KRIGER & SCHUBER APC
COMMUNITY ASSOCIATION LAW
News
First Quarter · 2026

Court of Appeal Confirms Broad Protection of Community Association Board Decisions by Business Judgment Rule and Judicial Deference Doctrine

By Steven Banks, Esq.

The Court of Appeal (First District, Division 2), in the case of *Eng v. Opperman* (2025) 117 Cal.App.5th 354, has upheld the broad protection of good faith decisions made by community associations through their volunteer directors based on the business judgment rule and the California Supreme Court decision in *Lamden v. La Jolla Shores Clubdominium Homeowners Assn.* (1999) 21 Cal.4th 249.

Generally, the case involved the denial of an architectural application for an accessory dwelling unit ("ADU") and a new garage. The applicants (the Oppermans) were members of the Portola Valley Ranch Association. They alleged that the Association's board of directors ("Board") violated State law and "intentionally ignored" procedural and substantive provisions of the HOA's governing documents in denying their application.

The Association moved for summary judgment, based in part on the HOA Board President's declaration. The motion argued that the Board had the authority to review the Oppermans' application and was protected from liability by the business judgment rule. The trial court granted the HOA's motion, and the Oppermans appealed.

The Oppermans contended that the CC&Rs authorized the Board to act in lieu of a design committee only if no design committee existed. A design committee did exist, but it had deferred to the Board on the application. The Oppermans argued that the Board could only appoint a new committee or allow the application to be approved by operation of law. The court of appeal found this to be an unreasonable interpretation of the CC&Rs that would leave the HOA paralyzed to act on any application. Instead, it found the CC&Rs empowered the Board to review and overrule the design committee.

The Oppermans also argued that the HOA was not protected by *Lamden's* judicial deference rule, claiming that it applies only to board maintenance decisions. The court of appeal disagreed, citing prior cases applying the rule to an HOA board's maintenance and repair decisions, selection of the appropriate means to remedy CC&R violations, designation of storage space in a common area, adoption of short-term rental rules, and approval or rejection of homeowner improvement plans. It concluded that *Lamden's* judicial deference standard is broadly read and has been expanded to apply to any good faith board decision made to further the purpose of the development that is consistent with the governing documents and public policy.

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The appellate court observed that the business judgment rule on which *Lamden* was modeled sets up a presumption that directors' decisions are made in good faith and are based on sound business judgment. That presumption can be rebutted only by facts which, if proven, would establish fraud, bad faith, overreaching, or an unreasonable failure to investigate material facts. The Court of Appeal agreed with the trial court's observation that the undisputed evidence failed to establish anything other than a disagreement between the parties that did not rise to the level of bad faith. Instead, the record indicated that the HOA acted in good faith, since before denying the application, it asked the Oppermans to split the application (they twice refused); and second, despite being in the middle of the lawsuit, the Association approved the Opperman's later ADU application.

Take-Home Lesson:

Lamden's rule of judicial deference is not limited to maintenance decisions. Like the analogous business judgment rule, it applies to any good-faith board decision made to further a development's purpose, consistent with the governing documents and public policy. As the court of appeal in *Eng v. Opperman* noted, "common interest developments are best operated by the board of directors, not the courts." ■

When Owners Push Back: What HOA Boards Can Learn from Cocoa AJ Holdings, LLC v. Schneider

By Samuel Roth, Esq.

A recent California appellate decision offers important lessons for HOA boards and managers about the limits of using litigation to respond to vocal or disruptive homeowners, particularly when anti-SLAPP protections come into play. "SLAPP" stands for Strategic Lawsuit Against Public Participation, and anti-SLAPP legal protections are intended to prevent the use of lawsuits to silence people from speaking on matters of public interest.

Cocoa AJ Holdings, LLC (Cocoa) was the developer of GS Heritage Place, a mixed condominium development in San Francisco's Ghirardelli Square that included both whole residential units and fractional (timeshare) units. Stephen Schneider owned a timeshare interest in one of the fractional units. In 2021, Cocoa decided to sell its 19 remaining unsold units as whole units rather than fractional units, a change that required amending the community's CC&Rs. Schneider objected and launched what Cocoa described as a "multiyear campaign" to block the amendments. His efforts included contacting other fractional owners, demanding negotiations with the board, making statements Cocoa considered false or misleading, organizing an unofficial owners' group, soliciting litigation funding, and filing multiple lawsuits.

The parties had previously settled a 2018 class action lawsuit, and that settlement included a general release of claims and a nondisparagement clause in which Schneider agreed not to make false or disparaging statements about Cocoa and to cooperate constructively in future dealings. In 2022, Cocoa filed a cross-complaint against Schneider alleging intentional interference with prospective economic advantage, breach of the settlement agreement, unjust enrichment, and defamation. Schneider responded with a special motion to strike under California's anti-SLAPP statute.

The appellate court affirmed the trial court's order granting Schneider's anti-SLAPP motion and striking all four of Cocoa's claims. The court's reasoning came down to two key findings. First, Schneider's conduct arose from protected activity. His campaigning against the amendments to the CC&Rs, which included statements to over 150 other fractional owners about the board's actions, was a matter of public interest because it affected the financial interests of the entire community. His lawsuits and communications in anticipation of the litigation were also protected petitioning activity.

Second, Cocoa failed to show a probability of prevailing on any of its claims. On the interference claim, Cocoa could not demonstrate it had an actual economic relationship with specific buyers at the time of Schneider's conduct or that his actions were independently wrongful. On the defamation claim, the two communications Cocoa pointed to were either not provably false or were protected by the litigation privilege. On breach of contract claim, the court found the settlement agreement's nondisparagement clause was limited to matters connected to the original class action, not future disputes about amendments to CC&Rs. And on the unjust enrichment claim, Cocoa could not show Schneider unjustly retained any benefit as it failed to demonstrate a probability of success on its other claims.

This case is a reminder that homeowner speech and advocacy—even when aggressive or disruptive—often carries significant legal protection, and HOA boards and managers should keep several practical lessons in mind.

First, boards should understand anti-SLAPP risks before filing suit. When an owner's conduct involves speaking out about community governance, organizing other owners, or filing lawsuits, those activities are likely protected under anti-SLAPP law. As such, a cross-complaint or lawsuit targeting that conduct runs the risk of being struck, and if that happens the board may be ordered to pay the owner's attorney's fees.

Second, nondisparagement clauses have limits. Settlement agreements are interpreted to cover the matters the parties intended to resolve at the time, and a nondisparagement clause from an earlier dispute may not extend to entirely new controversies that arise later. Boards should not assume a prior settlement gives them broad authority to silence an owner on future issues.

Third, owner criticism of board actions can be a matter of public interest. When a board decision affects the finances or living conditions of the broader ownership community, owners who speak out (even loudly) are engaging in protected activity. This is true even if the owner acts in an unofficial capacity or organizes an informal group.

Fourth, to prevail on claims like intentional interference, the wrongful conduct must go beyond the speech or petitioning itself. Boards should work with counsel to identify whether an owner's behavior crosses a line defined by statute, regulation, or other legal standard before pursuing legal action. And finally, before responding to a vocal owner with litigation or legal threats, boards should consult counsel early and assess whether the conduct at issue is likely protected and whether the association can realistically meet its burden of proof.

Disputes between developers, boards, and outspoken owners are common. This decision underscores the importance of responding thoughtfully and strategically rather than reactively. If you have questions about this case or any other issues, please contact your community association counsel. ■

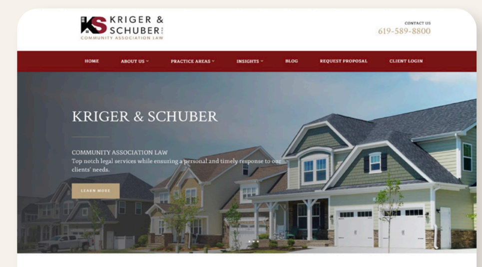
What's happening at

Attending the CACM Anaheim 2026 Law Seminar was a welcome reminder of how valuable these industry gatherings can be—not just for the substantive content, but for the connections that sustain our professional community.

One of the highlights of the seminar was the opportunity to reconnect with colleagues and friends we don't often get to see. In a profession that can be demanding and fast-paced, these moments of face-to-face interaction are more meaningful than ever.

Beyond the formal sessions, the event served as a valuable forum for exchanging ideas, discussing emerging challenges, and gaining perspective on where the industry is heading. Whether it was navigating evolving regulations or addressing the day-to-day realities faced by community associations, the discussions reinforced the importance of staying informed and connected.

Overall, the CACM Anaheim 2026 Law Seminar was a worthwhile experience. It combined high-quality education with the invaluable opportunity to reconnect with peers—something that remains one of the most rewarding aspects of participating in events like this.



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Court Reverses Judgment in HOA Recall Case, Clarifies Equal Access to "Association Media"

By Jake Johnson, Esq.

The Fourth District Court of Appeal reversed a trial court judgment in a dispute arising from the recall of Pacific Ridge HOA director Rachel Arroyo, holding that the association violated Civil Code §5105 by denying Arroyo equal access to association media during the recall campaign. The court emphasized that the association's recall notice and its attached candidate statement constituted "association media," triggering §5105's equal-access protections for members advocating a point of view.

Rachel Arroyo was elected to the board of directors of Pacific Ridge Neighborhood Homeowners Association in 2021, a 607-home San Diego subdivision. In late 2023, a member circulated a petition to recall her, triggering a formal recall election administered by a third-party elections inspector. As part of that process, the HOA distributed ballot materials that included a candidate statement from the one member running to replace Arroyo, urging members to vote for him. When Arroyo submitted her own statement opposing the recall, the inspector refused to include it, reasoning that only replacement candidates were entitled to have statements mailed with the ballot. The recall passed with 369 of 375 votes cast in favor of removal. Arroyo sued, arguing that by circulating a replacement candidate's advocacy statement to all homeowners at HOA expense while denying her the same opportunity, the HOA violated Civil Code §5105's equal-access requirement.

Critically, the appellate court stopped short of automatically voiding the recall. Instead, it remanded with directions for the trial court to determine, under Civil Code §5145, whether the association can establish by a preponderance of the evidence that its noncompliance did not affect the election results, and to state written findings. The appellate court made clear that a violation of §5105 "does not automatically void the election results" and that the trial court must exercise its discretion in determining whether the inequal access to association media materially affected the result of the election.

The opinion has significant implications for common interest developments. First, it broadens practical understanding of "association media." The court held that association-controlled communications accompanying ballots, such as recall notices and candidate statements circulated under the association's heading, are "media" within §5105, and when used to advocate a viewpoint, they require equal access for other members and candidates. Second, it underscores members' statutory right to advocate opposing views using the same HOA-controlled channels during an election. The decision aligns with the legislature's intent at the time of the statute took effect to provide "substantial new voting protections" and to ensure that opposing viewpoints are heard in association elections.

For HOA governance, the message is clear: equal-access obligations attach whenever the association uses its platforms to distribute advocacy, even if embedded in ballot packets or styled as "candidate statements." Election rules attempting to carve out exceptions by labeling such materials as mere "ballot" or "informational" content will not avoid §5105 scrutiny where advocacy is present.

Finally, the appellate court reaffirmed the recall voting standard for nonprofit mutual benefit corporations: because cumulative voting was not authorized for a single-seat recall replacement, removal required "approval by the members" under Corporations Code §5034's majority-of-quorum standard, not a supermajority. Together, these holdings elevate fair election practices and will shape future HOA procedures to protect member speech and equal access during campaigns.

HOAs should: (1) ensure election operating rules guarantee equal access to any association-distributed media used for advocacy; and (2) avoid content-based exclusions and include neutral disclaimers rather than editing or withholding content. ■

How Architectural Issues Can Go Wrong

By Garrett Wait, Esq.

In an unpublished decision out of San Diego County, *Varga v. Lomas Serenas Property Owners Association* (2025 WL 3652728), the appellate court sifted through a long, contentious dispute regarding architectural control and approval between a homeowners association and a homeowner. Ultimately, the court affirmed the trial court's judgment that the Lomas Serenas Property Owners Association's ("Association") heavy-handed approach and inadequate investigation constituted a breach of its fiduciary duty. Moreover, the personal animosity that arose between the Association's directors and the homeowner led to a judgment for a civil assault against one director.

The Association is a planned development in Escondido, California. Tibor and Ligia Varga ("Vargas") are owners within the Association. In 2002, the Vargas submitted plans to the Association for a substantial remodel of their home (the "Project"). The Association approved the plans in early 2003. The Vargas' neighbor appealed the approval of the Project, claiming it interfered with his view. Although the Board rejected the appeal, the Vargas postponed the Project for other reasons. In 2009, the Vargas sought "reapproval" of their Project, modifying their previous plans, which were again approved pending City permit approval.

Finally, in 2011, the City granted permits, and construction on the Vargas' Project began in September of that year. Unfortunately, plans

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HOW ARCHITECTURAL ISSUES CAN GO WRONG

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changed. The Vargas' revised their plans to include a pond and an access trail from the top of their property to the bottom, eliminating a planned swimming pool. The Association and the City approved the revised plans.

As construction continued, the Vargas provided an update at the Association's request. The update included mention of the pond and access trail that the Association previously approved. However, when the Vargas went to pour concrete under those plans, the Association issued a cease-and-desist order, claiming that the concrete work exceeded the scope of their approved plans.

After meeting with the Association several times over the next few weeks, the Vargas submitted a second revision to satisfy the Association's requests. The Association withheld its approval and kept the cease-and-desist order in place until the City approved the Vargas' second revision. The City subsequently approved the plans, but the Association refused to lift the cease-and-desist order.

The parties went to IDR and allegedly entered into a verbal agreement. However, the Vargas thereafter refused to sign a written proposed agreement, claiming it did not reflect what the parties had agreed to in the IDR. The Vargas' eventually completed the Project in February 2015, and the Association levied a $75 fine against them in September 2015. The Vargas initiated litigation in 2018 over the dispute and obtained a trial court judgment in their favor on their causes of action for breach of fiduciary duty, civil assault, and declaratory relief. The court awarded them damages of $337,060.90 and $32,260.98 in attorney's fees.

The appellate court affirmed the trial court's judgment, concluding that the Association and its individual directors breached their fiduciary duties to the Vargas by repeatedly forcing them to jump through hoops, then failing to lift the cease-and-desist order when the Vargas complied. In short, the appellate court found ample evidence to suggest that the Association was not entitled to the protections of the business judgment rule and judicial deference because the Association's directors failed to act in good faith.

The takeaway is that once an Association provides an owner with clear direction regarding an architectural application, it cannot then move the goalposts to prevent the owner from completing their construction. Once the owner meets the Association's imposed conditions, the Association must act in good faith by allowing the owner to proceed. Otherwise, the Association could be in a world of hurt. ■