



When Can the Association Use its Resources to **Fight the Good Fight?**

Every so often an issue arises that significantly affects the residents of a homeowners association even though the issue is created by an outside source. For example, the residents may be affected by a street-widening project even if the street is located outside of the community. Local development, changes in flight paths for the nearby airport, zoning for city homeless shelters and other local issues can have a dramatic impact on the quality of life. What if the association would like to get involved and utilize association funds to fight the good fight?

The safest approach in these kinds of circumstances is for a board to direct members towards another entity designed to take up the fight. A board can certainly assist in providing helpful information to the residents and acting as a conduit to disseminate updates and resources. A board can aid residents by providing contact information for charities or activists that can use donations to fight for the collective good. However, the problem with this approach, or so I have been told by countless board members in this situation, is that the residents will not “donate” money unless they are forced, meaning the association needs to collect the money via assessments and spend it on behalf of the members to really effectuate change.

The board’s power to spend association resources is dictated by the governing documents. Some homeowners associations have a great deal of discretion in these matters and others have no ability at all to make such an expenditure. A common provision found in governing documents reads “[a]ssessments must be used exclusively to promote the recreation, health, safety and welfare of its members and for the improvement and maintenance of the Common Area.” This kind of language does not strictly limit expenditures in that it allows expenditures to promote “welfare,” but it is difficult to know how far you can stretch the definition of “welfare.” When the language of the documents is not clear, we turn to California case law to assist with the interpretation.

In *Finley v. Superior Court* (2000), multiple homeowners associations collectively spent over \$500,000 in association funds to support local ballot measures seeking to prevent a local decommissioned military air station (El Toro) from being converted to a commercial airport. Unfortunately, the portion of the case that discussed the appropriateness of the expenditure was not published. However, based upon the language in the governing documents for the contributing homeowners associations, the appellate court found that the expenditures were proper. The published reasoning is that the Board believed that the money was being spent in the best interest of the corporation and the governing documents permitted such an expenditure.

The Court held that under the business judgment rule, a director cannot be held liable for actions taken in good faith which he or she believes, based upon reasonable investigation, to be in the best interest of the corporation. The complaining homeowners argued that the business judgment rule does not apply to actions which are ultra vires or illegal. In other words, they argued that the Board had no authority to spend the association's money fighting an airport proposal. The Court held it was within the authority of the Board to do so. Because a portion of the decision was not published, we do not know what language the Court used to come to that decision.

In contrast, in the case of *Spitser v Kentwood Home Guardians* (1972), which had relatively similar facts, an association's expenditure of assessment funds to finance litigation to abate airport noise was found to be improper on the grounds that the governing documents in *Spitser* narrowly defined the purposes of the defendant association. The Articles of Incorporation described the corporate purposes as: "[t]o exercise generally all powers of . . . interpretation . . . and construction of all conditions, restrictions and charges now in effect . . . affecting the real property herein described" The *Spitser* court found that the governing documents indicated that the purpose of assessments was for the maintenance of the common areas, and to enforce the CC&Rs. While the CC&Rs did prohibit nuisances, they only operated as to property subject to the CC&Rs (which did not include the airport). Accordingly, the CC&Rs did not support imposition of assessments to finance the lawsuit in question.

What does it all mean? This is not a "one size fits all" issue. In order for a board to make a decision to commit association funds to fight or support an external issue, it is necessary to first determine if the language of that particular association's governing documents supports that decision. If it does not, the board members could be subjecting themselves to personal liability for trying to do what they believe is the right thing and fight the good fight.

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