

## Appeal Court Win Thwarts Recalled Director-Litigant's Access to Records

In the case of *Sack v. Villa Europa Homeowners Association*, EG&H attorney Carrie Timko was successful in her efforts to get the Fourth District Court of Appeal to issue a writ of mandate in favor of the Association, setting aside a trial court's order which stopped recall of a controversial director, and granted that director access to Association records. The director had a lawsuit pending against the Association for mold and water damage to her unit when she was elected to the Board of Directors. When she was unable to obtain certain documents from the Association through discovery in the mold case, she decided to exercise her inspection rights as a director to access all corporate records to choose what documents would be useful in her lawsuit. When the Association refused her access, citing fiduciary and confidentiality issues, the director sought court intervention. The trial court decided that the director and her attorney could have access to corporate records, except for attorney-client privileged documents. Breach of fiduciary duty could be raised later. Before the time the Association had been ordered to provide access to the records, the membership successfully voted to recall the entire Board of Directors. The trial court stayed the effect of the recall vote until such time as the records could be produced.

Arguing on behalf of the Association, Timko filed a petition for writ of mandate with the Court of Appeal seeking a temporary stay and vacation of the orders. The Court of Appeal granted the writ, holding that the trial court exceeded its jurisdiction by staying the effect of the membership's recall vote. The court found that a homeowners' association is like a local government, and the trial court had no authority to stay a valid recall vote, which was akin to a vote enacting a valid ordinance, regulation, or other legislated item. The court also recognized that Corporations Code section 7220 regarding recall votes was amended effective January 1, 2010, to require that directors removed from office not remain on the Board until a successor has been appointed. Since the director had been validly removed from the Board before the time the Association had to allow access to corporate records pursuant to the trial court's order, she no longer had any right to inspect the records pursuant to Corporations Code section 8334. Therefore, both of the trial court's orders were vacated and the director was not allowed access to Association records.