

A HOMEOWNER'S ESSENTIAL GUIDE TO HOMEOWNERS' ASSOCIATIONS

2017



GOOD HOA / BAD HOA: DOES IT REALLY MATTER?

A GOOD HOA plays an important role in maintaining your property values and ensuring your quiet enjoyment of your property.

Good HOAs are priceless; bad ones can be a nightmare for a homeowner.

A BAD HOA can decrease the value of your home, force you to spend a lot of money, and turn your life upside down.



COMMON INTEREST DEVELOPMENTS AND THE DAVIS-STIRLING ACT

If you live in a condominium or planned housing development, then you live in a common interest development. There are four types of common interest developments: (1) community apartment projects; (2) planned developments; (3) condominium projects; and (4) stock cooperatives. Within those four categories, you'll find a lot of different types of housing arrangements, from single family homes (i.e., detached homes) and condominiums, to high-rise apartments and townhomes. What all common interest developments have in common, however, is that they are governed by an association of owners who enjoy the use of shared common areas and amenities.

No matter what kind of common interest development you live in, if it's in California, it's governed by the Davis-Stirling Act.

WHAT IS AN HOA?

Homeowners' Associations ("HOAs") are associations formed, usually as non-profit corporations, to own and manage common interest developments in California. The shareholders of HOAs (or "members," as they're more commonly referred to) own not only their individual homes, but a piece of the common areas through their membership in their HOAs.

EVEN THOUGH YOUR HOA'S BOARD OF DIRECTORS ENJOYS MANY OF THE SAME POWERS AND RESPONSIBILITIES AS ANY CORPORATION'S BOARD, YOUR HOA'S BOARD IS MADE UP OF VOLUNTEERS WHO OFTEN HAVE NO EXPERIENCE RUNNING A BUSINESS

Like any corporation, an HOA's board of directors has the power and authority to:

- adopt rules
- call meetings
- enforce gov. docs.
- invest funds
- main. comm. areas
- obtain insurance
- create committees
- set elections
- hire managers
- disburse reserves
- hire attorneys
- approve contracts
- call meetings
- elect officers
- hire vendors
- adopt budgets
- pay HOA expenses
- collect assessments

The problem is that most HOA board members have no experience whatsoever running a business – especially one worth millions of dollars. Think about it. If your HOA is large (i.e., has lots of homes and common amenities), then it's quite possible that your HOA has extremely valuable assets. This is especially true if, for example, your HOA has amenities like swimming pools, tennis courts, club houses, etc.



Obviously, many boards hire management companies, accountants, and lawyers to help them properly manage the HOA, but when it comes down to it, the decisions are made by lay people, most of whom have little experience in such matters.

For that reason, HOA board members are given a lot of leeway and protection in making decisions. Such leeway is granted to them not only through liability protection offered by the CC&Rs and by errors and omissions insurance paid for by the HOA, but also as a matter of law, board members are afforded the benefits of the *business judgment rule* (“BJR”).

The BJR is a legal doctrine that protects board members from liability (even if, in hindsight, bad decisions were made) if they acted in good faith, did not act in a grossly negligent way, and maintained liability insurance. In short, the law in California protects board members if they act in good faith in doing what they believe is in the best interest of the HOA.

However, more frequently than many would like to admit, homeowners find themselves dealing with board members who like to tell other homeowners what to do, or who refuse to properly manage the HOA. Sometimes, board members are dishonest or are just jerks who like to flaunt their authority. That's when homeowners really need help.

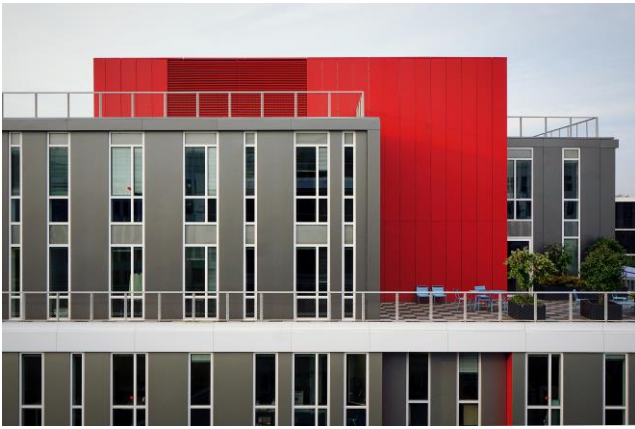
YOU HAVE OPTIONS WHEN YOUR HOA DOESN'T ACT IN GOOD FAITH OR REFUSES TO ENFORCE THE GOVERNING DOCUMENTS

Problems arise when board members either fail to do their jobs (e.g., they refuse to enforce the governing documents or maintain the common areas), or they act arbitrarily, dishonestly, or capriciously. When that happens, homeowners have options.

For example, homeowners have a right to **demand a recall**. Homeowners can recall the entire board, or just a specific member of the board. Regarding the latter, however, homeowners should remember that recalling the entire board is often much easier than recalling just one board member because in the case of a single board member recall, the cumulative voting laws permit a small minority of members from blocking a recall even if a vast majority of the members are in favor of the recall. Initiating a recall election is quite easy – it just takes a written petition signed by 5% or more of the HOA's members (for stock co-ops, the petition threshold is 10%). The board must then act according to the HOA's Bylaws in setting up a special meeting/election. HOAs are required to adopt recall policies as part of their election procedures, so homeowners should review those carefully.

Recalling the entire board is much easier than recalling just one board member.





Homeowners can also **file a lawsuit** against the HOA. Now, while it's true that filing a lawsuit is (and should be) a last resort, it is also true that homeowners typically only contemplate such drastic action after they've tried to resolve the dispute in other ways.

For example, assume that the dispute at issue involves the HOA's demand that a homeowner take down a shed erected in the owner's backyard. A homeowner might try to point out that many of his/her neighbors have similar sheds and the HOA is not requiring *them* to take their sheds down. Such a homeowner might appeal to the HOA's management company, and/or write emails to the board, and/or even speak up at board meetings. Only after getting nowhere might the homeowner consider litigation to force the HOA to treat everyone similarly.

Taking advantage of the ADR process, even when not technically required, often proves much more beneficial to the homeowner than to the HOA.

Or, take for example the homeowner who is having a dispute with his/her neighbor about water intrusion being caused by the neighbor's changing of the grading in the neighbor's yard in violation of the HOA's governing documents. After trying to resolve the dispute informally with the neighbor, the homeowner might

decide to get the HOA involved by demanding that it enforce the association's governing documents. Again, such a homeowner might write the management company, appear at board meetings, and even try talking to individual board members. But if that homeowner gets nowhere, he/she might not have any other choice but to file suit against the neighbor and the HOA.

In many cases, the homeowner is required to demand that the HOA/neighbor engage in **alternative dispute resolution** ("ADR") before filing a lawsuit against the HOA or another homeowner. This is accomplished through an **ADR Demand Letter**.

Although the Davis-Stirling Act only requires ADR prior to filing a lawsuit that is "solely for declaratory, injunctive relief, or writ relief," more often than not homeowner/HOA disputes can be resolved through the ADR process. ADR, therefore, in addition to sometimes being required by law, often plays a vital role in helping homeowners resolve disputes with their HOAs.

At the very least, ADR accomplishes three things: (1) it tells the HOA that a homeowner is serious about whatever dispute is at issue; (2) it provides an opportunity for the homeowner and the board to have one on one time to hash out the dispute; and (3) both sides get to hear the opinions of an experienced, knowledgeable, and impartial mediator regarding the dispute. With respect to the latter, that's often enough to convince a stubborn board to do what the HOA is required to do.

Because ADR can so often resolve a dispute between a homeowner and the HOA (even a serious dispute) taking advantage of the ADR process, even when not technically required, often proves much more beneficial to the homeowner than to the HOA.





Q&A

Can my HOA stop me from displaying an American flag?

Can my HOA stop me from installing video cameras?

Can my HOA ban me from owning a dog?

SIMPLE ANSWERS TO A FEW OF THE MOST COMMON QUESTIONS HOMEOWNERS ASK ABOUT THEIR HOAS

As you might imagine, homeowners have a lot of basic questions about their rights (and obligations) relating to their HOAs and neighbors. In no particular order, here are just a few of those questions (with answers):

Q: If I'm forced to sue my HOA, can I recover my attorneys' fees and costs if I win?

A: Yes. The Davis-Stirling Act requires an award of *reasonable* attorneys' fees and costs to the winning party. The judge will decide what's reasonable. Keep in mind that a refusal by a party to engage in ADR when it is demanded can result in that party's losing their right to their fees and costs even if they end up winning.

Q: Is my HOA obligated to enforce the CC&Rs against other homeowners?

A: Yes. HOAs can be held liable for not enforcing their own governing documents.

Q: If I think my HOA's board of directors is corrupt, what can I do?

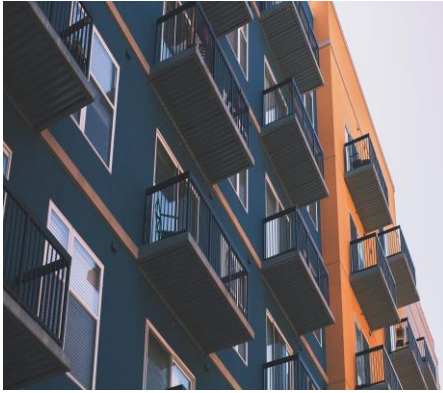
A: Subject to certain statutory exceptions, if 5% of the members of your HOA (you included) agree, you may institute a recall against the entire board or against individual director(s) by delivering a signed recall petition. This will force an official recall election. Because of cumulative voting requirements included in most CC&Rs, however, recalling individual directors is often more difficult than recalling the entire board.

Q: What's the difference between the CC&Rs and the rules?

A: Your HOA's CC&Rs are recorded with the county and may only be amended by the members of your HOA. The rules, on the other hand, can be established by your HOA's board as long as they're consistent with the CC&Rs. Rules must be reasonable, cannot be arbitrary, and any burden imposed must be outweighed by their benefit.

Q: Can the board just unilaterally change our HOA's rules?

A: Before instituting a rule change or a new rule (other than in an emergency situation), the HOA's board must vote to make the change or adopt the new rule at an open meeting. After that, the board must provide homeowners with at least 30 days' written notice to comment or object to the proposed change/new rule. The notice must include the exact text of the new rule, as well as a description of the purpose and effect of the rule change. If not vetoed by the homeowners during that time in the manner required by the Davis-Stirling Act, the HOA must then, within 15 days of the rule change, deliver notice to all homeowners that the new rule/change is in effect.



What are my rights after receiving a violation notice?

If I'm forced to sue my HOA, can I recover my attorneys' fees and costs?

Can my HOA prevent me from renting out my home?

Q: Can my HOA ban sober living/drug treatment homes?

A: Unfortunately, no. HOAs cannot prevent owners from operating or renting their homes out as alcohol or drug abuse treatment/recovery facilities as long as there are no more than 6 people living in a given home.

Q: Can my HOA ban me from owning a dog?

A: No. Your HOA cannot prevent you from owning a dog. HOAs can, however, set rules regarding the number of pets you can have, the size of the pet, and even whether certain breeds will be permitted. There was some debate about whether or not the law applied to all HOAs, or just those formed in the last few years, but because of a loophole in the law, it probably applies to all HOAs in California.

Q: Can my HOA stop me from installing video cameras?

A: No. As long as you install the cameras on your property (i.e., not common areas), and you aren't pointing them at a neighbor's windows, our HOA cannot prevent you from installing cameras on your property.

Q: Can I record HOA board meetings to ensure that a proper record is kept of what was discussed?

A: You do not have a right to record board meetings, so your HOA may adopt rules prohibiting you from doing so. But even if your board has not adopted such a rule, before recording a meeting, make sure you do so in compliance with California's other laws regarding privacy and recording conversations.

Q: What are my rights after receiving a violation notice?

A: Before any penalty (e.g., a fine or suspension of privileges) is assessed against you, the HOA must provide you with notice (typically 10 days for fines, 15 days for suspension of privileges) of a hearing. The Notice must specify the date, time, and place of the hearing, and what you're being accused of. You are also entitled to know who your accuser is, look at the evidence against you, and submit your own evidence to refute the accusations.

Q: Can my HOA prevent me from renting out my home?

A: It depends. Depending upon when you bought your home and what your HOA's governing documents said about rentals at that time, your HOA may or may not be able to enforce a complete ban on rentals. In any event, HOAs do have the right to set rules regarding rentals, including occupancy requirements, rental caps, and short term rentals, although most seek to do so by amendment to the CC&Rs.

Q: Can my HOA ban me from putting up a satellite dish?

A: No. As long as you're installing your satellite dish on your property, your HOA can't do much to stand in your way. However, HOAs can impose a few restrictions, such as: (i) requiring you to provide notice before installation; (ii) requiring you to camouflage the antenna (as long as it's not too expensive); and (iii) limiting you to 1 antenna. The HOA *cannot* require that preapprove such installation.



Can my HOA ban sober living/drug treatment homes?

Can my HOA enforce rules against me that it isn't enforcing against others?

Can our HOA do something about people who drive too fast?

Q: Can my HOA stop me from displaying an American flag? What about signs?

A: Both federal and state law protect your right to display an American flag on your property. HOAs can, however, set some restrictions. For example, HOAs can require that your flag be displayed from a window, pole, or in your yard. And HOAs can prohibit flags made from certain materials, such as lights, paint, balloons, etc. With respect to signs, it depends. HOAs can ban commercial signs (except for real estate signs, which the Davis-Stirling Act specifically permits), but subject to certain limitations (composition, time limits, size, etc.), HOAs can't prevent you from displaying most other types of signs, including political signs.

Q: I didn't realize when I built my deck about 7 years ago that I had violated the CC&Rs. Now, the HOA is ordering me to remove it. Do I have to?

A: Most likely not. There is a 5 year statute of limitations for punishing any violation of the CC&Rs or rules of an HOA (measured from the time that the board knew or should've known of the violation).

Q: I want to see a list of my HOA's members so I can write to them about a rule change that I think my HOA needs. Does the HOA have to give me that list?

A: In most cases, yes. You have a right to receive your HOA's membership list (i.e., names, addresses, mailing addresses) within 5 days of your request as long as you cover any actual costs incurred by the HOA in copying the list, state the reason you want the list, and that reason is reasonably related to your interest as a member of the HOA.

Q: Can my HOA stop me from smoking in my home or on my balcony?

A: Yes. The legislature and courts in CA have decided that smoking is not a civil right and that the HOA's right to minimize fire hazards and nuisances to other residents (especially in connected housing that share centralized air systems) trumps your right to smoke. However, whether an HOA can ban smoking *inside* single family homes is an open question.

Q: What about medical marijuana? I have a prescription and I need it for a medical condition.

A: The fact that you have a prescription for marijuana or that you need it for the treatment of an illness or disease is currently irrelevant. As far as HOAs are concerned under the current law in CA, there's no difference between marijuana and cigars or cigarettes.

Q: I had my car wrapped to advertise my business and my HOA is now telling me that I can't park my car on my driveway because of the ban on commercial vehicles in our CC&Rs. Can they do that?

A: No. A regular passenger vehicle does not qualify as a "commercial vehicle," and thus can't reasonably be banned.



Can I get in trouble if one or two neighbors constantly lodge anonymous complaints about me?

What can I do if an election wasn't conducted properly?

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Q: Do I have a right to receive the minutes of my HOA's board meetings?

A: As a member of the HOA, you have an absolute right to receive a copy of the minutes of each open meeting. You do not, however, have a right to inspect the minutes of executive session meetings.

Q: Can my HOA enforce rules against me that it isn't enforcing against others?

A: No. HOAs are obligated to treat all HOA members the same, and selective enforcement violates that obligation.

Q: Can I get fined if one or two neighbors constantly lodge anonymous complaints about me?

A: Not unless the HOA can prove a violation through some other means (e.g., a video camera, or another witness's testimony). You have the right to know who your accusers are and to confront them.

Q: Can our HOA do something about people who drive too fast?

A: Yes. If your HOA can prove that a resident is speeding through the community (through testimony, for example), the HOA can either impose a fine or even suspend the driver's right to drive in the neighborhood (meaning, that the speeder might have to park outside of the HOA's property and walk to his/her home).

Q: We have an election coming up. Do existing board members have rights that I don't have if I want to run?

A: No. Homeowners running for the board are entitled to equal access to the HOA's media and common area meeting spaces. So, if an HOA has a monthly newsletter (as many of them do), if any board member running for reelection uses that newsletter to campaign (i.e., if he/she does anything other than just sticking to general matters), the HOA is required to provide equal access to all candidates. Also, no HOA funds can be used for campaign purposes, so current board members shouldn't be using HOA funds in any way related to their reelection.

Q: What can I do if an election wasn't conducted properly?

A: HOA members have several options if they feel an election wasn't conducted properly. For example, homeowners can demand to inspect the ballots after they've been tabulated. HOA members can also demand a formal recount as long as they make the demand in writing within 5 days after the election results are announced and pay the reasonable costs associated with the recount. If the HOA fails to strictly abide by its election related obligations, homeowners have 1 year to challenge the election results in court.