



WEEKLY LAW RESUME™

Issue By: JAMES F. REGAN

April 19, 2012

Homeowners Associations – Modification of Supermajority Voting Requirement

Quail Lakes Owners Association v. Vladimir F. Kozina

Court of Appeal, Third District (March 8, 2012)

Many homeowners associations were founded with rules that require a “supermajority” (typically more than 2/3 of the membership) to make substantive changes to the governing documents. That is often difficult to achieve, given voter apathy. This case considered the conditions by which an Association or any member may seek to have the supermajority voting restriction modified.

The Quail Lakes Owners Association (“Association”) had attempted to make various amendments to its “Covenants, Conditions and Restrictions” or CC&Rs. There were 1,958 possible membership votes, and of those, 1,409 votes were cast related to the proposed amendments. Of the votes cast, 1,209 were cast in favor of the new CC&Rs. Although this constituted a majority, the original CC&Rs had a provision requiring a supermajority for the changes sought in the new governing documents. Hence, the Association was not able to make the proposed changes.

Civil Code Section 1356 allows for a homeowners association, or any member, to petition the court for a reduction in the percentage of affirmative votes required to amend the CC&Rs, when faced with a supermajority provision. That section states that the court “may, but need not, grant the petition if it finds that proper notice was given (not less than 15 days), the balloting was properly conducted, reasonable efforts were made to permit eligible members to

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vote, more than 50% of the eligible owners voted in favor of the amendment, the amendment is reasonable, and is “not improper.”

The Association filed a petition pursuant to Civil Code Section 1356, claiming an inability to make prudent changes to its CC&Rs despite majority support. The trial court set a hearing date of September 2, 2010, and ordered that notice be given to the homeowners on or before August 13, 2010, with any written opposition to be filed by August 17, 2010. Only one objection was filed to the petition, by Vladimir Kozina, who argued that there was insufficient notice before the hearing, including with his objection declarations from three homeowners stating they had not received notice in time to review the documents and consult counsel. Following the hearing, the trial court granted the amended petition.

Kozina appealed the order based both on claims of violation of due process because of the alleged shortened notice period, as well as on claims that the trial court abused its discretion in granting the Section 1356 Petition, since it failed to make proper factual findings and failed to find proper notice had been given to all entities entitled to notice.

As to the violation of due process claim, the Court of Appeal ruled that Kozina’s original objection had been considered by the court, although he chose at that time to address only the notice issue. He had not shown that he was prejudiced by the time limit set in the briefing order. In addition, although Kozen argued that other homeowners might have been prejudiced, the Court of Appeal held he lacked standing to assert their due process rights.

As to the Section 1356 Petition, the Appellate Court ruled that the lower Court findings were sufficient. The Court of Appeal agreed with Kozen that the lower Court’s initial ruling did not explicitly recite the six requirements under Civil Code Section 1356 as having been met. However, it did direct that a final order be prepared. The final order (on which the appeal was based) found that all six requirements had been met, including that “the Association has given not less than 15 days written notice of the Court hearing to all Association members and to all others entitled to such notice.”

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The Court of Appeal also noted that the requirements for granting a section 1356 petition were detailed in the Association's moving papers, and the trial court's final order also referenced section 1356 and deemed all necessary requirements met. Thus, the record adequately showed that the trial court was aware of the requirements of exercising its discretion under section 1356. Further, there was nothing in section 1356 that required the court to recite the evidence pertaining to each sub-finding under the statute.

The Court of Appeal upheld the trial court's granting of the petition for amendment to the CC&Rs by less than a supermajority.

COMMENT

This ruling reiterates that a homeowners association can modify its governing laws, but only after the Court finds that all six requirements under Civil Code section 1356 have been met, including proper notice, and that the petition is otherwise "reasonable" and "not improper."

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/C066835.PDF](http://www.courtinfo.ca.gov/opinions/documents/C066835.pdf)

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