

17 Legal Rights of Homeowners Living in HOAs

Homeowners associations act as both landlords and mini-governments to their members, which means homeowners have rights that HOAs should both acknowledge and protect. This requires mutual respect from both parties: homeowners must respect the HOA's authority while the association must respect a homeowner's individual freedoms. Yet the challenge is overcoming the classic one-sided perspective of seeing any conflict *as only a board member* or *only a homeowner* problem. Honesty, transparency, and respect are the foundations of community in every association.

Some boards of directors, when they become frustrated by an individual owner, don't want to allow the right to inspect the books. They don't want to be bothered. On the other hand, many homeowners grow suspicious when their board withholds information, and may even pursue legal action. So, what's right and what's unfair? Is there any legal protection for homeowners?

The answer is a resounding yes. In this article, we'll discuss what homeowners can expect when living in an HOA, whether it be a condominium complex or planned unit development, as well as provide a list of homeowner rights specifically sanctioned by the Davis-Stirling Act.

What to Expect as an HOA Homeowner

In California, homeowners' rights are established by the governing documents of the HOA, the Corporations Code (where it establishes guidelines for associations to govern their members), and the Davis-Stirling Act. Before a homeowner can question if they're being treated unfairly by their HOA's board, they must first learn their legally protected rights as part of the membership.

What Homeowners Should Expect from Their HOAs

Upon joining an HOA's membership, homeowners should expect a certain quality of treatment from their association. These expectations are based on rights established in the law, or on basic standards of decency and respect.

Homeowners deserve a response to an inquiry, unless of course the inquiry is ludicrous or threatening, or the demand(s) are intended to harass.

Homeowners should expect that HOA financial and other records will be kept in a routine manner for reasonably easy access.

Homeowners should expect disclosure procedures which ensure easy access to most documents within a reasonable time and without unreasonable restrictions.

Homeowners should get a timely notice and a fair opportunity to be heard if the HOA intends to take disciplinary action against them.

Homeowners deserve consistent treatment in enforcement of rules and regulations.

Homeowners deserve a reasonable opportunity to vote in important elections or to appoint another to vote on their behalf.

Homeowners deserve to be informed of their voting eligibility if they do not qualify to vote per the governing documents *before* a vote is held.

Homeowners should try to educate themselves as much as possible on HOA rules and regulations to ensure they are being treated fairly and justly by their association. Useful information can be gained from attending HOA educational seminars, sharing information amongst fellow members, reading publications and journals, and researching on the web. If you don't know where to start, try asking your HOA's manager, or reading this article on the basics of HOA operation. By knowing what is expected of the HOA and its governing board, you can better understand where you stand in the scheme of things, and most importantly, what rights you have as a member.

What the Law Expects of Homeowners

Homeowners should also keep in mind that they have their own rulings to be aware of. There are two crucial case laws that effect California condominium owners. The first is the long accepted principle first identified by a Florida District Court of Appeal in **Hidden Harbour Estates, Inc. v. Norman**, which is frequently cited in California condominium court cases. It states:

“ *Inherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit homeowners since they are living in such close proximity and using facilities in common, **each unit owner must give up a certain degree of freedom of choice** which he [or she] might otherwise enjoy in separate, privately owned property. Condominium unit homeowners comprise a little democratic sub-society of necessity more restrictive as it pertains to the use of condominium property than may be existent outside the condominium organization.*

Therefore, condominium owners are expected to relinquish a bit of their freedom due to the nature of their living situation.

In the second case law, **Nahrstedt v. Lakeside Village**, the California Supreme Court ruled that HOA boards must put the collective rights of the community above the individual's rights when it comes to enforcing the CC&Rs. This decision meant that despite any individual expectation of the HOA's duty, the board will always put the community's needs first, even if it means letting the grass go weeks without being cut to pay for roof maintenance

17 Member Rights Established by California Law

Board Meetings

Homeowners are entitled to 4 days' notice and an agenda for all open association meetings. If an executive session is held at a separate time, homeowners must be informed at least two days before the meeting. No owner notice is required for emergency meetings (Civil Code Section 4920). Homeowners may attend and address the board at open meetings at the time and in the manner established by the board (Civil Code Section 4925). There are penalties in the statute including \$500 fines for failure of the board to comply.

Inspection of Records

Homeowners may inspect many of the financial and other records of the HOA, although they have to pay the direct costs to produce the records for inspection (costs for copying and postage). If a homeowner requests the redaction of information that is private or could lead to identity theft, they must pay for those costs as well (Civil Code Section 5205(a)(f)(g)). There are penalties in the statute including \$500 fines for failure of the board to comply.

HOA Records Homeowners Have a Right to Access

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| Annual budget report (Civil Code Section 5300) | Reserves Summary (Civil Code Section 5565) and account balances |
| Interim financial statements | Executed contracts |
| Approved vendor or contractor proposals | State and federal tax returns |
| Any policy changes (Civil Code Section 5810) | Meeting agendas and minutes |
| Membership lists | Check Registers |
| Governing documents | Documents for prospective purchasers (Civil Code Section 4525) |

For the complete list of association records, see Civil Code Section 5200.

Disclosures

Homeowners are entitled to annual and other disclosures, which include: rules, fines, financials, budgets, reserves (including component list and funding plan), meeting minutes, assessments, insurance information, architectural procedures, and collection policies. Homeowners should also receive notices of dates, times and agendas of association meetings. (Civil Code Sections 4950(a), 5300, and 5520), and are entitled to distribution of the balance sheet and income and expenses for the prior fiscal year within 120 days of the end of the fiscal year. (Civil Code Section 5300)

Hearings for Disciplinary Action

Homeowners are entitled to notice and the opportunity to attend a fair hearing if disciplinary action is being considered against them, including fines. All homeowners are entitled to notice of fines through circulation of a fines schedule and notice of hearings by first class mail. (Civil Code Section 5855)

Communicating with Other Members

Unless the intention is suspect (e.g. retaliatory conduct or business solicitation), homeowners are allowed to inspect and copy the HOA membership list or, alternatively, get access via mailing of the communication with labels/envelopes through a mailing house, so long as they pay the copy and mailing costs. (Corporations Code Section 8330 et seq., Civil Code Section 5205(a))

Serving on the Board

Homeowners have the right to run for the board if they qualify. Qualifications should be established in the governing documents and will typically require the member to be in good standing (or having fully paid assessments and not in violation of the governing documents). Members are also entitled

to a fair election with equal access to HOA resources as other candidates, including incumbents. (Civil Code Section 5105(a), 5135) There are penalties for failure to allow these rights in Civil Code Section 5145, including a potential \$500 per violation fine against the association or possibly even the board.

Display of US Flag

Homeowners may fly flags in their separate interest areas (not including the common area). Boards can set reasonable parameters relating to the public health or safety, placement, type of display, and type of material. In any action to enforce this section, the prevailing party shall be awarded reasonable attorney's fees and costs. (Civil Code Section 4705)

Notice of Airport in Vicinity

If the development is located within an airport influence area, any HOA's CC&Rs recorded after January 1, 2004, must contain a specific statement giving notice of an airport in the vicinity. There are special rules for San Francisco. (Civil Code Section 4225)

Signs, Posters, Flags, or Banners; Exceptions

Associations must allow posting or displaying of noncommercial signs, posters, flags, or banners on or in an owner's separate interest. However, rules and limitations can be made for the protection of public health or safety or if the posting or display would violate a local, state, or federal law. (Civil Code Section 4710) The board can also restrict signs that constitute a nuisance or display obscenity, and can control the signs made for HOA elections (with reasonable restrictions).

Use of Drought Resistant Plants

Homeowners must be allowed to incorporate some forms of low water-using plants in their landscaping. (Civil Code Section 4735)

Electric Car Charging Stations

As of January 1, 2012 homeowners are entitled to install electric car charging stations at their expense but are required to get architectural approval. Associations may control place and manner and set restrictions for safety reasons (Civil Code Section 4745).

Modifying Unit for Access for Disabled Persons

Homeowners can request to make modifications to the property in order to gain access or facilitate the use of their units at their own expense, as long as these modifications do not impair the structural integrity or mechanical systems or lessen the support of any portions of buildings. Boards may set some conditions but cannot deny these requests unless the modifications will...

1. Adversely affect the health or safety of neighbors OR
2. Are not necessary for access or use because of viable alternatives. (Civil Code Section 4760, Fair Housing Laws)

Rights of Ingress, Egress, and Support & Access

Homeowners cannot be barred from "ingress" and "egress" (which are legal terms meaning getting to and from) their units, and cannot be barred from physical access to their units, unless...

The HOA has a court order

The HOA has an order pursuant to a final and binding arbitration decision

Reconstruction is needed

A hazardous condition exists

The unit is uninhabitable or red tagged. (Civil Code Sections 4505 and 4510)

Dogs, Cats, and Other Pets

No governing documents (including operating rules) passed or amended after January 1, 2010 may prohibit an owner from keeping one pet, subject to reasonable rules and regulations of the association. (Civil Code Section 4715) This does not mean a resident can keep a dangerous dog or nuisance pet on premises.

Satellite Dishes and Antennas

Homeowners are entitled to have satellite dishes. The board can set requirements relating to screening and placement. (FCC Rule 207)

Solar Installations

Homeowners are entitled to have certain solar installations. Boards are entitled to set reasonable restrictions that do not substantially increase the cost or decrease the efficiency. This includes requiring homeowners to remove their panels if and when the HOA has to maintain the roof. (Civil Code Section 714 and 714.1)

Towing Vehicles

Homeowners are entitled to know that the association can tow vehicles that violate the governing documents and must be given notice that they are in danger of being towed prior, which may be by tagging, a letter, or otherwise (Vehicle Code Section 22658.2).

Conclusion

Keep in mind that this list of rights and entitlements, while a good reference tool, is not all-inclusive. Homeowners can do a lot of other things according to HOA policies, but boards generally have ultimate control over architectural approvals, parking assignments, and any exterior additions or modifications, use of the common areas, and conduct (accomplished commonly through rule setting).

Homeowners who assertively pursue their rights through reasonable and proper channels can change their HOA, while boards who wrongly or purposefully deny rights of homeowners who are behaving reasonably will only hinder the HOA's purpose. And when both parties work together towards one common goal, it's amazing the community they can build.

Information provided by Beth Grimm, an HOA attorney and ECHO's East Bay Resource Panel chairwoman.