

FIORE RACOBS & POWERS

THE LEGAL PERSPECTIVE® COMMUNITY ASSOCIATION NEWSLETTER

“Successful CC&R and Architectural Enforcement” Workshops

JUNE 5TH & 12TH

Fiore Racobs & Powers is pleased to present its next Community Association Workshops which will cover the top ways to improve CC&R and Architectural Enforcement, including Identification of Violations, Preparing Effective Documentation, Restraining Orders, Reducing Legal Expenses, Manager’s Role in Enforcement, and more. These workshops will be held on June 5th in the Coachella Valley and Inland Empire; and June 12th in Orange County.

For further information, contact Diane Weissberg at our toll free number 1-877-31 FIORE, or by e-mail at dweissberg@fiorelaw.com.

COACHELLA VALLEY

Friday morning, June 5, 2009
Desert Willow Golf Resort
7:30 AM - 9:30 AM

INLAND EMPIRE

Friday afternoon, June 5, 2009
The Mission Inn
1:30 PM - 3:30 PM

ORANGE COUNTY

Friday morning, June 12, 2009
Hyatt Regency Irvine
7:30 AM - 9:30 AM

Is A Palm Tree Really a Tree?

By David A. Kline, Esq.
Coachella Valley Office

The recent case of Ekstrom v. Marquesa at Monarch Beach Homeowners Association provides guidance on association duties concerning view issues and enforcement of CC&Rs.

The CC&Rs for Marquesa at Monarch Beach Homeowners Association require owners to trim “all trees” on their lots so they do not exceed the height of the house, unless the tree does not obstruct the view of any other owner. Unlike most trees, palm trees cannot be trimmed to prevent vertical growth without destroying the tree. Therefore, the Association’s Board of Directors took the position over the years that the tree-trimming provision of

the CC&Rs does not apply to palm trees.

This decision divided the members of the Association.

Owners who had palm trees, many of which were planted by the developer, supported the Board’s decision as a reasonable interpretation of the CC&Rs. Owners whose ocean or golf course views were



obstructed by palm trees demanded that the Association enforce the CC&Rs by requiring the removal or topping of offending trees. The Board’s attempt to amend the CC&Rs to exempt palm trees from the tree-trimming provision failed to receive enough homeowner votes.

By December of 2004, a group

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in Community Association Law®

Is a Palm Tree Really A Tree?

of owners sued the Association to enforce the tree-trimming provision of the CC&Rs and for a declaration of their rights. While the lawsuit was pending, the Association's Board adopted a rule that defined the word "view" as being only that which is visible from the back of the house, six feet above ground level, standing in the middle of the outside of the house looking straight ahead to infinity. The definition would have precluded virtually all of the plaintiffs from claiming any view obstruction. The trial court agreed with the owners' position, ordered the association to enforce its CC&Rs as to palm trees, determined that the CC&Rs gave the board authority to identify which trees obstructed any views, and defined the word "view" as "a view of the ocean or neighboring golf course visible in any direction from anywhere on a homeowner's lot, inside or outside one's house."

The association appealed. The Court of Appeals ruled that the Board's interpretation of the CC&Rs was inconsistent with the plain meaning of the document. Generally, when an association's board of directors makes an ordinary managerial decision upon reasonable investigation, in good faith and with regard for the best interests of the community association and its members, courts defer to the board's presumed expertise. (*Lamden v. La Jolla Shores Clubdominium Homeowners Association* (1999) 21 Cal. 4th 249.) However, judicial deference is only given to decisions that are made within

the scope of the board's authority under relevant statutes and the association's governing documents.

Here, the CC&Rs are clear. The tree-trimming provision applies to "all trees." The provision is not vague or ambiguous. Therefore, the Board had no discretion to exempt palm trees from that provision.

Likewise, although the CC&Rs gave the Board authority to identify whether a particular tree blocks a view, the Board had no authority to allow view-blocking trees. Even if the Board had authority to determine what was meant by the word "view," it could not adopt a definition that rendered a provision in the CC&Rs meaningless.

Based upon the above case, associations should be very careful that decisions by the board of directors are made within the scope of its authority. Words like "view" may have different meanings in different communities. Therefore, any questions that a board may have regarding a perceived ambiguity in an association's governing documents should be brought to the association's counsel for careful consideration. Even if the board acts in good faith, if its actions are inconsistent with the CC&Rs, the board's decisions may not be upheld.



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