



Common Interest Developments: A new frontier for plaintiffs' attorneys

When a homeowners' association forecloses, the minimum bid can be the amount owed to the HOA, regardless of the worth of the home



Magar

MICHELE MAGAR

Nearly one of four California residents lives in a common interest development (CID) – the state's least expensive and fastest-growing form of home ownership. CIDs are run by homeowners' associations, which have evolved into de facto local governments that typically lack the checks and balances many Americans take for granted.

"Many new homeowners have no idea what they're getting into when they agree to abide by the Covenants, Conditions, and Restrictions (CC&Rs), which control what they can do with their property and, to a certain extent, their behavior," said Marjorie Murray. Murray is the executive director of the Center for California Homeowner Association Law, an Oakland nonprofit Murray founded to protect the rights of homeowners who live in California CIDs.

A common interest development offers each homeowner an exclusive interest in their home or lot, along with a shared interest in common areas and amenities. They include condominiums, cooperatives, mobile home parks, gated communities, and other forms of planned communities, and they vary in size from a few units to more than 20,000 homes. Owners typically pay monthly fees for maintenance, as well as occasional "special assessments" to cover capital improvements.

Real estate developers who build housing communities record CC&Rs that run with the land when the property is subdivided and form homeowners' associations (HOAs) to enforce them. The developers then transfer ownership of the HOA to the new homeowners.

"The relationship between a homeowner and a HOA is unequal, because CC&Rs are written by developers, not individual owners," said Murray. "The asso-

ciation is basically a form of local government in which the executive, legislature and judicial functions are concentrated in the board. They make up the rules, decide if you broke them, and they can fine and punish you and even take away your property."

Fallout from Prop. 13

Murray believes that California has the nation's greatest concentration of CIDs in large part because Proposition 13 capped property taxes nearly 30 years ago, which limited revenues available to run local governments and maintain community infrastructure. As a result, local governments are eager to give HOAs authority to collect garbage, provide landscaping, maintain roads, and take over similar functions they once provided.

But unlike local governments, HOAs are often run by volunteer homeowners who have neither knowledge of laws nor experience in governing. That can lead to contentious situations, where HOAs levy small fines for minor offenses like parking in a driveway instead of a garage or failing to keep garbage cans out of sight. When homeowners take issue with the fines and refuse to pay them, HOAs sometimes add late fees or levy penalties for each day the homeowner refuses to follow the CC&Rs. What's owed can mushroom quickly into an amount the homeowner can no longer afford to pay.

California law allows HOAs to file a lien on a property, and then enforce it through a non-judicial foreclosure. When a home is sold in auction, the minimum bid can be the amount owed to the HOA, regardless of the worth of the home.

In 2001, a study conducted by Sentinel Fair Housing in Oakland found that the median amount at issue in HOA foreclosures in Alameda, Contra Costa, San Mateo, Santa Clara, and Sacramento counties was



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\$2,557, which included collection costs. When auctions start that low, homeowners can lose their equity as well as their homes. For example, in 2003 a retired California couple lost their home through non-judicial foreclosure after missing a \$120 payment. Their home sold for \$70,000. Its appraised value was four times that amount.

Help for homeowners: SB 137

In 2005, the legislature enacted SB 137 (Ducheny). It allows homeowners to request payment plans to pay off debts, and bars HOAs from using foreclosure to collect a debt, unless it had been owed for at least a year or amounted to at least \$1800 without late charges, legal fees, or other surcharges. If an owner loses her home to foreclosure, the new law also allows her to buy back it back within 90 days.

Although foreclosure is the most dramatic example of an HOA's power, it is not the only one. HOAs can raise monthly dues 20 percent each year without prior approval from homeowners. Procedural due process protections are often lacking. HOA officers are not always informed about state and federal fair housing laws, particularly the right of residents with disabilities to request reasonable accommodations, such as having service animals in a no-pet development.

Murray believes these problems will only be remedied when CID residents organize and demand that lawmakers enact protections. She founded the Center for California Homeowner Association Law to provide education, training, and referral services to CID homeowners. "We reach them through conferences and workshops, and through the media," said Murray. Murray also works closely with legislative staff to educate them about the consumer protections homeowners need, and to persuade their bosses to enact reforms. She is building a network of referral attorneys to handle the never-ending stream of e-mails and phone calls from desperate homeowners who need representation, and says many more lawyers are needed.

Sacramento attorney Michael Johnson volunteered to help a homeowner facing foreclosure a few years ago after reading about his plight in the *Sacramento Bee*. Johnson knew nothing about CID law; he worked as an in-house attorney for the Union Pacific Railroad in Sacramento, a job he continues to hold.

"In the process of working on that case I uncovered all types of amazing things about CID foreclosure law," said Johnson. "It's Draconian beyond belief. Most people would be amazed to learn that if you didn't pay your dues for a

year, your neighbors can take your home."

Johnson had taken his children along on one of his visits to meet his client. "I told them what was happening in the case, and when it was over they looked at me and said, 'That's really neat – you saved his house!'"

Plaintiff attorneys who want to learn more about this emerging area of law can visit the Center for California Homeowner Association Law at www.cal-homelaw.org, and request to be added to the organization's list of referral attorneys. Lawyers who don't want to provide direct representation can help by mentoring less experienced attorneys, reviewing facts to determine whether a defense or affirmative case exists, providing limited scope representation and supporting the Association's legislative and media advocacy.

"I helped my client keep his home," said Johnson. "It's incredibly satisfying. It makes you feel like you're doing something you went to law school to do: help people find justice."

Michele Magar is a civil rights attorney and journalist based in San Francisco. She welcomes comments and ideas for future columns. Readers may reach her at mmagar@plaintiffmagazine.com.

