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What I Wish All Realtors® Knew About HOAs



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April 12, 2023



ARCADIA
ASSOCIATION OF
REALTORS®

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Is it a
“Common
Interest
Development”?



aka “Homeowners
Association” or “HOA”

- Recorded declaration (usu. “CC&R’s”)
- Mandatory membership
- Some separate ownership interest
- The former CID – expired CC&R’s

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A TERM NOT KNOWN IN
REAL ESTATE LAW...

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The “**TOWNHOUSE**”

Could be...

- condominium
- “own your own”
- planned development
- stock cooperative
- or something else!

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TYPES OF
CIDs

COMMUNITY APARTMENT

STOCK COOPERATIVE

CONDOMINIUM

PLANNED DEVELOPMENT

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Condominium

Unit (aka "separate interest") and
Common Area (everything but the Unit)

- Exclusive Use Common Area
 - Defined by Civil Code §4145
 - Is part of the Common Area
 - Governing Documents Define....

BUT THEY DON'T UNDERSTAND...

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What is NOT a
CID –
The "Tenant In
Common"
("TIC") project

- Strategy of developers (principally to avoid condo conversion restrictions)
- No recorded declaration
- A "tenant's agreement"
- Not subject to the protections, restrictions or clarifications of the Davis Stirling Act

[Not good or bad, just not a CID]

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The latest
craze –
The "Mixed
Use"
condo
project

Best of both or worst?

Many differing configurations

Know what your client owns....
And doesn't

Expect some friction between
the disparate interests.

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What your client isn't
reading –
the "Governing
Documents"

- Articles of Incorporation
- Condominium Plan / Subdivision Map
- Covenants, Conditions & Restrictions
- Bylaws
- Rules and Regulations

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Covenants, Conditions and Restrictions ("C&Rs")

- A legal contract
- Attorney fees awardable for breach
- A public document
- Controls even if you didn't read it.. Or didn't get a complete copy!
- Identical in effect to an easement

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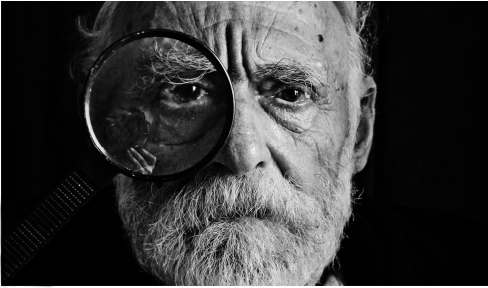
Condominium Size

- Almost certainly It's wrong
- Don't trust the County Assessor...
- Assessor just wants your money
- "Approximate" not enough
- Size not verified

Buyer... Is SIZE important? Then Buyer, make sure you MEASURE IT yourself

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What is that property REALLY worth- [What the Appraiser doesn't know] - Reserves


- The Reserve Fund
- BRE warning - Sept. 2012
- FHA/FNMA requirements -10% of budget annually
- Reserve health not considered in appraisal
- CAR disclosures

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USE RESTRICTIONS

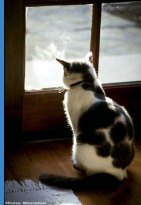
- Must be set forth in CC&Rs
- Are PRESUMPTIVELY VALID
- Nahrstadt



Tulip



Boo Boo



Dockers

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CC&R Amendments..

(more court
deference)

- Just as enforceable as if in original documents...
- Terifaj v. Villa Las Palmas (involving guess what dispute...)

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Court Deference toward HOA Maintenance Decisions – Lambden v. La Jolla Shores

- Court defers to HOA decision-making regarding properly maintenance.
- Lambden – spot treatment vs. tenting.

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Disclosure – What else to ask for...

In addition to Civil Code §4525 Disclosures...

Recommend your client ask seller for the latest:

**Annual Budget Report
&
Annual Policy Statement**

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The "Annual Budget Report" **[Not new]**, required since 2014]

Budget

Reserve summary

Summary of reserve funding plan

Statement as to whether Board has determined to defer or not repair or replace major component

Statement as to whether special assessment anticipated

Statement as to how board will fund reserves

Statement addressing procedures used to calculate reserves

Statement as to any outstanding loans longer than one year

Summary of insurance

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Major "New"
Document –
Annual Budget
Report - §5300

Also “New”- Annual Policy Statement §5310

"Annual Policy Statement" [also <u>not new</u> , required since 2014] contains:
Name/address of designated person to receive notices (<u>new</u>)
Right to request to have notices sent to 2 different addresses (<u>new re 5300 & 5310 packages and delinquency related notices</u>)
Posting locations for general notices (<u>new</u>)
Right to receive general notices individually
Right to receive copies of minutes
Assessment collection policies
Policies in enforcing lien rights
Discipline policies including schedule of fines
Summary of dispute resolution procedures
Summary architectural change application procedure
Mailing address for overnight payment of assessments
Any other information required by law or governing documents or as determined by board.

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HOW TO PICK 'EM- Management, Minutes & Moolah

Professionally or self-managed?

Regular, concise minutes

Budget? How long since last assessment increase?

Reserves? How much or how little?

How is the overall project maintenance?

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Client expectations of attached housing

- My Castle
- Independence
- Ownership

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The Reality

- Use Restrictions – lack of autonomy
- Legal deference toward board decisions
- Board control of information/documents
- Assessments
 - Regular
 - Special
 - Emergency

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Client expectations of attached housing

- My Refuge
- I own it... I don't have an apartment anymore...

So:
Sweet privacy... quiet neighbors



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The Reality

- Construction standards – same as apartments
- Footfalls
- Plumbing noise
- Hallway/courtyard



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They're not
for
everyone...

Shared ownership

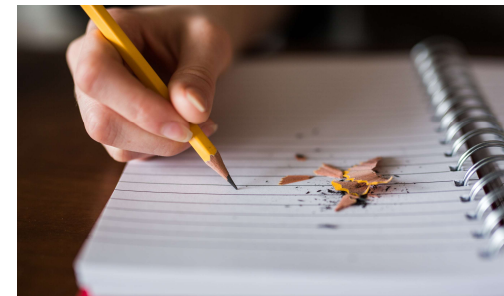
Shared cost

Shared responsibility

The trade off - independence

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Note –
The NON-RESIDENTIAL
CID ACT

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- Civil Code §6500-6876
- Simpler/shorter
- Mixed use projects are still in Davis Stirling
- In effect NOW

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