

# COMMON Q & A

## regarding CC&R's



### 1. WHAT ARE CC&R'S?

CC&R's, known as Covenants, Conditions, and Restrictions, are legal limits of usage that can be placed on a piece of property being sold. In terms of a homeowner's association, they dictate how the association operates and what rules the owners, tenants, and guests must obey. Unless these rules conflict with federal, state, or local laws, they are legally enforceable.

### 2. HOW ARE THE CC&R'S ENFORCED?

California Law allows that either the association or an owner in a common interest development may file a lawsuit asking the court to enforce the CC&R's. 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.

### 3. WHAT HAPPENS WHEN RULES ARE BROKEN?

If rules are broken, penalties might include fines, forced compliance, or a lawsuit by the association. For example, if an owner attempts to sneak in a large dog into a condominium unit despite a rule specifying a maximum weight for pets, the owner may be forced to get rid of the dog as well as pay fines or face a lawsuit if necessary.

### 4. HOW CAN THE RULES BE CHANGED?

When it comes to the rules, many conflicts can arise and someone may feel that the need for change is necessary. The procedure for changing the rules should be explained in the governing documents. A majority is often necessary for a change, so it can be difficult to change the existing rules, especially if there is poor attendance at homeowner association meetings.

### 5. WHAT ARE THE MOST IMPORTANT PROVISIONS IN THE GOVERNING DOCUMENTS?

Review the association's operating budget and make sure the complex isn't losing money. Ask for copies of any engineering, architectural or structural inspection reports. Pay attention to provisions governing the election of the board members, subleasing and restrictions on remodeling your own unit.

### 6. DO I NEED AN ATTORNEY TO EXPLAIN THE CC&R'S TO ME?

It is wise to seek legal counsel for any questions regarding the governing documents or rules of the association.

#### CC&R's Enforceable... Even If They Are Not In The Deed

In *Citizens for Covenant Compliance vs. Jared A. Anderson*, the California Supreme Court concluded that recorded Covenants, Conditions, and Restrictions (CC&R's) are enforceable even when they aren't mentioned in a purchaser's deed to the property. The California Association of Realtors participated in this case as an amicus curiae.

The defendants, Jared and Anne Anderson, purchased two adjacent parcels of property located in two separate subdivisions. Recorded CC&R's restricting the use of both parcels existed at the time the lots were sold.

The title insurance report for one of the lots mentioned the existence of CC&R's, but they weren't mentioned in either deed. The Andersons planned to operate a winery on the parcels and admitted to keeping even pet llamas on the property in violation of the CC&R's.

The plaintiffs, an unincorporated association and individual landowners representing the two affected subdivisions, filed suit to enforce the CC&R's. After a lengthy discussion of both law and public policy, the California Supreme Court reversed a Court of Appeal judgment and held that the recorded CC&R's provided constructive notice to the Andersons of the prohibited uses of the parcels.

As long as the CC&R's are recorded prior to the execution of a purchase agreement, they are enforceable; even if a misdrafted deed fails to mention them.