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**ARBITRATION PROVISIONS**

Arbitration provisions regarding developer disputes contained in CC&Rs are likely invalid. HOAs are reserved the right to a jury trial for disputes between the HOA and the developer.

**MEMBERSHIP RECORDS**

HOAs must satisfy member demands to inspect HOA membership records, including member addresses. In satisfying these demands, the HOA may be required to disclose member email addresses as well.

## Annual Legislative & Case Law Update

Once again we are at that time of year where we make an effort to inform our clients of the significant changes to the current law governing Homeowners Associations ("HOAs"). This COMMUNITY ASSOCIATION UPDATE provides a brief summary of some of the new case law and California Legislation that may impact a HOA's efforts in managing its community.

**NEW CASE LAW**

**Arbitration Provisions in Construction Defect.** In *Pinnacle Museum Tower Association v. Pinnacle Market Development (US), LLC*, 187 Cal.App.4th 24 (2010), a HOA sued its developer for construction defects. Both the HOA's CC&Rs and the homeowners' purchase and sale agreements required binding arbitration instead of a jury trial. These documents were prepared by the developer and could not be modified without the developer's consent.



In response to the developer's motion to compel arbitration of the case, the court held that the binding arbitration provision of the CC&Rs was not enforceable to the extent of denying a jury trial, because the CC&Rs did not constitute an "agreement" to waive the HOA's fundamental right to a jury trial. Though CC&Rs

typically have the force of contract, the court asserted that the developer is the only actual "party" to the agreement when disputes arise between the HOA and the developer. This decision effectively invalidates most binding arbitration provisions contained in CC&Rs with respect to disputes with developers.



**Email Addresses in Membership Records.** The recently decided case of *Worldmark v. Wyndham Resort Development Corporation*, 187 Cal.App.4th 1017 (2010), may subject HOAs to new requirements when members make demands to inspect membership records. In the statute authorizing nonprofit mutual benefit corporation members to demand inspection of a list of members' names, addresses and

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voting rights, the court in *Worldmark* found the term "address" to be sufficiently broad to include email addresses. Boards of Directors are encouraged to become familiar with a HOA's practices regarding the retention of member email addresses and the opt-out provisions contained in the California Civil Code.

## ATTORNEY FEE RECOVERY

Attorney's fees and costs are "routine costs" subject to an automatic stay pending appeal.

## MAINTENANCE DUTIES

Provisions of CC&Rs with respect to HOA and member maintenance responsibilities are subject to judicial interpretation. This may impact a HOA's responsibility to maintain areas within individual units.

## NOTICES OF DEFAULT

New legislation permits HOAs to record a single request for title information on all defaulting properties within the HOA.

## RENTER PROTECTIONS

High instances of foreclosures on rental properties have spurred new protections for unsuspecting renters subject to eviction.

## MAINTENANCE FINES

New legislation limits a HOA's ability to impose fines on recent purchasers of foreclosed properties for their failure to maintain those properties.

**Recovery of Attorney's Fees.** In *Chapala Management Corporation v. Stanton*, 186 Cal. App. 4th 1532 (2010), a HOA obtained an injunction against a owner requiring the homeowner to comply with the HOA's architectural guidelines. The issue was whether the award of attorney's fees and costs to the HOA, pursuant to the "Davis-Stirling Common Interest Development Act", are "ordinary or routine costs". If so, they are automatically stayed pending an appeal. If not, a HOA can seek to collect them, notwithstanding the owner's appeal of the case. The Court ultimately held that they are routine costs subject to an automatic stay pending appeal. This case

"...may not recover their award of attorney's fees..."

serves as another reminder to HOAs that, even when they are deemed the "prevailing party" in the case, they may not recover their award of attorney's fees and costs immediately after the case if there is an appeal.

**Maintenance Responsibilities.** In *Dover Village Association v. Jennison*, 4th District, No. G042741 (2010), the issue was whether it was the HOA's or the owner's responsibility to repair and maintain a deteriorated sewage pipe beneath the owner's unit that was causing sewage to seep into the owner's floors.



The HOA argued that portions of pipe within an owner's unit are the owner's responsibility, pursuant to the CC&Rs. In ruling for the owner, the court interpreted several other provisions of the CC&Rs as ultimately holding the HOA responsible for the repair and maintenance of the pipe because the pipe did not constitute an "exclusive use common area" to which the owner generally had access.

## NEW LEGISLATION

**AB2016 (Torres).** HOA Requests for Recorded Notices of Default. Torres permits HOAs to record a single request for title information on all defaulting properties within the HOA. Before this bill, HOAs wanting this information would have to record a request for each defaulting property. Torres, effective January 1, 2011, prevents a HOA from having to incur the costs involved in making multiple requests for title information and also enables a HOA to be more promptly notified when lenders commence foreclosure

proceedings on a property. Amends Civil Code Section 2924(b) (Recorded Notices of Default and Common Interest Developments).

**SB 1149 (Corbett).** Residential Tenancies and Foreclosure. High instances of foreclosures on rental properties have spurred new protections for unsuspecting renters subject to eviction.



Corbett, effective January 1, 2011, (1) changes the notice period of eviction requirements for post-foreclosure evictions (equal to the length of the tenancy, but not to exceed 30 days), (2) requires special notice for terminated tenancies within a year after foreclosure, (3) requires that any notices of the start of eviction proceedings served within one year of the foreclosure be served on the owner as well as any tenants, and (4) alters public access to unlawful detainer records. Some HOAs are foreclosing on properties in an effort to collect unpaid assessments. After these HOAs take ownership of the properties as a result of foreclosure, they continue to rent the properties as a means to further collect on some of the outstanding debt. These HOAs must comply with these newly enacted renter protections. Amends Code of Civil Procedure §§ 1161.2, 1166; adds § 1161(c) (Foreclosures).

"...these HOAs must comply with these newly enacted renter protections."

**SB 1427 (Price).** Foreclosures and Property Maintenance. HOAs have encountered maintenance problems with recent purchasers of foreclosed properties. Existing law imposes a fine of up to \$1,000 per day on purchasers of foreclosed property for their failure to maintain those properties.



Price, effective January 1, 2011, provides these purchasers with an opportunity to cure the violation before fines can be imposed, provided that the violation does not pose a public threat.

Additionally, Price puts a limitation on the costs recoverable by an Association for abating a nuisance to the "actual and reasonable" costs of abating the nuisance. *Adds Civil Code §§ 2929.4, 2929.45 (Foreclosures).*

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*This COMMUNITY ASSOCIATION UPDATE is another example of our commitment to providing the highest quality legal services to our clients. If your company would like a more in-depth explanation of these new laws and regulations and how they may affect your association, TINNELLY LAW GROUP provides in house training completely free of charge. Feel free to call our offices or to email us at [contact@tinnellylaw.com](mailto:contact@tinnellylaw.com).*

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## FIRMNEWS

### **\*The Unveiling of our New Corporate Name and Offices**

Effective January 1, 2011, the Law Offices of Richard A. Tinnelly will become TINNELLY LAW GROUP. We begin the year with a new name, new offices, a new attorney, and new technology, but we continue our same commitment to providing the highest quality legal services to our clients. We thank our clients and industry colleagues for their support throughout the past twenty years.

### **\*New Website & Blog at [tinnellylaw.com](http://tinnellylaw.com)**

With our new name comes a new look. Please check out our new website at: [tinnellylaw.com](http://tinnellylaw.com). Our library and new blog are updated frequently and contain numerous resources that will be of benefit to you and your Association.

### **\*New Attorney: Steve Tinnelly**

Steve Tinnelly has joined with his father Richard to form TINNELLY LAW GROUP. Steve's bio is available at: [tinnellylaw.com/steven-tinnelly.html](http://tinnellylaw.com/steven-tinnelly.html).

COMMUNITY ASSOCIATION UPDATE – JAN 2011  
Annual Legislative & Case Law Update

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