

Pacific Point Condo CC&Rs

History of and Rationale for Proportional Assessments

When Pacific Point condos were first sold, assessments were based on each unit's interior square footage, a common and reasonable approach. Larger units generally cost more to maintain and provide greater value to their owners. Reasons for this include:

- * **Greater exterior maintenance** — Larger units have more exterior wall area to maintain. In particular, the 2-bedroom, 2-bath units are corner units with an additional outward-facing wall that the 2-bedroom, 1-bath units lack.
- * **Additional plumbing** — Larger units have 2 bathrooms instead of 1, which can potentially increase plumbing-related maintenance costs.
- * **Higher usage potential** — Larger units can accommodate more residents, which may lead to greater use of water and increased amounts of trash, recycling, and compost.
- * **More windows and views** — Larger units have more windows, which provide more natural light and broader views, both of which add value. At the same time, windows can increase HOA costs due to water intrusion, chronic condensation, failed caulking, and framing problems leading to dry rot, mold, and damage to surrounding walls. Leaks can also spread to lower units and, in some cases, require repairs to an entire vertical stack of units.

Timeline of Assessment Changes

At Pacific Point's inception in **1973**, the CC&Rs established proportional assessments based on each unit plan's interior square footage. In August **1975**, the Board president and Secretary recorded and certified an amendment changing assessments to equal amounts. However, there is no evidence that the amendment met the homeowner approval threshold, and the equal-dues schedule was never implemented.

During **1995-1998**, correspondence from this period indicates that in January 1998, the board told members it would "make amends for the disastrous equal [assessment] ruling of 28 months," suggesting that the board imposed equal assessments at some point between 1995 and 1998. Two months later, however, the board reversed course, stating that "the special assessment will remain the same [equal] since it was approved by a majority of owners acting in good faith."

In doing so, the board disregarded the governing documents and attempted to justify bypassing the 75% approval requirement in the CC&Rs. Ironically, at least one of these same board members had participated in recording the 1975 amendment that established the 75% homeowner approval threshold. They then turned around and blamed the original governing documents for the resulting problems. *Homeowners argued that the problem was not the documents*

themselves, but the actions of those who sought to impose an equal fee schedule while circumventing the very rules they had introduced 20 years earlier. Homeowners later rejected the illegal equalization.

- These shifting positions have plagued governance of assessment policy for more than 50 years. Previous boards failed to legitimize the imposition of an equal assessment schedule on homeowners, even temporarily. They also failed to reconcile their actions with the CC&Rs, undermining their credibility as representatives of homeowners.

Recent Legal Dispute

- While updating the CC&Rs and Bylaws, the HOA legal counsel discovered the 1975 Amendment and advised the Board to temporarily reinstate equal assessments in January 2026 based on the recordation of the 1975 Amendment document. In the interim, the Board was advised to restate the CC&Rs and Bylaws to restore the proportional fee schedule, bring the governing documents into compliance with current laws, and revise outdated provisions.

Second Opinion

- Because the validity of the 1975 Amendment was unclear, the Board requested a second legal opinion.

It concluded the following:

“As the 1975 Amendment was not approved by 75% of the members, excluding the Declarant, it could not take effect and should not have been recorded. The recorded Amendment is invalid and unenforceable for lack of member approval.”

That opinion also concluded that:

“Restating the CC&Rs and Bylaws was the proper way to correct the record and restore proportional assessments.”

This second opinion supports the view that proportional rather than equal assessments were intended by both the original and later homeowners and have served as the standard for most of Pacific Point’s history.