

# HEATHER GLEN COMMUNITY SERVICES DISTRICT COMPLAINT NO. 99A-01

## Summary

The “Burton Bill,” as it is called, recently amended the Davis-Stirling Act, a part of California’s Fair Housing Law. Effective January 1, 2000, Boards of Directors of housing and property associations are mandated to “amend” and “restate” their inclusive Conditions, Covenants and Restrictions (CC&Rs), deleting any and all restrictions involving race, religion, sex, ethnic origin, handicap, or age.

Associations that fail to comply by January 1, 2001 are subject to lawsuits and/or court-ordered compliance.

The 1999-2000 Placer County Grand Jury received a complaint alleging that Heather Glen Community Services District (HGCS D) revised its CC&Rs by replacing its “adults only” provision, substituting a “55 and over” restriction, with only 60% of its approximately 80 mobile home site owners in agreement.

The question arises: What does a Community Services District need from its members to amend its CC&Rs to comply with the law – a simple majority, two-thirds or 100%? Attorneys on each side of the dispute have given written legal opinions opposed to the other. But an opinion is not a judgment.

The Grand Jury cannot render legal advice and concludes that the HGCS D Board of Directors should, on behalf of all its site owners, seek legal action in the courts to adjudicate this dispute.

## Discussion

The Heather Glen Community Services District (HGCS D) was legally formed in 1963 with an “adults only” clause in its inclusive Conditions, Covenants and Restrictions (CC&Rs). However, subsequent court decisions and both state and federal laws have rendered “adults only” clauses in fair housing unenforceable.

HGCS Ds Board of Directors, after consultation with legal counsel, sought a grant of statutory authority to properly and legally amend the CC&Rs. An Assembly Bill to effect this was introduced but never enacted.

To conserve funds, HGCS D elected not to continue legislative efforts, but retained the services of new legal counsel, who advised as follows:

- a) A Community Services District has powers identical to that of a Common Interest Development.
- b) Ordinarily, any amendment of CC&Rs by a district would require 100% concurrence of site owners (unless state legislative authority was obtained as was originally pursued unsuccessfully). A relatively new enactment, known as the Davis-Stirling Common Interest Development Act and codified in the

California Civil Code, specifies that a “Common Interest Development” could amend its CC&Rs with the approval of a simple majority of site owners.

- c) Since the District has a mutual interest in common-use gas pipeline and street easements appurtenant to individually owned sites, it comes within the definition of a “Common Interest Development.”
- d) Finally, since the District had the right to spend public funds to obtain (although unsuccessfully) enabling legislation to amend its CC&Rs, it must also have the right to spend such funds to retain private counsel in an effort to accomplish the same end result.

Following advice of counsel, the District’s Board formed a committee of its members that proceeded to solicit the approval of at least 50% of the site owners to amend the CC&Rs. Upon obtaining an affirmative vote in excess of 60%, legal counsel prepared amended CC&Rs which ostensibly declared Heather Glen to be a “senior community,” restricting site occupancy to those residents 55 and older. The District has attempted to implement the revised CC&Rs.

A group of site owners filed a lawsuit contesting the spending of District funds for attorney fees, the amendment of CC&Rs with less than 100% approval of site owners and the formation of a committee to solicit site owner approval for, and to implement, amended CC&Rs. The dissident site owners utilized the legal services of a leading authority on community development issues who advised as follows:

- a) A Community Services District is a standard subdivision entity and without enabling legislation does not have the power to either enforce or amend its CC&Rs.
- b) The District has authority to spend funds for enabling legislation but does not have the power to spend such funds to retain private counsel in amending its CC&Rs.
- c) Without legislative authority, the District as a standard subdivision, must have 100% of its site owners approve any CC&R amendment unless it can qualify as a “Common Interest Development.” To be such a development, there must be areas owned by site owners as “tenants-in-common,” or owned by a Homeowners Association on behalf of its members. Neither situation exists in the Heather Glen Subdivision.
- d) A management committee composed of District Board members cannot declare itself a private body with the power to perform private actions such as to solicit approval votes and to implement amended CC&Rs.

Based upon such advice in support of their lawsuit, the dissident group was hopeful of obtaining an out-of-court settlement. No such settlement occurred, and the group ultimately agreed to a dismissal due to insufficient funds.

The controversy continues to be pertinent with the passage of a new law that amends the Davis-Stirling Act, known as the “Burton Bill.” The Burton Bill, effective January 1, 2000, mandates Boards of Directors to “amend” and “restate” CC&Rs, deleting any restriction involving a person’s race, religion, sex, ethnic origin, physical or mental

handicap, or age. Associations that fail to remove discriminatory provisions by January 1, 2001 from each of the governing documents, which include Articles of Incorporation, Bylaws, CC&Rs and Operational Rules, may be sued and are subject to court-ordered removal. The effect of this amendment obviously questions both the past and present restrictive CC&Rs adopted by HGCSD's Board of Directors. Only a judgment in a court of law may answer the question.

### **Finding 1**

The opposing legal opinions presented might be supported under current applicable law, but rendering legal advice is not the charge of a Grand Jury.

### **Recommendation 2**

The 1999-2000 Placer County Grand Jury recommends that the Heather Glen Community Services District Board of Directors, on behalf of all of its site owners, seek a judicial review of its amended CC&Rs.

### **Respondent**

Heather Glen Community Services District Board of Directors

### **RESPONSE REQUIRED WITHIN 60 DAYS TO:**

The Honorable Larry D. Gaddis  
Presiding Judge, Superior Court  
County of Placer  
Historic Courthouse  
101 Maple Street  
Auburn, CA 95603