

HOA Compliance Review Inc.

A Safer Way To Disclosure

§1368 Compliance Report

HOA Name: Carriage Square Residential Association
Property Address: 17400 Carriage Lamp Way, Morgan Hill, CA USA 95123
Date of Review: May 21st 2001
Control Number: 2001434

Contact Information:

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1 Executive Summary

Carriage Square Residential Association is an incorporated planned development located in Santa Clara California 95151-2575. The owner of the unit/lot for which this review applies is Paul Kohlmeier, and resides at 3735 Terstena Plance #152. The individual or company requesting this review is Chicago Title Company. Documents were received on 4/30/2001. The review was conducted on 5/1/2001 by Jacquie Berry.

The managing agent responsible for providing the document package for this review is Community Management Service, located at 6489 Camden Avenue, #220, San Jose, CA, 95120. They can be contacted via phone at (408) 997-9606 or fax at (408) 997-5930 or email at customersupport@CMS.com.

1.1 Issues of Non-Compliance

For details regarding each issue or notation, refer to section 2.0 entitled "Ramifications and Resolutions of Issues and Notations". There you will be advised of issue ramifications and reasonable alternatives to begin resolution.

- 004i – Articles of Incorporation have pages that are not legible.
- 011i – CC&Rs are missing pages.
- 013i – Subdivision map is missing.
- 032i – Budget is not current.
- 034i – The budget does not contain a list of major components that estimates for each the following: (1) Replacement cost (2) Useful life (3) Remaining life
- 038i – A statement as to whether a special assessment is necessary to fund the reserves account was not provided.
- 039i – A statement disclosing how the reserve study was conducted was not provided.
- 040i – Delinquency Policy is missing.
- 050i – Insurance Summary Disclaimer is missing.
- 064i – Statement of Violations is missing.
- 080i – The documents requested where not delivered within 10 business days.
- 081i – Minutes are missing.

1.2 Notes

1.2.1 Major Notations

- 003n – The major components are NOT at least 100% funded.

1.2.2 Minor Notations

- 002n – Age restrictions are NOT present in the governing documents.

1.3 Limitations and Exclusions

- 001e – Verify that the CC&Rs is really the document of record.

Theoretically, between the times the CC&Rs were provided by the HOA for this review and the close or escrow, the CC&Rs might be restated or amended by the governing body. In order to identify this possibility the buyer should consider the following:

1. Reading the past 12 months of meeting minutes looking for "CC&R revisions" or
 2. Obtain a copy of the documents filed at the county recorders office. Pull these documents as close to the close of escrow as is reasonable.
-

002e – Verify the list of major components in the budget is accurate.

We do not verify that the governing body has maintained a complete list of reserve components in the budget only that a list exists. To verify the list is complete the buyer may consider the following approaches:

1. Reconcile the list provided in the budget with that of the previous reserve study report.
 2. Reconcile the list provided in the budget with that of the subdivision map, which shows many reserve components.
-

003e – Is the reserve fund over funded?

In the event that the HOA has over 100% funding for the maintenance of the major components, the buyer should consider the following:

1. The HOA might be deferring maintenance. Deferred maintenance can cause components to deteriorate more quickly. Take of visual inspection of the property to determine the possible deferred maintenance.
-

004e – Verify the current budget is based on a reserve study conducted pursuant to §1365.5

We do not verify that that the budget is based on a reserve study that was conducted using visual inspection of the major components within the previous 3 years. In order to verify that the HOA is abiding by the §1365.5 process and has conducted a visual inspection within the last 3 years, the buyer might consider the following:

1. Request copies of all reserve studies generated within the past 3 years and verify that an onsite visual inspection of the major components was conducted.
-

005e – Verify the Agent for Service of Process found in the Secretary of State database is correct.

We do not verify the accuracy of the *Agent for Service of Process (Agent)*. Agent is often incorrect. There is no known reward system in place, which encourages an HOA to keep current the records of the State of California with respect to the Agent. To identify the correct agent, the buyer might consider the following:

1. Contact the governing body directly.
 2. Read the minutes of previous meetings.
-

006e – Verify the HOA has a prudent and responsible termite and dry rot maintenance policy.

§1368 does not require the disclosure of the HOA's policy for managing the threats of both termites and dry rot; in spite of the significant impact each can have on the maintenance of an association. The buyer might consider the following:

1. Request the HOAs policy for addressing the risk of termite infestation and dry rot directly from the managing agent.
-

007e – Verify that illegal language is not used in the governing documentation.

This review does not verify the compliance of §12956.1 However the buyer should be aware that §12956.1 proclaims that any HOA document that contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal housing laws and is void. Any person holding interest in this property may request that the county recorder remove the restrictive covenant language pursuant to subdivision 'c' Section 12956.1 of The Government Code.

2 Ramifications and Resolutions of Issues and Notations

Issue: 004i – Articles of Incorporation have pages that are not legible.

Ramification / Risk: The Articles of Incorporation describe the name and the purpose of the corporation. This document also names the initial agent for process of service. Sometimes the articles also include language about voting, directors, amendments, and dissolution of the association. By having a copy of the articles of incorporation prior to the close of escrow the prospective purchaser can verify that he/she is buying into a corporation and thus ensuring all the legal protection a corporation provides under the state of California.

Resolution(s):

1. Contact the managing agent for a copy
 2. Contact a board member for a copy
 3. Contact the Secretary of State (SOS)
-

Issue: 011i – CC&Rs are missing pages.

Ramification / Risk: The CC&Rs describe the rights and obligations of the homeowner association and of each owner. Typically include: (1) the boundaries of the common area and of each unit or lot; (2) the owner usage restrictions, typically including occupancy limitations, pet regulations, and alteration control; (3) the maintenance responsibilities of the association and the individual owners; (4) the allocation of association operating costs among the owners, and the mechanism for collecting owner payments; (5) the dispute resolution procedure; and (6) the rights and protection of mortgage lenders. By having a copy of the CC&Rs prior to the close of escrow the prospective purchaser can verify the above rights and obligations are acceptable.

Resolution(s):

1. Contact title company for a copy
 2. Contact the managing agent for a copy
 3. Contact a board member for a copy
-

Issue: 013i – Subdivision map is missing.

Ramification / Risk: The “Subdivision Map” and “condominium plan”, as well as the less common terms “final map” and “parcel map”, describe types of drawings that illustrate how a property is divided into units or lots. These drawings show the exact location and boundaries of each unit or lot, and of the common area. By having a copy of the Subdivision map prior to the close of escrow the prospective purchaser can verify the boundaries of the units, assignment of parking spaces and assignment of restricted common area is acceptable.

Resolution(s):

1. Contact title company for a copy
 2. Contact the managing agent for a copy
 3. Contact a board member for a copy
-

Issue: 032i – Budget is not current.

Ramification / Risk: The *pro forma* operating budget is a document listing the expected income, operating fund needs, and reserve fund needs, along with the basis for the calculation of the reserve fund needs. By having a copy of the *pro forma* operating budget prior to the close of escrow the prospective purchaser can verify the board of directors' plans regarding the anticipated operating and major component expenses are acceptable. The effective planning for such expenses can greatly reduce the need for intra-year regular assessment increases as well as special assessments.

Resolution(s):

1. Contact the managing agent for a copy
 2. Contact a board member for a copy
-

Issue: 034i – The budget does not contain a list of major components that estimates for each the following:
(1) Replacement cost (2) Useful life (3) Remaining life

Ramification / Risk: The list of major components and complimentary information is imported into the budget from the most recent reserve study. The reserve study is an essential planning tool for every association. It ensures that the board will periodically take stock of the physical condition of the property that the association is obligated to maintain, and will keep informed about the deterioration of major components with a remaining service life of less than 30 years. It also ensures that the board will consider the adequacy of its reserve-funding program, and will report the current status of that program to the membership on an annual basis.

By ensure that the the *pro forma* operating budget contains the list of major components (with estimates for (1) Replacement cost (2) Useful life (3) Remaining life) prior to the close of escrow, the prospective purchaser can verify the board of directors' plans regarding the anticipated major component expenses are acceptable. The effective planning for such expenses can greatly reduce the need for intra-year regular assessment increases as well as special assessments.

Resolution(s):

1. {Unknown}
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NOTE TO BEV AND JB....Continue here with as many issues and notes as are listed in 1.1 and 1.2

3 Definitions

The following are definitions of terms that may be used in this report when assessing the compliance of the document package to that of §1368.

Articles of Incorporation

The Articles of Incorporation describe the name and the purpose of the corporation. This document also names the initial agent for process of service. Sometimes the articles also include language about voting, directors, amendments, and dissolution of the association.

Budget

The *pro forma* operating budget is a document listing the expected income, operating fund needs, and reserve fund needs, along with the basis for the calculation of the reserve fund needs.

Bylaws

The Bylaws describe the mechanics of association decision-making and management. Bylaws usually include the following: (1) numbers and selection methods for officers and directors; (2) notice, meeting and voting procedures for owner and board decision; and (3) association record keeping and reporting requirements.

Common Interest Development (CID)

Describes a form of real estate where each owner holds exclusive rights to a portion of the property typically called a unit or lot, and shared rights to a portion of the property typically called the common area.

Conditions, Covenants and Restrictions (CC&Rs)

The CC&Rs describe the rights and obligations of the homeowner association and of each owner. Typically include: (1) the boundaries of the common area and of each unit or lot; (2) the owner usage restrictions, typically including occupancy limitations, pet regulations, and alteration control; (3) the maintenance responsibilities of the association and the individual owners; (4) the allocation of association operating costs among the owners, and the mechanism for collecting owner payments; (5) the dispute resolution procedure; and (6) the rights and protection of mortgage lenders.

Financial Statements / Annual Report / Audit

Describe the set of reports that are defined by the generally accepted accounting principles (GAAP) as being Income Statement, Balance Sheet and Statement of Changes in Working Capital.

Governing Documents

This term is used as a general reference to the entire group of legally recognized paperwork that creates and controls a condominium project or planned development. The governing documents typically include a subdivision map and/or condominium plan, a declaration of covenants, conditions and restrictions, articles of incorporation, bylaws and rules.

Homeowners Association (HOA)

Describes a form of real estate where each owner holds exclusive rights to a portion of the property typically called a unit or lot, and shared rights to a portion of the property typically called the common area.

Reserve Study

The reserve study is an essential planning tool for every association. It ensures that the board will periodically take stock of the physical condition of the property that the association is obligated to maintain, and will keep informed about the deterioration of major components with a remaining service life of less than 30 years. It also

ensure that the board will consider the adequacy of its reserve funding program, and will report the current status of that program to the membership on an annual basis.

Subdivision Map

The “Subdivision Map” and “condominium plan”, as well as the less common terms “final map” and “parcel map”, describe types of drawings that illustrate how a property is divided into units or lots. These drawings show the exact location and boundaries of each unit or lot, and of the common area.

4 Scope of Review

If the client is the buyer, the report is not intended to be used by any third party, and the REVIEWER shall not be accountable to any such third parties in any manner. If the report is a "Listing Review" for the seller, the report may be relied on (within the scope of the inspection described below) by both the seller and the buyer of the property from the seller upon execution of this agreement. The report is not intended to be distributed to any subsequent buyer of the property for reliance by the subsequent buyer, and the REVIEWER is not accountable to such subsequent buyers in any manner.

The purpose of this report is to provide the reader with an overview of the documents provided pursuant to §1368 and its referenced civil code sections. The report will focus on any aspect of the disclosure that would prevent the prospective purchaser from confidently relying on the documents provided such as, but not limited to, package completeness, document(s) completeness, document(s) appropriateness, and document(s) legibility. The selection of specific documents covered by the report was the result of written notification to the homeowners' association (HOA) from the client.

The scope of our work has been limited to a high-level review of documentation provided by management of the common interest development (CID).

The scope of our work does not include:

- (i) Analysis of the budget, financial statements, reserve study or any other document for its accuracy other than that which is directly related to Civil Code §1368.
- (ii) Analysis of the effectiveness of the HOAs plan to correct issues highlighted by documents such as, but not limited to, the budget, financial statements, and reserve study.

HOA Compliance Review, Inc. will post updates to this report on its website to the extent that the assessed HOA provides requisite information to the client and the client purchases the services necessary to assess the newly acquired documentation and to update the report.

5 Claim Procedure

It is hereby agreed and understood that should the client claim to discover that one or more aspects of the report is incorrect, the client agrees to notify the reviewer before any corrective measures are undertaken, and further to allow a re-review by the REVIEWER of the reported problem at no cost to the client. Should the REVIEWER determine in the REVIEWER'S sole discretion that a modification to the documentation provided is required, the client agrees to allow the REVIEWER, the opportunity to effect the said modification prior to initiating any modification on his/her own behalf and prior to initiating any mediation, arbitration, or civil action. If there is a conflict regarding the wording of a report, the report kept at HOA Compliance Review, Inc. shall prevail.

6 Arbitration Agreement

Any dispute between the client and the REVIEWER arising out of the review or the resulting report shall be decided by neutral arbitration in accordance with Chapter 3, Title 9 of the California code of Civil Procedures (C.C.P. 1282, et seq.) and not by court action except as provide by California law for judicial review of arbitration proceedings. The parties to any arbitration under this agreement shall have the discovery rights provided in California code of Civil Procedure 1283.05. The arbitrator shall be a retired Superior Court judge, a licensed California Attorney with at least five years of real estate experience. If the parties herein cannot agree upon an arbitrator, the Superior Court of the County in which the property is located shall appoint an arbitrator. The prevailing party in any arbitration under this Arbitration Agreement shall be entitled to recover fees and costs incurred in the proceeding.

By signing below, you are specifically agreeing to the Scope of the Review, the Claims Procedure, and the Arbitration Agreement above, and all conditions as described above. You are agreeing to have any dispute decided by neutral arbitration as provided by California law and you are giving up any rights you might possess to have the dispute litigated in a court or jury trial. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the California code of civil procedures. If all parties do not sign this Agreement, this compliance report will carry no warranty or guarantee as to its contents, and shall be "As Information" only.

Client & Date

Reviewer & Date

Address of Unit/Lot _____