

Litigation Concepts for Homeowner and Condominium Owner Associations

Practical Considerations

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Litigation Concepts

- Waiver
- Estoppel
- Laches
- Abandonment
- Statute of Limitations
- Excuse
- Material Breach
- Fiduciary Duty



Legal Concepts

- Waiver
- Estoppel



Legal Concepts

- Laches-



Legal Concepts

- Statute of Limitations-



Legal Concepts

- Excuse-
- Material Breach-



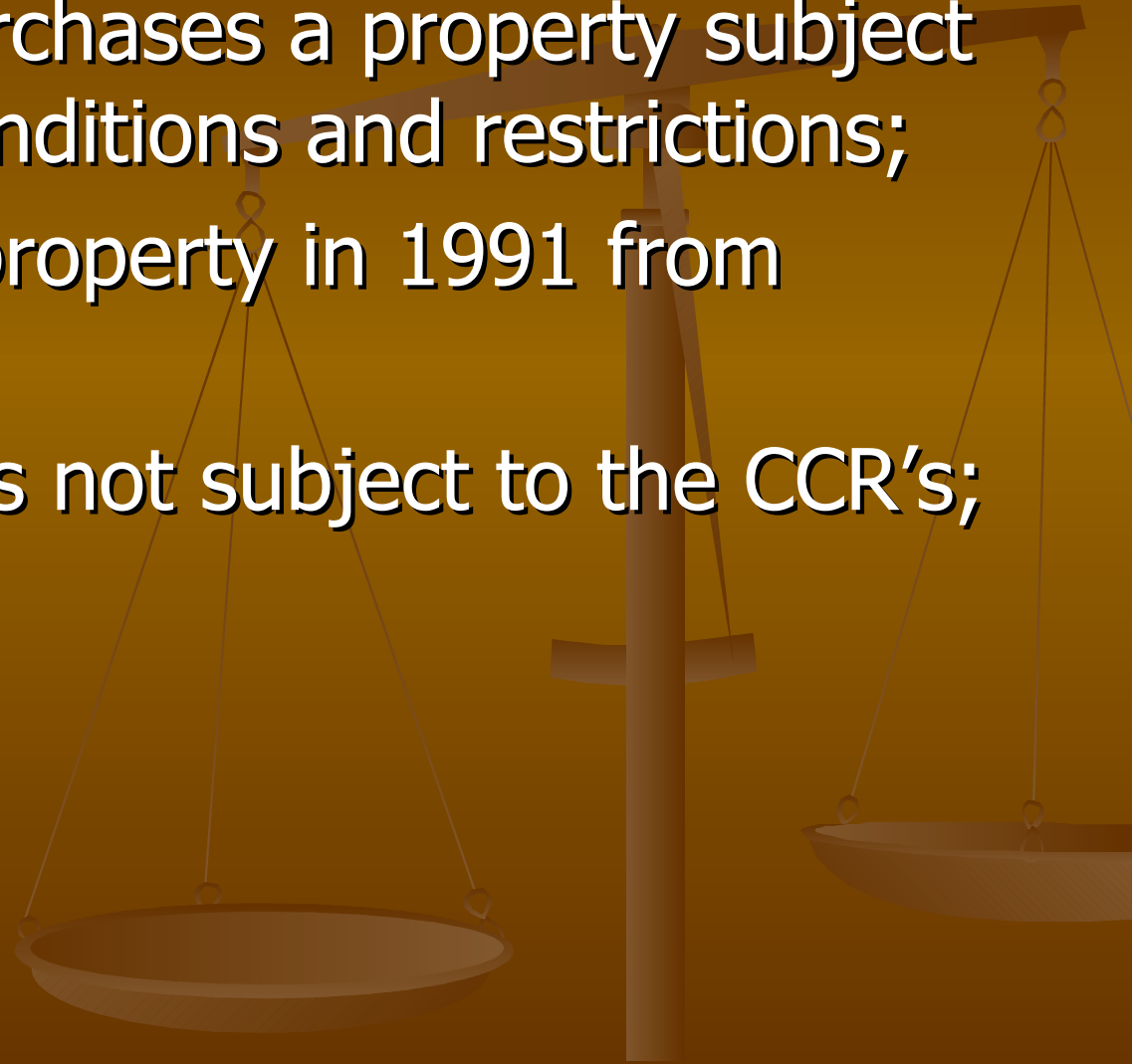
Legal Concepts

- Fiduciary Duty-



Exercise 1

- Homeowner purchases a property subject to covenant, conditions and restrictions;
- Purchases the property in 1991 from foreclosure;
- Insists that he is not subject to the CCR's;
- Refuses to pay.



Exercise 1

- Waiver
- Estoppel
- Laches
- Excuse
- Material breach
- Statute of limitations



The HOA v. Homeowner

A question of community responsibility

The problem

Mr. Homeowner will not pay his property owners' association assessments.

What is a property owners' association?

- What is an assessment?
 - He reaps the benefits, but won't share in the costs;
 - Shared benefits;
 - Paid by his neighbors;
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Trial issues

- Mr. Homeowner signed a deed in 1991 subjecting him to the Property Owners' Association (the POA) authority to levy assessments.
 - The POA has levied assessments annually.
 - Mr. Homeowner has not paid homeowners' association assessments. (He is the only one of 1068 property owners).
 - Mr. Homeowner states that he is disassociated with the homeowners' association and will not pay assessments.
 - The POA is entitled to judgment in its favor.
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The POA's burden for judgment

- That the homeowners' association existed at the time of Mr. Homeowner's deed execution.
 - That Mr. Homeowner's deed subjects him to the homeowners' association assessments.
 - That the POA levied assessments.
 - The amount of the assessments since June, 2000.
 - That demand was made upon Mr. Homeowner.
 - That payment was not made by Mr. Homeowner.
 - The amount of late fees and attorney fees that accrued.
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The law

- The obligation to pay homeowners association assessments is a covenant running with the land and the obligation is contractual.
 - The Texas Property Code and the law of contracts allows a property owners' association to collect assessments for the benefit of their neighborhoods.
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The evidence

- The POA's formation documents;
 - The POA's master declaration in force at the time;
 - The POA's bylaws;
 - Defendant's executed deed subjecting him to POA;
 - The assessments levied from June, 2000 through the present.
 - Demand letters to Mr. Homeowner;
 - Liens filed against Mr. Homeowner's residence; and
 - Late fees and Attorney fees.
-

Homeowner's Warranty Deed

- “Subject to all restrictions, covenants, limitations, conditions, charges, liens, and assessments, including that lien to secure the payment of the monthly assessment or charge, special assessment or charge for capital improvement, and any assessment benefiting specific areas, in favor of the Property Owners’ Association...”
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The Master Declaration

- 8.01: “Each owner of any lot **or Condominium**, by acceptance of any deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) monthly assessments or charges, and (b) special assessments for capital improvement, such assessments to be established and collected as hereinafter provided...”
-

The benefits of the POA received by all Property Owners.

- Among other things:
 - 24-hour gate guarded Main Entrance located at street one and street two;
 - 3 alternate remote activated gates;
 - Security cameras located at each gate location and monitored by guard;
 - Approximately 15 miles of privately owned roads, owned and maintained by POA;
 - Over 100 acres of greenbelt and common areas;
 - All community signage, (stop signs, directional signage, etc.);
 - Landscape maintenance of all right of ways, common areas, entrance locations;
 - Insurance on all assets owned by the POA;
 - On site office to service property owners with staff of three;
 - Conference facility on site;
 - Supervision of building and construction to ensure compliance with building codes and Architectural restrictions; and
 - Site inspections of community and enforcement of deed restrictions.
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What he will say:

- The evidence will be that Mr. Homeowner failed to pay assessments, then paid a few assessments, and then quit paying again.
 - He will say he requested financial documents, but say nothing about the fact he could have received them each year at the annual meetings.
 - He will say that he disassociated himself with the POA, but say nothing about the fact he quit paying in 1991, and started again in 1995, then quit again.
 - He will have many excuses as to why he shouldn't pay for the benefits...who should then?
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What he will say:

- Excuse-
 - Waiver-
 - Estoppel-
-

Attorney Fees

- The POA is entitled to attorney fees per the Texas Property Code and the Texas Civil Practice and Remedies Code.
 - The case has a convoluted procedural history where:
 - He sent requests to the wrong law firm; and
 - Failed to show up for trial although properly noticed.
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Relief sought

- Judgment for damages:
 - Past due assessments;
 - Late fees;
 - Attorney fees;
 - Penalties in the amount of \$200.00 per day consistent with Texas Property Code §202.004(c);
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Exercise 2

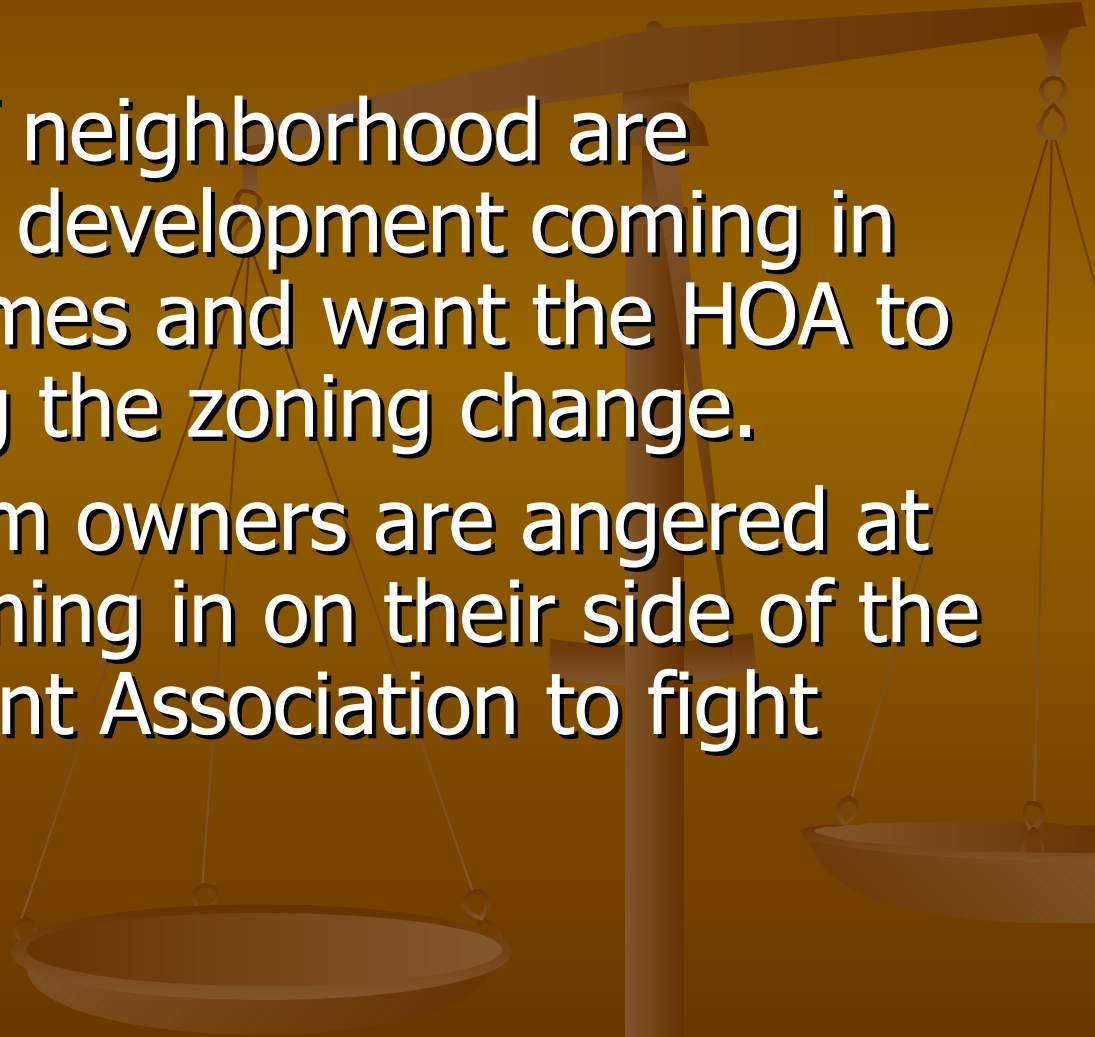
- Homeowner submits a landscaping plan to the ACC reflecting flagstones in a drainage easement;
- Instead of flagstones, large boulders are placed in the easement;
- After completion, a board member reviews the completed project;
- Months later floods pour over the stones and flood a neighbor's property.

Exercise 2

- Excuse
- Waiver
- Estoppel
- Material breach



Exercise 3

- Two scenarios:
 - 1) Residents of neighborhood are angered at new development coming in behind their homes and want the HOA to assist in fighting the zoning change.
 - 2) Condominium owners are angered at new project coming in on their side of the building and want Association to fight zoning change.
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Exercise 3



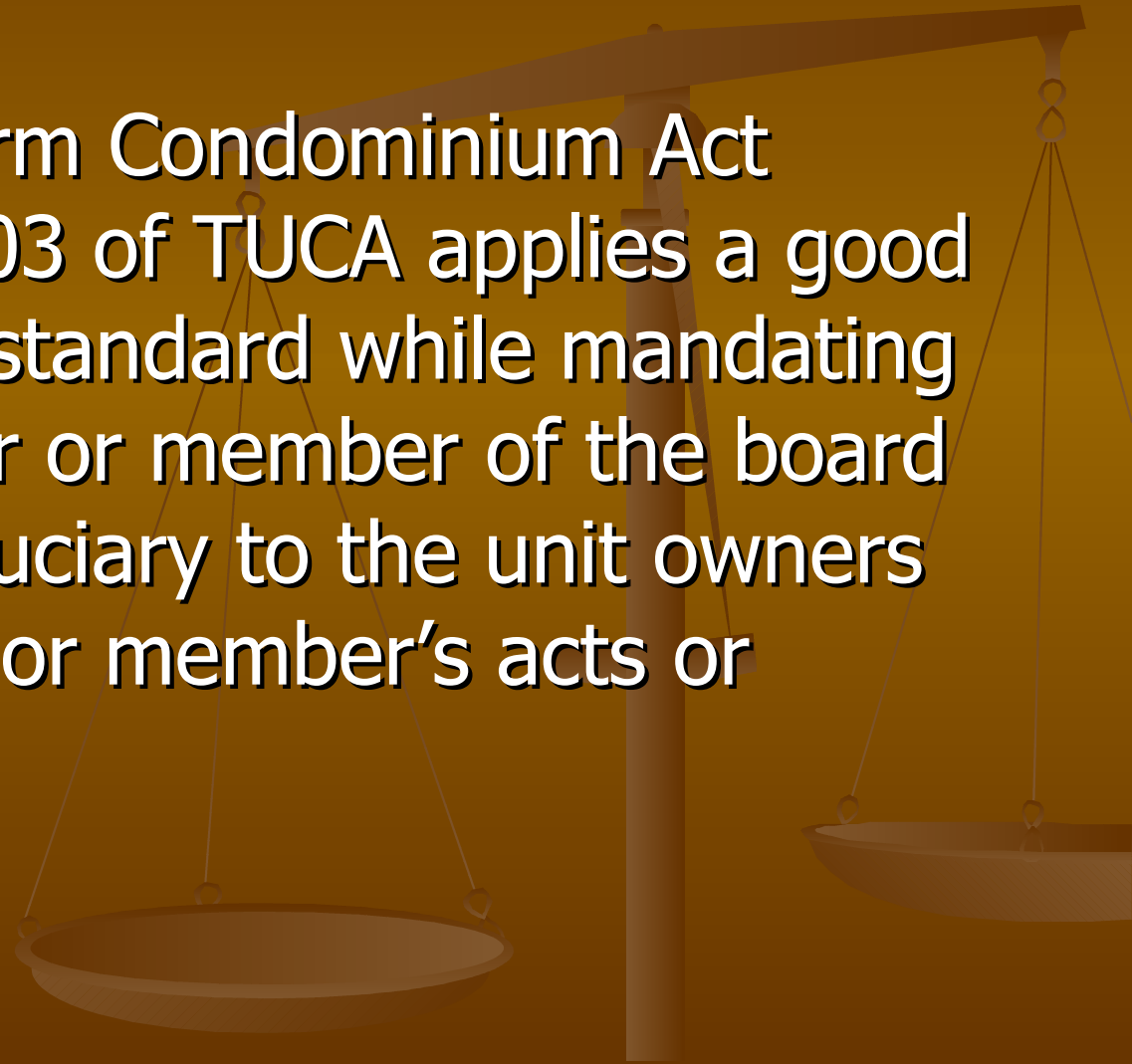
- Two scenarios:
- 1) Texas Non-Profit Corporation Act:

A Director is not liable to the corporation, any member, or any other person for any action taken if the director acted in compliance with the standard in the act.

Directors are required to discharge their duties in (1) good faith; (2) with ordinary care, and; (3) in a manner the director reasonably believes to be in the best interests of the corporation.

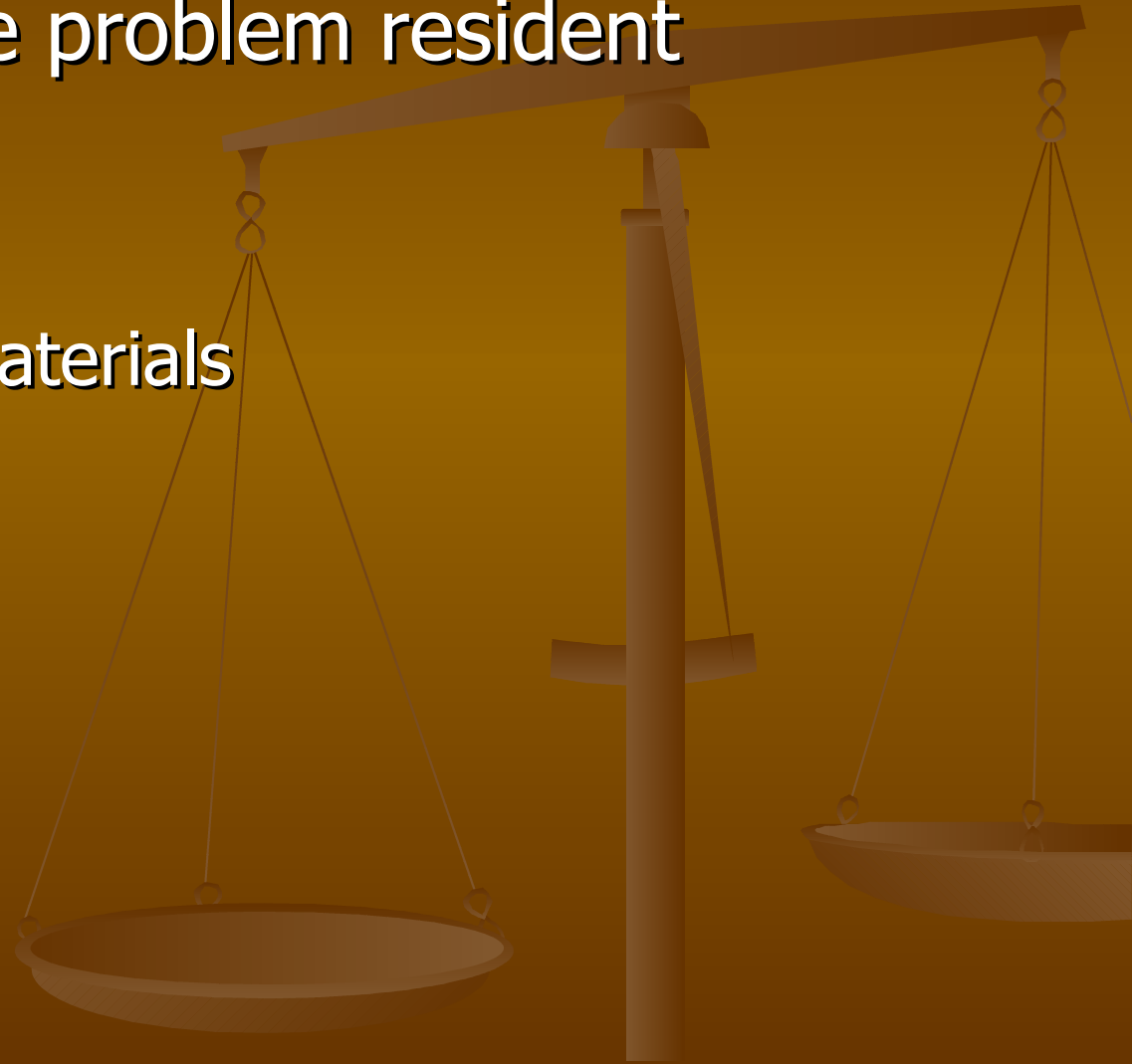
Exercise 3

- Two scenarios:
- 2) Texas Uniform Condominium Act (TUCA): § 82.103 of TUCA applies a good faith judgment standard while mandating that each officer or member of the board is liable as a fiduciary to the unit owners for the officer's or member's acts or omissions.



Exercise 4

- Dealing with the problem resident
 - Calls
 - Suit threats
 - Demands for materials



Exercise 4

- Suggestions



Conclusion

- There are multiple legal concepts to consider when dealing with residents/members. Be sure to consider each concept in addition to state and Federal statutes that may apply. Perhaps most importantly, always consider how your actions will be viewed by a panel of jurors months or years down the road.

