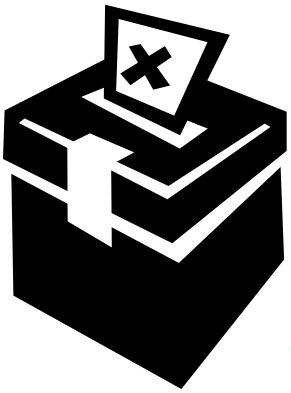
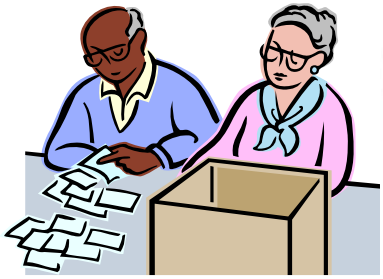
To all Diamond Heights Village Association members…..editorial by Terence Groeper, Director, DHVA

Why I will vote "NO" on the new Governing Documents…until they're done right





NO

After 5 years, over $34,000 in attorney fees and 1,000's of hours of volunteer time by only a *few* homeowners (including myself), the proposed restated Governing Documents (CC&R's, Bylaws & Articles) are finally available to you, the members. You are being asked to blindly vote for these changes without seeing them listed or forcing you to laboriously compare old and new, line by line, to discover just what they've changed and how. So it's time that *all owners* fully understand the critical changes being made to *their Documents* by these few.

For two years now, I've politely asked those few (on the Board and on the CC&R Committee):

1. To make it easy for you by simply listing each of the major changes they've made.
2. To also list the changes that some members want, but which they've rejected.
3. To list a brief pro and con for each change, for rest of the homeowners to see and consider.
4. To survey the membership with that list, to know what the rest of us want…or what might pass.
5. To do all of the above openly; then ask the attorney to write the majority's will into our Documents.
6. To mail alternate points of view (mine), along with theirs, as the law requires, to *every* member.

Requests all refused. After this huge 5 year effort and expense, what's so unreasonable about doing it right the first time? And not in with some uncertain future amendments, which might have to wait another 20 years.

Do you really want to wait to discuss smoking, pets, in-unit washers/dryers, hardwood floors, etc?

You will hear that we must accept this proposal as is, "to bring our Association up to date with current law." Well folks, current law always overrides anything contrary in our Documents, old or new, and **most of the proposed changes are optional**, i.e. left for members like you to decide how they want to be governed!

I think that our Governing Documents should strike **a fair and equitable balance** between the rights of the Association to remain viable…*and…*the rights of an individual homeowner to enjoy their home and their investment. Compared to our current Documents, this proposal tilts the scales against you on many issues.

So, while it would nice to have a retyped and legible set of documents, the law does not require it. I have no argument with reformatting or updates that make no substantial changes to the meaning, content or effect (as the Board once promised), but this proposal goes way beyond what's legally a must-do… and it broadly favors the Association over the individual homeowner…no surprise, given who pays the lawyer.

Davis-Stirling and other laws have seen many changes over the last 20 years and do allow for clarifications, but ones based on the will of the majority, not the few. You should question the specifics when you read about "changes….to clarify ambiguous provisions" *or* that "all attempts have been made to keep any current internal rules…unaltered and intact"…if so, they failed. Ask in whose favor are those clarifications and those attempts?

The Governing Documents control every aspect of your life and your investment here...so get all the facts…then choose how *you* want to be governed. These are *your* Governing Documents and should meet *your* needs and *your* understanding. I urge you to carefully review both the old and new.

You can either blindly trust the 10 ruling elites to know what's best for your property, your lives and your governance…***or***, you can vote against these harmful changes to **the only protection you have**. I will voting "**NO**" until *all* the members have been given *all* the facts on *all* the changes, fairly and openly.

Below are listed a very small sample of the many harmful changes I've found so far, with more available at the *unofficial* Website shown…please check there often for other news and opinion about improving our great community….news and opinion often suppressed and available nowhere else:

http://www.DHVA.INFO

I welcome your comments and calls. Please let know if you need any help in comparing the old and new documents…I have reams of research and e-docs that could make that easier. Thank you.

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A few of the harmful changes in the new CC&R's…please read these!

1. Issue: Hidden components would be the responsibility and liability of individual homeowners, not the Association, contrary to past precedent, practice and belief:

New §1.11 Redefines "Exclusive Use Common Area" (*all* of the components listed), as for "the exclusive use of one or more, but *fewer than all*, of the [396] Owners of the Units." I.e. all or some of the owners in a building, not DHVA, could be billed to fix the drains, electric lines or cabling all the way to the street…and held liable for damages, too.

New §5.1(all) & 5.2 Assigns new "Responsibilities" for some of these hidden components in a bewildering hodgepodge…some to the Association and many to the individual owner, including all TV and telephone cables, etc.

Old §1.20 "Exclusive use common area. Shall mean and refer to those portions of the common area, the exclusive use of each of which is set aside, allocated and restricted, to a particular unit or unit owner." This narrows it down to *one unit owner*, but has never been used to charge individual units for components hidden away in wall and floors…in the new version, it can and will be.

Principle: Components hidden away in Common Area walls, floors or ceilings and running hundreds of feet to a remote junction should *not* be the responsibility or liability of one innocent owner…or even a few. There is no way you alone can inspect, repair, replace or maintain this stuff…and you should not be liable when it fails or harms others. Make that very clear in new CC&Rs.

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2. Issue: Major Disaster. There should be no provision for a situation, no matter how dire, that would allow a majority, without your consent, to sell off your ownership and not theirs. And give you nothing for your share of the Common Areas or land. After a major earthquake or fire, that is likely, as your "Attorney-In-Fact."

New §9.7 "Sale of Building" defines the situation that would allow the Association to set the price, sell your unit and your share of the Association without your consent. It would divide the members into those with units deemed repairable and those not…favoring one group over the other. And it would even allow the remaining Association to purchase your damaged building and unit without your consent at their price. Do you want that? How much do you think they will pay you for a unit in a destroyed building, when they can level it, pay you only pennies on the dollar, and rebuild their own buildings, of which you no longer own a share.

Old §3.9 "Power of Attorney" uses California Civil Code §1359 to define extent of the damages and the procedure needed to permit the Association "to sell the entire project" (all units) without owner approval and for the benefit of *all* owners.

Old §2.3 "Waiver of Partition" further protects individual owners against actions by the majority at the expense of the minority and relies on Civil Code §1359 to do that.

Principle: If the dire situation described in §9.7 is reached, the Association should sell its assets, distribute the proceeds fairly to ***all*** members and then dissolve itself, as provided for in our current (old) Documents.

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3. Issue: Your share of regular and special Assessments: The option for an alternative reasonable and legal method and its table were removed. Removes requirement that assessments be "fair and equitable."

New §4.2 Revises content. Retains only one method of assessment based on the 3 tiers of Common Area ownership, removing the list of 8 unit sizes (square footage) and the legally optional method of assessing per unit size…as was done in the 2001 $6,200,000 Special Assessment.

Old §2.2.2 Allows and prefers an alternate fair and legal method for assessments that "shall be computed…..on the square footage of the respective Units in a pro rata fashion….to achieve an equitable and fair result." Provides a table for the computation:

"1) Studio (Model A1)..... 423 sq. ft.
2) Deluxe Studio (Model A2)..... 558 sq. ft.
3) Studio u/Alcove (Model A2a)..... 661 sq. ft.
4) One Bedroom (Model A4)..... 690 sq. ft.
5) One Bedroom u/Alcove (Model A4a)..... 779 sq. ft.
6) Deluxe One Bedroom (Model A3)..... 783 sq. ft.
7) One Bedroom u/Den (Model A5)..... 940 sq. ft.
8) Two Bedroom (Model A6)..... 1114 sq. ft."

Principle: It is a legal option for the membership, in their CC&Rs, to allocate assessments in a way that they deem fair to all, such as by the square footage of each unit (8 tiers)….and this option should be restored. It is not required to allocate per the arbitrary and unexplainable 3 tiers of Common Area Interest (studio, 1BR and 2BR units). Note that *votes* at DHV are allocated one per unit, not in 3 tiers. It's all up to the membership.

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4. Issue: Rules & Policies. Allows the Board broad, arbitrary and unlimited powers.

New §3.11 Allows Board to set rules over "use of ***any part*** of the Property" (including inside your unit), "pets, rental or lease of Condominiums, signs, holiday decorations, displays, and/or activities…which ***might***… offend, inconvenience, annoy…" Anything ***might***. And, if rentals are restricted, property values will fall.

Old §3.15 Called only for "reasonable rules not inconsistent with this Declaration relating to the use of [ONLY] the common areas….the conduct of the owners and their tenants, guests and pets with respect to the property and other owners."

Principle: Provide checks and balances on the Board's unlimited power to arbitrarily make petty, unnecessary or vindictive restrictions over every aspect of your life and home.

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5. Issue: Easements and licensing (leasing) of our shared Common Areas. Removes your right to vote on these; leaves it entirely up to the Board.

New §3.10 "The Board may grant Common Area easements or licenses…so long as the grant in whole or in part benefits the Owners and/or does not significantly interfere with the Owners' use of the Common Area"….as determined solely by the Board.

Old §3.14 Easements. The Association…shall have the power to….grant permits or licenses for the use of or easements over the Common Area….provided that any such dedication or grant shall have the assent of the majority of the voting members. In 2009, the Board sought no other offers before exclusively leasing DHVA-owned cabling to Comcast for 5 years and $39,600 without your vote….and spent the money on lobby surveillance equipment and cameras.

Principle: Before leasing away our common property, members should be allowed to know all the options and to vote, as is provided for in our current Governing Documents.

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6. Issue: Association absolved for liability from water related damages. Old DHVA pipes leak, you have to pay. And loss of use is explicitly denied, removing incentive for the Association to promptly repair their leak.

New § 5.4(b) "The Association shall not be liable for any interior water related or other damage to the Units (including personal property) unless it can be shown that the Association acted with gross negligence in any maintenance, repair or replacement project undertaken by the Association. Further, the Association shall not be liable for any loss of use caused for any reason."

Old 1.7, 1.8, 3.10 Defines Common Area water-related (and other) equipment as being the maintenance expense of the Association, implying Association liability. During the 2002 re-roofing, some units received up to $10,000 each for water damages with Board approval.

Principle: Common Area leaks (roof or pipes) can cause expensive damages and should be promptly repaired by the Association, along with any harm to your unit.

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7. Issue: You, the owner, are made totally responsible for "anything" our insurance companies do, with no way to know before they bill you the cost.

New 6.1(b) "No Owner shall permit anything to be done or kept in his or her Unit which will result in the increase of premiums, decrease in coverage or cancellation of insurance on any Unit or any Common Area… if the nature of use of any Unit causes an increase in the rate of insurance procured by the Association, the Board may levy a Reimbursement Assessment for the additional amount."

Old 5.1.5 More specific and limited, without assigning increased costs to owner. "No noxious, illegal, or seriously offensive activities shall be carried on in or upon any Condominium, or in any part of the property, nor shall anything be done thereon which may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of any Resident's Unit or, Association Common Area, or which shall in any way cause, or have the potential to cause; an increase in the rate of insurance for the Project, or any insurance policy to be cancelled or, a refusal by the Insurer to renew the same." Not perfect; should be more exact, not less.

Principle: Prohibitions on you, the owner, should be detailed, not vague, and should not charge you for failing to guess what the Association insurance companies will do.

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8. Issue: Catch-all; one of many instances of new CC&R's being made more vague and arbitrary, here by the removal of "seriously" and "serious," plus other changes.

New § 6.8 "Nuisance. No….offensive activity shall be carried on in or upon any Unit or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other residents. Nuisance may include, for example, loud, noxious, destructive or offensive activity or anything which causes significant embarrassment, disturbance or annoyance to others." No sex in your bedroom?

Old §5.1.5 "No noxious, illegal, or seriously offensive activities shall be carried on in or upon any Condominium, or in any part of the property, nor shall anything be done thereon which may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of any Resident's Unit or Association Common Area…"

Principle: Leaves you to guess what might disturb, annoy or embarrass anyone else, without specifying what…and leaves it to the Board to arbitrarily determine your fine.

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9. Issue: Conflicting, arbitrary and unnecessary restrictions banning RV's and all vehicles used in your business or trade, while allowing camper trucks and SUV's.

New §6.9(b) "The following types of vehicles or equipment are not allowed…large commercial type vehicle, any recreational vehicle (camper unit, motor home, trailer of any kind, boat trailer, mobile home or other similar vehicle), boats, jet skis, and similar recreational equipment, or any vehicle other than a private passenger vehicle. Camper trucks and sport utility vehicles up to and including three-quarter (3/4) ton load rated, when used for everyday type transportation (and not used for commercial purposes), are permitted." First sentence bans and second allows. Both ban "commercial" types or uses…why? Are bicycles a recreational vehicle?

Old §5.2 "Garage and Vehicle Restriction. The following types of vehicles or equipment are not allowed to be parked in the garage areas: A Mobile Home; Recreational Vehicle (commonly referred to as an RV); motor home; trailer of any kind; boat; or truck-camper; other than a bed-mounted camper, mounted on a

vehicle no larger than a 3/4 ton pickup; commercial vehicle of any kind; except sedans or standard size pick-up trucks which are used both for business and personal use."

Principle: If your vehicle is legal and fits entirely within your parking space, it should not be banned, regardless of how you use it. New and old both discriminate against trades people. Why?

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10. Issue: Continues to narrowly prohibit many harmless **home businesses and crafts** for no reason…and is difficult to enforce fairly.

New §6.16 Restriction on Businesses. No trade or business shall be conducted in or from any Unit, except for professional, administrative type work…" This bans all types of quiet craftwork, creative writing and other acceptable home-based businesses.

Old §5.1.1 "No Condominium….shall be occupied and/or used except for residential purposes by the Unit Owners, their tenants, residents, and guests, and no trade or business shall be conducted therein or thereon by any of the above mentioned owners, tenants, residents or guests, acting in a commercial capacity as either a self- employed entrepreneur, partner, employee, agent, or independent contractor." Even worse.

Principle: Petty and unnecessary bans on quiet, unobtrusive, profitable uses of one's home benefit no one…and, if money is tight, could lead to defaults.

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11. Issue: More silliness…as in the past, destined to be ignored by everyone.

New §6.3 "Outdoor Grills/Barbecues. No food preparation, barbecuing, or cooking of any kind shall be permitted in any …..Common Area." Does that include the pool area and the clubhouse kitchen? Both are Common Areas.

Old §5.1.6 Same silliness. .

Principle: Shouldn't the new Governing Documents weed out absurdities like this?

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12. Issue: In prohibiting short term rentals, new Documents also seem to ban home swaps, house-sitting or allowing friends to stay while you're away on vacation.

New §7.1 "No Condominium(s) or any portion, shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program, or arrangement, including without limitation, any so-called 'vacation license', 'travel club', 'extended vacation', or other membership or time interval ownership arrangement." New is much more stringent.

New §7.1(b)(2) "The initial period of the rental or lease is not less than one (1) year. Thereafter, tenancy under any lease or sublease shall be not less than thirty (30) days."

Old §5.7 "Lease Terms. No Unit Owner shall be permitted to lease his or her Condominium for a period of less than one (1) year." Nothing about home exchanges.

Principle: .While not a "time-share," there are legitimate organizations that safely arrange and background check two families agreeing to swap homes for a vacation….popular in Europe. Should you be prohibited from doing so? Or any arrangement for condo to be occupied or used by friends and family, while you're away?

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13. Issue: Lowers requirements, removing "all perils" and "all risk" endorsements for Association insurance, while making your homeowner's insurance mandatory, not optional. This is also not practical to enforce…and never has been.. .

New §8.1 – 8.3 Too long to include here….please read originals.

New §8.4(a) Unit Owner Required Insurance. Every Owner shall procure and continuously maintain adequate personal insurance coverage (first-party insurance) to insure his or her personal property and/or any improvement or betterment not covered by the Association's master policy. Additionally, every resident Unit Owner shall carry Comprehensive Personal Liability insurance (…referred to as an HO-6 policy for resident

Owners). Each non-resident Owner shall carry insurance generally equivalent to that required of a resident Owner." Translation: Both renter and owner must carry insurance and cannot self-insure.

New §8.4(b) "It is very important that each Owner consult with his or her insurance professional in procuring or maintaining the insurance required above. The subject of loss assessment coverage generally and loss assessment coverage for earthquake damage should also be addressed." Everybody must have individual unit insurance to cover all that the Association policy does not, including rebuilding after fire or earthquake?

Old §3.7.1.10 Association shall buy a "policy or policies of fire and casualty insurance… including all perils normally covered by the standard "all risk" endorsement…."

Old §3.7.1.15 "….No provision contained herein shall be construed to prevent any Unit Owner from obtaining such additional individual insurance coverage as such Unit Owner may consider necessary or desirable to protect the Unit Owner or his or her Unit." Optional in the old; compulsory in the new.

Principle: While homeowner insurance is desirable, many do not carry it. And in a major disaster, neither your insurance nor the Association's will be adequate to rebuild without huge assessments that will likely bankrupt homeowners and Association both. In this economy, forcing everyone to buy this now, will bankrupt many immediately. You can not afford or obtain all the insurance this would mandate…nor should you have to.

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14. Issue: In this long complex article granting mortgage holders many rights and voting privileges, even without their foreclosing or acquiring direct ownership. Why?

New §10.3. Termination of Project. "…in case of substantial destruction or condemnation of the Property, the consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding Mortgages on Units which have at least sixty-seven percent (67%) of the votes of Units subject to first Mortgages, shall be required to terminate the legal status of the Property as a condominium project. (*see also Civil Code section 1359 and Corporations Code section 8724*)."

New §10.6 "Distribution of Insurance or Condemnation Proceeds. No Owner, or any other party shall have priority over any rights of First Lenders pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Common Area property"….even if your mortgage payments are current.

New §10.7. "Restoration or Repair. Any restoration or repair of the Property after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by Eligible Mortgage Holders holding Mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to first Mortgages." Creates a new non-owner voting class for rebuilding.

New §10.8. "Reallocation of Interests. No reallocation of interests in the Common Areas resulting from a partial condemnation or partial destruction of the Property may be effected without the prior approval of Eligible Mortgage Holders holding Mortgages on all remaining Units whether existing in whole or in part, and which have at least fifty-one percent (51%) of the votes of such remaining Units subject to first Mortgages.

Old §6.11 "Termination. Any election to terminate the legal status of the Project after substantial destruction or a substantial destruction or taking in condemnation of the project property must require the approval of eligible mortgage holders holding mortgages on units which have at least fifty-one percent (51%) of the votes of units subject to eligible holder mortgages.

Old §6.12 "Reallocation of Interests. No reallocation of interests in the common areas resulting from a partial condemnation or partial destruction of the project may be effected without the prior approval of eligible mortgage holders holding mortgages on all remaining units whether existing in whole or in part, and which have at least fifty-one percent (51%) of the votes of such remaining units subject to eligible holder mortgages."

Principle: Both old and new Documents allow termination or reallocation of your ownership based on only 51% of votes. Both are unclear on who gets to vote and on the rights of owners with no loans.

Why do disasters grant to lenders sudden new rights and powers, even without foreclosure or acquiring direct ownership? New rights and powers superior even to the owners with no mortgages or not in default and with substantial equity? This is disproportional, undemocratic, unfair, and should be corrected.

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15. Issue: New Governing Documents do NOT clearly or fully incorporate the homeowner protections of AARP's Bill of Rights….shouldn't you demand these? Vote "NO" until they all are added

"A Bill of Rights for Homeowners in Associations: Basic Principles of Consumer Protection and Sample Model Statute AARP Public Policy Institute; July 21, 2006

Summary: This AARP Public Policy Institute Issue Paper outlines a set of 10 key principles and provides sample statutory language that states can follow…and that associations themselves can use when developing or modifying their own governing documents. In advocating reasonability as the touchstone for all actions, the principles maintain that homeowners have the right to a…

BILL OF RIGHTS FOR HOMEOWNERS

To ensure amicable and equitable relations between homeowners and their associations, this bill of rights seeks fair resolution of disputes, specifies rights regarding rules and charges, ensures individual autonomy, and promotes oversight and voting. The bill of rights uses reasonability as the touchstone for all actions.

I: The Right to Security against Foreclosure
An association shall not foreclose against a homeowner except for significant unpaid assessments, and any such foreclosure shall require judicial review to ensure fairness.

II: The Right to Resolve Disputes without Litigation
Homeowners and associations will have available alternative dispute resolution (ADR), although both parties preserve the right to litigate.

III: The Right to Fairness in Litigation
Where there is litigation between an association and a homeowner, and the homeowner prevails, the association shall pay attorney fees to a reasonable level.

IV: The Right to Be Told of All Rules and Charges
Homeowners shall be told--before buying--of the association's broad powers, and the association may not exercise any power not clearly disclosed to the homeowner if the power unreasonably interferes with homeownership.

V: The Right to Stability in Rules and Charges
Homeowners shall have rights to vote to create, amend, or terminate deed restrictions and other important documents. Where an association's directors have power to change operating rules, the homeowners shall have notice and an opportunity, by majority vote, to override new rules and charges.

VI: The Right to Individual Autonomy
Homeowners shall not surrender any essential rights of individual autonomy because they live in a common-interest community. Homeowners shall have the right to peaceful advocacy during elections and other votes as well as use of common areas."

Principle: While some of these protections are required by California law, others are optional. Why not incorporate them all? Be protected. See: http://assets.aarp.org/rgcenter/consume/2006_15_homeowner.pdf

PLEASE SHARE THIS INFORMATION WITH OTHER OWNERS. THANK YOU. *End*