

Homeowners Associations

by Alan Weinstein, Esq.

Homeowners associations, and their functional counterparts such as condominium or cooperative owners associations, have undergone explosive growth in the past few decades. In 1965 there were only 500 such associations. The latest information from the Community Associations Institute (CAI), the trade group for homeowners associations, indicates there are more than 250,000 associations in the United States.

Approximately 50 million people now live in developments governed by homeowners associations. This growth is accelerating, with an estimated four out of every five housing starts included in a homeowners association.¹

Several factors are driving this phenomenal growth. One is the changing housing preferences of older adults who often leave the homes where they raised their children to move to no-maintenance condominium developments in the south and southwest. This trend is only likely to accelerate as the baby boomer generation reaches retirement age.

Another factor: in our largest cities, cyclical weaknesses in residential rental markets have led to the large-scale conversion of apartment buildings to condominium or cooperative ownership.

Finally, developers have found that they enjoy a competitive advantage by constructing new subdivisions with common recreational amenities and provision of some services. In each instance, these forms of development will require some type of homeowners association to manage the common amenities or deal with maintenance and service issues.

In addition to providing amenities and/or services, homeowners associations function as a “private” government, setting rules and policies that govern

many of the same concerns as zoning. For example, association rules will normally apply to: parking and storage of vehicles; the display of signs and flags;

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home occupations; accessory uses; fences; building additions; solar energy and telecommunications devices; and many other items.

Indeed, in the absence of state legislation to the contrary, an association’s rules will take precedence over less restrictive local land use regulations because the residents of the association have agreed contractually to be bound by those rules. Thus, a homeowners association is able to restrict, or even prohibit, uses of property that would be allowed under the community’s zoning. This article explores whether the potential clash between local land use regulations and homeowners association rules should be a matter of concern for planning commissions and, if so, what (if anything) commissioners might do about it.

THE BASICS OF HOMEOWNERS ASSOCIATIONS

“Homeowners Association” is one of several terms used to describe the private governance arrangement for residential developments in which each property owner is required to join an organization comprising all owners in the development, abide by the organization’s rules, and pay any required fees and assessments.²

Membership in a homeowners association is not voluntary. Purchase of a property in the development automatically makes the purchaser a member who is subject to the association’s rules and financial obligations.

Homeowners associations are organized on a democratic model. Residents of a development elect a board of directors from among members of the development, and an association board meeting is roughly comparable to a city council meeting. While many associations are governed and managed entirely by their members, large associations will employ professional managers, attorneys, and accountants.

BENEFITS HOMEOWNERS ASSOCIATIONS PROVIDE

There are several important benefits to living in a development governed by a homeowners association. The most significant is the proven track record homeowners associations have in maintaining (and often enhancing) property values. Developments with homeowners associations better protect property values because the associations provide some critical benefits to residents that they normally would not be able to obtain on their own.

First, the association provides greater certainty that the community will remain physically attractive over time by imposing, and privately enforcing through fines and assessments, rules on architecture, landscaping, accessory buildings, fences, signs, and related matters. Residents don’t have to worry that a neighbor will park a 30-foot RV, boat, or

² Other common terms for these types of organizations, some of which depend on the nature of the resident’s ownership interest, include community association, condominium association, and residents association. While there can be some differences among these various types of associations, this article will simply refer to all of these as homeowners associations.

¹ “Data on U.S. Community Associations,” published by the Community Associations Institute (2004).

commercial vehicle in their driveway for months at a time, or that a neighboring home will be painted orange with lime-green trim, or that the landscaping will be allowed to die.

Second, associations often provide recreational amenities for residents — such as tennis courts, swimming pools, and “community rooms” — that many residents would not be able to afford on their own.

Third, the association provides a variety of services to residents, including maintaining common areas and managing the development’s recreational facilities.

Finally, many homeowners associations offer residents a heightened sense of personal safety and security because the development is a “gated” community that restricts access to community residents and their guests and invitees (such as repair or delivery services). More than eight million Americans now live in over 20,000 such gated communities, and these numbers are growing. Some observers estimate that eight out of ten new residential developments in urban centers are gated.

DRAWBACKS OF HOMEOWNERS ASSOCIATIONS

The principal drawbacks of homeowners associations result from the very same factor that allows associations to provide significant benefits: the homeowners ceding control over several aspects of use of their property to the homeowners association.³ While this is not dissimilar conceptually to the reciprocal benefits and burdens associated with zoning — I’m restricted in what I can do, but so is my neighbor — since the potential benefits derived from a homeowners association are greater, so are the potential burdens.

The first broad concern is the requirement of mandatory membership in an

³ While this section of the article focuses on problem areas with homeowners associations, it is worth bearing in mind that the large majority of homeowners appear quite satisfied with their association. Research conducted by the Gallup Organization in 1999 for the Community Associations Institute found that 75 percent of residents were “very” or “extremely” satisfied with their community, with those responding positively citing community appearance, safety, and financial accountability as strongly influencing their view.

association that provides few, if any, protections for those whose views differ from that of the majority of residents. Since the association is empowered to impose both financial burdens (through assessments) and restrictions on personal autonomy (through policies, rules, and regulations) the majority wields significant power to affect the lives of all residents.

It can be bad enough to have to abide by decisions with which you disagree, but in homeowners associations, you may also be faced with the obligation of having to pay for them. Residents who strongly disagree with association decisions may be left with little recourse other than to consider the drastic step of moving. But in many parts of the country this may not even be a realistic option because such a large percentage of housing developments are governed by homeowners associations.

The second broad concern is the degree to which association rules govern the use and enjoyment of one’s own property. This concern is amplified by the unfortunate fact that many prospective home purchasers are woefully uninformed about the degree to which the

use of their home will be constrained by association rules and regulations.

Absent mandatory disclosure requirements, it is in the self-interest of the developer — or seller and broker — to emphasize the potential benefits of the association, while minimizing the potential burdens. All too often, it is only after the fact that residents learn, to their distress, that they have bought a home in a development where a group of their neighbors will have veto power over such formerly personal decisions as: the number and size of pets allowed in the home; the color of the house; the right to fly the American flag or display a political sign; the freedom to allow relatives or friends to live in one’s house for an extended period; the right to build a treehouse or install a solar collector ... and on and on.

The third broad concern, which can affect even residents who agree with association policies, rules, and regulations, is the potential for their heavy-handed or arbitrary administration by the association’s governing body. This potential for abuse exists because associations, while private in nature, have

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“Community” Infrastructure

by Wayne Lemmon

When planners demand dedicated open space and community amenities from developers, they are — sometimes without even realizing it — creating the need for the developer to establish a homeowners association (HOA) to maintain and administer these lands and facilities. This isn’t just a matter of the developer wanting to be competitive by providing an array of amenities — the developer is frequently forced into setting up an HOA as the only viable entity to maintain open space, trails, and infrastructure that the municipal planners want, but that the municipality refuses to take on as public facilities.

For example, in our community, town planners (understandably) did not want a new development to include some 97 individual water wells and septic systems, but

neither did the town want to extend public water and sewer. The only acceptable alternative was inclusion of a community-scale water and waste treatment facility as part of the project. A homeowners association was required to operate and maintain this facility.

Similar examples can be found where the local government does not want to take on street maintenance and snow plowing responsibilities, and requires private roads, which have to be maintained by an HOA. Common area greenspace, trails, even stormwater detention basins also have to be maintained. If the local government doesn’t want to bear these burdens, an HOA will likely be needed.

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