

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. Membership in the homeowner association is mandatory, and you automatically become a member upon purchasing your home. 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.

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

Each homeowner association has its own governing documents in the form of restrictive covenants, bylaws, architectural guidelines, rules and regulations. The restrictive covenants prepared by the developer are filed on the deed records and are legally binding. The restrictive covenants are intended to define the standards of the community for the purpose of protecting property values.

Restrictive covenants can vary widely from one association to another. The covenants might control everything from parking to fences, sheds, and any architectural improvements such as porches, pools, and home additions. For some communities these restrictions even include exterior paint color and basketball goals. Condominiums may even regulate balcony decor and hardwood floors. 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 them typically leads to fines, restriction of services, property liens, and can ultimately include foreclosure. Associations should also 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 in the thousands or tens of thousands of dollars.



As mentioned previously, the association is governed by a board of directors which is 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 as 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 co-op 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 large 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 start of 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.