

October 13, 2017

Members of  
Michillinda Park Association

RE: MICHILLINDA PARK ASSOCIATION

Dear Members:

I have been retained by the Michillinda Park Association to advise the Board of Directors with regard to the maintenance and repair of the alleys within your development and the Members' obligation to pay assessments to fund the maintenance and repairs.

The following is an explanation of why you are mandatory Members of the Michillinda Park Association. Michillinda Park Association was incorporated in the State of California on October 21, 1940 as a non-profit corporation. The Articles of Incorporation provide that the liability of the Members to pay dues or assessments and the method of collection thereof shall be set forth in the Bylaws of the corporation.

The Bylaws from 1940, amended in 1969, provide in Article Ten as to membership:

"1. All members of the corporation shall be non-delinquent dues-paying and property-owning families who own real property situate [sic] within the area bounded by Rosemead Blvd. on the west, Huntington Drive on the south, Oakdale Ave. and Laurita Ave. on the north, and Michillinda Blvd. on the east. Such families shall be entitled to only one family membership and said family membership shall be entitled to cast only one vote."

Also, in Article Ten, of the Bylaws:

3. The Board of Directors shall fix and determine the amount of the dues, . . . Said dues shall be due and payable on the second Tuesday of November of each year and each six months thereafter, and shall be delinquent 60 days after each due date. The board of directors shall provide for the collection of dues."

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The alleys were initially deeded to Michillinda Improvement Co. by California Michigan Land & Water Co. on April 19, 1912. The alleys are lots L, M, N, O, P, Q, R, S, T, U and part of V of the Michillinda Tract. The deed contains a covenant running with the land that the land must be used as alleys or they will revert back to the Grantor.

Another deed from California-Michigan Land & Water Company to Michillinda Improvement Co. on March 11, 1927 granted the same alleys with covenants running with the land to use the land as private alleys for the benefit of stockholders of Michillinda Improvement Co. By virtue of the covenants running with the land, the same use was eventually granted to Michillinda Park Association.

In 1941, the alleys were deeded to the Michillinda Park Association ("Association") by Michillinda Improvements Co. That deed is subject to all reservations and restrictions of record, and easements of record. As the owner of the alleys, the Michillinda Park Association must assess its Members to obtain the funds necessary to maintain the alleys in good condition to avoid injuries, damage to vehicles, and to allow ingress and egress by the Members of Michillinda Park Association, the Fire Department and Police Department.

Prior to the enactment of the body of law which governs homeowners associations in California, California Civil Code Section 845 compelled abutting homeowners to pay for the maintenance and repair of the alleys as owners of the dominant estate.

In 1986, the Davis-Stirling Act, Civil Code Sections 4000, et seq. was enacted by the State of California to govern common interest developments. Civil Code Section 4200, provides:

"This act applies and a common interest development is created whenever there is a separate interest coupled with an interest in the common area or membership in the association is, or has been, conveyed, provided all of the following are recorded: (a) declaration, (b) condominium plan, if any exists, and (c) A final map or parcel map. . . ."

There is a final map or parcel map as required by the above Section. A condominium plan is only required in the case of a condominium development.

Declaration is defined in Civil Code Section 4250 to include "restrictions on the use or enjoyment of any portion of the common interest development that are intended to be enforceable equitable servitudes. With regard to enforcement, Civil Code Section 5975 provides that "the covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both."

The deed to Michillinda Improvement Co. in 1927 meets the definition of a Declaration and runs with the land to be included in the deed to the Association. If the land is ever not used as alleys, ownership reverts back to the original Grantee.

Common Area is also required by Civil Code Section 4201 in order to be subject to the Davis-Stirling Act. As the Deed grants the alleys to the Association to be used by the Members in common, the requirement of Common Area is satisfied. All of the requirements of Civil Code Section 4200 are present for your Association to be subject to the Davis-Stirling Act.

Civil Code Section 5600 states that "the association shall levy regular and special assessments sufficient to perform its obligations *under the governing documents* and this act." Civil Code Section 5650(b) states that

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“regular and special assessments levied *pursuant to the governing documents* are delinquent 15 days after they become due, . . .” “Governing documents” includes Bylaws and your original Bylaws do contain provisions allowing the Board to fix and determine the amount of the dues.

Even if the Davis-Stirling Act was not applicable to the Association, a determination could be obtained from a Court pursuant to Civil Code Section 845 that the abutting Owners are responsible for paying for the maintenance and repair of the alleys.

For all of the reasons set forth above, the Michillinda Park Association is obligated to maintain and repair the alleys and allow the homeowners to use them for ingress and egress. The Association is authorized pursuant to the Bylaws and the Davis-Stirling Act to levy assessments to pay for the repair and maintenance of the alleys, as well as insurance to protect the homeowners in the event of an injury or property damage occurring on the alleyways. The insurance premium is currently \$2,791.00 per year from March 1, 2017 to March 1, 2018. The estimated cost to repair the alleys is at least \$2,000 per lot. As shareholders of Michillinda Park Association, the funds for these purposes must come from your assessments/dues.

I understand that some of the Members are questioning the right of the Board to hire a managing agent for the Association. Paragraph 3 of the Bylaws provides: “The board of directors shall have power to appoint and remove at their pleasure all agents and employees of the corporation, and shall prescribe their duties and fix their compensation. As a result, the Board had the authority the hire HOA Management Professionals to act as the managing agent for the Association and assist it with the collection of assessments/dues needed to maintain and repair the alleyways and any other duties the Board is obligated to perform on behalf of the homeowners.