

Community Association Law

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Community Association Law

Cases and Materials on Common Interest Communities

Second Edition

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For

Margaret who brought joy back to my life.

—WSH

Tom, the light of my life.

—SFF

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Preface to the First Edition

Common interest communities, their associations, and community association law as such did not exist at the time the authors went to law school. Today the community association is the most popular form of residential, and increasingly nonresidential, development. Tens of millions of Americans live in community association developments. The law has experienced a similar evolution.

This book is structured to provide a thorough introduction to the substantive law of common interest communities and community associations. Moreover, and to some perhaps more importantly, it seeks to assist the student to grasp the obvious and the subtle qualities of both the theory and the practice of community association law.

The Notes and Problems throughout the book are taken from reported cases and from the contributed experiences of practitioners throughout the United States as well as the experiences of the authors and of men and women who deal with these issues daily. These questions and issues seek to probe the emerging questions and themes arising from the practice.

As noted earlier, the field of community association law is quite young, and it is a composite of both old and new. The basic principles undergirding community association law rest in property and servitude law, but they encompass much more. The threads of corporate law, municipal law, contract law, and other disciplines weave throughout. The relationship to, yet the departure from, these various legal fields and how the resulting principles apply and grow are all much a part of the subject.

It is important to consider where community association law has come from, and it is also important to consider where it is going and how that evolution is proceeding. The evolution, however, has not been linear, and one must note the variations and twists as different state courts address the issues and reflect changes in developmental experience. The number and complexity of judicial decisions dealing with community associations as well as the number and variety of statutes dealing with the subject are significantly on the increase.

The authors' experiences have framed a perspective which believes in the community association concept and in the capacity of the community association. It is a perspective which appreciates the great flexibility inherent in the concepts, legal forms, and developmental options. Experience is valuable only if one realistically learns from the entire experience and not just those portions which are "good" or which fit a preconceived pattern or desired result. This book will, therefore, reflect these experiences and perspectives and will attempt honestly and fully to raise and, in most cases, address the positives and the negatives.

These include concerns over the juxtaposition of the group and the individual, the various methods of individual and group ownership, and the relationship between residential and nonresidential development, among others. These and other questions raise questions of law and of policy. They involve property law as well as social, political, and

economic questions. Finally, they involve both scholarly theoretical and mundanely practical considerations.

The authors wish to express thanks for invaluable assistance in the preparation of this book. First, clients and students have contributed and supported the effort in so many ways. Ideas, questions, challenges to advanced “realities” have all made concepts sharper, more realistic, and useful to teacher as well as student.

Second, several Hyatt & Stubblefield staff members have, once again, shown their willingness to exceed even unreasonable expectations in supporting this project and, indeed, making it possible. Vivian Smith and Kara Silverstein have patiently and thoroughly processed the words, over and over.

Christine Barsody fulfills so many functions and does so well and cheerfully. She has been “managing editor,” reviewer, interviewer for the retrospectives and observations, and in so many additional ways a most significant contributor. We appreciate more than can be expressed the tangible and intangible support she provides so generously and selflessly.

Finally, it is fair to say that this book would have been neither complete nor completed without Michael S. Rodgers. As a student in the community associations law class, a research assistant, and now a Hyatt & Stubblefield associate, Michael has been actively and creatively engaged in this project since its inception. He has served effectively in many ways as an editor and author; he has brought insight, dedication, and patience to the process. It has been a pleasure working with him, and the authors are confident that, in the future, he will write respected books of his own and that he will use them successfully in his own classroom.

Preface to the Second Edition

Much has taken place in the common interest communities field since the first edition of this book. First, there are thousands of new common interest communities and millions of new owner-residents in those communities. New approaches, new challenges, experience in operation and management all flow from this increased utility of the form of ownership and governance known as “community association law.”

Second, professors and students have examined the concepts and questions contained in this book and have provided quite valuable feedback. “Teaching a book” is a real test of and for a book; teaching this one has been a helpful experience. Students as well as teachers have provided very helpful suggestions. The authors appreciate their doing so.

Third, the development industry, broadly defined, has employed new applications of community association law and the design and nature of common interest communities. These innovations have been both in response to and as means to move the real estate market. “Creating community,” community stewardship, innovative funding, involvement in cultural and educational activities were all in the future at the time of the first edition. They are all part of the tool box of common interest community developers today.

Fourth, the most significant event in community association law since the first edition is the publication of the Restatement (Third) of Property, Servitudes (2000). This monumental work contains an entire chapter dealing with common interest communities as well as numerous other sections applicable to issues of creation and application of servitudes. This second edition brings the Restatement directly into this book with both “black letter” and Reporter’s notes enriching the discussion. Both student and teacher would do well to spend some time with, at least, Chapter 6 of the Restatement.

Another appropriate tool for teacher and student would be Hyatt, Condominium and Homeowners Association Practice: Community Association Law (Third Edition). That work serves as a companion to this casebook.

Once again there are special people to thank for invaluable assistance. In addition to clients, ALI-ABA course attendees, students, and fellow teachers, these include Hyatt & Stubblefield attorneys and staff members who have assisted in so many ways. We particularly thank Lauren Hester and Christine Barsody. Once again and throughout the time between edition one and edition two, Chris has selflessly and generously provided tangible and intangible support.

Finally the authors’ heartfelt appreciation goes to those of you who use this book, whether professor, student or practitioner. Of course we are glad that you do so, but more importantly we hope that the book enhances your knowledge of and appreciation for common interest communities and community association law.

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Pueblo Bonito at Chaco Canyon, New Mexico. Master Planned Community, Circa 1000 A.D. Photo by Amanda Hyatt.