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THE RECORDER

California Needs Stronger Laws for Homeowner Association Dispute Resolution

By Robert M. Cohen
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California has an abundance of good weather, movie stars, celebrities, social media influencers, and many of the most expensive homes in America. It also has the most "common interest development" residents of any state in the nation. These residents live in homeowner associations (HOAs) and planned communities (PCs), and they account for roughly 35% of the state's population. In fact, as of 2022, there were almost 50,000 HOAs and PCs throughout the state with a total population of just under 15 million residents.

Every one of these HOAs and PCs is governed by the Davis-Stirling Act, adopted in 1985 and codified in Civil Code Sections 4000 through 6150. The act brought stability to the governance of millions of Californians living in and served by HOAs and PCs. It has been updated several times over the years, most recently in 2014, when it underwent a substantial reorganization with the advice and counsel of the California Law Revision Commission.

The act was just what was needed almost four decades ago, when common interest communities were in their infancy. But in today's litigious environment, the Davis-Stirling Act is not nearly powerful enough when it comes to resolving legal controversies between HOA/PC associations and members.

California HOA Dispute Resolution: Illusory

Those who reside under the auspices of an HOA or PC must comply with a myriad of written policies and governing documents. Tales of draconian CC&Rs and Rules & Regulations pertaining to the color of one's front door, what style of furniture can be placed on one's balcony, hours that one's children may play outside, and much more abound on social media. But when rules violators face few or no penalties, or when resident/members file spurious lawsuits for a shot at an insurance payday, the community is quickly and rightfully up in arms. For HOA/PC owners, volunteers, board members and officers, there is little grace whichever way they choose to move.

Robert M. Cohen is a mediation neutral with Alternative Resolution Centers in Southern California. Courtesy photo

Under California law, before an association or member can file an action in Superior Court to enforce the HOA/PC governing documents, the Davis-Stirling Act, or the California Nonprofit Mutual Benefit Corporation Law (via action for declaratory relief, injunction or writ), the parties must first have "endeavored to submit their dispute to alternative dispute resolution," pursuant to Civil Code Sections 5850 through 5986. California is not alone. Many states now recognize mediation as a preferred method for resolving HOA/PC disputes.

But there are loopholes. Even though the party filing a Superior Court enforcement action must file a "certificate" stating that certain ADR conditions precedent (i.e., good faith mediation or some other form of ADR) have been satisfied, the failure to do so can, under current law, be ignored by any court that finds dismissing the action would result in substantial prejudice to a party. This "de jure" escape clause basically eviscerates California's mandatory ADR for HOA/PC disputes prior to the filing of a lawsuit. Additionally, claims for monetary damages exceeding the jurisdictional limit of the small claims court and disputes involving assessments are exempt from mandatory mediation.

The result is a system that wreaks havoc on those it should be helping. Instead of offering a simple and unambiguous process for members and associations to address

and resolve disputes involving CC&Rs, bylaws, and rules and regulations, the current system does the opposite. By weakening the mediation mandate, the act enables parties to game the system, engaging in bad faith misuse of the law and operating documents and forcing others into expensive and psychologically debilitating litigation. And, under California law, the trial judge has the right to award attorney fees to the prevailing party in "enforcement actions."

If California's HOA/PC population were a separate state, it would be the fifth largest in the country. But its laws fall short when it comes to setting boundaries for disputes between members and associations through the ADR process. It's long past time for the legislature to improve California's common interest development laws by taking a page from the laws of Florida.

HOA Dispute Resolution Florida Style: More Pulp

Florida has the country's second-largest common interest population, but it has perhaps the best approach to managing HOA/PC disagreements. Unlike California's nebulous and somewhat ambiguous framework, which may or may not include ADR for resolving such matters, Florida law provides for mandatory mediation and binding arbitration of numerous HOA/PC disputes.

Pre-lawsuit mediation is required in Florida for all disputes regarding use of or changes to a unit or common area, enforcement of covenants, amendments to HOA documents, meetings of the board, committees appointed by the board, membership meetings, and access to HOA official records. Mediation is not required for disputes in which emergency relief is requested, where collection of finances is at issue, or in actions to enforce prior mediation settlements.

Arbitration is required for disputes concerning elections and recalls, and arbitrators are required to consider information or evidence arising from pre-lawsuit mediations in any proceedings to impose sanctions for failure to attend a mediation or to enforce a mediated settlement agreement.

To really drive home the importance of ADR in resolving HOA/PC disputes, Florida law mandates that a party who fails to participate in ADR may not recover attorney's fees in any subsequent litigation. In comparison to California's law, Florida's law clearly promotes and supports ADR for resolving the majority of HOA/PC matters.

Make ADR for HOA Disputes Truly Mandatory in California

In light of the popularity of litigation and the multitude of conflicts that arise in HOA/PC settings, California has missed the mark when it comes to managing HOA/PC disputes. Instead of ensuring prompt review and resolution of matters through mandatory mediation and arbitration, the state has left the door wide open to costly and time-consuming Superior Court litigation. For the millions of common interest development members who would simply like to have their concerns heard, to arrive at a satisfactory (if not perfect) resolution, and to move on with their lives, the current state of affairs can be excruciating.

For the nearly 15 million HOA/PC residents who want to believe their homes are their castles, mandatory mediation is illusory under the Davis-Stirling Act. Whereas Florida requires mediation for most HOA member claims, California has a laundry list of exceptions. Under Florida law, parties that fail or refuse to participate in ADR cannot recover legal fees, while California law gives the judge discretion to decide if a party's refusal to participate in ADR was reasonable and to award such party attorney fees even if the party refused to participate in ADR.

An expanded California law that unequivocally mandates pre-litigation mediation for a wide range of HOA/PC matters, as well as binding arbitration for a list of many other disputes, would change the picture entirely. If the majority of HOA/PC disputes went to ADR, both the frequency and duration of these disputes would be significantly curtailed. Legal fees and associated court costs would be dramatically reduced; members and the common interest associations to which they belong would resolve their disagreements with far less pain; fewer lawsuits would be filed. Ultimately, a Davis-Stirling Act that truly prioritizes ADR and mandates mediation will create a more stable and less contentious environment for California's 50,000 common interest associations and their multiple millions of HOA/PC members.

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