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PERSPECTIVE

The benefits of mediating HOA disputes

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In a capitalist economy, property rights are foundational and the assertion of control over one's home is particularly treasured. "The maxim that a 'man's house is his castle' is one of the oldest and most deeply rooted principles in Anglo-American jurisprudence." Jonathan L. Hafetz, "A Man's Home is His Castle?": Reflections on the Home, the Family, and Privacy During the Late Nineteenth and Early Twentieth Centuries, 8 Wm. & Mary J. Women & L. 175 (2002) citing *Weeks v. United States*, 232 U.S. 383, 390 (1914). Accordingly, when a property owner's space is interfered with or imposed upon, it strikes a particularly sensitive chord.

More than 14 million California residents live in common interest or planned communities overseen by homeowners' associations (HOAs) or other governing bodies which make and enforce rules for the community residents. For many, these communities are attractive; well-manicured, provide security, and individual owners have little responsibility (and pay far less) for amenities such as swimming pools, gyms and tennis courts. However, often the HOA rules and regulations are viewed as overly intrusive. In 2023 the show *Last Week Tonight with John Oliver* devoted an entire episode to HOA disputes. While relatable comedy, anyone embroiled in an HOA dispute does not consider it a laughing matter. Rather, the sentiments articulated



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by Charles Dickens in *A Tale of Two Cities* instead ring true: "It was the best of times, it was the worst of times..."

Most HOA disputes concern the CC&Rs, Association and PC Bylaws and Rules & Regulations (rules) which govern what a homeowner can or cannot do – the exterior color of one's home or front door, fence height, architectural or renovation plans, and landscaping. HOAs can decide whether a resident may install a basketball hoop over a garage and what hours the hoop may be used. One California HOA attempted to regulate the contents of a resident's unit. See *e.g., Fountain Valley Chateau Blanc Homeowner's Assn. v. Department of Veteran Affairs* (1998) 67 Cal. App.4th 743, 746 (HOA lawyers demanded an elderly resident clear his bed of all papers and books,

discard "outdated" clothing, and remove the papers, etc, from the floor). Such restrictions are at odds with the common law notion that "one's home is one's castle" and viewed as an intrusion by the resident. In contrast, neighbors and/or the HOA argue that the rules supersede individual property ownership rights. . Such was the situation in the Fountain Valley case with the Court of Appeal ruling in favor of the HOA member. These divergent views lie at the heart of HOA disputes.

Some HOA disputes involve millions of dollars. The recent legal claim that four HOA members (including two past members of the Board) had stolen approximately \$5.7 Million from the Ocean Towers, a luxury ocean view property in Santa Monica, is one such example but few disputes rise to this

level. Most often, HOA disputes involve smaller matters: barking dogs, inadequate property maintenance, smoking of cannabis, or something an individual HOA member or board member believes to be illegal, disruptive, or in violation of the HOA rules. Yet even disputes which may seem like minor grievances frequently escalate into high-conflict situations draining the disputing parties emotionally and financially.

The Davis-Stirling Common Interest Development Act governs all California community associations. Under the Act, neither an association nor a member can file an enforcement action in the California Superior Court for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of small claims court jurisdictional

limits unless the parties have first submitted their dispute to alternative dispute resolution (ADR). Cal. Civ. Code § 5930(a). Accordingly, the vast majority of HOA disputes arising between members and/or the HOA itself pertaining to the HOA governing documents go to mediation as the requisite ADR process (although arbitration and conciliation and other nonjudicial procedures can be utilized). Cal. Civ. Code § 5925(a).

HOA disputes are particularly well-suited for mediation. Disputes relating to “one’s castle” often create emotionally-driven reactive behavior. Adversarial processes - arbitration and litigation - fuel antagonistic behaviors while mediation permits the emotions of the parties to be addressed and de-escalated. Moreover, there is an ongoing relationship which must be addressed. Skilled mediators facilitate dialogue between the parties and create an atmosphere where better understanding can be achieved and where relationships may be not just repaired but transformed. (No one wants to come home to an uncomfortable, stressful situation.)

Mediation is also far less costly in terms of time and money. Not only may HOA-related litigation take two to three years, HOA members generally face increased insurance premiums and HOA special assessments. It should be noted that the prevailing party in HOA litigation may be awarded its attorneys’ fees under the applicable CC&Rs and /or California Civil Code section 5975(c) which permits an HOA member to sue the HOA or another member to enforce the governing documents of the community. See *Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal. App. 4th 761, 773 (the test for a “prevailing party” is a pragmatic one, namely whether the party prevailed “on a practical level” by achieving its main litigation objectives). Thus, it is not unusual for attorneys’ fees to exceed the actual economic value of the dispute. See, e.g., *Ritter & Ritter vs. Churchill Condominium Assn.* (2008) 166 Cal.App.4th 103 (award of \$531,159 in attorney’s fees to the HOA member as the prevailing party despite the fact that it was found to be 25% negligent and was awarded under

\$5,000 in total damages against the HOA).

When selecting a mediator for a HOA dispute, look for someone with substantial experience in real property litigation and HOA disputes. Equally important is retaining a mediator with strong interpersonal skills; the mediator must

possess active listening skills, display empathy, acknowledge the competing perceptions and needs while being able to control the process. Seek a mediator with creative thinking and the ability to facilitate a resolution that is mutually satisfying while bringing accord to the HOA litigants.

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