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EASEMENT AGREEMENTS

The language and interpretation of Association easement agreements can significantly impact an Association's rights and liabilities with respect to property located both inside and outside of its development.

An Association should clearly understand the scope of its rights and liabilities under easement agreements so as to prevent exposing itself to legal and financial risk.

SUSPENDED ASSOCIATIONS

An Association can have its California corporate status suspended for its failure to file and pay corporate taxes or make certain corporate filings.

Easement Agreements; Suspended Associations; Hoarding Inspections

ASSOCIATION EASEMENT AGREEMENTS

A recent court decision reminds us of the importance of the interpretation of language used in drafting Association easement agreements.



In *Coronado Cays Homeowners Association v. City of Coronado* (Feb, 2011), the City of Coronado ("City") appealed a judgment in which the court determined the City, rather than the Coronado Cays Homeowners Association ("Association") is responsible for the maintenance of a berm that provides lateral support to bulkheads located on Association property.

The original developer of the project had placed concrete bulkheads along "Lot 90" of the development to act as a retainer for the waterway that was to be dredged on the adjoining lot, "Lot C". The developer then dedicated "Lot C" to the City for public recreational use while reserving a 55' wide easement for docks and related structures for the exclusive use of the Association's residents.

The gradual erosion of the supporting berm in which the bulkheads are embedded resulted in the failing of several bulkheads. Though the Association conceded that it is responsible for maintaining the bulkheads, the

Association sought a judicial determination that the City is responsible for maintaining the berm since it is located in the waterway. The City denied such responsibility, arguing that the berm was an "ancillary structure" for the bulkheads that the Association, pursuant to the language in the easement, was required to maintain. The court rejected this argument by explaining that the berm could not reasonably come under the definition of an "ancillary structure" that was contemplated at the time the easement was created. This recently decided case reminds us that the language and interpretation of Association easement agreements could drastically affect the maintenance obligations and liabilities of an Association.

"...could drastically affect the maintenance obligations and liabilities of an Association."

Please speak with one of our attorneys if your Association needs assistance in determining the scope of its rights and liabilities under its easement agreements, or in drafting new easements over Association property.

THE PROBLEM OF SUSPENDED ASSOCIATIONS

California HOAs primarily exist as California Nonprofit Mutual Benefit Corporations. We have recently encountered some instances where smaller and/or self-managed Associations have failed to file and pay their state corporate taxes and/or make certain corporate filings. The unfortunate result for these Associations is that their California corporate status is being suspended. The exercise of corporate powers, rights and privileges may be suspended both under Ca. Rev.

SUSPENDED ASSOCIATIONS

Once an Association is suspended, it loses various legal rights which are essential to the effective management and functioning of its community.

HOARDING INSPECTIONS

An Orange County Association just adopted the county's first ever policy compelling Association members to submit to hoarding inspections.

Though these types of policies may be based on legitimate safety concerns, an Association should use extreme caution in exercising power over the contents of individual units.

and Tax. Code § 23301 for an Association's failure to pay taxes and under Ca. Corp. Code § 5008.6 for the Association's failure to file certain corporate statements. Once an Association is suspended, so too are its powers, rights and privileges which are outlined in its governing documents. These powers, rights and privileges are essential to the effective management and functioning of its community. Should directors, agents, or attorneys of a suspended Association even attempt to carry out the powers of the Association during the period of its suspension, Ca. Rev. and Tax. Code § 19719 may punish them "by a fine of not less than \$250 and not exceeding \$1,000, or by imprisonment not exceeding one year." The major problem with a suspended Association is that, during

"...the Association finds itself in a legal coma..."

the period of its suspension, the Association finds itself in a legal coma from which it loses its rights to (1) bring and defend lawsuits, (2) enter into new contracts, and (3) enforce already existing contracts with contractors and vendors. The suspension could also inhibit the Association's ability to pursue delinquent assessments—a terrible scenario for an Association already feeling the impact of a down economy.

ASSOCIATION HOARDING INSPECTIONS

An Orange County Association Board of Directors recently adopted a policy to compel Association members suspected of hoarding to allow the Association to inspect their home.



The policy is aimed at preventing safety hazards and protecting Association property. The Orange County Fire Authority ("OCFA") receives more than a dozen calls each month from people reporting hoarding. The OCFA claims that roughly 30 percent of those reported instances represent a danger in the home or fire code violations. The Orange County Health Care Agency's Older Adult Services has also reported receiving an average of over 200 reports a year of adults living

in hazardous conditions because of hoarding. Though the policy seems to be based on legitimate safety concerns, Associations should use extreme caution in exercising power over the contents of individual units. While safety concerns can justify the enforcement of many rules and regulations, the protection and respect of individual privacy rights are often paramount to maintaining community harmony.

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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 or Association would like to see a topic or issue covered in future editions of the COMMUNITY ASSOCIATION UPDATE, feel free to call our offices or to email us at contact@tinnellylaw.com.

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FIRM NEWS

TINNELLY LAW GROUP has had a tremendous amount of success in the opening months of 2011.

Special recognition goes to Attorney [Bruce Kermott](#) for his successful representation of our clients in three separate litigation matters. Bruce's hard work was able to secure favorable outcomes for each of our clients and to also recover more than a combined \$400,000 in attorneys' fees and costs on their behalf. Congratulations Bruce!

For more information on these events and on industry developments like those featured in this COMMUNITY ASSOCIATION UPDATE, don't forget to visit our [blog!](#)

COMMUNITY ASSOCIATION UPDATE – MAR 2011
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