

# **ENFORCEABILITY OF AMENDMENTS TO CC&Rs**

## **The Pinnacle**

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Many individuals own homes that are part of a subdivision. Almost all subdivisions are governed by recorded documents that are known as Covenants, Conditions and Restrictions (“CC&Rs”). Most CC&Rs state that they are enforceable for a certain period of time, such as forty years. Usually, most homeowners agree to extend the CC&Rs and record an amendment to do so.

In the recent case of Schuman v. Ignatin (2010) 191 Cal.App.4<sup>th</sup> 255, a California Appellate Court ruled that any amendment to the CC&Rs that is recorded will be deemed to be valid if no homeowner files a lawsuit to challenge the validity of the amendment within four years of the recording date of the amendment. In this case, a home builder built 68 homes in Los Angeles County and recorded a Declaration of CC&Rs that subjected all the lots in the development to the CC&Rs. The CC&Rs expressly stated that they would expire on January 1, 1999. On December 31, 1998, the Homeowners’ Association recorded an amendment to extend the CC&Rs for an additional ten years, with the CC&Rs automatically renewing for additional ten year periods unless a majority of the homeowners record a written agreement changing, modifying or extinguishing the CC&Rs. The amendment was signed by 43 of the 68 lot owners in the development.

In 2007, the Defendant, Alan Ignatin, wanted to build a house in the subdivision that would violate a provision of the CC&Rs that protects the view of each lot owner. The CC&Rs provided that no structure on any lot may obstruct the scenic view of another lot. The Plaintiff, Phillip Schuman, contended that Ignatin’s proposed house would limit Schuman’s scenic view in violation of the CCRs. Ignatin argued before the trial court that the amendment to the CC&Rs was invalid because not all of the homeowners signed the amendment to the CC&Rs. The case does not state whether a majority of the owners or all of the owners had to sign an amendment in order for the amendment to be valid. However, the trial court ruled in Ignatin’s favor and determined that the CC&Rs had terminated since the amendment was not signed by all of the homeowners. Therefore, the trial court ruled that Ignatin could proceed to build his house and partially block Schuman’s view.

The California Appellate Court reversed the trial court and determined that the amendment to the CC&Rs was valid in extending the term of the CC&Rs. The Appellate Court did not address the issue of whether the CC&Rs needed to be approved by a majority or all of the individual homeowners. Rather, the Appellate Court relied on California Code of Civil Procedure Section 343 and another Appellate Court case, both of which established that a plaintiff only has four years to seek to set aside any kind of instruments, including an amendment to any CC&Rs. The Appellate Court ruled that the four-year statute of limitations began on the date that the

amendment of the CC&Rs was recorded, which was December 31, 1998. Ignatin would have had four years after that date to file suit to challenge the validity of the CC&Rs. Since Ignatin's lawsuit was not filed until October, 2007, more than four years had elapsed since the amendment had been recorded and Ignatin could not challenge the validity of the amendment extending the term of the CC&Rs.

This is an important case because many subdivisions were established in the 1960s and 1970s. The CC&Rs governing these subdivisions may be expiring soon if they have not already expired. It is important for homeowners to know when the CC&Rs of their subdivision are terminating and to take appropriate actions in order to validly extend the term of the CC&Rs. A homeowner should consult a real estate attorney if he or she has any questions as to the validity or enforceability of any CC&Rs.

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