

LIVING IN A CALIFORNIA COMMON INTEREST DEVELOPMENT

Living in a California Common Interest Development was originally developed in January 1999 by the California Association of Community Managers, Inc., working with the Bureau of Real Estate (CalBRE/Bureau).

This booklet was revised in August 2002 and June 2016 by the Bureau.





PREFACE

This booklet is designed to provide general information in response to some of the more frequently asked questions regarding living in a common interest development (CID). We hope it contributes to your understanding and expectations of home ownership in a CID. Since this brochure does not contain specific legal information or guidance, it should only be used as a general source of information. If you want to research the subject matter further, you may wish to consult with an attorney or an industry professional experienced with CIDs.

QUESTIONS ABOUT LIVING IN A CALIFORNIA COMMON INTEREST DEVELOPMENT

What is a common interest development (CID)?

A CID is descriptive not only of a certain type of real estate and form of home ownership, but also of a lifestyle that has become more and more common to the American way of life. To understand the concept, it is important to know that there is no one structural type, architectural style, or standard size for CIDs. They come in a variety of types and styles, such as single-family detached houses, two-story townhouses, garden-style units with shared “party walls,” and apartment-like, multistory high rises. In California, there are tens of thousands of CIDs that range in size from a simple two-unit development to a large complex having thousands of homes, many commonly owned facilities, and multiple associations under the auspices of one overall master association. However, despite the wide range of differences that may exist among CIDs, all CIDs are similar in that they allow individual owners the use of common property and facilities and provide for a system of self-governance through an association of the homeowners within the CID. The most common type of association of homeowners is the nonprofit mutual benefit corporation. This is a corporation in which the members of the corporation vote for a board of directors that run the affairs of the corporation. However, some associations, usually the older ones, are unincorporated associations. In many ways, unincorporated associations are treated the same as mutual benefit corporations under California law.

Do you have to join the association?

Membership in the association(s) is automatic. When a person buys a lot, home, townhouse, or condominium in a common interest development, he/she automatically becomes a member of the association(s).

What are Covenants, Conditions and Restrictions (CC&Rs)?

The Declaration of the Covenants, Conditions and Restrictions, or CC&Rs, contains the ground rules for the operation of the association. This governing document identifies the association's common area and responsibilities, explains the obligation of the association to collect assessments, as well as the obligation of the owners to pay assessments. It also states that the association may sue owners for violations of the rules or failure to pay assessments, and explains what happens if there is any destruction of property in the development as a result of fire or earthquake. The CC&Rs will also state the duties and obligations of the association to its members, insurance requirements, and architectural control issues.

How are the CC&Rs enforced?

California laws allow that either the association or an owner in a common interest development may file a lawsuit asking the court to enforce the CC&Rs. The law currently requires, with some exceptions, that either the owner or the association must offer to engage in some form of alternative dispute resolution process before filing a lawsuit. You may wish to consult with an attorney who specializes in this type of law if you are faced with or contemplating an enforcement matter.

What are bylaws?

As stated above, the CC&Rs generally state how an association is to be operated. In almost every instance the association, through its board of directors, has the ultimate responsibility for managing the association. As the association is usually a corporation, bylaws establish the rules by which the corporation will be run. Bylaws usually set forth how members vote for the board of directors, the number and term limit of members of the board of directors, the duties of the board, the duties of the officers, and other incidental provisions.

Does the Bureau of Real Estate assist with the enforcement of the bylaws and CC&Rs?

CIDs are subject to the Davis-Stirling Common Interest Development Act (California Civil Code sections 4000 et seq.). This Act is intended to provide homeowners with a system of self-government and dispute resolution. The Bureau of Real Estate reviews the legal framework of all new CIDs to ensure compliance with the Subdivided Lands Law as part of the public report application process before homes are offered for sale to the public. Once sales have commenced, the Bureau's jurisdiction is limited to the subdivider's obligations under the public report, which does not include intervention in association disputes. Presently, there is no State or local agency that directly regulates associations or their members.

Who is in charge of the association?

The homeowners are in charge of the association. Often, homeowners will elect a board of directors to operate the association and preserve, enhance, and protect the value of the CID, but the board answers to the homeowners. It should be noted that it is not unusual for the board to contract with a professional management company to run the day-to-day affairs of the association. Ultimately, however, it is the board that is responsible for the oversight of the homeowner association.

What is the board of directors and how are its members elected?

The board of directors governs the association. Its members are elected yearly or less frequently, depending upon the terms mandated in the governing documents of the association. The governing documents also determine the number of directors. Directors are elected by the members of the association (homeowners) who vote for vacancies as they occur. Normally, each lot or unit has one vote no matter how many people own it, with the notable exception that the subdivider may, for a time, have up to three votes for each lot or unit he/she owns.



How can you serve on the association's board of directors?

There are two ways to become a member of the board of directors. You can request that the association or nominating committee place your name on the election ballot so other members of the association will have an opportunity to vote for you in the next election, or you can ask the board of directors to consider appointing you to any interim vacancy on the board.

What are the responsibilities of the board of directors?

The board has the ultimate responsibility for operating the association. Board members must deal in good faith on behalf of all the homeowners and exercise reasonable care. The board makes sure that the association's money is collected, its bills are

paid, the association is operated efficiently, and violations of the rules of the association are addressed. For example, the board is responsible for reviewing the association's bank statements, preparing a budget, and distributing the budget (or budget summary) to the members prior to the beginning of the association's fiscal year. The board must also prepare a fiscal year-end financial statement for distribution to the members. There are numerous other things for which the board is responsible, as set forth in the association's CC&Rs, bylaws, the Corporations Code and the Davis-Stirling Common Interest Development Act (California Civil Code sections 4000 et seq.). Even if the board of directors opts to contract with a professional management company to run the day-to-day affairs of the association, the board of directors is still ultimately responsible for management of the association.

Are there other opportunities to volunteer in the association besides the board of directors?

Usually, an association will have a number of committees that perform valuable functions. For example, the architectural committee oversees requests for modifications to properties in the development and generally attempts to make sure that modifications and other improvements are consistent with the existing architecture of the development. There may be other committees to join, depending on the type of development in which you live. An association may have a landscape committee to oversee landscaping. There may be a welcoming committee that greets new homeowners or an election committee that coordinates the election of the board of directors.

Committees are usually established by the association's bylaws, CC&Rs, and/or the board of directors. Let your board know that you would like to actively participate in your association.

How does the association pay its bills?

Each association has a budget that is prepared based on the common area obligations of the CID, and distributed to all of its members. The budget determines how much money the association is going to need to operate for the following year. The association has the right to bill the members for their fair share of the budgeted amount. This billing

is known as an assessment, which may be paid via monthly invoices, coupons supplied by the association, or some alternative method.

Ideally, the association collects sufficient money through these assessments and pays the bills for the services and goods contemplated in the budget. If the assessments collected are insufficient to pay the bills, the board of directors is allowed to levy what is known as a special assessment. Without member approval, the total of special assessments in any fiscal year cannot exceed 5 percent of the gross budgeted expenses for that year. By paying your fair share of the obligations of the association, through the budget and assessment process, you are proportionally paying for the current and long-term maintenance obligations of the association. Of course, all of the other owners are doing so as well.

How is the amount of the monthly assessment determined?

When the budget is prepared, the amounts necessary for the daily operation and long-term reserves for maintenance and replacement are determined based on the level of service for which the association is both required and willing to pay. For example, sometimes there are specific items defined in the CC&Rs that require a certain level of maintenance by the association.

Once the annual amount is determined, then it must be collected from the members in order for the association to operate. Each member's assessment is usually collected monthly, in 12 equal installments. Some associations collect assessments on a quarterly or annual basis. The CC&Rs will normally indicate the frequency of assessment collections.

Are there different types of assessments or fees?

There are several types of assessments that may apply to your association. The California Civil Code defines assessments as either being regular or special. Regular assessments are needed for the operating (day-to-day) and reserve (long-term maintenance) activities of the association.

Special assessments are those levied by the association for major repairs, replacement, or new construction of the common area or for a one-time, unanticipated expense which cannot be covered by the regular assessment (e.g., insurance premiums that unexpectedly rise sharply).

Note, a special assessment should not be confused with a monetary penalty levied by the association against an individual owner to reimburse the association for an expense such as damage to the common area, or imposed as a disciplinary measure for a violation of the rules and regulations. Homeowners can be fined for damaging common areas and/or violating any rules and regulations of the association. Some CIDs establish user fees or special charges for services and activities that are not customary. Typically, these are imposed on an owner specifically benefiting from the service, such as an owner who wants to use the common area pool, clubhouse, or tennis courts to entertain private guests. The fees are usually on a pay-as-you-go basis and generally cannot become a lien on the owner's unit or interest. There are other types of assessments that may be designated by the CID homeowners association. For example, an association may have an assessment for cable television service. A "reimbursement assessment" may be levied against an individual owner as a charge for damage to the common area resulting from an act by the owner or an owner's guest. The best place to look for the different types of assessments that may apply to a CID is in the CC&Rs of the association.

Who can increase the amount of the assessment?

The board of directors can increase the amount of the assessment by following certain procedures mandated by California Civil Code sections 5605 and 5610. Even if the governing documents (Civil Code section 4150) are more restrictive, the board of directors may not increase the regular assessment more than 20 percent per year, without the approval of the owners. The board must circulate a budget

to the membership 30 to 90 days before the end of its fiscal year (Civil Code section 5300). If the budget indicates that an assessment increase greater than 20 percent is necessary, a majority of the members of the association must approve the assessment. There are also provisions for a board to increase an assessment more than 20 percent without member approval in cases of emergency such as an extraordinary expense required by order of a court, or for repairs to the common area.

What happens if you do not pay your assessments?

Usually, the association will send you a reminder letter as a first step. The law is specific in California regarding the due date of assessments and the overall process that an association must follow regarding delinquent assessments. The law states that if an assessment is not paid within 15 days of the due date, a delinquency occurs, unless the governing documents provide for a longer time. At this point, the association can add a charge to your assessment in the form of a late fee in the amount of \$10 or 10 percent of the monthly assessment amount, whichever is greater, unless the CC&Rs specify a lesser amount. Again, the law covering this area is quite clear and the board must follow these procedures.

Once a year, the association will send each owner a copy of the assessment collection policy, which will tell you the amount of the late fee. If your assessment becomes over 30 days delinquent the association has the right to assess interest up to 12 percent per year on the balance that is owed and unpaid. If you still fail to pay your assessments, the matter may be referred to an attorney or foreclosure service. The association has the right to lien your property for the amounts owed as well as other costs such as attorney's fees. Ultimately, the association can foreclose and take your property for your failure to pay assessments. A personal judgment may also be entered against you. As you can see, it is imperative that all owners pay their assessments in a timely manner. Failure by several owners to pay their assessment obligation could place the association in financial jeopardy.

Are there other rules in an association?

An association's board of directors may establish rules and regulations governing issues ranging from where you can park to what you can place on a balcony or deck. Associations frequently have guidelines and rules that specify the type of landscaping that may be installed or in some instances, not installed. Rules and regulations can be just as enforceable in an association as the CC&Rs, bylaws and applicable laws. The most frequent type of miscommunication between an owner and the association usually arises from an owner being unaware of the rules and regulations when the association attempts to enforce them. You can easily prevent such misunderstandings by making certain you have a current copy of the rules and regulations, which may be obtained from the association or the management company.

Can you make improvements to your home?

The answer is generally yes, depending on the type of home that you have (condominium, townhouse, detached, etc.). However, in addition to the conditions in the CC&Rs, most associations have established rules and regulations (also known as Architectural Guidelines) that must be followed in order to make any alterations or improvements. Generally, associations assist members who wish to improve their property as long as the improvement is performed in a manner consistent with the CC&Rs and rules and regulations.

Who do you contact if you have problems with or questions regarding the home interior? The association common area? Neighbors? Paying assessments?

The first place to look for answers to your questions is the CC&Rs. Then you should speak to a board member or, if your association has contracted with a management company, it may be able to provide assistance. Problems with the interior of a home normally are the responsibility of the owner. The association's common area is managed by the association, so the appropriate contact is either one

of the association's board members or, if applicable, the management company. When there is a dispute between neighbors, sometimes it is best resolved between those owners. Where a dispute involves payment of assessments or an infraction of the association rules or CC&Rs, it would be appropriate to contact the board of directors and/or the management company.

What is a management company and what does it do?

A management company is a separate business enterprise usually hired to act as the agent of the association. As an agent for the association, it takes direction specifically from the association's board of directors. Typical contractual responsibilities of the managing agent include a variety of services to the association, such as collecting assessments, paying the association's bills, taking direction from the board of directors for enforcement of rules infractions, and obtaining various vendors to perform services. Other possibilities for management company duties include assisting with the budget process; preparing meeting agendas and minutes for the board of directors; or serving as a neutral third party to help solve problems that can occur in CIDs. Additionally, the managing company may advise the board of directors on how to comply with relevant California Civil Code requirements and assist with appropriate and timely compliance.

Can owners rent to someone else?

Some CIDs restrict the number of units that may be rented by owners. Some CC&Rs require that a rental agreement acknowledge that the tenancy is subject to all of the rules and regulations of the association. Some associations' rules and regulations also require that you provide the association with a copy of the rental agreement. In most associations, the CC&Rs state that the owner of the property being rented is responsible for the conduct of the tenant. Naturally, it is in the best interest of all parties to prevent problem situations between tenants and owners of other units. If your tenant does damage to the common area or creates a nuisance (e.g., loud music or pet problems), the disturbance could become your problem and the association may fine you.



What are your individual responsibilities as an owner living in a CID?

Primarily, you are responsible for paying your assessments on time and abiding by the CC&Rs and all other rules and regulations that exist for community harmony.

What are your individual rights as an owner living in a CID?

Your individual rights as an owner living in a CID are based upon the laws of California and the documents you signed at the time of purchase. Prior to making a purchase, it is advisable to thoroughly review the CC&Rs and any other governing documents applicable to the CID (California Civil Code section 4150). You may also wish to

attend a board meeting and obtain copies of minutes from previous board meetings. The CID should be able to demonstrate that it has adequate insurance coverage, a solvent budget, and a sufficient reserve account.

Generally, the rights of owners include:

- The right to participate in meetings of the board of directors and to be heard.
- The right to enter into dialogue with your association board of directors with regard to any problem you may perceive in the development.
- The right, with some exceptions, to utilize an alternative dispute resolution process, if a dispute arises between you and the association prior to the involvement of the court system.

What should I do if I decide to sell my home?

You may wish to contact a real estate professional, the board of directors, the professional management company (if your CID has one), and/or an escrow company for assistance with the many details involved with selling your home. There are a number of documents that an individual owner is legally required to provide to a prospective purchaser of a unit in a CID. You will want to make sure that the buyer is aware of the rules and regulations of the association as well as the assessment obligation so there is not a problem or misunderstanding that could jeopardize the sale of your home. Until the sales transaction is completed and title is transferred, the owner of record is responsible for all assessments and fines unless otherwise stated in the sales and purchase agreement. This includes new assessments approved during the sale and purchase that become due while the sale is pending.

Conclusion

A successful and viable CID is generally one in which homeowners assume an active role, not only by attending association meetings, voting and paying dues on time, but also by running for elected offices, serving on committees and participating in group activities. While governing documents help establish a foundation, involved owners build the CID and make it a community.

CalBRE publications

Bureau of Real Estate (CalBRE) publications are available on the CalBRE website:

www.calbre.ca.gov

CalBRE publications may also be purchased/ordered in person at any CalBRE District Office, by mail using the Publications Request Form (RE 350) available on the CalBRE website, or by calling (916) 263-8910.



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PDE_16-162