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NORTHERN CALIFORNIA
2023 CACM
LAW SEMINAR & EXPO

NEW CASE LAW

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2023 CACM LAW SEMINAR & EXPO

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2023 NORTHERN CALIFORNIA LAW SEMINAR & EXPO

Session Outcomes & Takeaways

At the end of the session, attendees will:

- Understand new legislation and its impacts on association operations
- Understand new cases and their impacts on association operations

Assembly Bill 1410 (Rodriguez): Social Media, Roommates, Enforcement Actions

- Amends CC section 4515 to prohibit governing documents from prohibiting a member or residents from using social media or other online resources to discuss specified issues even if the content is critical of the association.

Assembly Bill 1410 (Rodriguez)

- Examples: development living, association elections, legislation, election to public office, or the initiative, referendum, recall process, any other issues of concern.

Assembly Bill 1410 (Rodriguez)

- Does not require an association to provide social media or other online resources to members.
- Does not require an association to allow members to post content on the association's website.
- Association cannot retaliate against a member or resident for posting on social media.

Assembly Bill 1410 (Rodriguez)

- Clarifies that an owner shall not be subject to a rental restriction that prohibits the rental or leasing of a portion of the owner-occupied separate interest for a period of more than 30 days.

Assembly Bill 1410 (Rodriguez)

- Establishes that the “roommate” cannot violate any provision of the governing documents that govern conduct in the separate interest or common areas, or that govern membership rights or privileges, including but not limited to, parking restrictions and guest access to common facilities.

Assembly Bill 1410 (Rodriguez)

- The HOA cannot pursue enforcement actions during a declared emergency if the nature of the declared emergency makes it unsafe or impossible for the homeowner to either prevent or fix the violation.
    - Exception: nonpayment of assessments

AB 1738 (Boerner Horvath): EV Charging Stations

- HCD and CBSC to develop mandatory building standards, for potential consideration by the Building Standards Commission, for EV Charging Stations in existing multifamily dwelling parking facilities when a building permit is required and other significant construction, retrofits, or repair action is taking place.

AB 2221 (Quirk-Silva): ADUs

- Makes clarifying changes to ADU laws to ensure timely permitting of ADUs and JADUs:
    - Existing law requires permitting agencies to “act” within 60 days. This bill clarifies that “act” means approval or denial. If denied, the agency must return written comments and a comprehensive request for revisions.

SB 897 (Wieckowski): ADUs

- Changes height limits, depending on property features.
- Prohibits a local agency from denying a permit for a constructed, unpermitted ADU built before 1/1/18 for any of the following reasons:
    - The ADU is in violation of building standards, but correction of the violation is not necessary to protect the health and safety of the public or occupants of the structure;
    - The ADU does not comply with state or local ADU law.

SB 6 (Caballero) & AB 2011 (Wicks): Affordable Housing

- Beginning January 1, 2023, until January 1, 2033, allows a housing development project that is at least 50% residential to be an allowable use within a zone where office, retail, or parking are a principally permitted use, so long as the parcel is not adjacent to a parcel dedicated to industrial use.
- Encourage building near existing transit or near corridors for new transit.

What is on the Horizon for 2023?

- Manager Embezzlement
- Disciplinary Hearings
- Virtual Meetings
- Quorum
- Emergency Assessments

NEW CASE LAW

Artus v. Gramercy Towers Condominium Association, 76 Cal.App.5th 1043

- **"If you run to court, you won't be running to the bank: Attorney Fees"**
- Litigious homeowner brought an action against the Association regarding election rules and rental rules, making this her 4th lawsuit against the association.
- Homeowner won on only 1 of her 4 points. Both sides requested attorney fees as the "prevailing party."

Artus v. Gramercy Towers Condominium Association (CONTINUED)

- Homeowner filed suit to challenge GTCA's governance.
    - Did not show that other members objected to GTCA's ways or its rules.
    - Did not achieve any significant benefit to other members when GTCA undertook to amend its election rules and sales guidelines.
    - Did not obtain any judgement invalidating the Association rules or requiring them to change it.

Artus v. Gramercy Towers Condominium Association (CONTINUED)

- GTCA's unilaterally decided to adopt revised election rules and sales and leasing guidelines, ending the litigation, with no court order.
    - On a practical level GTCA did not achieve its litigation objectives.
    - The trial court and appellate court held each party will bear its own cost and denies the award of any attorney fees.

Artus v. Gramercy Towers Condominium Association (CONTINUED)

- **Takeaway:** The association may not be awarded attorney fees, even if the lawsuits are frivolous. Pick your battles – if it is an issue that can be settled outside of your court, do your best to do so, and document.

Olson v. Doe 12 Cal. 5th 669

- **"When is a Settlement Agreement not a Settlement Agreement?"**
- President has history with owner, including alleged sexual battery.
- Parties mediate and reach settlement, including agreement to not disparage one another.

Olson v. Doe 12 Cal. 5th 669 (CONTINUED)

- Owner files HUD complaint and lawsuit against Association and President, which include claims addressed in settlement agreement
- President counterclaims alleging settlement agreement waived owner's right to bring HUD complaint and lawsuit.

Olson v. Doe 12 Cal. 5th 669 (CONTINUED)

- Court of Appeals finds in favor of owner as settlement agreement appeared intended to govern conduct between the parties and did not contain language to waive an otherwise lawful claim. The California Supreme Court granted review and affirmed.
- **Takeaway:** Be careful when drafting settlement agreements particularly during IDR and ADR to globally resolve all claims. Unknown facts may constitute basis for a future lawsuit or HUD/DFEH claim.

Salehi v. Lakeview Terrace Homeowners Association

- **“Reasonable Accommodations: Delay at Your Own Risk”**
- Homeowner Salehi has an exclusive use parking space behind the building his condo is in, along an uneven grassy walkway.
- After knee surgery, Salehi requested a reasonable accommodation for a parking space in front of the building.
    - Parking space was an unreserved common area space.
    - Would not require he walk on uneven grass.

Salehi v. Lakeview Terrace Homeowners Association (CONTINUED)

- Community Manager replied and outlined protocol:
  - Requires an architectural application,
  - Required information regarding contractors, and
  - Advised Salehi he is responsible for all costs associated with the changes.
  - Once he had that information, he could submit application so the board could review for approval.

Salehi v. Lakeview Terrace Homeowners Association (CONTINUED)

- March 14, 2022 - Salehi obtains counsel who sends a notice to the Association related to the accommodation request.
- March 28, 2022 - association's counsel replies.

Salehi v. Lakeview Terrace Homeowners Association (CONTINUED)

- May 9, 2022 Salehi files a motion for preliminary injunction requiring the association to mark one of the spaces for his use, do what is necessary to do so and bear the costs.
- Association moves to dismiss for failure to state a claim, indicating they did not deny the request, merely requested more information.

Salehi v. Lakeview Terrace Homeowners Association (CONTINUED)

- Trial Court denies the motion to dismiss
    - "An undue or unreasonable delay in responding to a request for accommodation may amount to a constructive refusal of the request."
    - Court orders the association make a designated space available for use and meet for a settlement conference.

Takeaway: Don't create unreasonable delay in approving reasonable accommodations.

Orangecrest Country Community Association v. Burns

- **“Homeowner Stuck on Stucco Wall Case”**
- Homeowner Burns submitted an architectural application for a stucco wall in her front yard. The association denied the stucco wall.
- Homeowner proceeds with the construction of a wall in her front yard just without stucco. Impedes view from sidewalk.
- Association immediately communicated its opposition to the construction of the wall via telephone, email and mail. Board president even spoke with contractor. Association then sued the homeowner.

Orangecrest Country Community Association v. Burns (CONTINUED)

- The Appellate Court rules in favor of the Association to grant an injunction to remove the wall.
- **Takeaways –** Continuous clear and diligent communication creates a record that helps an Association in Court.

Schwindt v. Omar

- **“No Party on the Patio for these Neighbors”**
- Omar submits ARC app for room addition, which is approved.
- Schwindt sued Omar, alleging room addition was constructed in a prohibited patio area and unreasonably interferes with Schwindt's view.

Schwindt v. Omar (CONTINUED)

- CC&Rs unambiguously prohibited building in a patio area, but did not indicate what the patio area was. CC&Rs also prohibited unreasonable obstructions of views.
- Court finds that the room addition was constructed in a prohibited patio area, but that the Board's decision to allow it anyway was not arbitrary as it did not unreasonably obstruct the view.

Schwindt v. Omar (CONTINUED)

- Court further denies Schwindt's attorney's fees, determining Omar the prevailing party because Schwindt did not obtain the mandatory restraining order sought, and the impact on her view was minor.
- **Takeaway:** This case demonstrates the doctrine of economic waste which makes it very hard to have construction additions removed once they are built.
    - Associations need to be careful when objectionable unapproved additions are being constructed to rush to court to get an injunction to have them stopped before construction is completed.

Ladera Ranch Maint. Corp. v. Tinsley

- **“Don’t throw shade at the Association’s Governing Documents”**
- Homeowner Tinsley installed a large tarp (16x8) along the property line without approval
    - Owner did not pay $1300 in fines assessed by LARMAC.
    - Two committees and the Board all declined to approve the tarp.
- Homeowner also removed two developer installed trees between the sidewalk and front of his home and did not replace upon the association’s request.
    - The association replaced for $450 total.

Ladera Ranch Maint. Corp. v. Tinsley (CONTINUED)

- In addition to claims the Association violated its own documents, Tinsley claimed a board member singled him out but she recused herself from all decisions.
- Court ordered removal of the tarp, and payment of $1300 and $450, as well as removal of the sign and chain.
- Tinsley appealed.

Ladera Ranch Maint. Corp. v. Tinsley (CONTINUED)

- On appeal the judgment for the association affirmed.
- **Takeaway:** Follow proper procedure (i.e. committee approvals), document interactions, and use the business judgement rule when there is a conflict (recusal in this case) and you will come out on top.

Mayfaire Homeowners Association v. Doel

- **“The Case of the Burned Down Home”**
- Owner's home burns down in 2015.
- Association asks owner to rebuild the home repeatedly from 2015 onwards.
- ADR request was prepared.
- In 2017, association files lawsuit. Owner fails to respond after service and association takes default, which the trial Court eventually sets aside, but ultimately finds in favor of the association.

Mayfaire Homeowners Association v. Doel (CONTINUED)

- Owner appeals default claiming Association did not serve the ADR request.
- Court of Appeals find that Association, attaching ADR request to complaint, did not prove that they served the ADR request. There must be a declaration, deposition, or other proof of service.
- **Takeaway:** Make sure you always have proof of service of ADR request before filing lawsuit. This is important for attorney's fees awards.

Ambassador Real Estate Inc. v. Kashay

- **“The BBB Case”**
- What is an anti-SLAPP motion?

Ambassador Real Estate Inc. v. Kashay (CONTINUED)

- Owner filed a complaint to BBB against manager.
- Also reported manager for elder abuse.
- Manager files defamation lawsuit.
- Owner claims her statements criticizing manager were protected speech.
- Trial court denies Anti-SLAPP motion.

Ambassador Real Estate Inc. v. Kashay (CONTINUED)

- Appellate court reverses trial court and grants Anti-SLAPP motion:
  - Reports of criminal activities to law enforcement are protected activity.
  - Business complaint filing to BBB is protected activity.
  - Communications criticizing management are protected activity.
- **Takeaways:** Demonstrates the difficulty in bringing defamation cases in common interest context.

Doppes v. Norton

- **“Fines as Free Speech Case”**
- Board adopted a fine policy and fees related to custom home construction and entered into agreements with homeowners about the fines policy and fees. Homeowner Doppes sued.
- Board filed an Anti-Slapp motion claiming the actions were within the scope of free speech and were protected activity.

Doppes v. Norton (CONTINUED)

- The Appellate Court agreed as to the Fine Policy and Road Impact Fee but did not agree that the secret agreements were protected activity.
- **Takeaways** – Board actions taken pursuant to fiduciary duties are protected activity.

Mojtahedi v. Carpenter

- **"The Bad Board Member Case"**
- Allegation: board member used association funds for work on his unit
- Anti-SLAPP motion filed, saying vote of board member was protected

Mojtahedi v. Carpenter (CONTINUED)

- Anti-SLAPP motion denied
- **Takeaways:** Board member's vote was incidental to alleged wrongdoing and was not protected activity

Vorobiev v. Wolf

- **“The Who Wrote the Email? Case”**
- Malicious prosecution action – subject to anti-SLAPP Motion.
- Reasonable probability of prevailing on the merits.

Vorobiev v. Wolf (CONTINUED)

- Anti-SLAPP Motion denied.
- **Takeaways:** Protected activity may still be subject to Anti-SLAPP where there is a reasonable probability of prevailing.

Q&A

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