KRIGER & SCHUBER APC
COMMUNITY ASSOCIATION LAW

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News

Appellate Decision Addresses What Constitutes a "Claim" for Claims-Made Insurance Policies

By Steven Banks, Esq.

Community associations frequently receive homeowner requests and demands regarding issues involving their homes, neighbors, or the community. HOAs must consider whether such claims should be submitted to their insurers. Some insurance policies are "claims made" policies, which limit potential coverage to "claims" made during the policy period. In the recent case of *Del Mar Woods v. Philadelphia Indemnity Insurance Company*, the U.S. District Court for the Southern District of California, applying California law, addressed whether an owner email sent to an insured HOA was a "claim" within the policy's meaning.

Philadelphia Indemnity Insurance Company ("Philadelphia") issued the HOA a "claims made" policy covering March 25, 2022, to March 25, 2023. It defined a "claim" as "a written demand for monetary or non-monetary relief against an Insured." However, it didn't define what constituted a "demand" or "non-monetary relief." Before the policy period began, the HOA received an email from owners contending that unauthorized hard surface flooring had been installed in the condo above theirs. The complaining owners communicated their expectation that the HOA's board would "promptly resolve" the flooring violation and enforce their rights under the governing documents, but they didn't specify any governing documents provisions, demand any remedy, or threaten litigation. The HOA didn't notify Philadelphia of the email.

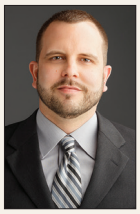
Subsequent communications between the complaining owners and the HOA followed, culminating in a "demand" letter from the owners' attorney, sent during the Philadelphia policy period, demanding that the HOA's board "undertake immediate action to enforce the CC&Rs and Rules and Regulations" against the upstairs neighbors. The HOA tendered the claim to Philadelphia the next day, but Philadelphia denied coverage, contending that the claim was first made before the policy incepted, when the owners first emailed the HOA about the flooring issue. When the owners later sued the HOA, Philadelphia refused to defend it in the lawsuit for the same reason.

The Court of Appeal had to decide if the owners' first email was a "claim" under the policy, which would preclude coverage. The appellate court found that it was not a "claim" under the policy, but that the attorney letter's explicit demand letter, sent during the policy period, was indeed a claim. The Court of Appeal found no case law supporting the insurer's contention that a "demand" was made absent a threat of litigation or notice of intent to sue. A "demand," the court noted, is typically "a request for something under an assertion of right or an insistence on some course of action," and the owners' original email didn't meet that general definition. While the owners' email communicated their expectation that the HOA would act, it didn't identify a specific process or regulation entitling them to relief, didn't insist on a monetary or non-monetary remedy, and didn't contain a threat to sue the HOA if the issue wasn't resolved. It also didn't come from an attorney.

Take-Home Lesson: The HOA doesn't have to notify its insurer of every owner request or complaint. The HOA should review its insurance policy's definitions regarding claims and reporting. The HOA must carefully evaluate owner communications that may constitute a claim under the policy. Does the "demand" cite specific sections of the governing documents it claims were or are being violated? Does it clearly and specifically demand monetary or other relief? Does it threaten litigation or indicate an intent to sue if the issue is not resolved? Was it sent by an attorney? The more of these questions that are answered "yes," the more likely the HOA should notify its insurer of the demand to avoid a defense that the claim was not made within the policy period. ■

In This Issue:

Federal Court Affirms That Tenants Have No Right to Vote in Association Elections



By Tyler Kerns, Esq.

The Civil Code includes extensive provisions pertaining to voting by "members" of community associations. Civil Code §4160 defines a "member" as "an owner" of a property in the common interest development. There are no voting rights afforded to tenants (i.e., renters) under the applicable statutory provisions. In addition, tenants are not eligible to serve on the board of directors, since Civil Code §5105(b) requires associations to disqualify a candidate for not being a member of the association and provides that a director who ceases to be a member shall be disqualified from continuing to serve as a director. Accordingly, tenants cannot vote in association elections or serve on the board of directors.

A tenant who began renting a home in 2022 in the Oakmont Village Association ("Association") in Santa Rosa, CA was denied a ballot to vote in the Association's annual election of directors in 2022, 2023, 2024, and 2025. The Association's reason for denying the tenant a ballot was that the tenant was not an owner. The tenant also applied to run as a candidate for election to the Association's board of directors, but she was disqualified as a candidate for the same reason of not being an owner.

The tenant sued the Association in federal court for not allowing her to vote in the Association's elections. Interestingly, her lawsuit, in which she represented herself, was not based on any purported rights under the Davis-Stirling Common Interest Development Act, since, as referenced above, the Act affords no voting rights to tenants. Instead, she alleged that prohibiting her to vote in the Association's elections violated the Civil Rights Act of 1964 as "socio-economic discrimination" based on her status as a renter rather than an owner. She argued that a "landownership requirement" to participate in elections was "a hold over from slavery times" and "needs to be abolished." She sought seven million dollars in damages.

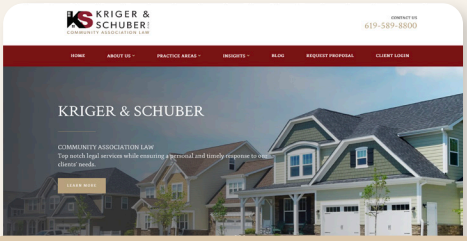
In reviewing the tenant plaintiff's complaint, the Court acknowledged that The Civil Rights Act of 1964 prohibits "unequal application of voter registration requirements" and "arbitrary application of voter qualification standards" in federal elections and that "the Voting Rights Act of 1965 expanded its reach to state elections as well." However, the Court found no authority applying those protections to elections within a private organization like an HOA. The Court concluded that the plaintiff's complaint was insufficient to state a claim and that its deficiencies could not be cured by any amendment to the complaint. The Court dismissed the plaintiff's case with prejudice. The Court's decision in the case, *Daniels v. Oakmont Village Association*, was not published, so the decision cannot be cited as binding authority, but it can still provide useful insight as to how courts might rule in similar cases.

It was already known that tenants had no statutory right to vote in association elections and were not eligible to run as candidates for election to the board. The *Daniels v. Oakmont Village Association* case affirms that limiting voting rights and candidate eligibility to owners is not legally discriminatory against renters. ■

What's happening at KRIGER & SCHUBER APC COMMUNITY ASSOCIATION LAW

As Thanksgiving approaches, we wanted to take a moment to express our gratitude for your continued partnership and support. Working with you has been a genuine pleasure, and we truly appreciate the trust you have placed in us.

We wish you and your loved ones a wonderful Thanksgiving filled with good food, laughter, and great memories. Thank you for being such an important part of our journey!



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Case Summary of Calusian v. Alpine Meadows Homeowners Association

By Sam Roth, Esq.

In *Calusian v. Alpine Meadows Homeowners Association*, the California Court of Appeal reversed a trial court's summary judgment in favor of a homeowners association. While this case was not published, it provides insight into how courts may rule in the future regarding an association's duty of care to non-member residents in common areas.

In this case, Kevin Tahmasebi died in a garage fire at a condominium he was renting with his family in the Alpine Meadows gated community. The property was owned by Gohar Amirkhanyan, a member of Alpine Meadows Homeowners Association. Kevin's wife, Carmen Calusian, and son, Calvin Tahmasebi, sued both Amirkhanyan (who ultimately settled) and Alpine Meadows for negligence, premises liability, and wrongful death.

Alpine Meadows moved for summary judgment on two grounds: (1) it owed no duty to non-members like the plaintiffs, and (2) it had no notice of any dangerous conditions. The trial court granted the motion, relying heavily on the published 2009 case of *Martin v. Bridgeport Community Assn.*, which held that non-members cannot enforce CC&Rs or Davis-Stirling Act provisions.

The appellate court reversed, holding that while non-members cannot enforce CC&Rs, homeowners associations still owe a general common law duty of care to all persons in areas they control and maintain. The court distinguished this case from *Martin*, noting that the plaintiffs' claims were based on general negligence principles, not contractual duties arising from CC&Rs or association membership.

While the association showed that tenants and the unit owner never complained about problems, it provided no evidence that it lacked actual or constructive notice from any other sources about dangerous conditions in the common areas. As such, the appellate court ruled that Alpine Meadows failed to meet its summary judgment burden regarding notice.

The court applied the factors from the 1968 case of *Rowland v. Christian*, emphasizing foreseeability considerations and policy concerns. It rejected the idea that common areas should be "no man's land" where non-owners have no remedy for injuries caused by a lack of ordinary care. The court emphasized that Alpine Meadows functions as the practical landlord of those spaces because it is the entity "solely responsible for maintaining" common areas, and therefore, it owes the same duty of care as any property controller.

The court noted that foreseeability and policy considerations support holding associations liable for injuries in common areas regardless of the injured party's membership status, as associations are best positioned to maintain these areas safely and typically carry insurance for such risks.

This decision expands potential liability for homeowners associations but aligns with fundamental premises liability principles. It reinforces that associations cannot use membership requirements as shields against basic negligence claims arising from their control and maintenance of common areas. The ruling emphasizes substance over form. Namely, those who control property have a duty to maintain it safely for all lawful users, regardless of contractual relationships.

The decision serves as a reminder that effective risk management requires proactive maintenance, comprehensive documentation, and recognition that legal duties often extend beyond contractual obligations to encompass fundamental safety responsibilities.

Key Takeaways for Associations and Community Managers

Associations should know that they owe a duty of ordinary care to all people lawfully in the common areas. This includes tenants, guests, visitors, contractors, etc. Membership status does not limit this fundamental responsibility.

As such, associations should implement regular inspection protocols for common area infrastructure, particularly electrical and plumbing systems, and maintain comprehensive records of all maintenance, inspections, and safety measures in common areas. A lack of complaints from residents doesn't necessarily establish a lack of notice from other sources.

While CC&Rs cannot eliminate common law duties, clearly delineating maintenance responsibilities between the association and unit owners remains important for allocating these responsibilities and related costs. Additionally, associations should also review their insurance coverage to ensure adequate protection for claims by non-members injured in common areas.

Managers should assist the Association in maintaining detailed records of all safety inspections, maintenance activities, and any conditions that could pose risks. This documentation is crucial for defending against claims and establishing reasonable care.

Managers should also establish multiple channels for receiving notice of potential problems beyond just owner/tenant complaints, including regular vendor reports, inspection findings, and their own observations. One idea to help with this is to request that contractors and service providers report all observed conditions that could create safety hazards, not just items specifically contracted for repair.

When in doubt about maintenance responsibilities or potential liability issues, please make sure to consult with association counsel rather than relying solely on CC&R interpretation. ■

The Case of the Underground Well

By Bradley Schuber, Esq.

In a recent case titled Doug Ridley, et al., v. Rancho Palma Grande Homeowners Association, et al., 2025 WL 2775672, a California court found that a homeowners association failed to conduct a reasonable investigation into the existence of an underground well and acted in bad faith. As a result, the plaintiffs in this case received a $1.8 million judgment for water damage, lost rent, emotional distress, and punitive damages.

Doug Ridley and Sherry Shen owned and rented a condominium unit (the "Unit") in Santa Clara County. The Unit was part of a common interest development with over 100 units and managed by the Rancho Palma Grande Homeowners Association ("HOA"). Under the CC&Rs, the HOA was responsible for managing, operating, maintaining, caring for, and preserving the common areas of the Rancho Palma Grande development.

In April 2018, the tenants living in the Unit reported flooding in the crawlspace. Since the crawlspace was technically part of the common area, the report of flooding was communicated to the HOA, which was responsible for investigating the source of the water intrusion and fixing it in accordance with the CC&Rs.

Preliminary investigations by the HOA into the cause of the flooding in the crawlspace strongly indicated that the water was coming

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from an underground well. For example, in May 2018, the HOA, through its retained counsel, contacted the City and the Santa Clara Valley Water District to inquire about potential funding for remediation of the water. In response, the Water District reported that it believed that the water was from "an unknown, unregistered well." The Water District provided the HOA with a map indicating the likely location of an abandoned but undestroyed well from a previously existing farm on the land. Additionally, three drilling contractors confirmed that there was likely an undestroyed well underneath or near the Unit.

However, the HOA chose to dismiss these initial findings. Instead, they sought an opinion from a hydrologist who, without prior knowledge of the well's existence, recommended installing a French drain to remove water from beneath the crawlspace. The cost of installing the French drain was significantly lower than searching for and repairing an underground well. Ultimately, the French drain proved ineffective, resulting in mold and termite infestations in the crawlspace, which made the unit uninhabitable. In January 2020, workers attempting to fill a sinkhole in the crawlspace accidentally uncovered a well cover beneath the living room of the unit. Ultimately,

this led to the discovery of an abandoned well over 400 feet deep.

In rendering its decision and holding the HOA liable, the court found that the HOA had ignored several consistent recommendations regarding the likelihood of an underground well existing, resulting in an incomplete investigation and a failure to properly identify, address, and make meaningful repairs for over a year and a half. The court held that the HOA was not protected by the business judgment rule or judicial deference, as it had failed to conduct a reasonable investigation and had not acted in good faith.

The HOA appealed the case to the California Court of Appeals, Sixth Appellate District; however, it upheld the trial court's decision that the HOA breached its duties under the CC&Rs by failing to reasonably investigate and promptly repair the damage in the common area. The appellate court also upheld the lower court's findings that the HOA's actions amounted to gross negligence. In addition to the $1.8 million judgment noted above, the homeowners were also awarded over $6 million in legal fees and costs. In making its decision about fees and costs, the trial court quoted from a California appellate decision: "An award of attorneys' fees is not a gift . . . it is just compensation for expenses actually incurred in vindicating the public right."

This case should serve as a reminder that California homeowner associations must conduct thorough investigations into repairs. It also highlights that the protections provided by the business judgment rule and judicial deference do not apply if a finding of bad faith is made. While board members can and should rely on expert opinions to fulfill their duty of care, they must not ignore, misrepresent, or conceal important information related to the maintenance and repair obligations of a homeowner association. ■