

## **Representing Modest Means Homeowners in Association Disputes: Key California Statutes and Consumer Protections**

**San Francisco, Live Webcast and [www.pli.edu](http://www.pli.edu),\* January 17, 2018**

### **Why You Should Attend**

Though created by state and local governments, homeowner associations are not regulated by either entity once the developer turns control of the subdivision over to the homeowner board. Nor does a single regulatory agency enforce the consumer rights of buyers who purchase association homes. Enforcement of consumer rights – to the extent they even exist – is achieved almost solely through private action.

About 14 million Californians now live in the state's 52,000 townhomes, co-ops, condos, and planned subdivisions managed by associations. The majority are homeowners of modest means. When disputes arise – over assessment collection, for example – the association corporation typically has an attorney, while the modest means homeowner does not. Representing modest means homeowners in association disputes is a field with enormous demand but few practitioners.

### **What You Will Learn**

This training will introduce the new practitioner to statutes governing consumer rights in three key areas: assessment collection, transparency in association financial operations, and election statutes (used not only to elect board directors, but to set certain assessments.) The training will also benefit practitioners, who have represented homeowners in the past, but want to deepen their understanding of the complex statutes governing associations. The goal of the training is to provide participants with tools for representing modest means homeowners.

### **Who Should Attend**

Consumer protection and real estate attorneys interested in expanding their practice to include modest means homeowners; lawyers who would like to extend their practices into the growing field of homeowner association law; elder law attorneys, who want to learn how to assist senior clients with homeowner association issues, particularly foreclosure by the association; pro bono attorneys, legal services attorneys, self-help attorneys, limited scope representation attorneys, small claims advisors; lawyers who want to

test their aptitude for association law by first expanding their practice into small claims assistance.<sup>1</sup>

## **AGENDA**

9:00

### **Opening Remarks**

***Marjorie Murray***

9:05

### **Consumer Rights in California Common Interest Developments: Transparency in Association Records**

Policy and legal framework for discussion: quasi-governmental nature of common interest developments (CIDs); its hybrid legal framework and powers; fiscal reasons for the growth of California CIDs; owner demographics; lack of regulation of CIDs: enforcement of homeowner consumer rights through private action in the courts; the infrastructure of the association industry; hierarchy of governing documents.

### **The Homeowner's Right to Transparency**

The homeowner's longstanding right to association records; the need for transparency; legislation (AB1098/2005) modeled on the Public Records Act; defines "records", the process for retrieving them, permissible redactions and changes; resistance of the association industry to transparency; recourse for the homeowner through small claims court; relief that the court might order, including recovery of costs. Recent cases brought by homeowners to county district attorneys and U.S. Attorneys.

***Commissioner Dave Jones, Marjorie Murray***

10:05

### **Limits on Assessment Collection and the Association's Power to Foreclose**

Types of assessments the association can levy; analyzing whether the assessment itself is valid; notice and disclosure issues; key actors in assessment collection; collection tools; statutory limits on the association's power to set assessments; the homeowner's right to challenge the association's accounting of the debt; measuring assessment collection practices against state and federal Fair Debt Collection statutes and the

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<sup>1</sup> Existing California law lets homeowners bring specific homeowner association disputes into small claims court. However, given the complexity of the law, homeowners need guidance in preparing the pleadings correctly.

Business and Professions Code. Recent class actions, key California Appellate rulings, and a 2017 9<sup>th</sup> Circuit opinion on association assessment collection.

***Justin T. Berger, Esq.***

11:05 Networking Break

11:15

**Fairness and Integrity in Association Elections**

Role of elections in CIDs; events governed by election statutes; public elections and CID elections compared; potential defendants in an elections case; Election Operating Rules: formation and adoption; quorum issues and cumulative voting; ballots v. proxies; role of the Inspector of Elections; challenging election procedures and outcomes in small claims court; remedies the court might order; discussion of *Wittenberg v Beachwalk HOA* (2013) 217 Cal. App. 41 654.; Q&A with the expert faculty.

***Eric M. Schiffer, Esq.***

12:30 Adjourn

**Faculty:**

**Chair:**

**Marjorie Murray**

President

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**Justin T. Berger, Esq.**

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**Program Attorney: Christina Thompson**