



# KDV San Francisco Real Estate Law FAQs (frequently asked questions)

## Q&As for Condo/HOA Disputes

9.2019

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***At Kaufman, Dolowich & Voluck, our San Francisco Bay Area real estate attorneys represent Condo Owners and HOA's in all types of disputes.***

**What laws apply to condos/HOA's?**

The Davis-Stirling Act (codified in the California Civil Code §§ 4000 *et seq*) is the primary statute that regulates residential homeowner associations and the condominiums that comprise them. Other applicable statutes include the California Corporations Code and the California Business and Professions Code.

**Are there documents that govern condos/HOA's, too?**

Yes. All HOA's are governed by a Declaration or CC&Rs, and a corresponding Condominium Map or Plan. HOA's may also have Bylaws and House Rules. In the case of an incorporated HOA, the HOA must also have Articles of Incorporation. Collectively, these documents comprise the Governing Documents for the HOA.

**What happens if the Governing Documents conflict with the law?**

To the extent that the Governing Documents are inconsistent with the law, the law prevails. But the law serves only as baseline rules for HOA's and in some cases, may expressly state that the Governing Documents prevail. For example, the Davis-Stirling Act requires a minimum of 4 days' notice of a HOA meeting, but expressly states that the Governing Documents may require a longer notice period. The Davis-Stirling Act also provides that HOA's are required to repair and maintain common areas, including exclusive use common areas, "unless otherwise provided in the declaration of a common interest development..."

**Who has the right to enforce the law and the Governing Documents against the HOA or HOA members?**

Each member of the HOA has the right to enforce the Governing Documents and applicable law against the HOA and other members of the HOA. Similarly, the HOA has the right, if not the requirement to, enforce the law and the Governing Documents against a violating member. The standard procedures for enforcement and disputes in general are discussed below.

**What are the procedures for enforcement of the law and the Governing Documents against the HOA or HOA members?**

In most cases, the law requires the HOA and HOA members participate in at least one form of alternative dispute resolution (ADR) before filing a formal enforcement lawsuit. ADR is typically mediation or arbitration. Some Governing Documents may also first require internal dispute resolution (IDR), which is an even less formal procedure than mediation or arbitration for resolving issues, typically involving an in-person meeting between the parties. The Governing Documents may also prohibit the filing of a lawsuit altogether, requiring that enforcement actions be decided in an arbitration and not in court. However, by law, HOA's and its members are exempt from IDR and ADR requirements in specified situations, such as when a party is seeking emergency, injunctive, or declaratory relief; the matter is a small claims action; or in foreclosure proceedings against a delinquent homeowner.

**Can a party recover attorney's fees and costs in an enforcement action?**

Yes, by law, a party who prevails in an enforcement action is entitled to recover his/her/its reasonable attorney's fees and costs. The prevailing party must have complied with the statutory ADR requirements or satisfied a statutory exception in order to recover fees and costs.

**What is the statute of limitations for an enforcement action?**

Under California Code of Civil Procedure § 336, a party has up to five years to bring an enforcement action. In some cases, the issue of waiver or unreasonable delay may affect the ability to enforce a provision of the Governing Documents.

**What are common issues for enforcement?**

Common issues include repairs/maintenance of common areas, use/misuse of common areas, improvements and alterations of the building, inadequate or nonexistent reserves, leasing and short-term rentals, pets, and noise/nuisance.

**Is a foreclosure proceeding against a delinquent homeowner the same as an enforcement action?**

No. Only HOA's have the right to pursue collect assessments from a homeowner, and therefore have the sole right to pursue foreclosure against the homeowner for failure to pay HOA dues. Another HOA member cannot pursue the foreclosure. The foreclosure proceeding is governed by the California Civil Code and the HOA must strictly comply with various notice requirements and time periods set forth under law in order to complete the foreclosure. The law also requires the HOA allow the delinquent homeowner the right to IDR and/or ADR, but the delinquent homeowner must first deposit the protested amount, including all fines, penalties, late fees, and interest.

**What makes Jeanne Grove at KDV unique?**



**Jeanne Grove** has been handling real property disputes for the past 15 years, including TIC and HOA/condo matters. Jeanne has extensive experience taking cases to trial and arbitration for TIC and condo/HOA disputes, and is also adept at resolving conflicts between parties. She focuses on finding cost-effective solutions for owners in a dispute, and can also implement strategies to leverage the best outcomes for clients in litigation. At KDV Law, our real estate practice group routinely handles cutting-edge matters for clients involved in a range of complex real estate issues, including those that involve a TIC or condo.

We engage closely with our clients to ensure that we have a comprehensive understanding of their needs, goals and limitations. We form collaborative relationships and maintain a transparent communication style, thus giving our clients the opportunity to discuss their concerns openly with our team. Our demonstrated success in achieving our clients' objectives gives us a substantial advantage over the competition.

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