



A LIMITED LIABILITY PARTNERSHIP ♦ ATTORNEYS AT LAW

Community Association Law ♦ Construction Defect Representation

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Legal Update Newsletter

November 2011

Welcome to the latest edition of **Silldorf & Levine, LLP's Legal Update Newsletter!**

Happy Thanksgiving to you and yours from the attorneys and staff at Silldorf & Levine, LLP. We wish you a bountiful Thanksgiving and a joyous holiday season!

Silldorf & Levine, LLP

California's Preeminent Construction Defect Law Firm

Dealing with a Foreclosure where the Homeowner Remains in the Property

In today's economic climate, we have been asked by several clients about how to deal with a homeowner association member who has lost their home to foreclosure, but has failed to vacate the property. Associations that have dealt with this situation have raised some obvious questions: What are the former owners' rights in the community? What can the association do to stop the unlawful occupation of the property? Should the former owner still be responsible for payment of assessments?

These questions do not have clear answers. However, a legal analysis of the situation can provide some insight on how associations should handle these issues. First, once the property is foreclosed, the foreclosing entity is the new owner of the property. The foreclosing entity is almost always the mortgagee—the bank or mortgage company that financed the member's purchase of the property. As the new owner, this entity is the only party responsible for payment of assessments. Accordingly, the former-owner, despite still being in the property, does not have to pay the association's dues. The Association should seek payment of assessments from the new owner as soon as possible.

The next question is trickier: If the former-owner who is occupying the property is no longer the owner of the property, and is not renting the property from the current owner (i.e. he is not a lawful tenant), how should the association treat him or her? The closest way to describe the former-owner's status is as a "holdover tenant." A holdover tenant is one who remains in the property after a lease has expired, but before the landlord commences eviction proceedings or demands that the tenant vacate the property. In most scenarios, the foreclosing entity (the bank) is the new landlord, and the former owner, who remains in the property unlawfully, should be treated as a holdover tenant.

First, the association cannot stop the former owner from occupying the property. Although he or she may be occupying it illegally, a tenancy still exists, and it is exclusively the landlord's responsibility to evict the unwanted occupant. California Civil Code §1361.5 states, "an association may not deny an owner or occupant physical access to his or her separate interest." A tenant, including a holdover tenant, is an occupant. Accordingly, if the community is enclosed by a gate, for example, the association must continue to allow the former-owner access through the gate to his old property.

With that said, the association can, if it chooses to do so, prevent the former-owner from entering and using common area facilities like the pool or guest parking areas. When those privileges are taken away, the only entity with the right to complain is the true owner of the property, not the tenant.

This is a tricky situation and we advise that you contact your legal counsel for guidance in handling the intricacies of a holdover tenant.

Holding an Effective & Efficient Board Meeting

This article provides some tips to share with new community managers regarding how to hold an effective and efficient meeting. Being prepared and organized to hold a meeting puts you in a better position to accomplish the necessary business at hand. By following five easy steps, any association can hold effective and efficient board meetings.

First, prior to any board meeting the association manager should prepare board packets for the board members. Board packets summarize the important issues of the day in a comprehensive, easily readable manner so that the board can quickly and easily understand the issues before them. Well prepared board packets provide a tool that allows the board meeting to proceed without significant delay.

Second, a board meeting should have a consent calendar. A consent calendar typically consists of any items that the board is likely to approve without discussion and allows for a significant amount of business to be conducted quickly at the beginning of any meeting.

Third, schedule a specific time (usually at the beginning of the meeting) for homeowners to express their concerns to the board. In addition, limit the amount of time each homeowner has to present their issues to the board. Establishing rules regarding when and for how long each member may speak will maintain a level of cohesiveness in the meeting and prevent members from interrupting the meeting.

Fourth, the meeting should proceed under a specific parliamentary procedure. As is the case with set homeowner forums, a board meeting that maintains specific procedures will be orderly and respectful. In addition, parliamentary procedures make it less likely the meeting will get off track from the business to be conducted.

Lastly, stick to the agenda. A meeting that follows the agenda and doesn't get sidetracked with non-related questions or topics is more likely to run effectively and efficiently.

By following these five easy steps, an association is more likely to create an atmosphere of accessibility and effectiveness for all involved in board of director meetings.

Upcoming Power Board Seminar Dates for 2012

The Attorneys of Silldorf & Levine announce the "Power Board" Seminar locations for 2012:

January - Palm Desert Area

March - Orange County

August - San Diego

October - Los Angeles

More details and official dates and location to follow in the coming weeks

About Our Law Firm

Sillardorf & Levine, LLP is a full service community association law firm with offices in San Diego, Orange County, Los Angeles and San Francisco. Our law practice serves all of Southern California. The attorneys at Sillardorf & Levine, LLP have combined legal experience of more than 75 years. During that time, we have successfully represented hundreds of homeowners and community associations in a variety of legal matters.

Free Consultation

If you believe your association or one of your homeowner association clients has a construction defect, our firm is available to help. We are available for a no cost/no obligation site inspection of your property. We also provide a no cost/no obligation follow-up inspection with an expert. If you or your association has a potential construction defect that is approaching a statutory deadline, we can prepare a FREE Calderon or SB 800 Notice to stop the running of your statute of limitations.

We are always available to provide your Association with a proposal for legal services for General Counsel or Construction Defect representation.

We look forward to assisting you!

Please contact: Christina Ciceron, Esq. at (800) 811-5874 or cciceron@sillardorf-levine.com.

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