

## **Can a Developer Unilaterally Impose an Arbitration Clause on a Condo Homeowners Association?**

The answer is yes, as long as the arbitration clause is not unreasonable, according to the California Supreme Court in [Pinnacle Museum Tower Association v. Pinnacle Market Development](#) (July 16, 2012). In Pinnacle, the developer recorded CC&Rs before the condo project homeowners association was formed. The CC&Rs contained a mandatory procedure for resolution of construction defect claims, including a jury trial waiver and binding arbitration. The purchase agreement for individual condo units provided that by accepting the grant deed, the buyer agreed to comply with the CC&Rs. The HOA later sued the developer for construction defects and the developer moved to compel arbitration. The HOA claimed that it could not be bound by the arbitration clause because it did not exist at the time the CC&Rs were prepared, and had never agreed to the terms of the CC&Rs. The HOA also argued that the jury waiver was unenforceable because it was unreasonable. CC&Rs Binding Even if HOA Has No Opportunity to Negotiate Terms. The Court disagreed, finding it settled law that provisions in a recorded declaration are enforceable against both individual owners and the HOA. Regardless of whether or not the HOA negotiated the CC&Rs, the Court found, the HOA, like its individual members, was bound by them. The success of a common interest development would be "gravely undermined," the Court said, if the "intent, expectations, and wishes" of those whose collective interests the HOA represents could simply be disregarded. CC&Rs May Grant Developer Special Privileges. While CC&Rs must include provisions governing the "use and enjoyment" of the project, the Court explained that the restrictions a developer may include are not limited to those affecting the use or maintenance of the property – rather a developer can include any terms it deems appropriate as long as they are not unreasonable. This may even include terms that grant the developer "special rights, preferences or privileges." The Court found nothing unreasonable about the inclusion of mandatory arbitration and jury waiver provisions in the CC&Rs. Further, the Court held, CC&Rs may be drafted so as to limit or eliminate the ability of individual owners or the HOA to amend their terms without the developer's consent. Pinnacle confirms that developers may include preferential terms in CC&Rs as long as those terms are reasonable. While the HOA and the individual owners may have little or no ability to negotiate or amend such terms, the CC&Rs – which manifest the intent and expectations of both the developer and those who choose to purchase property in the development – will be honored and enforced unless proven unreasonable.

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