



BY LINDA BARRETT

YOU VS. YOUR HOMEOWNER'S ASSOCIATION

How to best interact with your HOA when you have a dispute.

Here in Northern Virginia, it's difficult to purchase a property in a community that doesn't have a homeowner's association. In many townhome, condominium and single-family neighborhoods, the association rules define residents' relationships with each other.

What is a Homeowner's Association?

A homeowner's association (HOA) is "an organization in a subdivision, planned community or condominium that makes and enforces rules for the properties within its jurisdiction," according to Investopedia. "Those who purchase property within an HOA's jurisdiction automatically become members and are required to pay dues, known as HOA fees."

Homeowner's associations are most often created by the real estate developer of a planned community containing multiple single-family homes or units like condos. Most HOAs are incorporated and subject to state laws. An HOA also differs from a

"community association," a non-governmental organization that may serve as a social club, service organization, or other intentional grouping.

HOAs or condominium associations are governed by an elected board of directors enforcing and overseeing the HOA's governing documents including the Articles of Incorporation, the Declaration of Covenants, Conditions and Restrictions (CC&Rs) and By-Laws. They may restrict or define what is allowed or not allowed in a community, like the color of paint, fencing, or landscaping. They also set penalties for nonconformance and violations that can include fees, forced compliance, or in some cases, litigation.

Having a Dispute with Your Homeowner's Association or a Neighbor?

"If you have a dispute, the first thing to do is review your copy of the governing documents, including the Declaration of

Covenants, Amendments, By-Laws, Articles of Incorporation, Architectural Guidelines, rules and regulations," recommends John Cowherd, a local construction and real estate attorney with Cowherd PLC. "Those governing documents function as a binding contract between the homeowner, the HOA, and other neighbors in the community."

"One topic that gets a lot of attention is architectural restrictions. These may dictate what kind of mailbox you must put on your property and whether you can build an addition or convert your garage into living space, for example." Common homeowner mistakes include making improvements to the property without first considering HOA architectural restrictions. An owner may need to ask permission of both the HOA and the city or county before breaking ground. A homeowner might construct an addition without checking whether they need to first apply for permission from an architectural review committee. However, if the homeowner inadvertently overlooks a legally-enforceable

requirement, they may later be required to tear down the improvement and start over. "It is easier to get approval ahead of time rather than deal with a rude awakening with a notice of violation and requirement to attend a hearing," Cowherd said. "To complicate matters further, HOAs sometimes overstep their enforcement authority or misinterpret their own governing documents. An owner should not be forced to comply with requests that aren't well founded."

If you receive a letter from your HOA, consult the governing documents to ensure the rule they are trying to enforce actually exists or was not changed through an amendment, and whether the HOA actually has the authority to enforce the rule.

Bear in mind any deadlines to respond referenced in the notice letter. Failure to attend a hearing or meet a response deadline can discredit your claim and enable the HOA to push through their enforcement, whether or not they are in the right. The governing documents or state law may impose other deadlines that may not be referenced in the letter but nonetheless apply.

Try to maintain a positive relationship with your board members. Often they are trying to do the right thing and want to enforce the rules uniformly. You don't want to create a perpetual war, either with the governing body or your neighbors. "If disputes are not approached with an eye toward achieving an amicable settlement, they can become so acrimonious that the board and owner, or neighbor and neighbor, go on fighting over things as long as they are living there," Cowherd said. "You want to avoid that. Realize that if a dispute arises, the owners' best interests is usually to settle it so that everyone can live peacefully together."

When Do You Need An Attorney?

"Often the time to call in an attorney is when things have gotten to the point where you have tried everything, and the dispute persists," Cowherd continued. "I'm often called in when the owner's letter, email or phone calls haven't worked. That's when it's necessary to see what legal options are available." Bringing an attorney in early in a dispute ideally helps to avoid escalation into what may seem to be an intractable conflict or waiver of property rights.

In the initial consultation, an attorney will review the governing documents, and determine whether a forensic engineer must be brought in for a professional opinion. "Many times it is less expensive to fix the problem rather than spend the money to retain an attorney," Cowherd advised, since most attorneys charge by the hour.

What Can An Attorney Do?

An attorney can prepare a lawsuit, file it and take it to trial. When selecting an attorney, look for one with specific experience in resolving disputes of this kind. Ask "Have you ever handled a case of this kind?" "How many?" and "Do you have a plan for how we should investigate and pursue this?" If they don't have a strategy, it may not be a good fit. Ask the attorney, "Are there any deadlines imposed upon us legally that we need to file to preserve our claim?" A qualified attorney will know these answers. Homeowners should be aware that most of the attorneys with experience in community association law ordinarily represent the boards of directors in these kinds of disputes.

When disputes arise, emotions become involved. "These issues touch people very deeply, and emotions can be overlooked," Cowherd said. "People often feel like their life is under siege, and it only takes a few months before it becomes an incredible strain on someone's time, budget and health. Most people do not have familiarity with the legal and construction technicalities to negotiate with their board or neighbor from an informed position. This can add frustration. Property owners may struggle to find the contractor, engineer or attorney that is a good fit for tackling their dilemma. Yet, consultation with qualified professionals working for the property owner may be essential to charting a path to an amicable resolution or success in court."

Hopefully, you will never have a dispute with your homeowner's association. After all, living peaceably in a community is the goal for everyone. ❖



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