

## LAW REVIEW

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### HOA SUPER-MAJORITY VOTE REQUIREMENT REDUCED TO 50 PERCENT

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Many of us live in subdivisions with home owner associations (HOA) and CC&R's, which along with design guidelines, govern the property owners in the subdivision.

Serving on the board of an HOA can be an unrewarding experience, trying to govern the many and still be able to walk around the neighborhood without threat of recall. A reasonable and thoughtful HOA board is a blessing and benefit to any subdivision.

One of the hurdles often faced by an HOA board of directors is member apathy, especially when some votes require a super-majority like a two-thirds vote of approval. A two-thirds vote requirement is not uncommon in CC&R's, yet it is virtually impossible to get two-thirds of the property owners to vote for anything.

It's my experience that if the vote was: "Every property owner in the subdivision shall receive one hundred dollars falling from heaven", Associations would *still* fail to obtain super-majority approval.

#### Two-Thirds Vote Required

Mission Shores is a subdivision in Rancho Mirage governed by the Mission Shores Association.

The Association wanted to keep its members from renting their homes for less than a 30 day period – to prevent short-term rentals and owners managing their homes like mini-hotels.

The Association board proposed an amendment to the CC&R's that: "No short-term rentals or leases of less than 30 days are allowed." The amendment required approval of at least two-thirds of the Association members.

After the ballots were counted, the amendment garnered only 59 percent of the owner vote, it failed. End of story, right? Nope.

#### Petition for Majority Approval

The Association petitioned the superior court under a seldom used section of the Davis-Stirling Common Interest Development Act which governs most subdivisions ("Davis" being former Governor Gray Davis). Under section 1356 of the Davis-Stirling Act, association or subdivision members may petition the court to reduce the requirement to amend the subdivision CC&R's from a super-majority requirement like two-thirds or three-fourths approval to a majority – 50 percent plus one.

And that's what the Mission Shores board did - petition the superior court to reduce the votes required to prohibit short-term rentals - to a majority.

#### Suit

David Pheil and his wife sued to challenge the petition because when they purchased a vacation home in Rancho Mirage there was no such rental limitation and they regularly rented their home for short-term rentals. The Pheils argued that changing the CC&R's after they had purchased was unfair and illegal and

the Association had not technically complied with the requirements of section 1356.

### Section 1356 of Davis-Stirling Act

Under section 1356, the court may, but need not, grant a petition to reduce the CC&R amendment requirement to a majority vote if it finds all of the following: notice was properly given; the (secret) balloting was properly conducted; reasonable efforts were made to permit eligible members to vote; owners having more than 50 percent of the votes voted in favor of the amendment; the amendment is reasonable; within 15 days of the election the tabulated results are communicated to all association members and the amendment does not impair the security interest of any mortgagees.

It is commonly viewed that section 1356 is a safety valve for those situations where the need for a super-majority vote would hamstring the association.

### Court Ruling

The Court of Appeal and the trial court had no trouble approving the Mission Shores Association's petition seeking 50 percent majority to approve the amendment to prevent short-term rentals in the subdivision. The Court's approval in this case retroactively approved the amendment even though it only obtained 59 percent of the owner vote.

Interestingly, attorney's fees are not available to either party in a section 1356 action unless the CC&R's provide otherwise. Those poor attorneys.

I like this case. It follows the law and unties the hands of HOA's burdened with super-majority vote requirements that in practice are difficult to obtain.

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