

HOA Homefront

Our CC&R's Expired!

By: Kelly G. Richardson

Reader's Question

Dear Mr. Richardson:

I just read your article in today's Marketplace section of the Orange County register and have a question for you.

I am part of an Association that maintains the common areas, i.e., slopes. Our CC&R's have expired — for some reason they were not set up to renew. We now have many homeowners who have opted out of the Association. How can anyone opt out? There are 61 homes, some of which have slopes that are maintained by the Association.

We do have an article of incorporation and bylaws. The subdivision map shows the common interest area and now with homeowners opting out, how do we maintain the slopes in this common area if some are part of this association and some are not.

I would appreciate any help you can give me with this.

L.L, Anaheim Hills

Dear Mr. Richardson:

How do we reinstate an HOA when your next door neighbor may have already opted out? Is this even a possibility of homeowners being able to quit the HOA? I would think the community HOA would be set up as all or nothing?

Is there any governing office that may be able to help us regain our HOA status?

Terribly disappointed,
M. B., Anaheim Hills

Dear LL and MB:

In years past, many common interest developments were established with covenants (i.e. "CC&R's") which had expiration dates. Unfortunately, such covenants often can expire without an association realizing it until too late.

If an association acts before it is too late, the covenants can be renewed by a vote of the members, even if the covenants do not expressly provide for extension. Under Civil Code Section 1357, if more than 50% of the owners approve, CC&R's can be extended up to twenty years.

Covenants recorded to create a common interest development are a contract binding all owners of the real estate within that development, so long as it is recorded on all of the property.

After it is too late and the covenants have expired, the contractual obligations contained in those covenants no longer run with the land. Also, if there is no recorded declaration of covenants, conditions and restrictions ("CC&R's") in place, then the community no longer falls under the Davis-Stirling Act. Under Civil Code Section 1352, there must be a recorded declaration of CC&R's in order for the Davis-Stirling Act to apply.

Therefore, compliance with the former CC&R's is in fact optional, since they can no longer be enforced after they expire. This can be particularly problematic if the association has common area to maintain.

In order to reinstate the association, consent of the community owners will be necessary. Compelling neighbors to give that consent is not an option, but the mutual benefits of membership in a common interest development may itself be most persuasive.

Sorry LL and MB, no good news on this answer, only explanations.

Best,
Kelly G. Richardson

Kelly,

I've been quite dismayed lately over the laws being passed with regard to HOA's. Can we find out what bills are being introduced into

committee so we can weigh in on them before they go to the floor for a vote? Some of these laws lately have been crippling to our small association. The latest law regarding posting agendas is quite a challenge to comply with. We'd like our voice to be heard at the committee level.

I appreciate any insight or direction you could offer.

SS, Garden Grove

Dear SS:

It is easy to track most bills specifically addressing common interest developments. The official Legislature web site is www.leginfo.ca.gov

Click on "Bill Information," and in the search box type "common interest developments" (including the quotation marks). Click on any bill listed to see its text and its status. For help tracking all bills affecting associations, you may need to contact an organization such as the Community Associations Institute. Their statewide web site is www.CAICALIF.org.

Sincerely,
Kelly G. Richardson

© All Rights Reserved

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**](mailto:KRichardson@RH4Law.com)