

# Case Summaries

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## Assessment Cases

### Owner has personal obligation to pay assessments

*Cerro De Alcalá Homeowners Assn v Burns* (1985) 169 CA 3d Supp. 1

Anticipating foreclosure by the first trust deed, condominium owner abandons his unit. He refuses to pay assessments contending he has no personal obligation to pay after he vacates. Court holds that he did derive a benefit (common area maintenance, repairs, insurance), did not relinquish ownership and was bound to pay by the CC&Rs.

*Case lesson:* An owner remains personally liable for assessments that accrue up to transfer of title even after they abandon or lose their property to foreclosure.

### Special Assessment to Replenish Reserves Not Excessive or Unwarranted

*Foothills Townhome Assn v Christiansen* (1998) 65 CA 4th 688

An owner refused to pay a membership-approved lump sum special assessment levied to replenish reserves after monies were withdrawn to make a seawall repair. The owner argued that the special assessment was excessive under Civ Code §1366.1 because there was no need for immediate restoration of reserves. The Court held that the assessment was proper even if the replenishment could have been spread out over time.

*Case lesson:* Associations can use lump sum special assessments or those spread out over time to “repay” or restore reserves.

### No “Set Off” For Association’s Improper Maintenance

*Park Place Estates v Naber* (1994) 29 CA 4th 427

A dispute arose between an owner and his association as to the manner in which it performed repairs to his unit. The owner contended that evidence of those repairs should have been permitted to show damages to offset the amount of unpaid assessments. Stating that assessments were the “lifeblood” of the association, the court rejected the “set off” claims.

*Case lesson:* Even if the association is not properly performing maintenance (because, perhaps, it lacks adequate funds owing to the high rate of delinquencies), owners have a duty to pay assessments. The “lifeblood” argument also suggests that associations have a duty to try to collect assessments. This is consistent with the *O’Toole* case.

Court Can Order Special Assessment; Association Must Levy Assessments  
*O’Toole v Los Angeles Kingsbury Court Assn* (2005) 126 CA 4th 549

Vendor successfully sued association for non-payment; association claimed assessments were “exempt” from judgment creditors and refused to levy an assessment to pay the judgment. Court appoints receiver whose power to impose the special assessment is upheld by the Court.

*Case Lesson:* If funds are needed to make repairs but members fail to authorize a special assessment for the purpose, the Association can obtain a Court Order imposing the assessment.

Association Cannot Avoid Judgment via Bankruptcy or Name Change  
*McClellan v. Northridge Park Townhome Assn* (2001) 89 CA 4th 746

Association refused to pay a judgment in favor of a contractor who made repairs following the Northridge earthquake. To avoid the judgment, association filed a bankruptcy and then changed its name and transferred its assets and duties to a “new” association. The bankruptcy court dismissed the petition. The state court permitted the judgment creditor to amend the judgment to add the “new” association since it was merely a continuation of the original association that was subject to the judgment debt.

*Case Lesson:* A creditor can force the association to pay judgments by the appointment of a receiver (as in *O’Toole*) and the filing of bankruptcy or a change of name (even with new governing documents) will not “save” the association.

### Association Powers and Duties

Using Rules to Address Operational Challenges  
*Liebler v Point Loma Tennis Club Assn* (1995) 40 CA 4th 1600  
*MaJor v Miraverde Homeowners Assn* (1992) 7 CA 4 th 618

In both cases, the board of directors enacted rules that prohibited non-resident owners from using common area recreational facilities. One case was resolved in favor and the other against enforceability of the rule but the basis of the holdings were the same: rules concerning use of the project must be consistent with the CC&Rs.

*Case Lesson:* The use of rules can, depending on the applicable CC&Rs, allow a board to withhold use rights to those who are delinquent in paying assessments or to charge a fee for those who wish to use common areas.

With Judicial Help, it Only Takes Majority Approval to Amend CC&Rs

*Fourth La Costa Association v. Seith* (2008) 159 CA 4th 563

*Mission Shores Association v. Pheil* (2008) 166 CA4th 789

Members in these two associations voted to amend their CC&Rs; in both cases, the required "supermajority" percentage of "yes" votes could not be obtained. The associations filed "petitions" requesting judicial approval of the amendments. Since the amendments were authorized by more than a majority of members, properly voted upon and "reasonable", the court granted the petition.

*Case Lesson:* These cases "blessed" many of the procedures and provisions typical of amendments including those relating to lender notice, vote count and rental limitations.

CC&Rs Can Limit Association Responsibility for Interior Damage

*Franklin v. Marie Antoinette Owners Assn.* (1993) 19 Cal.App.4th 824

The CC&Rs for this high-rise condominium conversion project afflicted with leaking pipes said "[T]he Association ... shall [not] be liable for ... damage to ... property in the project ... resulting from ... water ... which may leak or flow from outside of any unit or from any part of the building, or from any pipes, drains, conduits, appliances or equipment or from any other place or cause, unless caused by the gross negligence of ... the Association, its Board, officers, the manager or his staff" The association did not cause or contribute to the leaks that caused extensive damage to a member's floor. The court upheld the "exculpatory clause" confirming that CC&Rs can "shift the risk of loss" to owners.

*Case Lesson:* CC&R amendments can be used to minimize or eliminate claims or unforeseen drains on association budgets by shifting certain cost risks to owners.

The Scope of the Association's Maintenance Duty

*Ritter & Ritter v. Churchill Condominium Assn* (2008) 166 Cal. App. 4th 103  
*Lamden v. La Jolla Shores Clubdominium Homeowners Association* (1999)

In *Lamden*, the Supreme Court indicated that judges shouldn't second guess maintenance decisions made by a board. In *Churchill*, holes in the concrete flooring of a high rise condominium created a fire risk but the board refused to fix the problem (which was an original construction defect). The court ordered it to be repaired. The difference between the cases: boards do not have the discretion to refuse to address a safety problem affecting a unit when sued by the unit owner; the manner in which the repair is made is, however, left to the discretion of the board.

*Case Lesson:* This case involves fiduciary duty, recovery of attorney fees and other issues. One main lesson is that common area conditions that pose safety risks cannot be ignored on the basis of the "business judgment" rule.