

HOA Homefront

Agenda Bill Author, Recall Expenses

By: Kelly G. Richardson

Reader's Question

Dear Mr. Richardson:

Re: Your article in the newspaper on agendas.

Mr. Richardson, do you know who was the author of this Civil Code 1363.05?

Thank you,

AA, Garden Grove

Dear AA:

The new agenda law discussed in my recent column, adding to the Open Meeting Act, Civil Code Section 1363.05, regarding agendas, came from Senate Bill 528 of 2007. SB 528 sailed through the legislative process last year without receiving a single "no" vote. The author of SB 528 was Senator Sam Aanestad, from the 4th Senatorial District, in Northern California.

The Open Meeting Act was enacted into law in 1995, adding Civil Code Section 1363.05 to the Davis-Stirling Common Interest Development Act. The Open Meeting Act came from Assembly Bill 46 by then-Assemblyman Dan Hauser of Arcata.

Hopefully word will quickly spread through California's 41,000 common interest developments of this important change in the law.

Thanks for reading,
Kelly G. Richardson, Esq.

Dear Mr. Richardson:

We just ended a failed recall for a Board Member. The recall was initiated and carried out by several unethical homeowners. The cost of handling the recall was \$7,000 and the HOA has had to pay for this. Can we, the HOA and remaining homeowners, request reimbursement from this rogue party for the expense? Can we sue them individually in Small Claims Court to cover the total cost?

D. M., Menifee

Dear D.M.:

Recall elections are ugly business. They can be expensive, not only in direct election costs, but also in legal fees, since tensions are usually high and legal questions so often become involved. Sometimes recalls are necessary to remove a board that is not doing a good job, or is out of touch with the membership, or both. I urge my clients to do what they can to avoid recall elections, which by definition are so negative for the community. Recalls are destructive no matter what the outcome, because they reflect a failure to work out differences, and essentially give up on resolution.

When a recall petition comes in, whether or not it technically is sufficient to force a recall vote, invite the recall leaders to an informal meeting to discuss their concerns. One client of mine has had great difficulty achieving quorum in recent years, and so has not had a board election in several years. They received a recall petition, which expressed a desire to have an election. The petitioning members had no idea the board was just as frustrated, and invited the leaders of the recall group to meet with them to help make sure there is a quorum the next time they try to elect a board.

The law does not provide for an association to pursue the leaders of an unsuccessful recall for costs incurred in the process. It also does not provide for costs of a successful recall election to be imposed against the recalled directors.

Hoping things calm down for your association,
Kelly G. Richardson, Esq.

Dear Mr. Richardson:

Your article of the Association documents was informative. You mentioned that the CC&R's document is recorded and is a public document. Where could I get a copy of my CC&R's? For a replacement CC&R's it will cost \$50.00.

Thanks,
MH, Anaheim Hills

Dear MH:

CC&Rs are a public documents, as they are filed (aka "recorded") with the County Recorder. Many associations find at one time or another they need to retrieve a copy, as they realize they have an incomplete copy on file, or even an unrecorded copy. Retrieving them is usually easily accomplished through a call to the customer service department of a title company, which may charge you a fee. You can also go directly to the County Recorder, but that is less convenient.

By the way, your association's condominium plan or subdivision map, an often overlooked but important governing document, is also available from same sources. Maybe you will want to request both at the same time.

Best regards,
Kelly G. Richardson

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Kelly G. Richardson, Esq. is the Managing Partner of Richardson & Harman PC, a California law firm known for its real estate and community association advice. Mr. Richardson is a popular lecturer for attorney groups, Southern California Associations of Realtors®, real estate brokerages and community association industry groups. He is general counsel for several Los Angeles area Associations of REALTORS®, and is a member of the C.A.R. Legal Affairs Forum.

Direct questions to Kelly at **KRichardson@RH4Law.com**