confer" costs cannot be charged to an owner, but ADR costs can be "...borne by the parties."

Also, owners will now have the right to provide you with a secondary address to send information to. If you receive such a secondary address, you must send additional copies of everything to this second address.

As an alternative, the new law allows associations to file small claims actions to collect delinquent assessments, and allows other parties, like the association manager, to represent the association at the hearing. However, you can only sue for up to \$5,000 each time, and you can't file more than two claims in any calendar year in excess of \$2,500. Also, if you file more than twelve claims in any twelve-month period, the filing fee goes up.

## 2. Election Procedures – SB 61

Beginning on July 1, 2006, associations are required to adopt new rules for elections. The new rules adopted by the association must cover the following areas, and must be sent to owners for review and comment 30 days before they are adopted:

- Associations must have a rule that ensures that if any candidate or member advocating a point of view is provided access to any Association media, newsletters, or Internet Web sites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view. This includes those not endorsed by the board, for purposes that are reasonably related to the election. You cannot edit or delete any content from these communications, but you can include a statement specifying that the candidate or member, and not the Association, is responsible for that content.
- Associations are required to have a rule ensuring equal access to any common area meeting space, if any exists, during a campaign, at no cost, to all candidates. This includes those who are not incumbents, and all members advocating a point of view, including those not endorsed by the Board, for purposes reasonably related to the election.
- Associations are required to have a rule specifying the qualifications for candidates for the board and any other elected position, and procedures for the nomination of candidates. The new rule must allow any member of the association to nominate himself or herself for election to the Board.
- Associations are required to have new rules regarding voting, including the qualifications for voting, the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections,



including the times at which polls will open and close.

- Associations are required to have new rules specifying a method of selecting independent third parties as inspector or inspectors of election utilizing either (a) appointment of the inspector or inspectors by the Board, (b) election of the inspector or inspectors by the members of the association, or (c) some other method for selecting the inspector or inspectors. Note that unless your rules specifically allow the association manager or an agent to be an inspector, he or she may not be one.
- Speaking of inspectors of election, a new Civil Code 1363(c) requires associations to select one or three independent third party inspectors of election. These inspectors can be volunteer poll workers with your County registrar of voters, a CPA, a notary public, or a member of the community who is not a director or candidate or related to a director or candidate.
  - The inspectors are required to act in good faith as quickly as practical, to the best of their abilities, and must be impartial, doing each of the following:
    - Determine the number of memberships entitled to vote and the voting power of each.
    - Determine the authenticity, validity, and effect of proxies, if any.
    - Receive ballots. The sealed ballots at all times must be in the custody of the inspector or inspectors of election or at a location designated by the inspector or inspectors until after the tabulation of the vote, at which time custody will be transferred to the association. No person, including a member of the association or an employee of the management company, may open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.
    - Hear and determine all challenges and questions arising out of the right to vote.
    - Count and tabulate all votes in public at a properly noticed open meeting of the board or members. Any candidate or other member of the association may witness the counting and tabulation of the votes.
    - Determine when the polls shall close.
    - Determine the result of the election. The results of the election must be promptly reported to the board, must be recorded in the minutes of the next meeting of the board and must be available for review by members of the association.

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## New 2006 Legislation

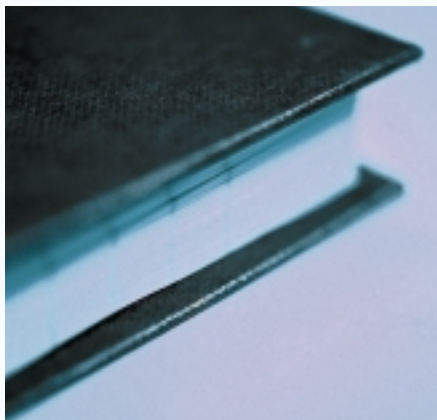
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- Perform any acts as may be proper to conduct the election with fairness to all members and all applicable rules of the association regarding the conduct of the election that are not in conflict with law.

Section 1363.03(e) requires specific procedures for voting ballots. Ballots and two pre-addressed envelopes with instructions on how to return ballots must be mailed by first-class mail or delivered to every member not less than 30 days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, or Lot or Unit number on the ballot.

Associations are encouraged to use, as a model, those procedures used by California counties for ensuring confidentiality of voter absentee ballots, including:

- The ballot itself is not signed by the voter, but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left hand corner of the second envelope, the voter prints and signs his or her name, address, and Lot or Unit number, that entitles him or her to vote; and
- The second envelope is addressed to the inspector or inspectors of election, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of election. The member may request a receipt for delivery.



**Proxies** – Any instruction given in a proxy issued for an election that directs the manner in which the proxy holder is to cast the vote must be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain. The proxy holder is required to cast the vote by secret ballot.

**Secret ballots** – Note that the law specifically requires secret ballots for voting on (a) assessments, (b) selection of directors, (c) amendments to the governing documents, and (d) any grant of exclusive use of common area property to any owner.

**Publicize** – Within 15 days of the election, the board is required to publicize the results of an election in a communication directed to all members of the association.

**Storing** – After counting, election ballots must be stored by the association in a secure place for at least one year. In the event of a recount or other challenge, the association is required to make the ballots available for inspection and review by members or their authorized representatives. Any recount must be conducted in a manner that preserves the confidentiality of the vote.

**Campaign funds** – Another new law prohibits the use of association funds for campaign purposes. Campaign purposes can include pushing for an election or defeat of any candidate, or including candidate photographs or names in association publications within 30 days of the election.

So, what happens if you don't do all of this? You can get sued. Members can file civil lawsuits for violations; even in small claims court! If they win, members get their "reasonable" attorneys' fees and court costs, and the association can be fined an additional civil penalty of \$500.00 for each violation. The election results can also be voided.



### 3. Member Inspection Rights – AB 1098

Beginning July 1, 2006, the new law provides more certainty as to what "accounting books and records" members of the association may see. These records are:

- Any financial documents (e.g. budgets, reserve studies, insurance, etc.).
- Interim unaudited financial statements, periodic or as compiled, containing any of the following: (a) balance sheet; (b) income and expense statement; (c) budget comparison; and (d) general ledger. A "general ledger" is a report that shows all transactions that occurred in an association account over a specified period of time. The records described in this paragraph must be prepared in accordance with generally accepted accounting principles.
- Executed contracts not otherwise privileged under law. Privileged contracts do not include contracts for maintenance, management, or legal services, and must be available for inspection.
- Written board approval of vendor or contractor proposals or invoices.
- State and federal tax returns.
- Reserve account balances and records of payments made from reserve accounts.
- Agendas and minutes of meetings of the members, the directors and any committees appointed by the board, excluding information from executive sessions.
- Check registers.
- Membership lists, including name, property address, and mailing address, with the rights of members to "opt out."

There are additional documents to which members have a right of access; they are called by the statute "Enhanced Association Records."

Enhanced association records include:

- Invoices.
- Receipts and canceled checks for payments made by the Association.
- Purchase orders approved by the Association.
- Credit card statements for credit cards issued in the name of the Association.
- Statements for services rendered.
- Reimbursement requests submitted to the Association.

Note: Reimbursement requests can include some very personal information, including account numbers and other identifying information. The person submitting the reimbursement request is solely responsible for removing all personal identification information.

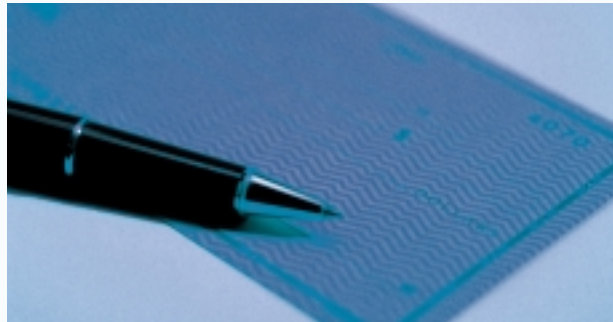
These records include those for the current fiscal year, and the previous two fiscal years. However, minutes of meetings (board, member and committee meetings) must be *permanently* available. That means forever.

Associations are obligated to make the records available for inspection and copying in any on-site business office. If there is no business office on the project, the parties can agree on a place for inspection. If they cannot agree, or if the member specifically requests copies, these obligations can be satisfied by mailing copies by first-class mail.

Associations can charge the requesting member for the direct and actual cost of copying and mailing requested documents, with prior notice and agreement to pay. If the association has to remove certain information from the records first, it can bill the requesting member an amount not in excess of \$10 per hour, and not to exceed \$200 total per written request, for the time actually and reasonably involved in removing sensitive information that is allowed to be removed. Again, there must be prior notice and an agreement to pay first.

Associations are entitled to remove information from the records for any of the following reasons:

- The release of the information is reasonably likely to lead to identity theft.
- The release of the information is reasonably likely to lead to fraud.
- The information is privileged under law.
- The release of the information is reasonably likely to compromise the privacy of an individual member of the association.
- Records of "...a-la-carte goods or services..." provided to individual members of the association for which the association received monetary consideration other than assessments.



- Records of disciplinary actions, collection activities, or payment plans of homeowners other than the homeowner requesting the records.
- Any person's personal identification information (social security number, tax identification number, driver's license number, etc.).
- Agendas, minutes, and other information from executive sessions.
- Personal personnel records. This does not include compensation paid to employees, vendors, or contractors.
- Interior architectural plans, including security features, for individual homes.

If requested by the member, when the association denies or redacts records, it must specify the legal basis for its actions.

**Timeline to respond** – Request for records for the current fiscal year must be provided within 10 business days

following receipt of the request. Records prepared during the previous two fiscal years must be provided within 30 calendar days following receipt of the request. For minutes, provide within 30 days of the meeting.

**Methods of transmission** –

Requesting parties have the option of receiving specifically identified records by electronic transmission (e.g., e-mail) or machine-readable storage media (e.g. CD) as long as those records can be transmitted in a redacted format that does not allow the records to be altered. The cost of duplication is to be limited to the direct cost of producing the copy of a record in that electronic format.

**Good-faith protections** – The association, nor any officer, director,

employee, agent or volunteer can be liable for damages to a member of the association as the result of identity theft or other breach of privacy because of the failure to withhold or redact that member's information, unless the failure to withhold or redact the information was intentional, willful, or negligent. Also, there is no liability for failing to retain

records for the periods specified herein that were created prior to January 1, 2006.

Again, members have the right to bring a civil action to enforce their right to inspect and copy the records, even in small claims court. If a court finds that the association unreasonably withheld access to the records, the court must award the member reasonable costs and expenses, including reasonable attorney's fees, and may assess a civil penalty of up to \$500 dollars for the denial of each separate written request. On the other hand, a prevailing association may recover any costs if the court finds the action to be frivolous, unreasonable, or without foundation.

If you have any questions about these or any other requirements, please consult with an appropriate legal professional. ■

## New Collections Procedures

BY KENNETH H. DILLINGHAM, JR., ESQ.

The following is a brief timeline of the assessment collection procedures, with references to the new requirements:

1. Send the annual notices to the owners; the new one required by Civil Code Section 1365.1 and the lien and collection policies and procedures (as well as all other annual disclosures).
2. If an owner becomes delinquent, make the decision whether to record a lien or not. **(This is new:)** Note that the board must make this decision at an open meeting (by a majority vote and reflected in the minutes). This decision cannot be delegated to anyone else. Protect the owners' identity by referring to the property by parcel number.
3. At least thirty days before recording a lien, send a pre-lien letter to the delinquent owner. The prelien letter needs to include the following:
  - (a) A general description of the collection and lien enforcement procedures of the Association;
  - (b) the method of calculation of the delinquent amount;
  - (c) a statement that the owner of the separate interest has the right to inspect the Association records, pursuant to Section 8333 of the Corporations Code;
  - (d) a statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION;"
  - (e) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any;
  - (f) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Association;
  - (g) The right to request a meeting with the Board;
  - (h) **(This is new:)** The right to dispute the assessment debt by submitting a written request for dispute resolution pursuant to Civil Code Sections 1363.810, et. seq.; and
  - (i) **(This is new:)** The right to request alternative dispute resolution with a neutral third party pursuant to Civil Code Sections 1369.510, et. seq. before the Association may initiate foreclosure, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.
4. **(This is new:)** Sometime before recording the lien, you must offer an owner a chance to "meet and confer" with the association pursuant to your dispute resolution program adopted under Civil Code Sections 1363.810 et. seq., if any. Even if you don't have a program, you still must make this offer.
5. Record the lien. The lien needs to include (a) the amount of the assessment and other sums imposed in accordance with Section 1366, (b) a legal description of the Owner's Unit, (c) the name of the record Owner of the Unit, and

(d) **(This is new:)** an itemized statement of the charges owed by the owner. In order for the lien to be enforced by nonjudicial foreclosure, the lien must also state the name and address of the trustee authorized by the association to enforce the lien by sale. The lien must be signed by the person designated in the CC&Rs or by the association for that purpose, or if no one is designated, it must be signed by the president of the association.

6. Send a copy of the recorded lien to every person whose name is shown as an owner of the home by certified mail no later than 10 calendar days after recording.

Alright! So, now you have a lien recorded against the delinquent owner. Now what? Well, until the principle assessment amount is \$1,800.00 or 12 months delinquent, you can't do anything with the lien. It'll just sit there, protecting the association's position in the event of a bankruptcy, sale or refinance.

Once the delinquency reaches \$1,800.00 or 12 months delinquent, the association may proceed with judicial or nonjudicial foreclosure to collect the delinquent payments. However, before it can proceed, all the following has to happen:

1. **(This is new:)** At least 30 days prior to any sale, make the decision to initiate foreclosure. This decision can only be made by the board, by a majority vote in executive session, and may not be delegated to anyone else. This vote must be put in the minutes of the next open meeting. Maintain the confidentiality of the owner or owners by identifying the matter in the minutes by the parcel number of the property.
2. **(This is new:)** Provide notice by personal service to an owner who occupies the home or to the owner's legal representative, of the board's decision to foreclose on the home. If the owner does not occupy the home, you must provide written notice by first-class mail, postage prepaid, to the most current address shown on the books of the association.
3. **(This is new:)** Sometime before starting a foreclosure on an owner's home, you must offer the owner to participate in dispute resolution pursuant to Civil Code Section 1363.810 et. seq., or alternative dispute resolution as set forth in Civil Code Section 1369.510 et. seq. The decision to pursue dispute resolution or a particular type of alternative dispute resolution is the choice of the owner, except that binding arbitration is not available if the association intends to initiate a judicial foreclosure.

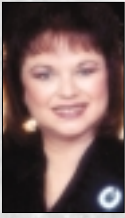
If at any time in this process the owner agrees to participate in dispute resolution, the association must participate. The new law does not reference how the costs of the dispute resolution are to be shared, unless it is found that the association has recorded a lien in error. If there is an error, the association must pay all the costs of the dispute resolution, as well as reverse all late charges, fees, interest, attorneys' fees, collection costs and other costs. If there is no error, "meet and confer" costs cannot be charged to an owner, but ADR costs can be "...borne by the parties."

Also, owners will now have the right to provide you with a secondary address to send information to. If you receive such a secondary address, you must send additional copies of everything to this second address. ■

Disaster After Disaster

## Preparedness – Lessons Learned from Katrina and Rita

BY PATEE BARTA, EDITOR



Of course in California, earthquake country, there is often “a whole lotta shakin’ going on” even when not felt beneath our foundations. There are numerous elements to a disaster while in the midst, then the post traumatic drama when it all ends. Could a disaster like Hurricane Katrina or the chaotic follow up storm that hit the Gulf Coast happen here in California? The answer is yes.

We cannot ignore warnings of previous disasters irregardless of what form they take – a storm, hurricane, tornado, earthquake, wildfire or airline mishaps. In fact, last century, California felt very large earthquakes in 1906, 1933, 1954, 1971, 1989, and 1994 to name a few. Yet through major seismic activity, our state has not experienced the Big One — an earthquake measuring 8.5 or above on the Richter Scale and at least 10 to 15 times more damaging than the Northridge earthquake of 1994, according to an article in the *San Diego Daily Transcript* by Thomas Elias.

Enough of the “let’s scare everyone to death” tactic! What can we do about it? We must care for ourselves and others in our homes and community associations. With more high rise condominium and office buildings (nonexistent 100 years ago), building codes used as protections might be flawed much like the breached levees once thought as a protection for the people of New Orleans. What is the answer?

California, and our community association population, needs a much better response plan than Louisiana had ready when its disaster presented itself. It is not only the state but also individuals that must act now to prepare for such disasters.

As media reported, New Orleans residents and people along Mississippi’s Gulf Coast had no plan or adequate supplies to deal with a disaster they knew was on the horizon. Few carried flood insurance as few carry earthquake insurance in California, and even fewer maintain adequate and secure supplies of drinking water and food to sustain them in a major disaster. Therefore, victims must rely on the charity of friends, family and

strangers. This begs the question, can an association offer shelter to evacuees if restricted by their CC&Rs?

Here is what happened in Florida where rules trumped humanitarian efforts, and peer pressure brought an exception to the rule.

### Deed Restrictions Prevent Evacuee Housing

What baffles the mind is the Ocala, Florida incident after the hurricane that every common interest development industry person should know about. What happened in this subdivision when evacuees needed help most defies the importance of “following the CC&Rs to a tee.”

Majestic Oaks Homeowners Association had people in their community that wanted to help by housing “additional families.” According to the Ocala Star-Banner, a flier distributed by the Majestic Oaks homeowners association on a Saturday stated that they would encourage that residents in the community contribute to hurricane relief funds because of their deed restrictions that prohibit housing people who fled the Gulf Coast.

A notice was sent to all residents asking them not to take in additional families even temporarily after the board found that a minister in the 500-home subdivision traveled to New Orleans and wanted to bring back three families of evacuees.

One resident went “ballistic,” felt very ashamed, and wanted to move out when she received the notice. She touted her community as being a very hospitable community that was very proud of what Texas was doing for evacuees. Unfortunately, according to the Ocala Star Banner, the president declared that legal liability meant that “restrictions can’t be ignored.” His rationale was that the residents of Majestic Oaks were leading with their feelings and not using common sense... and that there was really no solution even though everyone felt very bad about it.

The director of the Florida community coalition was contacted with the information that “similar restrictions are routinely upheld in court, but boards can decide to NOT enforce them.”

Residents did not know the CC&Rs would mean that their hands would be tied when trying to help people. After all, the homes are single-family residences, and the Vice President of the Board, felt that is what they were intended for [one family per home]. However, she did say that association residents were allowed to bring in evacuees who were family members.

### Board Changes their Minds – Allows Evacuees

On September 13, 2005, the *Ocala Star-Banner* reported that the board of directors issued a statement of apology admitting their “serious error” in not allowing the housing of refugees because of deed restriction violations. The apology was delivered to the residents’ mailboxes and was posted on the “unofficial neighborhood Web site.”

Majestic Oaks has a mix of retirees and families that view their neighborhood as friendly and safe. While other deed-restricted subdivisions in their county were busy relaxing and bending rules to house Gulf Coast evacuees left homeless by Katrina, it was very upsetting to two board members that they were restricted from helping. In fact, two of the board members not only resigned from the board because they disagreed with the original banning of evacuees, but also apologized to the community. The apology reversing the decision was very important to show that the board members do not have a special agenda regarding who can and cannot visit residents’ homes.

Some rules must be adjusted, particularly in a disaster such as Katrina, Rita and in our region’s earthquake situations such as Northridge. Compassion in the face of adversity in community associations sometimes means making exceptions to help neighbors.

Please access the [www.redcross.org](http://www.redcross.org) site for purchasing disaster preparedness kits and supplies, and for other information on pets, wildfires and winter storm safety.

Be prepared, be safe and help your communities and their members without hesitation should the Big One rattle our cages [homes]. ■

# Notice Assessments and Foreclosure

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

## ASSESSMENTS AND FORECLOSURE

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2006, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent assessments or dues, exclusive of any accelerated assessments, late charges, fees, attorney's fees, interest, and costs of collection, is less than one thousand eight hundred dollars (\$1,800). For delinquent assessments or dues in excess of one thousand eight hundred dollars (\$1,800) or more than 12 months delinquent, an association may use judicial or nonjudicial foreclosure subject to the conditions set forth in Section 1367.4 of the Civil Code. When using judicial or nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the amounts secured by the lien are not paid. (Sections 1366, 1367.1, and 1367.4 of the Civil Code)

In a judicial or nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 1367.1 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail, including a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Section 1367.1 of the Civil Code)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Section 1367.1 of the Civil Code)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

## PAYMENTS

When an owner makes a payment, he or she may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Section 1367.1 of the Civil Code)

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 5 (commencing with Section 1368.810) of Chapter 4 of Title 6 of Division 2 of the Civil Code. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in Article 2 (commencing with Section 1369.510) of Chapter 7 of Title 6 of Division 2 of the Civil Code, if so requested by the owner. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time. (Section 1367.1 of the Civil Code)

## MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a timeshare may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Section 1367.1 of the Civil Code)

The board of directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Section 1367.1 of the Civil Code)



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