

# Carmel Valley residents raising roof over fumigation, break-ins at condos

By [Joe Tash \(/staff/joe-tash/\)](#) 9:49 a.m. Dec. 9, 2014

A decision by a Carmel Valley homeowners association board to fumigate a condominium complex over the objections of a majority of residents has roiled the community, leading to a recall effort, potential litigation and discord during the holiday season.

The tensions were heightened further when it was discovered that during the fumigation, which took place just after Thanksgiving, at least four of the condos were burglarized while the community was tented for the termite eradication treatment.

"This is abuse of power that has resulted in catastrophe for this community," said Sam Jha, a resident of the Regents Square condominium complex, a 62-unit development on Quarter Mile Drive in Carmel Valley. "It has caused physical and mental strain for the community members. So much so, I know for sure, two of the homeowners in the community have moved out lock, stock and barrel."

Some residents of the community are seeking a litigation attorney, while others are pursuing a recall against the three-member condo association board, Jha said.

Ed Weiner, president of the condo board, responded to an email from a reporter by referring inquiries to the association's attorney. A voicemail left with the attorney was not returned by press time.

A legal expert contacted by this newspaper said the board was acting within its legal rights and responsibilities in ordering the fumigation to protect the condo complex from termite infestation.

"These guys were doing their job," said Professor Scott B. Ehrlich of the California Western School of Law.

The Davis-Stirling Act, a state law that regulates the operations of homeowners associations in California, says, "the association is responsible for the repair and maintenance of the common area occasioned by the presence of wood-destroying pests or organisms." The law also gives the association the right to order residents to leave during the fumigation.

As long as the board's actions followed the requirements of the Davis-Stirling Act, said Ehrlich, the panel would have been authorized to make such a decision. One indication that the board was acting lawfully, he said, was that a judge declined to issue a temporary restraining order that residents wanted in order to block the fumigation.

"Whether the homeowners like it or not, they (the board) have a responsibility to take care of the project. If the project is infested, their job is to get rid of the termites," said Ehrlich. "It's not a popularity contest. They are the board of directors who are responsible for taking care of the condo project."

However, residents fault the board for the way the fumigation was carried out. The issue has been debated within the community since last summer, when more than half of the owners signed a petition against the fumigation project, which cost each homeowner \$1,700.

After owners spoke out, the board voted at a community meeting not to move forward with the fumigation, residents said. That decision was reversed, however, in an email sent out about three weeks before Thanksgiving. The fumigation was scheduled for Monday, Dec. 1, just after the holiday weekend.

"We had a very bad holiday because of this," said Sim Loo, who lives in Regent Square with her husband and two children.

Residents said termite inspections conducted at their own expense showed little or no termite infestation at the complex, and that any problems could have been eliminated with treatment of specific areas, instead of tenting the entire complex.

Along with removing the board of directors, residents also said they want to change the rules of the homeowners association to give them more say in the community's governance.

"People want control over what affects their life. We don't want secret meetings, decisions without votes, this has to stop," wrote resident Xavier Cany in an email. "We have upcoming elections and this is the opportunity to elect new board members, and change the rules of our community."

"The law doesn't protect homeowners. There's no way for the homeowners to fight back," said Loo. "We should change the law so homeowners have more rights."

The dispute has resulted in numerous flare-ups in recent weeks. Police were called last week when at least one family refused to leave their condo for the fumigation. According to Loo, board members also called police when residents tried to serve them with the recall petition.

Some residents were so concerned about the toxicity of the chemicals used to fumigate the condos that they moved out temporarily. Jha said his wife, who is pregnant, didn't want to take any chances, so the family has moved into an extended-stay hotel.

According to Jha, the whole project was handled poorly, from the way the fumigation was announced via email to the timing, just after a holiday weekend, when a winter storm was approaching.

"Anything that could go wrong with this has gone wrong," he said.

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