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ENFORCEMENT OF VIEW RESTRICTIONS: WHOSE RESPONSIBILITY IS IT AND HOW FAR MUST (SHOULD) AN ASSOCIATION GO?

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Without a doubt, one of the most contentious types of dispute which can arise in California single family home development is one involving interference or impairment of view. One of the reasons that such disputes are so heated is because there is tremendous subjectivity in defining a "view," let alone determining what constitutes a view impairment. Depending on how an Association's governing documents are written, such disputes may fall squarely on the shoulders of a Board of Directors to take some course of action. This article will discuss the types of view restrictions, the obligations of the Association in regards to same and the Board's potential discretion to stop short of filing an expensive lawsuit in a view impairment case. This article is not intended to be a comprehensive analysis of all the various permutations and combinations of facts, CCR provisions and court decisions, but rather a basic and common sense roadmap for Boards to use in navigating through somewhat murky waters.

LIMITED VIEW RIGHTS

In California, there is no inherent right to a view except when created by a statute or when established through a recorded instrument, such as CCRs or similar covenant running with the land. Consequently, in recognition of the value which views can add to the overall value of a home within a common interest development, many if not most developers include in the CCRs a provision addressing view rights. This often corresponds with the fact that developers often charge a premium price for lots which they designate as having views.

TYPES OF VIEW RESTRICTION DISPUTES

There are generally three types of view restrictions which come into play in common interest development CCRs. The most common is the provision which indicates that an owner cannot "unreasonably impair or interfere with the views from another owner's lot or home." A second type is where the CCRs actually establish view corridors which are plotted on a diagram attached to the CCR with a corresponding prohibition of impairment of such view corridors with landscaping or other improvements. The third type of provision involves the architectural review process wherein architectural guidelines, promulgated under the CCRs (often by the developer), permit the Board or Architectural Committee to deny an application to modify an improvement or install landscaping which in the committee's discretion would impair a view right of another owner.

WHEN THE ASSOCIATION SHOULD UNDERTAKE ENFORCEMENT

A very basic tenet in every set of CCRs, which is reinforced in Civil Code Section 1354 (Davis-Stirling Act) is that provisions in recorded CCRs are equally enforceable by the Association (through its Board of Directors) and any member of the Association. This ultimately means that in certain situations, which will be discussed below, the Association does not have to prosecute lawsuits at the expense of the members if the directly affected member has the ability and right to prosecute such an action. This fundamental concept certainly applies to enforcement of view rights. Although impacted members invariably believe that it is absolutely the Association's obligation to enforce the CCRs through every means available when that member's rights are affected, that is simply not the case.

To directly identify and address the types of situations in which an Association WOULD have an obligation to take some level of definitive enforcement action concerning view impairment, that would generally be in the context of Architectural Review. The CCRs will usually contain an architectural review process whereby proposed construction and landscape modifications must be submitted for approval by an architectural committee before undertaken. These review provisions and accompanying architectural guidelines will often reference that modifications of structures or landscape which impair views are not permitted. On some level, the reviewing committee has to exercise its discretion in determining whether there really is a view and whether the proposed improvement will materially or unreasonably impair another owner's view.

In the event that an Architectural Review Committee or Board acting as the reviewing body DENIES an architectural application BECAUSE the proposed work would impair another property owner's view, and the denied owner proceeds with the work notwithstanding the denial of the application, it is my opinion that the Association has an obligation to take definitive enforcement action against the member, perhaps even to the magnitude of filing a lawsuit for injunctive relief to compel cessation or removal of the unapproved work. The architectural review provisions in

CCRs create a legal duty in the Association to take reasonable steps to enforce those provisions.
The Association has an obligation to ensure that its own administrative processes are followed by its members so as to preserve the aesthetic harmony in the community and prevent erosion of property values. Loss of views have the potential of reducing the property value of a home or lot and consequently, an Association's failure to undertake an enforcement action in this limited context could very well make the Association liable for the decrease in value or the expense in obtaining judicial relief to "undo" the violation of the Association's decision to deny the application.

Further reasons why the Association's taking the laboring oar in enforcing its denial of the an application is appropriate are that attorneys fees and costs are recoverable in an enforcement action and that the Owner who has proceeded to build or landscape without approval will have the difficult burden of demonstrating that the committee's decision to deny was unreasonable or arbitrary under the holding in Nahrstedt v. Lakeside Village Condominium Association (1994) 8 Cal. 4th 361, the seminal California Supreme Court decision creating a presumption that restrictions in CCRs are enforceable. Further, pursuant to the decision of the Supreme Court in Lamden v. La Jolla Shores Clubdominium Association (1999) 21 Cal. 4th 249 and cases following its holding, decisions by Boards are afforded significant deference and will not be overturned if made in good faith, are reasonable and are within the authority of the decision maker. Dolan-King v. Rancho Santa Fe Assn. (2000) 81 Cal. App. 4th 948.

Although I believe that the administrative integrity and authority of the Association in this context requires the Association to take action beyond a cease and desist letter and beyond fines, there is a recent case which suggests that an individual owner has standing to prosecute an action against another owner who ignores a denial of an architectural application or seeks to overturn such a denial. In the case of Larson v. Las Posas Hills Homeowners Association, (2011) ___ Cal. App. ____, Larson filed a lawsuit challenging the Association's denial of an architectural application on the basis it would interfere with his neighbor's views. The Association's counsel suggested to the neighbor whose view would be impaired that he should intervene in the case because a negative outcome could seriously impact his view rights. The court allowed the neighbor to intervene in the case because his interests would be impacted by the outcome of the case and awarded both the Association and the intervening neighbor attorney's fees against the owner who filed the lawsuit. While this does not directly indicate that an affected owner "can" assert an action against a neighbor based on the denial of an application, it seems to imply that anyone affected by the denial and subject to the CCRs could use the committee's denial as a basis to protect their individual rights in a lawsuit. This logic could potentially form the basis for a Board determining to limit its enforcement action against an owner ignoring the denial of an architectural application to non-judicial remedies, thereby avoiding the extreme expense of litigation when the actual scope of the harm is very narrow.

In addition, there are multiple appellate decisions which stand for the common sense proposition that Association Board's have the right to exercise discretion not to file a lawsuit based on the potential incursion of legal expenses, particularly when the impacted member has the ability to prosecute the same action for violation directly against another owner. Beehan v. Lido Isle Community Assn. (1977) 70 Cal. App. 3d 858.

WHEN THE ASSOCIATION SHOULD CLASSIFY THE DISPUTE AS NEIGHBOR VS. NEIGHBOR

In situations where a view dispute involves a question as to whether or not a view impairment even exists, whether the magnitude of the impairment is material or unreasonable or involves an owner's maintenance of existing landscaping, the Association can properly classify such matters as neighbor vs. neighbor disputes and can substantially limit involvement or even refuse to become involved. Decisions about what is reasonable or material in this context oftentimes should be left to a judge.

The situations described immediately above constitute the vast majority of disputes over views and represent a "lose/lose" proposition for Boards and Associations if they attempt to intervene, because one of the owners is undoubtedly not going to agree with the Association's decision and the next thing that happens is that the Association is named in a lawsuit for breach of the CCRs or breach of fiduciary duty because the Association "failed" to take appropriate action. However, I believe it preferable for an Association to "defend" its decision to limit its involvement based on good business judgment than expend significant resources to assist an owner with the ability to enforce the governing documents directly. Beehan v. Lido Isle Community Assn. (1977) 70 Cal. App. 3d 858. Under the Beehan case and others, the outcome of the case defending a decision not to file suit is far more predictable than in prosecuting an "unreasonable view impairment" case,

In situations where neighbors want the Board to "take sides" in a view context where architectural approval is not involved and a violation is not clear and obvious, the Association may properly advise the neighbors that they each have the independent right to take legal action against the other to enforce the CCRs. It may be advisable, depending on the dynamics of the particular situation, to have legal counsel advise them in writing of the Association's position so that the applicable language in the CCRs and statutory authority are recited when this position is taken. By taking no position for or against, at least the owner/victim cannot claim the Association undermined his claim of violation. No one, including the Board or counsel, can predict the outcome of litigation and Association's need to be very circumspect about choosing which matters to litigate or the expenses will be uncontrollable.

If the Association/Board believes that one neighbor has in fact violated one of these "view restrictions," it is also appropriate for the Board to state its position that there is a violation, undertake the hearing process under the CCRs and even

impose discipline such as a fine after conducting a hearing. If the violator refuses to comply with the decision of the Board after hearing, it is appropriate for the Association to indicate to the victim of the violation that the Board has determined that it taking the matter into litigation is not a prudent expenditure of Association resources and declines to take further action. Under the Beehan case cited before, the Association is not obligated to actually obtain compliance from a violator. By taking such a position of limited enforcement, the Association has met its duty of attempting to uniformly enforce the CCRs, thereby preventing a claim of selective enforcement and simultaneously providing the victim of the violation with "evidence" of a violation to pursue in court if they wish, at their own expense. If an owner is dissatisfied with the Association's decision to not proceed to litigation on their behalf and names the Association for its failure, the Association will have the ability to recover its attorney's fees against the owner/plaintiff. It is also likely that the Association's liability or D & O insurance policy will provide a defense in such an action. Defending such an action makes vastly more economic sense than prosecuting actions where subjective standards such as "reasonableness" are in play, expenses are high and outcomes are very uncertain.

ROLE OF LEGAL COUNSEL

Although many of these issues can be determined through common sense, and at the risk of seeming to advocate for more legal business, it is my opinion that the sheer expense of initiating or defending litigation in these types of cases makes it fundamentally prudent for a Board to request Association counsel to assist in classifying what kind of view dispute the Board is confronted with rather than risk making an incorrect decision. This is particularly true because Board's are entitled to rely on the advice of counsel in making decisions about whether and how to proceed and thereby are protected under the Business Judgment Rule. There have been a number of recent cases which have resulted in literally hundreds of thousands of dollars being spent (or misspent) in injunctive relief enforcement cases because Board's felt as though the Association had a duty to file a lawsuit or take a particular party's side in a dispute. Careful analysis and consultation with experienced Association counsel should be able to prevent that from happening to your Association or client.