When Obstructed Views Become Litigated

By Alex Chazen

This time of year, particularly when the temperatures start to drop on the East Coast, we on the West Coast become even more grateful for the beauty of where we live than we may be at other times of the year. Part of this appreciation, for some, is a fabulous view of the ocean from your home. Unfortunately, being in California, the topic of views is something that lawyers all too often become involved in, when neighbors think that the only way to settle a dispute is to "lawyer up" and file a lawsuit.

The biggest problem that we see in neighbor disputes is that often, when the door to emotion is opened, reason goes out the window.

The main principle that the right to a view is not something that you can sue for was developed in 1898 when the California Supreme Court ruled that one's ownership of land does not imply a right to force owners of neighboring land to refrain from obstructing the view from the land or the light and air reaching the land. Kennedy v. Burnap (1898) 120 Cal. 488. Interestingly, the Court had the foresight to understand that preventing homeowners from building structures, or allowing natural conditions to develop, which blocked their neighbors' views would tend to hamper the future development of land and considered that to be a poor policy to promote.

Over the years, some cities have created exceptions to this rule. Certain localities have established so called "View Protection Ordinances". In the bay area, the city of Tiburon has passed an ordinance that prohibits landowners from planting or maintaining any tree or plant that "unreasonably" obstructs the view from, or sunlight reaching "any active area" of any other parcel of real property within the city's limits. The Courts have upheld this ordinance despite objections and lawsuits from homeowners citing the general California rule discussed above. Typically though, as is the case with Tiburon, these ordinances deal with tree trimming, and not ocean views.

In California therefore, the general rule is that the only protections for views can be contained within an "agreement of landowners". Whether it is Bayshores, Castaways or Newport Coast (or one of the dozens of other community associations nearby), most of the homes on our coastline are subject to Covenants, Conditions and Restrictions (CC&Rs), which govern the way that homes can be modified or rebuilt. What this means is that the general principle discussed above is very often not the actual rule at all.

CC&Rs are often a tricky subject to tackle. So much about how we determine what is and is not permissible is based upon documents that are written, in many cases, decades before a dispute even arises. At the time that the documents were drafted, building materials that are commonplace today – exterior uses of glass, major advancements in exterior plastic use, and other "hidden" construction elements – were not even contemplated.

As any homeowner would hope, a homeowner's right to do what they want with their property is extremely important to the California Courts. They have previously held that "it is not reasonable to interpret the CC&Rs as prohibiting any obstruction of existing views as urged by appellants." Zabrucky v. McAdams (2005) 129 Cal. App. 4th 618. Therefore, any restriction made by the CC&Rs has to allow for development of a homeowners' property, and only make reasonable restrictions for purposes of protecting a neighbor's view.

The key to avoiding lawsuits, in almost every dispute, is communication. It is imperative that if you are planning on building a new home, or doing any type of addition or remodel, that you provide the CC&Rs and any other planning or zoning documents from you community association to your architect at the time that they are drawing up the plans. This will not only help you avoid violations, but also avoid the architect creating multiple drafts of plans, which will likely also save you money in paying for the architect's time. Further, many associations have an architectural committee who are empowered to make decisions about whether or not your construction plans conform to the CC&Rs.

Finally, a piece of advice that is always worthwhile – talk to your neighbors. Most of the time when neighbors sue one another, the only winners at the end of the day are their attorneys who are being paid by the hour to rehash any dispute that the neighbors have had in the entirety of the time that they have lived next to one another. Similar to the Democratic Peace Theory in which democracies do not go to war with each other, neighbors who are friendly and have a rapport with one another typically try to resolve disputes amongst each other rather than running up attorneys fees bills in a game of litigation chicken.