



Bridle Path Homeowners Association

At the HOA meeting on February 19, 2009, homeowners Linda Pierce and Jim Pantaleo offered letters to the Board, in which Ms. Pierce and Mr. Pantaleo assert that the actions taken by the Board which resulted in the \$6.00 per month dues increase were improper.

*In support of their assertions, these homeowners refer to sections of Civil Code Section 1350 and following, commonly referred to as the **Davis-Stirling Common Interest Development Act**.*

At the meeting, Michael Anatole, BP-HOA Vice President, stated that he would respond to these concerns in writing. The response follows:

Ms. Pierce and Mr. Pantaleo both asserted that the dues increase of \$6.00 per month, enacted by the Board at an emergency meeting, was improper. Ms. Pierce cited to the HOA Bylaws, Article V § 2; Article IV § 9; and Civil Code § 1363.05H.

Mr. Pantaleo cites to Article IV, § 8(a) of the bylaws; Civil Code § 1363.05h; Article V, Section 2; Civil Code § 1366.

Response:

1. The homeowners' references to Article IV §§ 8(a) and 9 of the Bylaws are irrelevant, because those sections refers to "special meetings," and not "emergency meetings," which are different. Even if they were relevant, they are superseded by Davis Stirling §§ 1363.05(i)(4), which relates to "emergency meetings.
2. Civil Code §1363H is probably an incorrect citation, because it does not deal with the instant facts at all.
3. Mr. Pantaleo asserts that the emergency meeting convened by the new Board to put its new budget in place was not an emergency. However, Civil Code § 1363.05(i)(4)(i) states, in pertinent part:

“An emergency situation exists if there are circumstances that could not have been reasonably foreseen by the board, that require immediate attention and possible action by the board, and that, of necessity, make it impracticable to provide notice.”

Civil Code § 1365 states:

“Notwithstanding a contrary provision in the governing documents, a copy of the operating budget shall be annually distributed not less than 30 days nor more than 90 days prior to the beginning of the association's fiscal year.”



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The Association fiscal year begins on March 1. The new Board was elected on January 19th. Per Civil Code § 1365, the new budget *had* to be in the mail by January 28th. The Board had to create the budget, and all 4-5 days for printing, and processing by ABM, prior to mailing.

This was insufficient time to notice any sort of a meeting. This made it an emergency.

4. Mr. Pantaleo also asserts that the Board erred for not providing notice of the emergency meeting. No such notice is required, as set forth in Civil Code § 1363(f), which states in pertinent part:

“... members shall be given notice of the time and place of a meeting as defined in subdivision (j), **except for an emergency meeting**, at least four days prior to the meeting (emphasis added).”

5. The homeowners' reference to Article V § 2 of the CC&R's is irrelevant. That Article requires that notice of a dues increase must be given 60 days before January of the year when an increase is to take place.

However, the article is superseded by Civil Code §§ 1365-1366.

As above, an emergency meeting was called to meet the requirements of Civil Code § 1365, and the Board *did* meet the requirement. Therefore, the provisions of Civil Code § 1366 come into play, to wit (in pertinent part):

“(a) Except as provided in this section, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this title. However, annual increases in regular assessments for any fiscal year, as authorized by subdivision (b), shall not be imposed unless the board has complied with subdivision (a) of Section 1365 with respect to that fiscal year. . .”

(b) Notwithstanding more restrictive limitations placed on the board by the governing documents, the board of directors may not impose a regular assessment that is more than 20 percent greater than the regular assessment for the association's preceding fiscal year. . .”

At the last open meeting, Mr. Pantaleo stated that the prior Board increased the dues in exactly this same way, and that he “would be the first to admit that the prior Board acted improperly with regard to dues increase.”

Therefore, after considerable research and consultation with counsel, it is the opinion of this Board that both the prior and the current Boards have acted properly, with regard to the dues increase, under California Law, and as it pertains to our bylaws and CC&R's.