Litigation Due Diligence Analysis

Brilliant v. Mulholland Estates, et al.

By

DS

February 20, 2024

Table of Contents

[1. SUMMARY 11](#_Toc147469381)

[2. PARTIES/SIGNIFICANT FIGURES 11](#_Toc147469382)

[3. STATEMENT OF FACTS / EVIDENTIARY SUPPORT 14](#_Toc147469383)

[4. yn\_notable\_provisions\_govdocs\_table == "Yes" NOTABLE PROVISIONS OF THE GOVERNING DOCUMENTS###yn\_notable\_provisions\_agreement\_table == "Yes" NOTABLE PROVISIONS OF ONE OR MORE OPERATIVE AGREEMENTS###yn\_notable\_provisions\_govdocs\_table == "No" or yn\_notable\_provisions\_agreement\_table == "No"RESERVED### 16](#_Toc147469384)

[5. ADDITIONAL INFORMATION/CLARIFICATION NEEDED FROM CLIENT 17](#_Toc147469385)

[6. CIVIL CODE § 5200 DOCUMENT DEMAND 18](#_Toc147469386)

[7. ADDITIONAL DOCUMENTS NEEDED FROM CLIENT 19](#_Toc147469387)

[8. THIRD-PARTY DOCUMENTS/INFORMATION KNOWN TO EXIST 20](#_Toc147469388)

[9. MUST NOT USE HOA’S PRIVILEGED DOCUMENTS 22](#_Toc147469389)

[9.1. Can Client Waive the Privilege? 22](#_Toc147469390)

[9.2. Does the CRPC Require the Firm to *Return* the Privileged Documents? 22](#_Toc147469391)

[9.3. Does Providing Privileged Documents to the Firm Constitute a Fiduciary Breach by Client? 23](#_Toc147469392)

[10. radio\_client\_plaintiff\_defendant == "Plaintiff/Petitioner" or radio\_client\_plaintiff\_defendant == "Plaintiff & Cross-Defendant" CURRENT CAUSES OF ACTION ALLEGED IN THE COMPLAINT & THE STRENGTHS/WEAKNESSES OF EACH###radio\_client\_plaintiff\_defendant == "Defendant/Respondent" and yn\_client\_filed\_cross\_complaint == "Yes" CURRENT CAUSES OF ACTION ALLEGED IN THE CROSS-COMPLAINT & THE STRENGTHS/WEAKNESSES OF EACH### radio\_client\_plaintiff\_defendant == "Defendant/Respondent" and yn\_client\_filed\_cross\_complaint == "No" and yn\_cross\_claims == "Yes" POTENTIAL CAUSES OF ACTION TO INCLUDE IN A CROSS-COMPLAINT & THE STRENGTHS/WEAKNESSES OF EACH###radio\_client\_plaintiff\_defendant == "Defendant/Respondent" and yn\_client\_filed\_cross\_complaint == "No" and yn\_cross\_claims != "Yes" RESERVED### 24](#_Toc147469393)

[10.1. Breach of CC&Rs / Breach of Equitable Servitudes / Violation of Civ. Code, § 5975 24](#_Toc147469394)

[10.2. Breach of Contract 27](#_Toc147469395)

[10.3. Implied Covenant of Good Faith and Fair Dealing 29](#_Toc147469396)

[10.4. Breach of Other Governing Documents 31](#_Toc147469397)

[10.5. Negligence 32](#_Toc147469398)

[10.6. Breach of Fiduciary Duty 36](#_Toc147469399)

[10.7. Nuisance 41](#_Toc147469400)

[10.8. Trespass 47](#_Toc147469401)

[10.9. Interference with Prospective Business Advantage 51](#_Toc147469402)

[10.10. Interference with Contract 52](#_Toc147469403)

[10.11. Intentional Misrepresentation (Fraud) 54](#_Toc147469404)

[10.12. Negligent Misrepresentation 58](#_Toc147469405)

[10.13. Intentional Infliction of Emotional Distress (“IIED”) 59](#_Toc147469406)

[10.14. Violation of Open Meeting Act 61](#_Toc147469407)

[10.15. Declaratory Relief 63](#_Toc147469408)

[10.16. Violation of Election Laws (Civ. Code, § 5100 et seq.) 75](#_Toc147469409)

[10.17. Assault 78](#_Toc147469410)

[10.18. Battery 80](#_Toc147469411)

[10.19. Defamation 82](#_Toc147469412)

[10.20. Civil Stalking 84](#_Toc147469413)

[10.21. Violation of Statute (Dog Bite) 86](#_Toc147469414)

[10.22. False Imprisonment 87](#_Toc147469415)

[10.23. Invasion of Privacy 89](#_Toc147469416)

[10.24. Express Indemnity 91](#_Toc147469417)

[10.25. Equitable Indemnity 92](#_Toc147469418)

[10.26. Failure to Permit Inspection of Records 94](#_Toc147469419)

[10.27. Quiet Title 95](#_Toc147469420)

[10.28. Slander of Title 97](#_Toc147469421)

[10.29. Cancellation of Instrument 98](#_Toc147469422)

[10.30. Reformation of Instrument 99](#_Toc147469423)

[10.31. Partition 100](#_Toc147469424)

[10.32. Conversion 102](#_Toc147469425)

[10.33. Trespass to Chattels 104](#_Toc147469426)

[10.34. Open Book Account 106](#_Toc147469427)

[10.35. Money Had and Received 107](#_Toc147469428)

[10.36. Account Stated 108](#_Toc147469429)

[10.37. Goods and Services Rendered 109](#_Toc147469430)

[10.38. Unjust Enrichment 110](#_Toc147469431)

[10.39. Rescission 111](#_Toc147469432)

[10.40. Financial Elder Abuse (Welf. & Inst. Code, § 15610.30) 112](#_Toc147469433)

[10.41. Negligent Hiring 114](#_Toc147469434)

[10.42. Negligent Supervision 116](#_Toc147469435)

[10.43. Unfair Business Practices (Bus. & Prof. Code, § 17200 et seq.) 119](#_Toc147469436)

[10.44. Receipt of Stolen Property (Penal Code § 496) 122](#_Toc147469437)

[10.45. Misrepresentation in Connection with Sale of Security (Corp. Code, § 25401) 123](#_Toc147469438)

[10.46. Recovery Against Contractor’s Bond 125](#_Toc147469439)

[10.47. Breach of Independent Wholesale Representatives Act (Civ. Code, § 1738.10 et seq) 126](#_Toc147469440)

[10.48. Violation of California Uniform Trade Secrets Act (Civ. Code, § 3426 et seq.) 130](#_Toc147469441)

[10.49. Malicious Prosecution 131](#_Toc147469442)

[10.50. Abuse of Process 133](#_Toc147469443)

[10.51. Insurance Bad Faith 135](#_Toc147469444)

[10.52. Medical Malpractice 137](#_Toc147469445)

[10.53. Legal Malpractice 139](#_Toc147469446)

[10.54. Fraudulent Transfer (Uniform Fraudulent Transfer Act—Civil Code, § 3439 et seq.) 143](#_Toc147469447)

[11. (radio\_client\_plaintiff\_defendant == "Plaintiff/Petitioner" or radio\_client\_plaintiff\_defendant == "Plaintiff & Cross-Defendant") and yn\_add\_new\_coa\_complaint == "Yes" POTENTIAL CAUSES OF ACTION TO BE ADDED TO THE COMPLAINT & THE STRENGTHS/WEAKNESSES OF EACH###radio\_client\_plaintiff\_defendant == "Defendant/Respondent" and yn\_add\_new\_coa\_cross\_complaint == "Yes" POTENTIAL CAUSES OF ACTION TO BE ADDED TO THE CROSS-COMPLAINT & THE STRENGTHS/WEAKNESSES OF EACH###radio\_client\_plaintiff\_defendant == "Defendant/Respondent" and (yn\_add\_new\_coa\_cross\_complaint == "No" or yn\_cross\_claims == "No") RESERVED### 146](#_Toc147469448)

[11.1. Breach of CC&Rs / Breach of Equitable Servitudes / Violation of Civ. Code, § 5975 146](#_Toc147469449)

[11.2. Breach of Contract 149](#_Toc147469450)

[11.3. Implied Covenant of Good Faith and Fair Dealing 151](#_Toc147469451)

[11.4. Breach of Other Governing Documents 153](#_Toc147469452)

[11.5. Negligence 154](#_Toc147469453)

[11.6. Breach of Fiduciary Duty 158](#_Toc147469454)

[11.7. Nuisance 163](#_Toc147469455)

[11.8. Trespass 169](#_Toc147469456)

[11.9. Interference with Prospective Business Advantage 172](#_Toc147469457)

[11.10. Interference with Contract 174](#_Toc147469458)

[11.11. Intentional Misrepresentation (Fraud) 175](#_Toc147469459)

[11.12. Negligent Misrepresentation 179](#_Toc147469460)

[11.13. Intentional Infliction of Emotional Distress (“IIED”) 181](#_Toc147469461)

[11.14. Violation of Open Meeting Act 183](#_Toc147469462)

[11.15. Declaratory Relief 184](#_Toc147469463)

[11.16. Violation of Election Laws (Civ. Code, § 5100 et seq.) 195](#_Toc147469464)

[11.17. Assault 199](#_Toc147469465)

[11.18. Battery 200](#_Toc147469466)

[11.19. Defamation 202](#_Toc147469467)

[11.20. Civil Stalking 204](#_Toc147469468)

[11.21. Violation of Statute (Dog Bite) 206](#_Toc147469469)

[11.22. False Imprisonment 207](#_Toc147469470)

[11.23. Invasion of Privacy 209](#_Toc147469471)

[11.24. Express Indemnity 211](#_Toc147469472)

[11.25. Equitable Indemnity 212](#_Toc147469473)

[11.26. Failure to Permit Inspection of Records 214](#_Toc147469474)

[11.27. Quiet Title 215](#_Toc147469475)

[11.28. Slander of Title 217](#_Toc147469476)

[11.29. Cancellation of Instrument 218](#_Toc147469477)

[11.30. Reformation of Instrument 219](#_Toc147469478)

[11.31. Partition 220](#_Toc147469479)

[11.32. Conversion 222](#_Toc147469480)

[11.33. Trespass to Chattels 224](#_Toc147469481)

[11.34. Open Book Account 226](#_Toc147469482)

[11.35. Money Had and Received 227](#_Toc147469483)

[11.36. Account Stated 228](#_Toc147469484)

[11.37. Goods and Services Rendered 229](#_Toc147469485)

[11.38. Unjust Enrichment 230](#_Toc147469486)

[11.39. Rescission 231](#_Toc147469487)

[11.40. Financial Elder Abuse (Welf. & Inst. Code, § 15610.30) 232](#_Toc147469488)

[11.41. Negligent Hiring 234](#_Toc147469489)

[11.42. Negligent Supervision 236](#_Toc147469490)

[11.43. Unfair Business Practices (Bus. & Prof. Code, § 17200 et seq.) 239](#_Toc147469491)

[11.44. Receipt of Stolen Property (Penal Code § 496) 241](#_Toc147469492)

[11.45. Misrepresentation in Connection with Sale of Security (Corp. Code, § 25401) 242](#_Toc147469493)

[11.46. Recovery Against Contractor’s Bond 245](#_Toc147469494)

[11.47. Breach of Independent Wholesale Representatives Act (Civ. Code, § 1738.10 et seq) 246](#_Toc147469495)

[11.48. Violation of California Uniform Trade Secrets Act (Civ. Code, § 3426 et seq.) 249](#_Toc147469496)

[11.49. Malicious Prosecution 251](#_Toc147469497)

[11.50. Abuse of Process 253](#_Toc147469498)

[11.51. Insurance Bad Faith 254](#_Toc147469499)

[11.52. Medical Malpractice 257](#_Toc147469500)

[11.53. Legal Malpractice 259](#_Toc147469501)

[11.54. Fraudulent Transfer (Uniform Fraudulent Transfer Act—Civil Code, § 3439 et seq.) 262](#_Toc147469502)

[radio\_client\_plaintiff\_defendant == "Defendant/Respondent" or radio\_client\_plaintiff\_defendant == "Plaintiff & Cross-Defendant" 265](#_Toc147469503)

[12. POTENTIAL AFFIRMATIVE DEFENSES 265](#_Toc147469504)

[12.1. BJR (Lamden) 266](#_Toc147469505)

[12.2. Statute of Limitations 268](#_Toc147469506)

[12.3. Equitable Estoppel 273](#_Toc147469507)

[12.4. Unclean Hands 273](#_Toc147469508)

[12.5. Laches 274](#_Toc147469509)

[12.6. Negligence (Comparative Fault) 274](#_Toc147469510)

[12.7. Apportionment 275](#_Toc147469511)

[12.8. Negligence (Sudden Emergency) 275](#_Toc147469512)

[12.9. Assumption of Risk 276](#_Toc147469513)

[12.10. Contract (Force Majeure) 276](#_Toc147469514)

[12.11. Contract (Duress) 277](#_Toc147469515)

[12.12. Contract (Fraud) 277](#_Toc147469516)

[12.13. Contract (Frustration of Purpose) 278](#_Toc147469517)

[12.14. Contract (Lack of Consideration) 278](#_Toc147469518)

[12.15. Contract (Failure of Consideration) 279](#_Toc147469519)

[12.16. Contract (Illegality) 279](#_Toc147469520)

[12.17. Contract (Impossibility) 279](#_Toc147469521)

[12.18. Contract (Impracticability) 280](#_Toc147469522)

[12.19. Contract (Mistake of Law) 280](#_Toc147469523)

[12.20. Contract (Mistake of Fact) 281](#_Toc147469524)

[12.21. Contract (Novation) 281](#_Toc147469525)

[12.22. Contract (Statute of Frauds) 282](#_Toc147469526)

[12.23. Contract (Unconscionability) 283](#_Toc147469527)

[12.24. Contract (Undue Influence) 284](#_Toc147469528)

[12.25. Contract (Accord and Satisfaction) 284](#_Toc147469529)

[12.26. Waiver 284](#_Toc147469530)

[12.27. Failure to Mitigate 285](#_Toc147469531)

[12.28. Lack of Damages 285](#_Toc147469532)

[12.29. Failure to State a Claim 286](#_Toc147469533)

[12.30. No Causation 286](#_Toc147469534)

[12.31. Justification 287](#_Toc147469535)

[12.32. Ratification 287](#_Toc147469536)

[12.33. Litigation Privilege (Civ. Code, § 47) 288](#_Toc147469537)

[12.34. Consent 288](#_Toc147469538)

[12.35. Necessity 289](#_Toc147469539)

[12.36. Private Necessity 289](#_Toc147469540)

[12.37. Equitable Easement 290](#_Toc147469541)

[13. STRATEGIC CONSIDERATIONS 291](#_Toc147469542)

[13.1. Statute of Limitations 291](#_Toc147469543)

[13.2. Applicability of Davis-Stirling Act 292](#_Toc147469544)

[13.3. Jurisdiction 292](#_Toc147469545)

[13.3.1. Arbitration 292](#_Toc147469546)

[13.3.2. Venue 294](#_Toc147469547)

[13.4. Standing 295](#_Toc147469548)

[13.5. Anti-SLAPP Analysis 296](#_Toc147469549)

[13.6. Damage to Client’s Credit as an Element of Client’s Damages 305](#_Toc147469550)

[13.7. Pre-Filing Requirements (e.g., Notice or Mediation Requirements) 306](#_Toc147469551)

[13.8. Attorneys’ Fees and Costs 309](#_Toc147469552)

[14. FINAL THOUGHTS / ISSUES / CONCERNS / COMMENTS 313](#_Toc147469553)

# SUMMARY

Quisque non magna in lacus egestas imperdiet. Etiam dolor augue, ultrices nec orci sit amet, rutrum accumsan justo. Aliquam eu ligula vel orci mollis ornare. Morbi pellentesque semper velit in pretium. Sed eleifend ex quis malesuada placerat. Ut eget ligula pellentesque dolor porta dapibus. Integer rutrum scelerisque erat, vehicula auctor tortor sodales nec. Maecenas vehicula fermentum neque eget blandit. Aliquam ornare risus dolor, eget porta dui fringilla eget. Proin commodo risus non eros porttitor sodales. Proin eget ullamcorper ipsum. Mauris tempor vulputate ipsum, eget imperdiet sapien fringilla ac. Vestibulum lobortis ipsum vel lorem efficitur blandit.Proin mauris ex, dignissim sit amet ante vel, rhoncus placerat turpis. Vestibulum ante ipsum primis in faucibus orci luctus et ultrices posuere cubilia curae; Nullam sit amet metus pharetra, varius risus posuere, rutrum sapien. Proin pretium mattis risus ac posuere. Morbi quis viverra ex, id convallis odio. Etiam interdum ut leo at placerat. Etiam dolor dolor, dignissim sed sodales quis, pharetra id ipsum. Quisque convallis lacus efficitur, eleifend arcu ac, iaculis urna. Integer aliquet vestibulum magna, ut aliquam nulla mattis volutpat. Ut nulla tellus, bibendum ac pharetra non, luctus vel massa. Aliquam vitae tortor id sem tincidunt lacinia. Quisque sollicitudin vehicula metus sed luctus.Pellentesque habitant morbi tristique senectus et netus et malesuada fames ac turpis egestas. Quisque ut interdum risus. Suspendisse sit amet tempor est. Maecenas ullamcorper, libero at ultrices ullamcorper, arcu velit porta mi, quis tincidunt dolor enim nec ex. Suspendisse potenti. Morbi magna ipsum, sollicitudin ut tempor ut, vestibulum eu ante. Proin eleifend mauris nibh, et sodales nunc pharetra nec. Aliquam eget accumsan est. Donec ullamcorper nisl ex. Aliquam fringilla id turpis nec euismod. Pellentesque ac justo magna.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# PARTIES/SIGNIFICANT FIGURES

|  |  |
| --- | --- |
| **Name of Party / Significant Figure** | **Significance to Underlying Matter/Dispute** |
| Robert Brilliant (“Client”)  DELETE THIS NOTE: If we represent more than one individual/entity, then list all our Clients here—one on each line. Then, make sure to alter the defined “Client” to say: **“(collectively, ‘Client’”)**. The point is to keep “Client” *singular* no matter how many people/entities we represent. If there’s a need to refer to different Clients in the “Statement of Facts/Evidentiary Support” section below, you can put a shortcut (“\*\*\*”) after each individual Client, but still collectively define all of them as “Client.” | N/A |
| Mulholland Estates, Inc. ("HOA") | The HOA |

The table above may be amended from time to time to reflect revisions to Client’s narrative and/or new information that may become available in the future.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# STATEMENT OF FACTS / EVIDENTIARY SUPPORT

|  |  |  |
| --- | --- | --- |
| **Date / NA** | **Fact** | **Evidence Supporting That Fact** |
| \* | This section should contain a comprehensive and objective statement of the relevant facts of the case, as well as any relevant dates. When possible, cite to evidence already in our possession that support the facts referenced. | \* |
| 4/19/19 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA.  Client closed escrow on the property. | Client Timeline |
| 6/10/19 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA.  Client notified HOA of sprinkler leak into Client’s unit. | Email from Client to Mgmt. Co. |
| N/A | REMEMBER TO DELETE ANY EXCESS ROWS IN THE TABLE BY DRAGGING YOUR MOUSE OVER THE ROWS TO BE DELETED AND THEN PRESSING **BACKSPACE** and then pressing **DELETE ENTIRE ROW**. | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |

This table may be amended from time to time as new information/evidence comes in. To the extent that such new information necessitates any significant revisions to Client’s litigation strategy, where applicable, the Firm will work with Client to develop a new strategy.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# NOTABLE PROVISIONS OF THE GOVERNING DOCUMENTS

|  |  |
| --- | --- |
| **Document Name**  **Article / Section No.** | **Text of the Selected Article/Sections No.**  **(if none, put “N/A”; delete rows that you didn’t use; maintain formatting)** |
| CC&Rs  Article IX, Section 6.01 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA. |
| Purchase Agreement  Section 8.4 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA. |
| N/A | REMEMBER TO DELETE ANY EXCESS ROWS IN THE TABLE. IF YOU DON’T KNOW HOW TO DO THAT, ASK MBK. |
| \* |  |
| \* | \*\* |
| \* | \*\* |
| \* | \*\* |
| \* | \*\* |
| \* | \*\* |
| \* | \*\* |

The table may or may not contain all the significant provisions of the document(s) at issue. It is simply a place to include one or more provisions of one or more operative agreement/document that we believe could play a role in some aspect of Client’s case (e.g., binding arbitration, attorneys’ fees, and choice of law provisions). The provisions contained in the table, therefore, should neither be viewed as an exhaustive list of key provisions/evidence, nor be used as a measure of what provisions of the operative documents might strengthen (or weaken) Client’s case.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# ADDITIONAL INFORMATION/CLARIFICATION NEEDED FROM CLIENT

The Firm should follow up with Client regarding the following items/issues:

— Ask Client to provide more details surrounding the leakage that occurred in or around July of 2019.

This section of the LADD may be amended from time to time as new information becomes known.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# CIVIL CODE § 5200 DOCUMENT DEMAND

The HOA produced some documents in response to a Civil Code section 5200 demand. The Firm will complete its review of those documents to determine whether any that should’ve been included are in fact missing.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# ADDITIONAL DOCUMENTS NEEDED FROM CLIENT

At this time, the Firm does not need Client to provide any additional documents. This section of the LADD, however, may be amended from time to time if Client locates additional documents, or if a third party produces additional documents.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# THIRD-PARTY DOCUMENTS/INFORMATION KNOWN TO EXIST

At this time, Client is unaware of any documents or information that can only be obtained from a third party. This, however, may change as new information comes to light, in which case the LADD may be amended to reflect such new information.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# CURRENT CAUSES OF ACTION ALLEGED IN THE COMPLAINT & THE STRENGTHS/WEAKNESSES OF EACH

## Breach of CC&Rs / Breach of Equitable Servitudes / Violation of Civ. Code, § 5975

Elements—Breach of CC&Rs

— Restrictive covenants and recorded declarations are written agreements governed by contract principles. (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US) LLC* (2012) 55 Cal.4th 223, 240.) Restrictive covenants and recorded declarations are of a contractual nature and are enforceable by statute unless unreasonable. (*Id. at* 237; and see Civ. Code, § 5975.) Because the Declaration of CC&Rs is a recorded declaration of restrictive covenants, it is enforceable provided it is not unreasonable. “[S]ettled principles of condominium law establish that an owners association, like its constituent members, must act in conformity with the terms of a recorded declaration. (See Civ. Code, § 5975, subd. (a); *Lamden v. La Jolla Shores Clubdominium Homeowners Assn.* (1999) 21 Cal.4th 249, 268 [homeowner can sue association to compel enforcement of declaration's provisions];(Citations.)” (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US) LLC*, supra, 55 Cal.4th at p. 239.)

— Where enforcement is an issue in a breach of CC&R cause of action, it tends to arise in two ways: (i) HOA not enforcing rules at all; or (ii) HOA applying different rules to different homeowners and/or issuing fines that are not supported by existing CC&Rs (i.e., selective enforcement).

• HOA Not Enforcing Rules.

→ A homeowner can sue his or her HOA to compel enforcement of the CC&Rs. (*Lamden v. La Jolla Shores Clubdominium Homeowners Assn., supra,* 21 Cal.4th at 268; *Pinnacle Museum Tower Assn. v. Pinnacle Market Development* *(US) LLC, supra,* 55 Cal.4th 223, 239.)

• Selective Enforcement.

→ In an improper enforcement situation, there a couple avenues of attack against the HOA. First is to examine the propriety of the rule itself. Use restrictions can be enforced unless they are wholly arbitrary, violate a fundamental public policy, or impose a burden on the use of affected land that far outweighs any benefit. (*Sui v. Price* (2011) 196 Cal.App.4th 933.)

→ The second avenue is to review the enforcement process used by the HOA. This enforcement must be “in good faith, not arbitrary or capricious, and by procedures which are fair and uniformly applied.” (*Liebler v. Point Loma Tennis Club* (1995) 40 Cal.App.4th 1600, 1610; *Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361.) In other words, the HOA must enforce the CC&Rs in a uniform and fair manner, or else its enforcement will be deemed unlawful. (*Dolan-King v. Rancho Santa Fe Ass’n.* (2000) 81 Cal.App.4th 965, 975, citing former Civ. Code, § 1354; *Villas De Las Palmas Homeowners Ass’n. v. Terifaj* (2004) 33 Cal.4th 73, 84.)

→ When an HOA seeks to enforce the provisions of its CC&Rs to compel an act by one of its member owners, it is incumbent upon it to show that it has followed its own standards and procedures prior to pursuing such a remedy, that those procedures were fair and reasonable and that its substantive decision was made in good faith, and is reasonable, not arbitrary or capricious. [Citations.]” (*Ironwood Owners Assn. IX v. Solomon* (1986) 178 Cal.App.3d 766, 772.) “The criteria for testing the reasonableness of an exercise of such a power by an owners’ association are (1) whether the reason for withholding approval is rationally related to the protection, preservation or proper operation of the property and the purposes of the Association as set forth in its governing instruments and (2) whether the power was exercised in a fair and nondiscriminatory manner. [Citations.]” (*Laguna Royale Owners Assn. v. Darger* (1981) 119 Cal.App.3d 670, 683–684.)

— One of the fundamental duties of an HOA is to maintain the common areas. (Civ. Code, § 4775.) In performing its duties, an association shall perform a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to repair, replace, restore or maintain. (Civ. Code, § 5500(a).)

Applicable Statute of Limitations—

— The statute of limitations to enforce a restriction, which includes CC&Rs, is five years. (Code Civ. Proc., § 336(b).) Consequently, an action for a violation of a restriction must be commenced within five years after the party enforcing the restriction discovers, or through the exercise of reasonable diligence, should have discovered, the violation. [*As used here, a “restriction” means a limitation on, or a provision affecting the use of, real property in a deed, Declaration, or other instrument in the form of a covenant, equitable servitude, condition subsequent, negative easement, or other form of restriction.*] (Civ. Code, § 784.)

Remedies—

— While typically injunctive in nature, courts may fashion remedies to enjoin an ongoing breaches. (*Ritter & Ritter Inc. Pension and Profit Plan v. The Churchill Condominium Assn.* (2008) 166 Cal.App.4th 103.) Additionally, compensatory damages are available if plaintiff incurred monetary damages. (*Cutujian v. Benedict Hills Estates Assn.* (1996) 41 Cal.App.4th 1379, 1385; Civ. Code, §§ 3281, 3300.)

— As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *breach of the CC&Rs*. If one or more provisions of the CC&Rs is/are relevant, you should cite to that/those provision(s) here (no need to quote or provide a snip). **By the same token, however, you need to determine whether the CC&Rs actually require the HOA to enforce the CC&Rs. Some do, and some don’t.**

— \*\*\*

— \*\*\*

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the *strengths* of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the *weaknesses*, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## Breach of Fiduciary Duty

Elements—Breach of Fiduciary Duty

— The elements of a claim for breach of fiduciary duty are: (i) the existence of a fiduciary relationship; (ii) its breach; and (iii) damage proximately caused by that breach. (*Tribeca Companies, LLC v. First American Title, Ins.* (2015) 239 Cal.App.4th 1088.)

— Associations owe a fiduciary duty to their members. (*Raven’s Cove Townhomes, Inc. v. Knuppe Development Co.* (1981) 114 Cal.App.3d 783; *Cohen v. Kite Hill Community Assn.* (1983) 142 Cal.App.3d 642.)

— Directors of an association are fiduciaries and are thus required to exercise due care and undivided loyalty for the interests of the association. (*Francis T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 513; *Mueller v. Macban* (1976) 62 Cal.App.3d 258, 274.)

— HOAs have an affirmative duty to enforce the restrictions in their governing documents. (*Ekstrom v. Marquesa at Monarch Beach Homeowners Assn.* (2008) 168 Cal.App.4th 1111.)

— Among its acts, directors may not make decisions for the association that benefit their own interests at the expense of the association and the entire membership. (*Raven’s Cove Townhomes, Inc. v. Kruppe Development Co.* (1981) 114 Cal.App.3d 783, 799.) This is typically referred to as “self-dealing.”

— The “enforcement” issues discussed in the context of the “Breach of CC&Rs” cause of action above is also applicable to a breach of fiduciary duty claim.

— One of the fundamental duties of an HOA is to maintain the common areas. (Civ. Code, § 4775.) In performing its duties, an association shall perform a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to repair, replace, restore or maintain. (Civ. Code, § 5500(a).)

Remedies—

— If the breach of fiduciary duty results in a breach of CC&Rs, then compensatory (money) damages and injunctive relief may be available.

— If the breach results in damage to property, available compensatory damages are the cost to remedy defects and for loss of use during the period of injury. (*Raven’s Cove Townhomes Inc. v. Knuppe Development Co.* (1981) 114 Cal.App.3d 783, 802.)

— Civil Code § 3333: “For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.”

— Equitable remedies such as constructive trust, rescission, and restitution are available when the defendant has been unjustly enriched by the breach. (*Miester v. Mensinger* (2014) 230 Cal.App.4th 381.)

— Punitive damages may be available if the breach constitutes constructive fraud. (Civ. Code., § 3294; *Hobbs v. Bateman Eichler, Hill Richards Inc.* (1985) 164 Cal.App.3d 174.)

— As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Applicable Statute of Limitations—

— A claim for breaching a fiduciary duty must be brought within four years of the breach. (Code Civ. Proc., § 343; *William L. Lyon & Assoc, Inc. v. Sup. Ct.* (2012) 204 Cal.App.4th 1294, 1312.) If the breach of fiduciary duty stems from the defendant’s fraud (even if pleaded as breach of fiduciary duty), which has a statute of limitations of only three years, the claim must be brought within *three* years. (Code Civ. Proc., § 338; *Professional Collection Consultants v. Lujan* (2018) 23 Cal.App.5th 685, 691.)

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *breach of fiduciary duty*. If one or more provisions of the CC&Rs is/are relevant, you should cite to that/those provision(s) here (no need to quote or provide a snip).

— \*\*\*

— \*\*\*

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the *strengths* of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the *weaknesses*, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## Nuisance

Elements—Nuisance

— The elements for a private nuisance claim are: (i) plaintiff’s interest in property; (ii) defendant’s creation of the nuisance; (iii) unreasonable interference with plaintiff’s use or enjoyment of property; (iv) causation; and (v) damages. (Civ. Code, §§ 3479, 3491; *San Diego Gas & Electric Co. v. Sup. Ct.* (1996) 13 Cal.4th 893, 937.)

— Simply put, a cause of action for private nuisance requires the plaintiff to prove that the defendant interfered with his or her use and enjoyment of the property. (*Adams v. MHC Colony Park, L.P.* (2014) 224 Cal.App.4th 601, 610; *Monks v. City of Rancho Palos Verdes* (2008) 167 Cal.App.4th 263, 302-303.)

— A person’s unreasonable, unwarrantable, or unlawful use of his or her own property in a way that interferes with the rights of others is a nuisance. (*Hutcherseon v. Alexander* (1968) 264 CA2d 126.)

— A nuisance occurs where the invasion of the property of another is intentional and unreasonable, or is unintentional but caused by negligent or reckless conduct, or is from an abnormally dangerous activity. An *intentional* nuisance requires proof of malice or actual knowledge that harm was substantially certain to follow from the activity. The conduct is not a nuisance if it is intentional but reasonable, or is accidental and not within one of the above definitions of a nuisance. Where negligence and nuisance causes of action rely on the same facts dealing with lack of due care, the nuisance claim is a negligence claim.

— If the interference is substantial *and* unreasonable (so much so that it would be offensive or inconvenient to the “normal” person), then almost any disturbance of the enjoyment of someone’s property could constitute a nuisance. (*Monks v. City of Rancho Palos Verdes* (2008) 167 Cal.App.4th 263, 302-303 citing *Koll-Irvine Center Property Owners Assn v. County of Orange* (1994) 24 Cal.App.4th 1036, 1041 [“an interference need not directly damage the land or prevent its use to constitute a nuisance; private plaintiffs have successfully maintained nuisance actions against airports for interferences caused by noise, smoke and vibrations from flights over their homes ... and against a sewage treatment plant for interference caused by noxious odors....”].)

— Nuisances are characterized as either permanent or continuing. The nature of the claim and available damages are different for either type of nuisance. The crucial distinction between a permanent and continuing nuisance is whether the nuisance is abatable—i.e., capable of being remedied at reasonable cost and by reasonable means. (See *Mangini v. Aerojet-General Corp.* (1996) 12 Cal.4th 1087, 1093; *McCoy v. Gustafson* (2009) 180 Cal.App.4th 56, 84.)

— One of the fundamental duties of an HOA is to maintain the common areas. (Civ. Code, § 4775.) In performing its duties, an association shall perform a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to repair, replace, restore or maintain. (Civ. Code, § 5500(a).)

— Nuisance v. Trespass. Nuisance is based on a property’s owner’s use of his or her own property in a way that adversely affects other property owners. Typical examples of a nuisance include things like excessive noise, vibration, odors, etc. Trespass refers to a physical invasion of property, either by persons entering the property, or a substance that is dumped, has drained onto, or under the property (e.g., drainage, toxic spills, etc.), or the encroachment of a physical object, such as a structure built over a property line.

Remedies—

— Remedies are different, depending upon whether the nuisance is *permanent* or *continuing*.

• For *permanent* nuisances, compensatory (money) damages are available. The usual measure of such damages is the diminution in fair market value of the affected property. (*Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 292 [jury decides fair market value before and after creation of nuisance].) A plaintiff may also recover the present value of losses or expenses he or she may, with reasonable certainty, incur in the future because of the nuisance. (*Id. at* 295.) A plaintiff must recover all past, present, and future damages in one suit. (*Kornoff v. Kingsburg Cotton Oil Co.* (1955) 45 Cal.2d 265, 271-272.)

• For *continuing* nuisances, the compensatory (money) damages are different. A plaintiff can only recover actual damages *through the date of the suit* (i.e., plaintiff cannot recover damages for diminution in value) because there is no certainty the nuisance will continue. The rational for that is apparently that if the defendant is willing and able to abate the nuisance, it is unfair to award damages on the theory that the nuisance will continue. (*Gehr v. Baker Hughes Oil Field Operations Inc.* (2008) 165 Cal.App.4th 660, 668.) Which leads to the most common remedy for ongoing nuisances—abatement. A continuing nuisance is ongoing and can be abated at any time via injunction. (*Baker v. Burbank-Glendale-Pasadena Airport Auth.* (1985) 39 Cal.3d 862, 868-871.)

— Emotional distress damages are also a possibility. (See *Kornoff v. Kingsburg Cotton Oil Co.*, *supra*, 45 Cal.2d at 272; *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 986, fn.10; *Smith v. County of Los Angeles* (1989) 214 Cal.App.3d 266, 287-288; *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 464 [damages recoverable in a successful nuisance action for injuries to real property include not only diminution in market value but also damages for annoyance, inconvenience, and discomfort].) Mental distress is an element of loss of enjoyment. (*Sturges v. Charles L. Harney Inc.* (1958) 165 Cal.App.2d 306, 323.)

— Punitive damages may be awarded where plaintiff proves by clear and convincing evidence that defendant was guilty of oppression, fraud, or malice. (Civ. Code, § 3294(a); *Hassoldt v. Patrick Media Group Inc.* (2000) 84 Cal.App.4th 153, 169-170.)

— Declaratory relief may be available in nuisance cases. (Code Civ. Proc., § 1060; *Shamsian v. Atlantic Richfield Co.* (2003) 107 Cal.App.4th 967, 984.)

— As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Applicable Statute of Limitations—

— Three years for property damage resulting from a nuisance. (Code Civ. Proc., § 338(b); *Wilshire Westwood Assocs. v. Atlantic Richfield Co.* (1993) 20 Cal.App.4th 732, 743-745.)

— Two years for personal injuries resulting from a nuisance. (Code Civ. Proc., § 335.1.)

— Commencement of running of the statute can be an issue.

• For private *continuing* nuisances, each repetition of a continuing nuisance is considered a separate wrong that commences a new period in which to bring an action based on the new injury. (*Beck Development Co., v. Southern Pacific Transportation Co.* (1996), 44 Cal.App.4th 1160.)

• For a *permanent* nuisance (e.g., a building, fence, buried sewer, or structure located on the property of another), the three year statute of limitations begins to run *when the nuisance first occurred*.

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *Nuisance*. If one or more provisions of the CC&Rs is/are relevant, you should cite to that/those provision(s) here (no need to quote or provide a snip).

— \*\*\*

— \*\*\*

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the *strengths* of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the *weaknesses*, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## Trespass

Elements—Trespass

— “A trespass is an invasion of the interest in the exclusive possession of land, as by entry upon it.” (*Wilson v. Interlake Steel Co.* (1982) 32 Cal.3d 229, 233.) “The essence of the cause of action for trespass is an ‘unauthorized entry’ onto the land of another.” (*Cassinos v. Union Oil Co.* (1993) 14 Cal.App.4th 1770, 1778) [trespass where wastewater was injected from defendant’s property to plaintiff’s, interfering with plaintiff’s mineral estate].

— An action for trespass may technically be maintained only by one whose right to possession has been violated (see generally, Prosser, Law of Torts, (4th ed.) § 13, p. 69; *Uttendorffer v. Saegers* (1875) 50 Cal. 496, 497–498); however, an out-of-possession property owner may recover for an injury to the land by a trespasser which damages the ownership interest. (*Rogers v. Duhart* (1893) 97 Cal. 500, 504–505)[citations]” (*Smith v. Cap Concrete, Inc.* (1982) 133 Cal.App.3d 769, 774.) In other words, a plaintiff asserting a claim for trespass must have a possessory interest in the land at issue; mere ownership is not sufficient. (*Dieterich Int’l Truck Sales, Inc. v. J.S. & J. Servs. Inc.* (1992) 3 Cal.App.4th 1601, 1608–10.)

— Where possession is an issue, courts have held that “whether plaintiff’s relationship to the land amounts to possession within the meaning of the foregoing principles is a question of fact to be determined by the jury (*O’Banion v. Borba* (1948) 32 Cal.2d 145; *Walner v. City of Turlock* (1964) 230 Cal.App.2d 399; *Brumagim v. Bradshaw* (1870) 39 Cal. 24), unless it can be said as a matter of law that the evidence upon that issue is palpably insufficient to support a verdict for plaintiff. (*O’Keefe v. South End Rowing Club* (1966) 64 Cal.2d 729; [Citations]” (*Williams v. Goodwin* (1974) 41 Cal.App.3d 496, 509.)

— Like nuisances, trespasses can be characterized by either permanent or continuing. The principles governing the permanent or continuing nature of a trespass or nuisance are the same, and the cases discuss the two causes of action without distinction (although the distinction has implications for the statute of limitations and remedies available). (See *Starrh & Starrh Cotton Growers v. Aera Energy LLC* (2007) 153 Cal.App.4th 583.) The key to classifying a trespass as continuing or permanent is whether it is likely to be discontinued or abated at a later date. (*Id. at* 592.)

Remedies—

— As is the case with nuisances, the remedies for *prior* trespasses and an *ongoing* trespasses are different.

• For a *prior* act of trespass, the measure of compensatory (money) damages includes the: (i) value of the property’s use during the time it was wrongfully occupied (not more than five years before filing suit); (ii) reasonable cost of repair or restoration of the property to its original condition; and (iii) costs of recovering possession. (Civ. Code, § 3334(a).) The value of a property’s use is the greater of its reasonable rental value or the benefits obtained by the person wrongfully occupying the land. (Civ. Code, § 3334(b); *Starrh & Starrh Cotton Growers v. Aera Energy LLC*, *supra*, 153 Cal.App.4th at 604.) The “reasonable” component means that a plaintiff will recover the lesser of the cost of repairing the damage and restoring the property to its original condition, or the diminution in the value of the property. (*Id.* at pp. 599-600.)

→ Damages for “annoyance and discomfort that would naturally ensue” from a trespass on a plaintiff’s land are also recoverable, and are intended to compensate plaintiff for the loss of peaceful enjoyment of the property. (*Kornoff v. Kingsburg Cotton Oil Co.* (1955) 45 Cal.2d 265, 273.) These damages are generally related to distress “arising out of physical discomfort, irritation, or inconvenience caused by odors, pests, noise, and the like.” (*Kelly v. CB & I Constructors Inc.* (2009) 179 Cal.App.4th 442, 456.)

→ A plaintiff may recover damages for emotional distress and mental anguish proximately caused by a trespass. (*Armitage v. Decker* (1990) 218 Cal.App.3d 887, 905; *Hensley v. San Diego Gas & Elec. Co.* (2017) 7 Cal.App.5th 1337, 1348-1352.) Emotional distress without physical injury is also compensable. (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 986, fn.10.)

• With *continuing* trespasses, compensatory damages calculations are different because a plaintiff may only recover damages for *present and past injury to the property*. No award may be made for *future or prospective harm* because, as in the case of ongoing nuisances, a continuing trespass can be abated any time, ending the harm. (*Starrh & Starrh Cotton Growers v. Aera Energy LLC* (2007) 153 Cal.App.4th 583, 592.) Only the “reasonable” cost of repairing or restoring the property to its original condition is recoverable. (Civ. Code, § 3334(a); see *Mangini v. Aerojet-General Corp.* (1996) 12 Cal.4th 1087, 1103.)

— A trespass can be abated by an injunction in certain situations. In cases of encroachment, plaintiff may obtain a mandatory injunction ordering defendant to remove the encroachment. (*Posey v. Leavitt* (1991) 229 Cal.App.3d 1236, 1251[condominium owner extended deck into common area and was ordered to remove it].)

— For all forms of trespass, punitive damages may be awarded where plaintiff proves by clear and convincing evidence that defendant is guilty of oppression, fraud, or malice. (Civ. Code, § 3294(a); *Hassholdt v. Patrick Media Group Inc.* (2000) 84 Cal.App.4th 153, 169.)

— As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Applicable Statute of Limitations—

— The limitations period for a trespass action is generally three years. (Code Civ. Proc., § 338(b).) When the claim accrues depends on whether the trespass is “permanent” or “continuing.”

• For *permanent trespass*, a claim accrues when the trespass occurs. Plaintiff must bring a single action for past, present, and future damages within three years (*Starrh & Starrh Cotton Growers v. Aera Energy LLC* (2007) 153 Cal.App.4th 583, 592.)

• For *continuing trespass*, a new cause of action accrues each day the trespass continues, and a plaintiff must bring periodic successive actions if the trespass continues without abatement. (*Baker v. Burbank-Glendale-Pasadena Airport Auth.* (1985) 39 Cal.3d 862, 869.)

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *trespass*. If one or more provisions of the CC&Rs is/are relevant, you should cite to that/those provision(s) here (no need to quote or provide a snip).

— \*\*\*

— \*\*\*

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the *strengths* of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the *weaknesses*, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## Failure to Permit Inspection of Records

Elements—Failure to Permit Inspection of Records

— To prevail on a claim for failing to allow the plaintiff to inspect the HOA’s records, the plaintiff must prove that: (i) he or she is a member of the association; (ii) he or she made a written request to the HOA that it make its records available for inspection; (iii) he or she had a proper purpose for requesting to inspect the records related to his or her interests as an HOA member; and (iv) the HOA either (a) refused to allow the inspection, (b) ignored the plaintiff’s request, or (c) did not make all permitted and requested records available. (Civ. Code, § 5200 et seq.)

Remedies—

— If the plaintiff can prove that the HOA failed to allow him or her to inspect the records, the plaintiff can obtain injunctive relief ordering the HOA to allow the inspection. Additionally, if the HOA’s refusal is deemed to have been unreasonable, the plaintiff may be entitled to a civil penalty of up to $500 for each separate request that was denied, as well as all of his or her attorneys’ fees and costs. (Civ. Code, § 5235(a).)

— Given the potentially low value of this claim, it likely needs to be brought in small claims court if it is the plaintiff’s only cause of action. (Civ. Code, § 5235(b).)

— An HOA may recover its fees and costs if the court determines that the claim was frivolous, unreasonable, or without foundation. (Civ. Code, § 5235(c).)

Applicable Statute of Limitations—

— A claim for failing to allow the records to be inspected must be brought within three years. (Code Civ. Proc., § 338(a).)

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *failure to permit inspection of records*. If one or more provisions of the CC&Rs is/are relevant (e.g., nuisance), you should cite to that/those provision(s) here (no need to quote or provide a snip).

— \*\*\*

— \*\*\*

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the *strengths* of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the *weaknesses*, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# 

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# STRATEGIC CONSIDERATIONS

## Statute of Limitations

This section is *not* intended to address whether or not the statute of limitations has run on a particular cause of action that might have otherwise been relevant under the facts. Those specifics can be found in reference to each of the potential causes of action discussed above. This section of the LADD is intended only to highlight the earliest statute of limitations of a claim that remains available to Client.

If Client wants to file a lawsuit containing the applicable the causes of action discussed above, the action must be filed on or before **February 20, 2024** (the *earliest* of the applicable non-expired statutes of limitations deadlines given the desired causes of action).

## Applicability of Davis-Stirling Act

The Davis-Stirling Act applies to the facts of this dispute.

## Jurisdiction

### Arbitration

### Venue

## Standing

Client may lack standing to bring cause of action for \*\*\*. [*State the reasons for lack of standing. If there is more than one cause of action at issue, adjust the language accordingly.*] The Firm will take a closer look at the standing issue and follow up with Client in the near future.

## Anti-SLAPP Analysis

## Pre-Filing Requirements (e.g., Notice or Mediation Requirements)

Given the facts of this dispute, the Davis-Stirling Act does *not* require pre-lawsuit ADR.

## Attorneys’ Fees and Costs

The prevailing party is entitled to attorneys’ fees and costs under the Davis-Stirling Act. The prevailing party is also entitled to their attorneys’ fees and costs under Section 34.5 of the CC&Rs.

If new information comes to light that affects Client’s right to attorneys’ fees and costs, Client will be notified.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# FINAL THOUGHTS / ISSUES / CONCERNS / COMMENTS

This section of the LADD might be amended from time to time to reflect new information, strategies, or concerns that arise during the course of the litigation.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_