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# Anatomy of a Claim Against a Homeowners Association

A General Roadmap to Responding to Claims Submitted to a Homeowners Association

**Presented by Christopher E. Haskell**  
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# Summary of Presentation

- General overview of a process which is often lengthy and complicated
- Not a substantive outline of all claims and defenses
- Major highlights and general rules
- There are always exceptions to the rules
- And every dispute is different

Joe Litigator, Esq.  
ABC Street, Suite 1  
Santa Barbara, CA 9000

June 11, 2012

President  
Perfect Paradise Homeowners Association  
Santa Barbara, CA

Re: Honest Ted's Claim Against the Perfect Paradise Homeowners Association

Dear President:

What kind of racket do you run here? As you know, my client, Honest Ted, lives in unit B. Every time it rains it pours in his unit through the windows and roof. Then the lights go out. He has raised his complaint with each one of the members of the Board, to no avail. Ted finally got his friend Jack to do some repairs, but it still leaks and now black mold has been discovered. His ceiling, walls and carpet are ruined. What do we need to do to get his unit repaired?

In addition, every time his neighbor in unit A (Sam) is in town, he uses Honest Ted's parking space. Adding insult to injury his other neighbor in unit C rents out his unit, apparently as a short term vacation rental, and there are loud parties almost every Friday and Saturday night.

We demand immediate and complete repairs to Honest Ted's unit, enforcement of the CC&Rs and Association rules regarding noise and parking, and \$200,000 in damages for the continued interference with Ted's quiet enjoyment of his unit (no credit cards)! We will graciously agree to give you a week to respond.

Very truly yours,

Joe L.

# What do you do when you receive Joe's demand letter?

1. Resign from the Board
2. Ignore
3. Tell Joe you will never pay him a dime until he calms down
4. Respond in writing inquisitively and in a diplomatic tone

# The Paper Trail

- Write everything as though it was for a judge/jury
- Lack of response -- perceived admission/credibility
- The Board's fiduciary duty = prompt and diplomatic response

# Who Responds?

1. Board President
2. Property manager
3. Member Executive Committee/Litigation Committee
4. Ted's Friend on the Board

# The Association's Investigation

## Collection of documents

- CC&Rs
- Bylaws
- Rules
- E-mails/correspondence
- Minutes/Agendas

# Preliminary Interviews

- The claimant
- Board members
- Maintenance person

# Hire Local Attorney

Prepare:

- Chronology
- Narrative summary
- Document binder
- Contact List

# **Attorney Hires a Consultant (i.e., a Contractor)**

Site inspection

- Photographs/videos
- Measurements
- Plans/permits

# The Owner's Investigation

## The Association's Documents (CC 1365.2)

1. Membership lists
2. Association records for current and previous 2 years, financial documents (financial statements, ledgers, balance sheets, executed contracts, tax returns, etc.) and corporate records back to 1/1/07 (i.e., Board and committee meeting agendas, minutes, and other information)
3. Enhanced Association records (i.e., checks, invoices, etc.)

- Owner requesting documents must pre-pay for the copies and specify the format
- Privacy issues
- For personal information some protective steps can be undertaken (redacting)
- Short response time for Assoc. Can be as little as 10 or 15 days. Other records - 30 days.

# Notice to Association's Insurance Carrier

When & Why?

- Free defense attorney
- Source of funding for settlement
- Pays the judgment/award
- But increase in premiums due to number of claims filed

# Hiring a Local Attorney

Sooner rather than later

Why Local?

- Lower Fees & Costs
- Knows local mediators/arbitrators/judges
- Knows local consultants
- Knows local attorneys

# Attorney-Client Privilege

Communications between the Board and the attorney are privileged and confidential

- Limit attorney communications to the executive or litigation committee
- Do not forward email chains to others!
- Separate file
- Careful of discussing the lawyer's recommendations/strategies

Must provide Notice of Meeting of Executive Committee; “pending litigation” sufficient

# Meet & Confer and ADR Requirements

Two part process for pre-litigation resolution of intra-association disputes

## 1. The Meet & Confer

*Every association “must make available a fair, reasonable, and expeditious internal dispute resolution mechanism at no cost to the membership. . . .” (Civil Code 1363.820(a))*

Supplements but does not replace the formal ADR process that is required as a prerequisite to an enforcement action (Civil Code 1363.810(b))

If association fails to provide for an internal dispute resolution procedure, the statutorily prescribed default procedure applies (Civil Code 363.840)

- Intra-Association dispute resolution procedure applies to any dispute between an association and a member that involves their respective rights, duties, or liabilities under any of the following:
  - The Davis-Sterling Common Interest Development Act (Civ. Code 1350, et seq.)
  - The Nonprofit Mutual Benefit Corporation Law
  - The common interest development or Association's governing documents, including CC&Rs, bylaws, articles of incorporation, articles of association, etc. (Civil Code 1351(j))

There is a presumption favoring the procedure for intra-association resolution adopted by the Association

–Bottom line--is the Association's meet & confer process: reasonable, fair, and free to the member?

–Special exception for member disputing an assessment, penalty, fine, etc. (member pays the amount and files a small claims action (up to \$7,500.00) (Civil Code 1367.6(a))

# Requirements for a Fair, Reasonable, and Expeditious Procedure

- Can be invoked by either party in writing
- Provides for prompt deadlines for responses
- Optional for the member, but mandatory for the Assoc. if invoked by a member
- Process should be free to the member
- Provides fair opportunity to member to present his argument

# Statutory Procedure Provided for Association Which Does Not Have its Own Process

- Request other party to meet & confer in writing
- Optional for the member, not for the Association
- Statute suggest a physical meeting promptly undertaken and in “good faith”
- Resolution must be memorialized in writing signed by the parties
- An agreement will be binding if it does not conflict with laws or governing documents and is approved by the Board
- No fee can be charged for the process

## 2. The Formal ADR Process

*Prerequisite to filing an enforcement action based on (a) Davis-Stirling Act, (b) Nonprofit Mutual Benefit Corp. law, or (c) the Assoc.'s governing docs*

- Must be for declaratory/injunctive/writ relief
- Damages sought are no more than \$5,000
- Does not apply to assessment dispute

Mandatory for both Assoc. and owner — or lose ability to recover attorneys' fees and action prematurely filed may be stayed pending completion of ADR

- Mediation
- Conciliation
- Arbitration
- “Other nonjudicial process”

# The Mechanics of the ADR Process

- Written notice to the other side
- 30 days to respond
- Must complete the ADR within 90 Days of acceptance (unless there is an agreement between the parties to extend the time)
- Parties share the costs
- Certificate of ADR compliance must be attached to complaint

# Mediation

- Can be very cost effective
- Take it seriously-prepare for it as a mini-trial
  - Bring key documents
  - Bring key witnesses or summary of testimony
  - Review the mediation briefs
- Association's insurance adjuster should attend in person

# **Association's Claims Against Original Developer/Builder**

Pre-filing requirements for claims against developer/builder/original contractor of the common interest development (CC 1368.5 & 1375) – this should be handled by your lawyer

- Detailed statute/many steps/specific timing for each step
- Notice of Commencement of an Action
- Summaries of surveys and testing
- The Assoc. must provide 30 day written notice to all owners of a meeting to discuss the potential filing of a lawsuit and other options

# When Action is Filed

Pros & cons of binding arbitration vs. normal lawsuit filed in superior court

- Faster
- Additional fees/costs
- Limited discovery
- Limited appeal
- More private

# Discovery Phase

- Interrogatories
- Document demands
- Requests for admission
- Depositions
- [Subpoenas for third party depositions and documents]
- Motions to compel

# Trial

- Expensive (financially & otherwise)
- Additional mediation or “settlement conference”
- Jury vs Judge trial
  - Careful thought here....
- Pre-trial motions
- Who sits at counsel’s table?

# Post –Trial

- Appeals
- Collection (liens)
- Reconciliation?