OWNER OF RECORD, WHAT DOES THAT MEAN?

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INTRODUCTION

It comes up all the time. A resident wants to attend and participate at a Board meeting, or wants to serve on the Board of Directors. That resident may be a tenant or the significant other of an actual owner of that property; perhaps the beneficiary of a trust or shareholder of a corporation that owns the property. The governing documents often state that only the "owner of record" can serve on the Board and the Open Meeting Act states that "any member of the Association may attend a meeting of the Board of Directors of the Association…" Electing a non-owner to the Board of Directors, when the governing documents require ownership as a qualification, could jeopardize the legality of the Board's decisions, and even insurance coverage.

Black's Law Dictionary defines an "owner" of real property as a person who is vested with title to property and has a right to enjoy that property and do with it as they please. The "Record Owner" is usually defined in the CC&Rs as the "owner of the Title" at the time of Notice, but does this mean that the Association is required to go out and check Title? Not necessarily. Typically, the owner of record at a community association is the owner on the Association's records based on the information that was provided, perhaps through escrow when the unit was sold. Some management company agreements obligate the manager to a higher level of record keeping by requiring that the manager keep not only a list of the homeowners, but rather a "current list". This rather innocuous phrase could actually place an ongoing obligation on the manager to verify correct ownership. If that's your intention, great; if not, rephrase your contracts. The Association is entitled to rely on its records, unless it is provided proof, by way of a recorded Deed, that ownership (in whole or in part) has been transferred to someone new.

That resident may present you with a copy of a Quit Claim Deed, showing that they may own a portion of, or all of, the property, but perhaps that Deed has not been recorded. That person would not necessarily be the "owner of record," at least not recognized by the County Recorder's Office as the owner, and thus should not be considered by the Association to be an owner.

RECORD OWNER

It is important to determine who the owner of the property is because many activities (read most) at common interest developments require the owner to be the Record Owner of the property. Only the Record Owner can make decisions on behalf of a unit/lot as it relates to association matters. Association disputes over ownership generally arise over the issue of "legal ownership" and are usually easily resolved by determining identity of the property owner as listed on the recorded grant deed. Unfortunately, conducting check-in at an annual meeting (for the election of directors) makes it difficult at that moment to obtain the most current grant deed to verify Record ownership. That said, prior planning and organization should allow a manager to ascertain prior to either the record date or the date of the annual meeting who the true Record Owner of the property is.

Most CC&Rs require homeowners to provide the association with the names and addresses of the Record Owners. In fact, state statute places the obligation on the corporation or unincorporated non-profit association to maintain a list of all homeowners and their addresses Record Title (corp. code 8321). It is the association's obligation, even prior to the annual meeting, to ascertain who the record owner is for the purpose of collecting assessments and enforcing the governing documents. Because state statute provides that the levy of assessments is a debt of the owner at the time the assessment was levied going after the correct owner for payment is fundamentally important to not only the Association's financial health, but also to limit the Association's liability for proceeding against the wrong person or entity for a debt.

Under California law, a recorded interest has priority over an unrecorded interest. What that means is, if two owners claim a right of ownership to a piece of property, the association should treat the Record Owner, the person listed on the recorded grant deed, as the true owner. The same holds true even where a homeowner acquires title to their unit/lot by a quick claim deed provided of course that the deed is recorded. When an unrecorded grant deed is involved or if more than one person claims a right of ownership under a separate recorded grant deed or a representative of a trust claims the ownership, the issue can become murky. If no recorded deed exists or more than one recorded deed is discovered, management should, based on state statute (Davis-Stirling Common Interest Development Act), refer to recorded interests only. Other statutes, not specific to homeowners associations, provide that a grant deed is valid and enforceable even if not recorded as long as the grant deed gives notice to all. However, what is more commonly found is that the notice of ownership has not been given to all prospective buyers and does not provide legal notice as required by law.

FIRST IN TIME, FIRST IN RIGHT

If there is an ownership dispute between record owners and management does not know who to allow to vote (who gets the ballot), management should rely on Civil Code Sections 1213 through 1220 which provide, when more than one grant deed exists, the "Record Owner" will be the person(s) whose grant deed was recorded first. For example, if a homeowner were to record their deed to a unit/lot in 2002 and a subsequent grant deed for that same unit/lot was recorded by another person in 2003, without their being a chain of title that satisfies the transfer of property, the Record Owner would be the homeowner who recorded first.

TRUST OWNERSHIP

A problem occurring more and more arises when property is owned in trust. When conducting check in at an annual meeting, if a trust ownership is presented, the manager should require verification that the person who wants to vote on behalf of the trust is authorized to do so. The individual is usually the trustee of the trust. Interestingly, although the trustee does not own the property, the trustee has the same legal rights to act on behalf of the property as those who would be afforded any other ownership rights of the association. It is incumbent upon managers to advise homeowners that, if they are a trustee of a trust, they need to provide trust documentation to establish that they have the authority as referenced above.

Most times it seems the ownership issue is only a problem in contested elections or when certain members of the association have an agenda. Management's agenda is to make sure the right owners are representing the memberships in the association. Following the above will guarantee your success.

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