

Guide to Understanding Homeowner Associations

For association boards, residents, and new home buyers



Prepared by HOA-USA

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The primary purpose of a homeowner association is to maintain and enhance property values.

- Learn why some associations succeed and some fail.
 - Learn 3 keys to a successful association.
 - Check Our Top Ten Do's & Don'ts List.

And finally, learn the single best thing you can do to protect your property value and help your association!

What Exactly Is A Homeowner Association?

A homeowner association is typically a non-profit corporation that is created by a developer when a community is in the planning stages and prior to sale of the first home. Membership in the homeowner association is mandatory. The association is governed by a board of directors which initially is the developer and his representatives. Control of the association remains with the developer until a specified percentage of homes are sold (usually 2/3 or higher). The developer then transitions control to a new board of directors which are elected by the residents.

Practically all incorporated homeowner associations are subject to state laws governing non-profit corporations. Most states also have additional laws governing condominiums and homeowner associations. These laws vary widely by state. In addition, homeowner associations are also subject to federal laws governing everything from fair housing to satellite dishes to swimming pools.

Practically all homeowner associations have their own governing documents in the form of restrictive covenants and bylaws. The restrictive covenants prepared by the developer are recorded with the deed and are legally binding. The restrictive covenants are intended to define the standards of the community so as to protect property values. The restrictive covenants vary widely from one association to another. The covenants can control everything from parking to fences, sheds, any architectural improvements such as porches, pools, and home additions. In some communities, even exterior paint color and basketball goals. In condominiums, even balcony decor and hardwood floors may be controlled. People who buy homes in a community with a homeowner association typically place value on community appearance. Neighbors cannot let their yards grow up in weeds, park boats and RVs in the driveway, ignore exterior maintenance, or paint their house with psychedelic colors.

Many homeowner associations benefit from shared amenities such as pools, tennis courts, and clubhouses. Some have marinas, stables, and even landing strips for small aircraft. The costs of operating and maintaining the community amenities as well as other expenses are paid by the members in the form of assessments. The assessments are mandatory and failure to pay assessments typically leads to fines, restriction of services, property liens, and can ultimately include foreclosure. Associations are supposed to set aside funds for large capital improvements such as painting or roofing in a townhome community, repaving of streets and parking areas, or replacement of mailboxes and street signs. When associations do not set aside adequate funds, residents usually have to pay special assessments which can be substantial.

As mentioned previously, the association is governed by a board of directors who are elected after the developer turns over control. The board has a fiduciary responsibility to act in the best interests of the community. This includes attending board meetings, keeping records, making or amending rules, collecting assessments, paying bills, providing financial reports, holding an

annual member meeting, and generally operating the association like a business. Often, when the duties of operating the association become overwhelming for volunteers on the board, a management company will be hired to perform the day to day duties. However, only the board of directors have the authority to govern the community; not the management company.

Finally, every homeowner association is unique. We begin with distinctions of condos, townhomes, single family, and coop communities. There are some that are small cities with over 10,000 members and budgets in the millions of dollars. There are many with less than 50 homes. Some associations have no amenities and some have multiple pools, theatres, and community transportation. There is a lot of difference between a high-rise condo in New York and a suburban single family community in Oklahoma. Associations have geographic considerations such as hurricanes in the southeast, droughts in the west, and blizzards in the north. Some states such as Florida and California have extensive laws and some states have few. Most associations benefit from a developer that ensures that the community is well governed and financed during construction. Some associations suffer from a developer who changes neighborhood standards, does not provide financial records, and operates with absolute autonomy. Some associations have management companies that do a great job and some do not. Some associations are governed by a board of directors that operate by a code of conduct and are open, fair, and consistent. Then there are boards that operate in secrecy, control power, and play favorites. Since the housing crisis, we now find more associations with high foreclosure rates, financial stresses, and resident apathy.

Unfortunately most homebuyers pay more attention to paint colors than to the homeowner association. This can ultimately make the difference in living in paradise or living in the neighborhood from hell.

So What Is Wrong With The Homeowner Association Model?

The wrong developer can doom the community to failure before control is ever transitioned to a resident elected board.

Unfortunately many first time homebuyers never receive or read the governing documents. Unknowingly, they break the rules and run afoul of the association. And there will always be some residents who knowingly violate the covenants, break the rules and challenge the board. In today's electronic age, email and social networking can stir up dissension in a community in a flash. At a minimum, most residents do not participate in the association and would not consider serving on a committee or the board. Many annual membership meetings fail to reach the necessary quorum in order to conduct business!

The volunteers that serve on a board may lack the time and/or the expertise to properly govern the association. Board members are neighbors and sensitive to making tough decision that are unpopular. It's easier to pass the problems on to the next board

In most states, fewer than 20% of associations are managed by a professional management company. Nationwide, fewer than 10 states require management licensing. The association must carefully evaluate and consider other credentials, experience, and references. Even with the best management company, it comes down to the community manager who usually is responsible for other communities.

Practically all states have some form of Real Estate Commission; however; very few states have agencies or departments with homeowner association oversight responsibility. Those states that do have oversight struggle with focusing on the big issues and effecting legislative change. They are often inundated with individual complaints about board decisions, poor management practices, covenant violations, and assessments. Often, they have little enforcement power and can only advise. Real Estate laws and enforcement of HOA disclosure including governing documents vary widely.

Practically every association has been sued or has filed a lawsuit. Typically the courts are the primary means of remedy. Residents sue boards all the time. They sue for failure to exercise fiduciary responsibility, for failure to enforce the covenants, for not approving an architectural request and the list goes on. Boards go to the courts to collect assessments and fines; and to enforce the covenants. Residents rarely have the financial resources and organizing power to fight a rogue board or developer. Legal fees often result in expenses in the thousands.

The media loves homeowner associations. Time and time again the evening news has a story of the poor resident and crying children who have to remove the basketball goal, the grandmother who has a lien placed on the property for non-payment of assessments, or the out of control annual meetings. Rarely will you see a story about the successful board, the great job that a management company is doing, or the volunteers that work together. The media bias contributes to negative perceptions about homeowner associations.

So What Is Right With The Homeowner Association Model?

Recent surveys show that over 70% of residents are satisfied and happy to live in a community with a homeowner association.

These association members want the protection of restrictive covenants and rules to protect the value of their home and community. They do not want an overgrown weed infested yard to stand out in an otherwise well landscaped community. They do not want boats and utility trailers and RVs and commercial vehicles parked in driveways and streets. They do not want the rogue neighbor to paint his house orange in protest. They do not want their neighbor to build a fence that blocks a beautiful view; much less a do it yourself home addition that goes on forever.

These association members want the value of shared amenities. They enjoy the pool, the tennis courts, and the clubhouse. They value the rules that set standards of conduct.

These association members understand that a homeowner association is a business. It has expenses that must be paid by assessments. These can include the street lights, the pool maintenance, the landscaping, the management fees, the insurance, the cable in the condo and much more. They understand that the association must be able to collect the assessments, even if it means fines, restriction of privileges, and even the threat of foreclosure. There is nothing wrong with compassion and exceptions in hardship, but a pattern of allowing deadbeats to get away with not paying their assessments will lead to financial stresses and larger issues that affect the entire membership.

These association members are involved in their community. They serve on committees or on the board. They attend the annual meetings. They support the board.

What Makes The Difference?

Leadership:

“The residents who assume positions of responsibility as officers and directors of homeowner associations will be the key to its success or the catalyst for its failure.”

Peter M. Dunbar, Esquire, sponsor/co-sponsor of most major laws affecting homeowner associations in Florida during his decade of service in the Florida Legislature.

For an association to succeed it is critical that it start off on the right foot. This means that before the association is transitioned to resident control, the developer must at a minimum enforce the covenants, collect assessments, and hold annual meetings. Then it is up to the resident elected board to govern effectively. Practically every homeowner association board is made up of volunteers. Most have little or no training in the governance of a homeowner association. Most have the same busy lives as all of us. Most will struggle with making hard decisions on behalf of the association in the face of a neighbor’s criticism. Ultimately, leadership is critical! Beyond leadership, there are two keys to success that are essential.

Education: The more that developers, boards, and residents understand about effective leadership, governance, and best practices; the greater the chance that the association will succeed. To help, HOA-USA has provided the following three Top Ten Lists. They are for boards, residents, and new homebuyers.

Communication: Unfortunately, our sense of community is limited to knowing maybe just our next door neighbors. Successful associations work together. Residents serve on committees and boards. Social events bring people together and foster understanding. This is critical in our diverse society. The board must involve the community in issues and recognize different viewpoints. At a minimum, residents have a responsibility to attend the annual meeting. Leadership and Teamwork!

The Need for Legislative Change

Homeowner associations are a relatively new phenomena. Over 73% were incorporated in the last 20 years and more than half (52%) were incorporated in just the last 10 years. In some states, the legislative process has kept pace. In most, it has not and the laws vary widely. This topic is beyond the scope of this paper and can easily be the basis for another future document.

The Single Best Thing to Help Your Association and Protect Your Property Values:

We are passionate about our goal to Educate, Support, and Refer through the development of the first comprehensive nationwide database of homeowner associations.

Currently Nevada is the only state that requires homeowner associations to register with the state. Florida requires only condominiums to register. Most associations do not have current Registered Agent information on file with the Secretary of State. Very few states require homeowner associations to submit an Annual Report with the state. Only the largest of associations maintain an office or phone. Consequently most associations are not listed in phone directories. Most associations do not maintain websites and are difficult to find in Internet searches. Most associations have frequent turnover in officers and directors. Consequently, without current contact information your association is 'invisible' to us.

Our single best thing that you can do to help us advance our mission of providing Education, Support, and Referrals to association boards, residents and homebuyers is...

Update your association's Profile Page in our Statewide Directory!

Simply visit our website www.hoa-usa.com and click on your state. Then click on the update banner in the upper right hand corner of the homepage. **Anyone** can update their Association's Profile Page. It's easy, it's free, and you do not need to register or login.

We also encourage you to register on our respective state websites. This is the only way that we can help keep you stay informed. This is especially important if you are a board member.

Thank you for visiting www.hoa-usa.com.

Jim Laumann, President
Homeowner Associations USA

Ten Things Every HOA **Board** Should Know!

1. Your primary role should be to protect and enhance the value of your community.
2. As directors and officers of a non-profit corporation, you have a legal fiduciary duty. Your actions and liability as a board member are generally protected by governing documents or state statutes governing non-profit corporations based on duty of care, duty of loyalty, and acting in good faith. The board should also be protected with directors and officers insurance.
3. The Board should adopt and adhere to a written Code of Conduct.
4. The board must comply with federal, state, and local laws and ensure that the association's governing documents are followed in a fair and consistent manner.
5. Board members have no individual authority separate of the board and should not make any commitments on behalf of the board. Sensitive communications with other board members should be done by phone since email may be introduced by discovery in the event of a lawsuit.
6. Know the basics of parliamentary procedure, participate with etiquette and support the chair.
7. The board president does not vote on motions unless there is a conflict of interest. In at least one state, Florida, the president must vote and is considered to have voted in the affirmative unless he or she votes against the motion or specifically abstains.
8. Communication with members is key. Do not govern in secrecy except when executive sessions are required. Treat residents with the same respect that you would expect. Provide residents with an opportunity to address the board. This is usually done in a resident's forum at the beginning of some or all board meetings. Have a welcome package for new residents.
9. The board should not become 'condo commandos' by overly aggressive enforcement or fining practices. There are first time infractions that usually result from a resident's lack of knowledge and misunderstanding. There are minor issues, major issues and safety issues. There are repeat offenders. There are the few that commit obvious rule violations, challenge the authority of the board, and stir up disharmony in the community. The challenge for the board is finding the right governing balance that includes objectivity, fairness, consistency, diplomacy, tolerance and measured response.
10. Always work to recruit new volunteers that have the time and skills to serve on the board and on committees. The board should also have an orientation or training plan in place for new members.

Ten Things Every HOA **Resident** Should Know!

1. Know the Rules - Understand and comply with the restrictive covenants, by-laws, and other rules and regulations.
2. Know that you must pay your assessments on time.
3. Do not ignore communications from your homeowner association, especially notices that may regard outstanding assessments, rule violations, or fines. The board has the responsibility to govern fairly and consistently in the interest of all members, which includes placing liens or foreclosing for nonpayment of assessments and fines. Don't let a minor fine escalate to the point that the association board must turn the matter over to an attorney. A fifty dollar fine can easily lead to five hundred dollars to five thousand dollars.
4. You must maintain your property according to the governing documents and rules.
5. Know that an Architectural Review Application and approval is generally required before making improvements. This typically includes sheds, fences, above ground pools, playground equipment and much more. This may also include paint colors, door styles, landscaping, and mailboxes.
6. Know that your association has certain responsibilities to the membership including compliance with federal and state laws, fiduciary responsibility by board members, elections, meeting notices, meetings, due process and much more as defined in the covenants and by laws.
7. Stay informed and participate in the business of your homeowner association by reading the meeting minutes, attending the annual meeting, understanding the budget, and volunteering to serve on a committee or the board.
8. Maintain a current address with your homeowner association. This is critical if you are a member of a homeowner association but do not live in the community. Examples include rental property, second homes, homes used by children in college or retired parents, or investment property.
9. Know that if your home is rental property or occupied by others, ensure that tenants/occupants understand that they must also comply with certain restrictive covenants such as parking, pets, architectural changes, and other requirements. This may also include association rules regarding use of playgrounds, pools, tennis courts, parking and other common areas.
10. Know who is in charge. Maintain contact information for an association representative. This may be an on-site employee, a management company, a board member, or the builder/developer.

Ten Things Every **Homebuyer** Should Know!

1. Do your HOA homework before you make an offer! Don't buy the perfect dream home in the neighborhood from hell.
2. Know who is in control. Almost always the association is a non-profit corporation and is governed by a board of directors. This is either the declarant (developer/builder) or elected residents. Only 20% of associations contract with a professional management company for day to day operations.
3. Know if your association is pre or post transition. The process of transferring control from the developer to the association residents is called 'transition'. The developer has wide latitude to amend the documents and change development standards when in control.
4. Ask for and read the governing documents before making an offer.
5. Ask for and review the association financials. – Review the operating budget and make sure the reserve fund is adequate for future capital projects.
6. Know that association fees (assessments) are required and that the board usually has the authority to impose special assessments.
7. Know that you have to live by the rules or gain the support of the community to amend the governing documents and rules.
8. Know that the board has the power to assess fines, restrict access to services, place liens, and foreclose.
9. Know that HOA laws vary widely by state and are complicated. Right or wrong, lawsuits are expensive, time consuming and stressful. Better to educate yourself rather than becoming involved in a lawsuit.
10. Don't be a whiner if you don't do your homework and purchase in a community with HOA issues. Your alternatives include accepting the issues, making things better by becoming involved, filing a lawsuit, or moving.