

HOA Basics for Consumers

HERA

housing and
economic
rights advocates

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HOA Players and Rules

Who are the common HOA “players”?

- HOA Board of Directors
- Property Management Company
- HOA’s Attorney
- HOA Debt Collectors
- Homeowners

What HOA rules apply to homeowners?

- The most important sources of HOA rules are the following:**
- Covenants, Conditions & Restrictions (CC&Rs)
 - Bylaws
 - Rules & Regulations
 - Davis-Stirling Act (Civ. Code §4000 et seq.)

Participating in Your HOA– General (Open) Board Meetings

COMMON QUESTIONS

- What is a board meeting?
- How do I find out the timing and location of meetings?
- How much notice should be given to members?
- Who can attend?
- What topics can be discussed in the general meeting?

Participating in Your HOA – Executive Sessions

- Executive sessions are NOT open to general membership
- There are limited discussion topics permissible for executive sessions
- Executive Session vs. “Daisy Chain” Meetings
- Information discussed is confidential



Participating in Your HOA – Running for Board of Directors

Required qualifications to be a board member?

- Check your governing documents

Don't agree with the results of an election?

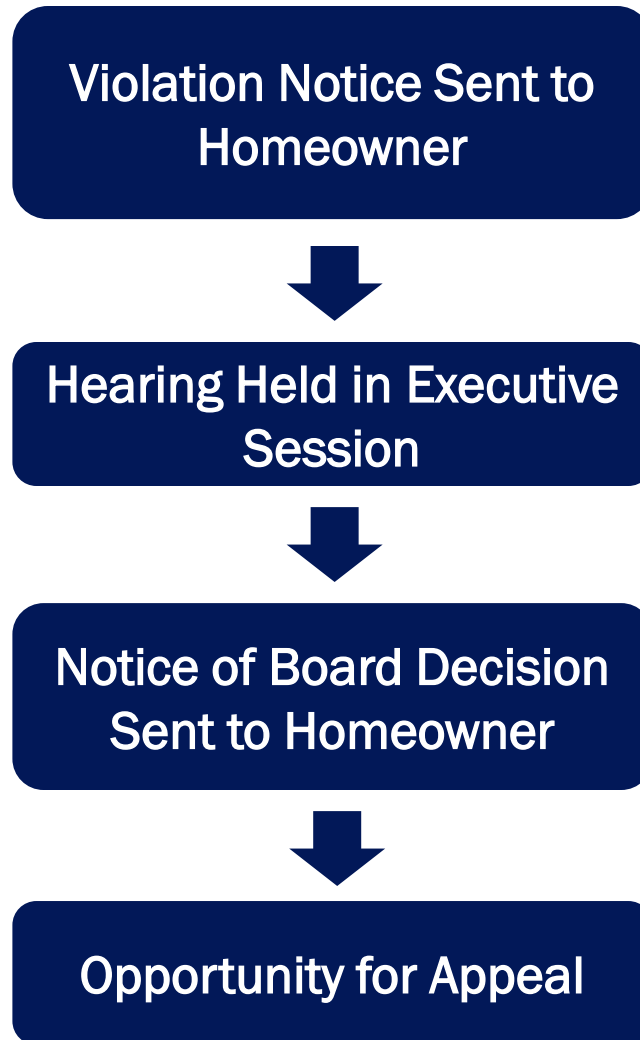
- Any person who had the right to vote in the election has standing to challenge the election



Reporting Issues with HOA Governance

- Complaints regarding HOA governance issues can go to the California Attorney General's Office
 - Website: https://oag.ca.gov/consumers/general/homeowner_assn
- Examples:
 - Failure to hold regular meetings
 - Obstruction of voting
 - Failure to hold special meetings upon request
 - Failure to keep books and records
 - Failure to allow inspection of documents

HOA Rules Violation Flow Chart



HOA Assessment Issues

- If you are on title to the property, you are on the hook
- The HOA's right to collect is outlined in your CC&Rs and by law
- Paying your HOA is just as important as paying your mortgage!

Types of HOA Assessments

Regular Assessments (aka, “HOA Dues”)

- Determined annually
- No more than 20 % greater than last year’s regular assessments

Special Assessments

- For unexpected expenses or capital improvements.
- Special assessments > 5% of the annual budget, must be approved by the membership.

Types of HOA Assessments

Emergency Assessments

- No cap
- Do not require membership approval
- What constitutes an “emergency”?
 - Extraordinary expense required by court order
 - Maintenance required where there is a threat to personal safety
 - Extraordinary expense that the Board could not have reasonably foreseen (special rules apply)

How To Stay Informed About Potential Special Assessments

- Review HOA's financial statements
- Ask about budget and reserve fund
- Sit in on HOA meetings or review minutes
- Is HOA planning on updating its amenities?
- Assess the age and condition of common areas
- Evaluate the HOA's environmental practices
- Ask about the history of the HOA
- Talk to your neighbors

How Your HOA May Collect Delinquent Balances

- **Collection Options Depend on Amount and Timing of Delinquency**
 - **When Assessments < \$1,800 and 12 Months Delinquent:**
 - Small Claims Court
 - Lien
 - NOT Foreclosure
 - **When Assessments > \$1,800 or 12 Months Delinquent:**
 - Small Claims Court
 - Lien
 - Judicial Foreclosure
 - Non-Judicial Foreclosure

HOA Foreclosure Process

Homeowner falls behind on assessments



Board resolution to record lien



HOA sends pre-lien notice*



HOA lien recorded



NOD recorded



NOTS recorded



HOA foreclosure



90 day right of redemption*



Deed recorded

Other Issues RE: Delinquent Balances

➤ Can my HOA limit my participation in HOA activities if I am delinquent?

➤ Yes, with exceptions:

- Ingress or Egress
- Elevators
- Meeting Attendance
- Trash Collection
- Utilities

➤ Can the HOA foreclose for monetary penalties?

- No, but that doesn't mean they can't sue you!

Debt Collection Protections Under the Davis-Stirling Act

Meet and Confer

- You have a right to engage in dispute resolution
- Ask in writing!

Payment Plans

- You have a right to discuss a plan
- HOAs are not obligated to offer a plan
- HOA must inform owners of plan standards
- Done during executive meeting
- Stops ongoing fees and foreclosure activity

Debt Collection Protections Under the Davis-Stirling Act

Payments Made Outside of a Plan

- ➔ HOA must accept any payment
- ➔ A plan is not required to make a payment!

Application of Payments

- ➔ Payments toward a debt must first be applied to assessments owed.

Debt Collection Protections Under the Davis-Stirling Act

Fees, Interest, and Costs of Collection

In addition to assessments, HOA may only collect:

- Reasonable costs *incurred*
- A late charge of 10% or \$10 per month
- 12 % annual interest

Amounts Necessary to Defray Costs to HOA

- HOA cannot charge you for costs that it did not incur!

Debt Collection Protections Under the Davis-Stirling Act

Disputing Payments

- If you do not agree with a charge, DO NOT withhold payments to the HOA!
- You can “**pay under protest**”

Pre-Lien Notice Requirement

- HOA must send at least 30 days prior to recording a lien on the homeowner's property

Resources Related to HOA Issues

- **I have an active dispute with the HOA. Is there someone I can contact to assist with Dispute Resolution?**
 - Yes! The San Francisco Bar Association's Conflict Intervention Services is available to assist at no cost to the homeowner and HOA.
 - <https://www.sfbar.org/adr-services/cis/>
 - Helpline: 415-782-8940

- **I want to pay my delinquent HOA dues, but I need some financial assistance. Are there any programs available to help me pay?**
 - Yes! The City of San Francisco has a loan program to assist homeowners who have fallen behind on their HOA dues. Learn more at sfmohcd.org/COVID19HELP

HERA Provides An Array of Legal Services

HERA's Services

Debt Collection	<ul style="list-style-type: none">• Student loan• Auto loan• Medical debt• High cost loans (auto-title, payday, check cashing)• Home Owners Association (HOA)
Credit Reporting	<ul style="list-style-type: none">• Identity theft• Accessing credit report• Denial of credit or loan because of credit report• Errors on credit report
Financial Products Recommendations	<ul style="list-style-type: none">• Affordable small dollar loans• Credit building products
Mortgages	<ul style="list-style-type: none">• Foreclosure prevention and mortgage servicing issues
Veterans & Servicemembers	<ul style="list-style-type: none">• Enforcing special protections and assisting with special resources for veterans and service members
Estate Planning	<ul style="list-style-type: none">• Simple wills, trusts, health directives, and power of attorney (*sliding scale fee for services)

Tel (510) 271-8443
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Our services are free!*