

## FREQUENTLY ASKED QUESTIONS

### THE FULL STORY OF EMERY COVE MARINA CONDOMINIUM ASSOC., INC.

#### **EXACTLY WHAT AM I BUYING — WHAT IS A CONDOMINIUM BOAT SLIP AND HOW DOES IT WORK?**

Owning a condominium boat slip at Emery Cove is like owning a 'condo' in a residential development: you own and control 100% of your individual, private boat slip; you also own permanent rights to use and enjoy – along with your fellow slip owners – all the common areas including the docks, the deck areas, the parking lots, the sidewalks and landscaping, the bathroom building, etc... Ours is a marina which enjoys a generous basic design; the over-all dimensions are roomy and modern with wide berths, wide fairways and many dock amenities including dock boxes, free wireless internet, 30 to 50 amp electrical service, telephone hook-ups, etc. The trend in marina design is towards longer, wider slips and wide fairways, like ours. With an average slip length of about 41', an excellent central Bay location, and a first class, well-funded dock and grounds maintenance program, your slip at Emery Cove should continue to hold its value for a long time.

One of the main benefits of owning a condominium is ease of repair and maintenance. Emery Cove's common areas are repaired, maintained, insured and managed through a non-profit property owner's association (Emery Cove Marina Condominium Association, Inc. or the "Association"). As a slip owner, your only obligation regarding maintenance is to pay your monthly Association dues (i.e. your pro-rata share of the actual maintenance costs which is currently \$6.62 per lineal foot per month). The Association's staff takes care of the rest. Other than Association dues, your only other cost to own your boat slip is Alameda County's real estate taxes. Like real estate taxes on your home, boat slip taxes are based on market value and are billed directly by Alameda County. Thus, slip ownership is virtually carefree and your cost to own and use your slip is very economical since Association dues cover just the actual cost (both present and future) to keep Emery Cove insured, managed, repaired and looking good; there is no mark-up or profit paid to a marina operator.

Another major point: our condo boat slips at Emery Cove are unique in that you own fee title\* to the slip, not a State land's ground lease like other marinas. When you own property in 'fee title', your ownership rights never expire; they go on forever. Thus, the market value of your slip will not decline due to a fixed expiration date on a State tidelands ground lease. No other condo marina on San Francisco Bay has this valuable feature, and fee title is an important asset when you decide to dispose of your slip in the future.

Emery Cove's property owner's Association is financially sound. There are 430 slips at Emery Cove totaling 17,787 lineal feet, and upkeep costs are spread evenly to slip owners on a per-lineal-foot basis via monthly dues billed by the Association. As of December 2011 the Association has accumulated about \$2,550,000 in cash reserves to cover current and future repairs and maintenance, and as a new slip owner you get the benefit of these funds. Ever since its completion in 1984, Emery Cove has enjoyed the reputation of being one of the best run, cleanest, safest marinas on the Bay. For over 28 years, the condo concept at Emery Cove has worked well. It works because boaters – people like yourself – have purchased a permanent fee interest in their own boat slip and, like any "homeowner", they maintain a keen

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interest in the continued good health of their investment. The result is that Emery Cove Yacht Harbor is one of the best managed, best maintained, best looking marinas on the Bay.

### **WHAT IS FEE OWNERSHIP?\***

There is no greater status of property ownership than 'fee' or 'fee simple' ownership. When you own property in fee, as is the case at Emery Cove, you own a permanent and perpetual right to use and enjoy your slip – not a ground lease. At almost every other San Francisco Bay marina, the water-based real estate is actually subject to a State ground lease for anywhere from 30 years to 50 years and the marina owner is merely a leasehold tenant of the State. A ground lease loses value every year as the lease termination date gets closer and closer. WE ARE DIFFERENT. Emery Cove is unique in that individuals can actually buy and own a perpetual, fee simple\* interest in a small piece of San Francisco Bay, including all related water rights.

\*Note: all water lots in California, fee or leased, are subject to State BTL public easements for "waterborne commerce" – please see preliminary title report for details. Just like an expensive waterfront home in Belvedere, you own your fee simple slip forever, subject to this State easement. Fee title to property is a key feature when it comes time for you to re-sell or trade your slip in the future.

### **DO I GET A DEED, TITLE INSURANCE, ETC., ETC?**

Yes, buying a slip at Emery Cove is just like any other real estate purchase. At close of escrow, you receive a Grant Deed in your name which is recorded in Alameda County records and a policy of title insurance from a title company insuring your exclusive ownership in fee title to your own boat slip plus your non-exclusive rights to use and enjoy the common areas at Emery Cove. Sample title documents are included in the Emery Cove Document Book, available upon request.

### **CAN THE GOVERNMENT OR ANYONE ELSE LIMIT MY INTEREST IN MY SLIP IN THE FUTURE?**

The original developers of Emery Cove paid substantial sums for valid permits to build and sell condominium boat slips from a number of governmental agencies, including The San Francisco Bay Conservation and Development Commission (BCDC). These rights cannot be revoked, modified or taken away unless you get paid for what is taken. When you buy your slip at Emery Cove, you are purchasing a valuable property right and it does not expire or run out or need to be renewed – it is permanent and cannot be taken away or changed without fair compensation to you. A copy of the BCDC permit is included in the Emery Cove Document Book.

### **ARE THERE ANY RESTRICTIONS ON MY USE OF THE SLIP?**

Like a residential condo, so long as you use your property in a responsible manner, you can do pretty much as you please. Your slip can be used to berth your own boat or you can rent it out to another boat owner. To protect values, commercial uses are not allowed in the marina. Your slip can be freely re-sold, traded, inherited, mortgaged, rented, gifted, etc. Other than standard title conditions, the only restrictions on your slip use are those which are set out in Emery Cove's Rules and Regulations and these relate primarily to mutual safety and are, in general, plain common sense. These rules are set out in the Association's Articles, By-Laws and CC&R's and their goal, which has

been successful for 28 years, is to basically govern the day-to-day operations of the marina and to control or, if necessary, act to prohibit behavior that is contrary to everyone's mutual enjoyment of the marina. Copies of these documents are included in the Emery Cove Document Book.

### **CAN I RENT OUT MY SLIP IF I WANT TO?**

Absolutely. You are free to rent your slip to anyone for any length of time at any rental rate you want to charge. As long as your tenant abides with the marina Rules & Regulations, your right to be a slip landlord' has no limitations.

### **CAN I LIVE ABOARD MY BOAT?**

Our marina has been given approval by the BCDC for a total of 26 live-aboard slips. Permanent live-aboard status is at the discretion of the Harbor Master and is not specific to any particular boat slip. The harbor office can advise you as to the details. Weekend use and periodic overnight occupancy by you or a guest will always be OK at Emery Cove.

### **CAN I RE-SELL OR TRADE MY SLIP TO A NEW OWNER?**

Definitely – there are no restrictions on the sale or transfer of a slip. You can sell it, trade it, gift it, bequeath it or mortgage it at any time on any terms you may agree upon and no permission is required from any person or entity.

### **WHO TAKES CARE OF THE MAINTENANCE AND REPAIR WORK FOR THE DOCKS AND COMMON AREAS? HOW IS THE WORK PAID FOR?**

One of the best features of condominium ownership is freedom from repairs and this is why vacation condos are so popular. Upkeep of the docks and the other marina areas is handled by the Association and is paid for by slip owners out of monthly dues assessed and collected by the Association. Every November, the Association's board of directors and the marina staff work together to establish a maintenance budget for the next calendar year, including sinking funds for future repairs. The Association's annual operating budget for the past few years has ranged between \$1,579,000 to 1,833,000 per year. The budget is evenly spread amongst all slip owners on a per-lineal foot basis. Most of the minor repairs and the daily maintenance tasks are handled by Emery Cove's four staff members. The Harbor Master, Diane Isley, has been at Emery Cove for about 26 years we are fortunate to have such a well-experienced, professional manager. Special maintenance and repair tasks are contracted out on an 'as needed' basis and are supervised by the staff. Although Emery Cove Yacht Harbor is twenty-eight years old, the marina has been maintained in good condition due to the common interest which all slip owners have in keeping their own investment in good condition and repair. When you buy a slip at Emery Cove, you'll also enjoy your pro rata benefit of the Association's nearly \$2,550,000 as of December 2011 in cash reserves set aside for dredging, future repairs and general maintenance of Emery Cove's common areas.

## **WHO RUNS THE ASSOCIATION AND WHAT CONTROLS ARE THERE?**

Basically, the Association is run by slip owners for the benefit of slip owners. The Association is managed pursuant to permanent, recorded rules which were set up at the beginning of Emery Cove's formation and the system has worked successfully since its inception. These permanent rules are called "Covenants, Conditions and Restrictions" and the CC&R's are rules set up for the common good to keep Emery Cove running smoothly. Every slip owner is an automatic voting member of the Association and the membership annually elects a panel of five unpaid volunteers to serve as members of the Association's Board of Directors. The Board works with the marina staff and with various outside consultants to set up annual operating budgets and to monitor marina operating costs to keep Emery Cove running well and looking good. After the estimated costs have been determined and the annual budget set, monthly dues are calculated on a per-lineal-foot basis and are assessed against all slip owners. The system is very democratic – everyone can vote and anyone can run for a position on the board. Board meetings are public and are held about five times a year to discuss and analyze various issues affecting marina operations. Since its inception in 1984, Emery Cove's Association has been run in a smooth, friendly and professional manner.

## **WHAT HAS BEEN THE COST TREND FOR THE ASSOCIATION'S DUES?**

Over the years, Association dues (i.e. maintenance and insurance costs) have generally been stable. In 1985 the initial dues were set at \$1.00 per lineal foot ("LF") per month and Emery Cove's dues remained at that same level for the next four years. In 1989, due to increasing costs, dues were raised to \$1.20 per LF and stayed at that level for eight years. They have gone up an average of about 5% per year over the 28 years since the Association was established; they are currently \$6.62 per LF. There were several significant projects recently completed; The replacement of the main breakwater from wood to concrete in 2007 of which our shared cost with the City of Emeryville was \$1,200,000, Dredging of the access channel in 2008 of which our shared cost with the City of Emeryville was \$320,000 and Dredging within the marina under the docks and fairways in 2009 which cost about \$940,000. The next significant project is the replacement of the floating dock system scheduled for 2016. The Association is well funded and as of December 2011 has about \$2,550,000 in cash reserves in its bank accounts set aside for future repairs, all as per the professional cost estimates obtained from the Association's marine engineers. [Dues may increase or decrease in future years depending upon income and expense decisions which may be made by the Association in the future through the Board of Directors.]

## **WHAT MAINTENANCE OR OPERATING COSTS ARE NOT HANDLED BY THE ASSOCIATION?**

None. All items of common area maintenance, insurance, management, etc. for Emery Cove's docks and grounds are handled by and through the Association.

## **IF AN ACCIDENT SHOULD OCCUR AT THE MARINA, WHAT ABOUT LAW SUITS AND MY PERSONAL LIABILITY AS A SLIP OWNER?**

In twenty-eight years of operation, Emery Cove has had but one insurance claim. The Association has never sued anyone or been sued by anyone. This remarkable record is due to the fact that not only is the marina staff very safety conscience but all boats berthed in the marina are required by the marina rules and regulations to carry their own liability insurance naming the Association as an additional insured.

The condo Association itself is well insured with a total of \$6 million in liability insurance to cover the docks and common areas. Should an accident occur and a claim be made, the Association's insurer will provide a legal defense and will cover all damages up to the policy limits. In the unlikely event that a judgment should exceed the \$6,000,000 policy limits, only the Association would be liable for the difference – individual slip owners would NOT be held individually liable.

### **DO CONDO SLIP OWNERS GET AN INCOME TAX "SHELTER"?**

As explained elsewhere, one of the few true tax 'shelters' still available to taxpayers today is the deductibility of mortgage interest and real estate taxes by homeowners against earned income. Slip owners who use their slip and boat as a "second home" as permitted under the tax code (which many Emery Cove slip owners do) are allowed to deduct all mortgage interest paid on both slip and boat mortgages, as well as all real estate taxes paid, as an offset against their other income. For the typical taxpayer, this results in a true tax shelter to the extent that about 44% to 48% of these costs are deductible against one's taxable income.

### **WHY BUY A SLIP – WHY NOT JUST RENT ONE?**

Saving money is the biggest reason to buy. Emery Cove's current rent rate is about \$9.00 to \$10.00 per lineal foot per month and rental rates will almost certainly continue to increase in future years. Due to the deductibility of mortgage interest and real estate taxes, you can now buy your own slip for an average monthly after-tax cost that beats renting. And your savings start the day you close escrow. Now is your chance to buy your "Piece of the Rock". Thus, you can save right now over the monthly cost of renting a slip, you can enjoy possible future appreciation in market value.

In summary, it's just like a home or apartment: when you rent, you have nothing but 12 canceled checks at year's end and the prospect of higher rents. When you buy, not only do you actually lower your after-tax berthing payments for the slip but you are now in a position to enjoy future appreciation in the value of your slip along with protection against future rent hikes.

### **IF I WANT TO RE-SELL MY SLIP, ARE THERE ANY RESTRICTIONS OR LIMITATIONS OR GOVERNMENT APPROVALS?**

No, there are no limitations, restrictions or approvals required from any government agency or the Association for re-sale of a slip. You are free to sell it to any person at any time. Liveaboard status does not attach to individual slips and use of slips for living aboard is not automatically transferred – this is governed by the Association.

### **WHAT ASSURANCE DO I HAVE THAT THE MARINA WILL BE RUN PROPERLY IN THE FUTURE AND THAT THE VALUE OF MY SLIP WON'T SUFFER AS A RESULT OF POOR MANAGEMENT?**

By any measure, Emery Cove has had a successful operating record. In twenty-six years of existence, there has been no law suits, one landslide electrical insurance claim in 1998 for \$16,000, and no Association dues delinquency

issues. When things go this smoothly over such a long period of time, it is likely that a good basic management system is in place. At Emery Cove, the “management system” is the judgment and self-interest of the slip owners themselves who govern and oversee the operations of the marina pursuant to the permanently recorded rules of operation called CC&R’s via the Association’s Board of Directors. Unlike the management of other marinas, the Association’s goals are simply to do what is in the best interest of the slip owners – there is no other agenda. For most of its existence, Emery Cove has also been very fortunate to have had talented and dedicated staff people who have worked in close harmony with the Board and with Emery Cove’s slip owners to ensure the continued smooth operation of Emery Cove. Emery Cove’s record speaks for itself. In simple terms, it is the slip owners acting in concert through the Association who are in control of the marina. It is the slips owners themselves (each slip has one vote) who have the ultimate power to correct problems, if any, affecting Emery Cove and thereby to protect the value of their slips.

### **WHY DO PRICES OF THE SLIPS VARY?**

Boat slip prices vary according to the asking price of the seller, but are generally based upon location. Upwind and extra wide berths carry a slight premium due to a greater ease of vessel docking; also, prices of slips closer to land and to parking also carry a slight premium.

### **HOW DO I MARKET MY SLIP LATER ON?**

There are several ways to sell – or to rent out – your Emery Cove boat slip later on when you no longer need your boat slip. It can be sold by advertising it in Bay Area yachting publications, in local newspaper classifieds or via the harbor bulletin board across from the Emery Cove office. In addition, the Association keeps a list of slips for sale by our owners and it is sent out to anyone who responds to the marina marketing ads which Emery Cove’s Association runs in Latitude 38 and the Yachtsman. We also maintain a website: [www.emerycove.com](http://www.emerycove.com). These marketing resources are at no additional cost to slip owners. The Association does charge a handling and documentation fee for staff’s time to handle the sale paperwork and to help you process your sale. Of course, when you sell your yacht, you can also sell your slip along with it to the same buyer thereby possibly earning a premium price for your boat. You can also gift or bequeath it. Another option is to simply keep your slip and to rent it out as an investment: you collect a nice monthly rental check with little management required.

### **I THINK I WANT TO BUY A SLIP – WHAT DO I DO?**

Contact Diane Isley at the Emery Cove Marina office (510-428-0505) to request additional information or to make an appointment. If you have any questions, the marina staff will be happy to answer them for you.

#### **CONTACT:**

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