



ACC Report to Shareholders

1. We wish to welcome a new ACC member, Hugo Sibrian!
2. Sawyer put in his resignation due to family responsibilities. We want to thank him for his service to our community.
3. **Airbnb complaint:**

This case closed on the grounds that according to the law, we have no legal means for enforcement.

Reason being, the *CALIFORNIA CIVIL CODE CHAPTER 5. Property Use and Maintenance - ARTICLE 1, Section 4741. Protected Uses*, prohibits us:

4741.a "An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests, accessory dwelling units, or junior accessory dwelling units in that common interest development to a renter, lessee, or tenant."

Also of note, the code also explains that should the development adopt such a requirement in their CC&Rs, it still does not change the right of an owner who acquired title to property before the effective date to have any new rental limitations imposed upon them. (4741.h)

It also warns that should a development willfully violate this section of the law, they will be liable to the owner for actual damages, and also pay a civil penalty to the owner, of up to \$1,000. (4741.g)

Also playing a part in our decision is Assembly Bill 670, which was adopted into California code 4751 on Jan 1, 2021. From that date forward, any provision in a divisions' CC&Rs that prohibits or restricts either the construction or use of an additional or junior accessory dwelling unit (mother-in-law's quarters, etc) - even if the lot is zoned for single-family residential use - is considered void and unenforceable. (4751.a)

So, while neither the ACC nor individual property owners has legal standing to enforce the restriction of the above types of junior dwelling rentals,, the cited codes do *not* prohibit our Development from adopting and enforcing a provision in our CC&Rs that prohibit short-term rentals for a period of 30 days or less - **but only where the entire dwelling unit is being rented and is non-owner occupied**. But - again, the law specifically states any newly adopted CC&R restrictions regarding whole-unit short-term rentals are unenforceable upon an owner unless the restrictions were in effect *before* the owner acquired the property. (4741.h)

Sources:

https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4741.&lawCode=CIV
https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4751&lawCode=CIV
(Additionally, Section 4741 & 4751 now supersede any legal case law previously adjudicated.)

Lastly, if we thought there might be any ambiguity - in December 2020 in the case *Lastavich v. Nob Hill Homeowners Association* the California court confirmed that short-term rentals are *not considered an unauthorized commercial or business use of the home*. In this case, the Court held that absent any express language specifically prohibiting short-term vacation rentals or providing for a minimum lease term in the CC&Rs, the owners' rental activities were in fact an authorized, single-family use of the home for "a residential purpose".

A downloadable copy of the case determination can be found here:

<https://lakefrancisestates.org/wp-content/uploads/Lastavich-v-Nob-Hill-Homeowners-Association.pdf>

Therefore, in accordance with current California law, the ACC cannot legally enforce any rules regarding the short-term rentals, unless it is specifically adopted by amending the CC&Rs. To make a binding change, all property owners would need to vote in 100% agreeance to amend the CC&Rs to restrict short-term rentals. And even then, the prohibition would only apply and be enforceable upon owners who acquired property in the development *after any such amendments were ratified*. (4741.h)

Additionally, the ACC is unfunded, and cannot legally use the funds of the water company to pursue any kind of legal action against property owners. Of course, individual property owners have recourse to take legal action against each other as specifically stated in Section 10 of the CR&Rs:

"10. Except otherwise provided herein, any person or persons owning any property situated within said Subdivision shall have the right to prosecute at law or in equity any proceeding, which may be appropriate against any person or persons violating or attempting or threatening to violate or failing to comply with any one of the restrictions, covenants, or conditions hereof, and to maintain against any such person any action for injunction, damage or other relief which may be proper in the matter."

4. Rental and Short-Term Rental Requirements & Guidelines

In light of the above determination, and in the interest of preserving the original vision of the Ingersolls, the ACC has drafted a proposed set of *Requirements and Guidelines for Long & Short Term Rentals* in recommendation to the Board, to be followed by those wishing to rent space in short or long term. ~~In it we included that the water company could require an indemnification clause, to protect the water company against liability.~~ *After consulting counsel, the Board learned that neither the LFMWC nor the ACC can legally require or enforce an indemnification clause.*

We also included *guidelines* which will help reduce the problem of rentals becoming a nuisance to other property owners. This document will be available on the website, and we will welcome property owner's comments and suggestions in the process of fine-tuning this document.

5. Fence Placements

Like most jurisdictions, Yuba County Code defines their fence and wall ordinance separately from accessory structures, with different setback requirements. The CC&Rs of Lake Francis Estates (LFE) have rules for structural (building) setbacks, but do not define any existing rules regarding fencing types or their setbacks. Therefore, we refer all property owners to the Yuba County Regulations on Fences and Walls affecting Lake Francis Estates, Ordinance 11.19.040, regarding setbacks. This law states:

“Setback from Right of Way. *Within the Valley Growth Boundary, fences, walls and hedges shall be set back a minimum of five feet from an adjacent right of way line. In areas with detached sidewalks the fence shall not be any closer than back of walk. The area adjacent to the fence or wall shall be landscaped. Outside the Valley Growth Boundary, fences, walls, and hedges may be located at the property line so long as they are outside of any adjacent right of way or access easement and are not in conflict with a sight distance triangle of a road or driveway.”*

First, LFE is not located within the Yuba County "Valley Growth Boundary" - therefore "fences, walls, and hedges may be located at the property line so long as they are outside of any adjacent right of way or access easement and are not in conflict with a sight distance triangle of a road or driveway."

Secondly, the ACC acknowledges that no fencing is currently known to exist on any owner's property that prevents easement access to any existing LFMWC water lines. However, we acknowledge that some fences have been placed within water company setbacks where no water lines exist, one of these made with previous LFMWC documented approval/direction.

Sources:

Official documentation of the Yuba County fencing ordinance quoted above can be found on page 10 of their online document here:

<https://www.yuba.org/Yuba%20County/Community%20Development/Planning/Yuba%20County%20Development%20Code/Division%203%20Regulations%20Applying%20to%20Some%20or%20All%20Districts.pdf>

Official documentation of the declared Yuba County Valley Growth Boundary can be found on their online map here:

https://www.yuba.org/revize_photo_gallery/Community%20Development/2030%20GP%20Land%20Use%20Diagram.jpg

Official LFMWC Statement regarding fences over its easements submitted to the ACC:

LFMWC has easements under and across LFMWC shareholder properties. These easements allow LFMWC to service its roads, wells, pumps, and water lines that it owns.

LFMWC does not actually own the property where its easements are located. Instead, the land that LFMWC easements run under and across is owned by the property owner. Therefore, according to California law, LFMWC can only use the property subject to these easements for the specific purpose of the easements — unless LFMWC is specifically undertaking the specific duties of the water company, such as performing improvements or repairs to its utility infrastructure located in the easement. When performing these maintenance duties, LFMWC has the right to cross a person's land only to the extent necessary to access its easement.

There have been instances in which LFMWC granted express permission to property owners to encroach on its easement, such as in the placement of a fence. Or there has been a known open & notorious encroachment of an easement for longer than 5 years, defined by law as a granted prescriptive easement.

In the above cases, LFMWC has no legal authority to require these encroachments be removed -- until the encroachments interfere with LFMWC's use of its easement in order to service its utility infrastructure. An interference would occur if a fence crossing over an easement prevents LFMWC from performing repairs to the infrastructure located in its easement. In this situation, LFMWC has the right to seek a court order mandating the removal of the fence in order to

access the easement. Unless LFMWC needs to perform emergency repairs to infrastructure in an easement, LFMWC will make an effort to make arrangements with owners or to provide notice to reduce any inconvenience to the owner when LFMWC needs to access its easement.

6. Building Inquiries

ACC has drafted template responses for building inquiries. Sawyer Fischer has drawn up a graphic detailing the setbacks and all other requirements.

ACC received two inquiries regarding building in the last four months. A new owner of a lot wished to place an RV on the lot and was informed that he could only do so for a period of one year while building. He submitted a building plan but decided he was no longer building. The second requested the ACC requirements which were forwarded to him.

7. Formal Complaint

Due to a formal complaint received on December 20th (see last ACC meeting minutes for detail), the ACC issued a statement which in a nutshell is asking all property owners to respect the privacy of neighbors and avoid trespassing onto any lot without the consent of the owner. This was sent to property owners.

8. ACC recommendations for structures

The ACC plans to draw up a set of guidelines for future buildings to encourage some visual integrity in the subdivision.

End of report.