

## CALIFORNIA ASSOCIATION OBTAINS ASSISTANCE FROM COURT IN AMENDING GOVERNING DOCUMENTS

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A recent California court case is important to the state's homeowner associations because it sets forth new rules of law concerning associations' ability to amend their governing documents.

A California Appellate Court recently upheld a trial court's granting of a petition brought to assist in amending the CC&Rs (covenants, conditions and restrictions) and bylaws of a common interest development. On January 4, 2008, the Fourth District Court of Appeal rendered a decision affirming the trial court's decision. In summary:

- The Fourth La Costa Condominium Owners Association ("Association") sought to restate its 1969 CC&Rs and bylaws. Both documents required approval of 75 percent of the voting power of the Association.
- Despite repeated efforts to get owners' approval of the restated documents, the Association did not obtain approval of 75 percent of the voting power for either document. However, the Association did obtain approval from a majority of the total voting power. Thus, the Association obtained approval of a majority of the voting power, but not the "supermajority" requirement.
- Two California statutes, *Civil Code* Section 1356 and *Corporations Code* Section 7515, assisted in the Association's cause. California *Civil Code* Section 1356 provides a unique procedure designed to assist in amending the governing documents of a common interest development. Under this statute, associations or owners can file a "petition" asking the Superior Court to reduce the percentage of affirmative votes required to amend the CC&Rs when the CC&Rs require that a "supermajority" approve the amendment.
- In February, 2006, the Association filed a petition ("Petition") under California Civil Code Section 1356 asking that the court reduce the percentage of votes necessary to approve the First Restated CC&Rs. In July, 2006, the Association filed a supplemental Petition under Corporations Code Section 7515 asking that the First Restated Bylaws be approved.
- A Fourth La Costa homeowner filed objections to the Petitions.

- After briefing and oral argument, the trial court granted the Petitions on August 21, 2006. The homeowner then filed an appeal.
- The case was decided based on the trial court record, the homeowner's appellate brief, and oral argument. The Appellate Court affirmed the ruling of the trial court's decision to grant the Petitions.

The Appellate Court's decision contains significant holdings for California's common interest developments. Of note, the Appellate Court set forth the standard of review for both trial and appellate courts when ruling on petitions brought under *Civil Code* Section 1356. The case upheld the Association's voting procedures and its method of obtaining consent of the holders of mortgages. The Court also refused to enforce an amendment provision that, by its own terms, is unable to be amended.

This decision also addresses specific provisions of the governing documents concerning posting of non-commercial signs and leasing restrictions. Furthermore, the Appellate Court provided that similar petitions can be brought under California *Corporations Code* Section 7515 for amendments to the bylaws.

A complete discussion of the case and its rulings can be found at "[Association Prevails In Court of Appeal Decision Upholding Petition To Amend CC&Rs and Bylaws.](#)"

*Laurie S. Poole, Esq. and Laurie F. Masotto, Esq. of Peters & Freedman, LLP, represented the Fourth La Costa Condominium Owners Association in restating the documents and at the trial court proceedings on the petitions filed under California Civil Code Section 1356 and Corporations Code Section 7515. Peters & Freedman, LLP has offices in Encinitas and Palm Desert, California*