

# **Director's Potential Liability for Unauthorized Acts**

**By Martin L. Lee, Esq**

**Directors in homeowners associations often feel as if they have the power and authority to make general business decisions similar to officers in normal business corporations; and in many cases they do. Where directors in homeowners associations need to be careful (and where an important distinction exists relative to other corporations) is in adhering to the restraint on their powers which does not exist in normal corporations; to wit, in the declaration of CC&R's. Homeowners associations are like other corporations in that they have Bylaws and Articles of Incorporation. But only homeowners associations have declarations of CC&R's – other kinds of corporations do not. And so, where the officers of a normal business corporation may, for example, decide to pay for a business Christmas party or wash the windows of its employees' offices, the directors of a homeowners association may not make such decisions unless the specific power to do so exists in the declaration of CC&R's.**

**The law analogizes directors in homeowners associations as trustees whose exercise of power is limited by the declaration of CC&R's. A trustee is a fiduciary who may be individually and personally liable for any breaches of his or her fiduciary duty. The declaration of CC&R's is also thereby analogized to the trust declaration in a normal trust situation. And just as a trustee in a normal trust may not decide to do anything with the trust corpus unless the authority therefor is in the trust declaration, neither may the directors in a homeowners association decide to do anything with homeowner assessment monies (i.e., the "trust corpus") other than what is specifically provided for in the declaration of CC&R's (the "trust declaration").**

**A violation by the directors of limitations on their authority set forth expressly or implied in the declaration of CC&R's can result in those directors becoming personally and individually liable to association members for, inter alia, the breach of their fiduciary duty - this is analogous to the liability of a trustee. And so, unless specific authority exists in the declaration of CC&R's, the directors in a homeowners association may not use common monies to pay, for example, for parties, the repair and/or maintenance of anything which benefits individual association members, or to do anything which sounds nice, unless the CC&R's specifically permit same. The risk which a director runs in violating these restraints is one of individual and/or personal liability. In any situation where doubt exists whether a specific expenditure is or is not permitted under the association's declaration of CC&R's, competent legal counsel should be consulted and the advice of such counsel in this regard should be followed.**

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Martin Lee is the Vice President and a founding principal of Feldsott & Lee, A Law Corporation. Mr. Lee completed his undergraduate education in 1963 as a dean list scholar at the University of California, Santa Barbara, graduating with a membership in the Phi Alpha Beta Honors Society. Mr. Lee completed his legal education at Hastings College of Law (University of California) in San Francisco where he was in the top quarter of his class and obtained his juris doctor degree in 1973. Mr. Lee has also done graduate work at the graduate faculty of the New School for Social Research in New York City and at the University of California, Irvine.

Prior to forming Feldsott & Lee, Mr. Lee was employed as a writer for Matthew Bender, one of the then leading publishers in the area of legal writing at the time. Since 1974, Mr. Lee has been admitted to practice before all courts of the state of California and has also been admitted to practice before the Southern District of the United States District Court. Mr. Lee has been a frequent contributor of articles for the Community Association Institute, as well as other association publications. Mr. Lee does preparation of the firm's cases for trial. He has been a leading contributor to the success of the firm, year after year.

Mr. Lee directs the firm's appellate research and briefing department. He has been involved in a number of reported appellate court decisions in the community association field. Laguna Royale Owners Association v. Darger, Cohen v. Kite Hill Community Association, and Harbor View v. Torley are still cited today as landmark decisions. Mr. Lee's arguments some 20 years ago in the Kite Hill case regarding enforcement of CC&Rs were adopted by the California Supreme Court a few years ago.

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