

Homeowners Bill of Rights

Without A Constitution What Is a Bill of Rights Worth?

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"A Bill of Rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse." Thomas Jefferson (1787)

There is no Federal or State Constitution behind any Homeowners Association Owners' Bill of Rights but that doesn't mean no bill of rights exists. Indeed, homeowners do have rights - the problem is that many boards and many owners don't know them. So owners scream and boards deny, and amidst the fighting, in many associations, nothing gets resolved. If the parties knew the respective rights, many of the disputes would never occur. Boards would (hopefully in a reasonable way) be equipped to respond when owners (hopefully in a civilized way) exercise their rights.

Owners' rights are established by the governing documents of associations (which documents actually "constitute" the "constitution" for that association) and by the Davis Stirling Act. In many associations, no one thinks about a "constitution" or "bill of rights" and attorneys try to avoid discussions of "state action". Still, things remain for the most part "harmonious" in most associations because people's minds are busy with other of life's concerns like getting to work, getting home, closing the doors behind them and surviving the craziness of today's living. I would guess most owners do not even know their neighbors very well. Most people just plug along or (more likely) are completely "asleep at the wheel" when it comes to association affairs.

On the other hand there are those who continually scream from the rooftops - "My home is my castle and I can do anything I want!" Well, that's certainly not true unless you live in the "backwoods" of Mississippi or Montana.

Where does one find out about what rights exist?

Mostly the information comes from attending seminars, sharing information, reading publications, and research on the web. There is some good (and some very detrimental) information "out there". Lots of associations but only a small percentage of the total number are professionally managed. Of those that are not (probably more than 80% of the total number in California), I am sure that 90% or more don't know anything about owner's rights. That's a whole bunch of folks who know very little, if anything at all about proper etiquette when asking or answering demands to exercise rights to participate in association matters and to information about finances, operations, policies, debts, threats and regrets.

In California's very important case law decision called *Nahrstedt v. Lakeside Village*, the Supreme Court of California ruled that community associations' boards of directors must defer to the collective rights over an individual's rights when it comes to enforcing the CC&Rs. All but one of the Supreme Court Justices found that most persons purchase in a

common interest development with unusual expectations, i.e., that the development and amenities will continue to look nice, that the CC&Rs will be enforced, that the lawns will be mowed and the roofs replaced when needed and that the board of directors will take some kind of action if their neighbors get out of hand and that the collective interests are higher than any individual's interests.

But in reality, even when one knows that, he or she bristles if he or she does not get an answer to every question, or when the rules prevent him or her from doing or getting something they want.

The "Shoulds":

There are identified rights and some clear "shoulds" with regard to owners' rights. First I will address the "shoulds" (the just treatment envisioned by Thomas Jefferson), and by the way - this is not rocket science:

- Owners are legally entitled to a response to an inquiry, unless of course the inquiry is ludicrous or threatening, or the demand(s) are intended to harass.
- Owners have a right to expect that HOA (financial and other records) will be kept in a routine manner and that they (the owners) will have access to financial information about the HOA's standing and financial health (or lack thereof).
- Owners have a right to disclosure procedures which ensure easy access to most documents within a reasonable time and without unreasonable restrictions.
- Owners have a right to attend business meetings that are not (for good reason) subject to confidential treatment.
- Owners should have access to open meeting minutes.
- Owners should get fair warning of restrictions and rules, and notice and an opportunity to be heard if there is an intention that disciplinary action against them is to be considered.
- Owners are legally entitled to consistent treatment in enforcement of rules and regulations.
- Owners should, if they are qualified under the HOA documents, be able to run for the board in a fair election.
- Owners are legally entitled to be able to vote in important elections unless they do not qualify to vote per the governing documents.

Owners - for balance - be aware of a long accepted principle first identified by a Florida District Court of Appeal in *Hidden Harbour Estates, Inc. v. Norman* (Fla. Dist. Ct. App. 1975, 309 So. 2d 180), and frequently cited in condominium cases (including California courts):

"Inherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit owners since they are living in such close proximity and using facilities in common, each unit owner must give up a certain degree of freedom of choice which he [or she] might otherwise enjoy in separate, privately owned property. Condominium unit owners comprise a little democratic sub-society of necessity more restrictive as it pertains to the use of condominium property than may be existent outside the condominium organization."

Rights Established by Law:

Meetings: Homeowners are legally entitled to 4 days' notice and an agenda relating to all association meetings except executive sessions (which require only 2 days' notice) and emergency meetings (where no notice to owners is required), and may attend and address the board at open meetings at a time and in a manner to be established by the Board. (Civil Code Section 1363.05 and subsections) There are penalties in the statute including \$500 fines for failure of the board to comply.

Inspection of Records: Homeowners may inspect the financial and many other records of the HOA (the list is quite long), although they have to pay the reasonable costs to produce the records for inspection. (Civil Code Section 1365.2) There are penalties in the statute including \$500 fines for failure of the board to comply.

Disclosures: Owners are entitled to annual and other disclosures relating to rules, fines, financials, budgets, reserves including component list and funding plan, how to get copies of meeting minutes, assessments, insurance information, architectural procedures, collection policies, and notices of dates, times and agendas of association meetings. (Civil Code Sections 1363.05, 1365, and 1365.5)

Hearings: Homeowners are entitled to notice and the opportunity to attend a fair hearing if disciplinary action is being considered against them, or if fines are to be considered. All owners are entitled to notice of fines through circulation of a fines schedule and notice of hearings by first class mail. (Civil Code Section 1363)

Communicating With Other Members: Unless the intention is suspect, such as would be the case if retaliatory conduct or solicitation for a business is anticipated, homeowners are allowed to inspect and copy the HOA membership list, or, alternatively, get access via mailing of the communication with labels/envelopes through a mailing house, so long as they pay the copy and mailing costs. (Corporations Code Section 8330 et seq., Civil Code Section 1365.2)

Serving on the Board: Homeowners have the right to run for the Board assuming they qualify, which *if established in the governing documents* may require good standing (usually defined as paid up in assessments and not in violation of the governing documents), and are entitled to a fair election and equal access to HOA resources with other candidates, including incumbents. (Civil Code Section 1363.03, 1363.04) There are penalties for failure to allow these rights in Civil Code Section 1363.09, including a potential \$500 per violation fine against the association or possibly even the board.

Display of US Flag: Owners can fly flags in their separate interest areas (not including common area). Boards can set parameters relating to the public health or safety, placement, type of display, type of materials. In any action to enforce this section, the prevailing party shall be awarded reasonable attorney's fees and costs. (Civil Code Section 1353.5)

Notice Of Airport In Vicinity: If the development is located within an airport influence area, a Declaration recorded after January 1, 2004, shall must contain a specific statement giving notice of an airport in the vicinity. There are special rules for San Francisco. (Civil Code Section 1353)

Signs, Posters, Flags, Or Banners; Exceptions: Associations must allow posting or

displaying of noncommercial signs, posters, flags, or banners on or in an owner's separate interest, except rules/limitations can be made for the protection of public health or safety or if the posting or display would violate a local, state, or federal law. (Civil Code Section 1353.6)

Use of Drought Resistant Plants: Owners must be allowed to incorporate some forms of low water-using plants in their landscaping. (Civil Code Section 1353.8)

Electric Car Charging Stations: After 1/1/2012 owners are entitled to install electric car charging stations at their expense but are required to get architectural approval; Associations may control place and manner and set restrictions for safety reasons and there are many other requirements for owners wanting the EVCs, but the right is established. (Civil Code Section 1353.9)

Modifying Unit For Access For Disabled Persons: Owners may request to make modifications that do not impair the structural integrity or mechanical systems or lessen the support of any portions of buildings to gain access to or facilitate use of their units, at their own expense. Boards may set some conditions but can't deny unless the modifications would adversely affect the health or safety of neighbors or are not necessary for access or use because of available alternatives. (Civil Code Section 1360)

Pets within Common Interest Developments: No governing documents passed or amended after 1/1/10 may prohibit an owner from keeping at least one pet, subject to reasonable rules and regulations of the association. (Civil Code Section 1360.5)

Rights Of Ingress, Egress, And Support and Access: Owners cannot be barred from "ingress" and "egress" (which are legal terms meaning getting to and from) their units, and cannot be barred from physical access to their Units, except by an order of the court, or an order pursuant to a final and binding arbitration decision, or when reconstruction is needed, there exists a hazardous condition, and/or the unit is uninhabitable or red tagged. (Civil Code Sections 1361 and 1361.5)

Satellite Dishes and Antennas: Owners in planned unit developments (called PUDs) and free-standing homes are entitled to have satellite dishes. The board can set requirements relating to screening and placement. (FCC Rule 207)

Solar Installations: Owners in planned unit developments (called PUDs) and free-standing homes are entitled to have certain solar installations. Boards are entitled to set reasonable restrictions that do not substantially increase the cost or decrease the efficiency and that require owners to remove if/when association has to maintain the roof. (Civil Code Section 714 and 714.1)

This is a long list of rights and it's not all-inclusive. Owners can do a lot of other things according to association policies, but boards generally have ultimate control over architectural approvals, parking assignments, and any exterior additions or modifications, use of the common areas, and conduct (accomplished commonly through rule setting). Owners who assertively pursue their rights through reasonable and proper channels are to be respected. Boards who wrongly or purposely deny rights of owners who are behaving reasonably are not as respectable.