

The Right to the Full Amount Owed

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Assessment collection is a part of every homeowner association in California, but issues often arise when an owner refuses to pay because the owner believes the association is not doing its job. A common claim is based upon the association's alleged failure to properly maintain the common area or the owner's property. The association claims the owner owes \$500 for five months' worth of assessments, but the owner only pays \$350 because he is not getting the maintenance he believes he is paying for. Another example is when an owner repairs a common area sidewalk that he believes is a safety hazard and then withholds his assessments in order to "reimburse" himself for the work he claims the association should have performed. The issue becomes whether the owner can do this?

The California Court of Appeals considered this argument and determined that an owner in a common interest development may not withhold assessments on the basis that the association has violated its own governing documents or otherwise caused the owner harm. The statutory setoff rights under Code of Civil Procedure Section 431.70 do not apply to assessment obligations. *Park Place Estates Homeowners Association, Inc. v. Ike Naber* (1994) 29 Cal.App.4th 427 (Naber).

The Court held that regardless of the association's conduct, owners must pay their assessments. There is no exception or condition to every owner's assessment obligations under Civil Code Sections 1366 and 1367.1, and the association's governing documents. Under no condition may an owner withhold assessments. Naber was a member of the Park Place Estates Homeowners Association. Park Place Estates is a condominium development in which the association is responsible for maintaining the individual units. Naber and the association were in a lawsuit over the maintenance of his unit and his delinquent assessments. At trial, Naber argued that he had a right to withhold his assessments because the association had violated the governing documents by failing to properly maintain the common areas. The Court refused to allow Naber to make those arguments on the basis that he had no right to withhold assessments. The association prevailed at the trial court level and on appeal.

The Court held that if the association has violated its governing documents or caused the owner harm, he or she must pursue the appropriate legal remedies pursuant to the

association's governing documents and California law, such as filing an action in the Superior Court for the alleged violations or harm. In the alternative, the owner could pay under protest pursuant to Civil Code Section 1367.6, and then file an action in small claims court to recover the disputed amount. The Court also noted that Civil Code Sections 1366 and 1367.1 demonstrate the Legislature's recognition of the importance of assessments to the functioning of common interest developments in California. In this regard, the Court stated:

"Because homeowners associations would cease to exist without regular payment of assessment fees, the Legislature has created procedures for associations to quickly and efficiently seek relief against a non-paying owner. Permitting an owner to broadly assert the homeowners association's conduct as a defense or 'setoff' to such enforcement action would seriously undermine these rules."

The *Naber* case is important for associations because it affirms and supports associations' abilities to collect assessments, and provides a clear rule that owners cannot withhold assessments based upon their belief that the association is not fulfilling its obligations.