

HOMEOWNER ASSOCIATIONS

The Good, The Bad, and The Ugly

Revision 3

© October 2017

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Perhaps the ultimate two-edged sword, the homeowner association (HOA), and or condo association, can provide protection of homeowner interests and property values and/or impose restrictions on the freedoms you would otherwise have as a property owner and nearly stigmatize property.

There are undeniably “yin and yang” issues, in which four basic and inseparable priorities must be balanced to produce a successful and harmonious community: the association's corporate, real estate, financial and community priorities. In many HOA controlled communities there is peace and harmony among the residents due in part, perhaps, because of the HOA. In other communities the HOA has become a nightmare for all concerned. Balance is elusive.

Therefore, in communities that have an HOA, it is very important that potential home buyers give full and careful consideration to this powerful organization and their Covenants, Conditions & Restrictions (CC&Rs). CC&Rs are legally binding documents that are typically originally written and established by the developer of a planned community and recorded against all of the properties in the community.

Please understand that if the property you are buying is controlled by an HOA, you cannot just ignore them and hope they go away. You are absolutely and legally obligated to follow their rules and be governed by them. At closing you will sign papers that bind you to the recorded deed restrictions including any CC&Rs in effect at that time – and of course, to pay all appropriate dues, fees, fines, penalties and assessments as they come due. If legitimate charges are not paid, it is likely they will become a lien against your property and will be paid out of your proceeds upon the ultimate sale and transfer of your home.

Initially, the developer, or their designee, is going to be the sole director of the association until a certain percentage or number of homes have been sold, as defined by the Bylaws. During the initial development when the homes are being sold by the developer/builder or their agent, a public report, which will include the CC&Rs, is generally required to be provided prospective buyers and homeowners. Once the community is populated with enough residents, control of the HOA is turned over to them. Sometimes this is a carefully planned and executed turnover, sometimes it amounts to the developer leaving a pile of unsorted paperwork in a cardboard box on somebody's doorstep in the middle of the night. Residents should make sure to hold the developer accountable for funds collected during the builders' reign. In any event, it is now up to the homeowners to organize themselves and elect a Board of Directors and implement the CC&Rs. Sometimes this can be facilitated by the hiring of a property management company that specializes in homeowner association management. Regardless of whether the HOA decides to be self-run or a professional manager is hired, competent legal advice should be sought from an attorney that specializes in HOAs.

Sometimes developers will have provisions or rules that are in their own best interest during the construction and sale period that might later be modified or removed by official action of the Board of Directors (Board) of the homeowners association. For example, the developer may have had a restriction on parking in the streets for his own benefit in facilitating the movement of construction equipment during that time period. Homeowners may now decide by vote to change or remove that restriction if they choose to. This is an excellent time for any interested members to closely scrutinize the CC&Rs and Rules for any revisions that may be advisable. Any such changes to the CC&Rs should be reviewed by an attorney experienced in these matters and officially recorded as well.

Assignment of Developer's Rights

Be aware that if there are vacant lots remaining after the developer/builder has turned over control of the homeowner association, there is some risk associated with what may happen on those lots. The developer builder may act responsibly and maintain the lots in an acceptable manner – or they may not. Some developers have been known to allow construction trash/rubble or equipment to be stored on vacant lots for extended periods of time. If the real estate market is soft and the developer moves on to another location or town – or goes out of business or declares bankruptcy – it's going to be tough to hold them accountable. Even if this isn't the case, there is often a provision (developer exclusion) in the CC&Rs that makes it difficult to take action against these folks for undesirable behavior. Of perhaps greater concern would be a case where maybe several years have passed and building lots have still remained vacant and unsold. And, the original developer/builder is uninterested or unable to execute new construction on those lots, but rather sells the lots to an individual who wants to build a property that does not conform to the community standards. If the developer "assigns" their rights to the new lot owner, the HOA may not be able to have any control over what gets built on the lot. Well, some may say that, "that's the way it ought to be", but others who purchased homes on the adjacent lots – reasonably expecting that all of the homes to be built after theirs, were going to be single story houses as shown in the original developers plans – now find out that their spectacular view (that they paid an extra \$30,000 for in lot premium) is going to be blocked by a large two-story house. It can get ugly. This writer learned this lesson the hard way while serving as President of the Board of Directors for his HOA.

Here is just an example of actual language found in HOA Covenants that are pretty typical of what developers do to protect their sole interests:

ARCHITECTURAL CONTROL

7.1. Scope. Except as otherwise provided in this Declaration, there shall be no excavation, construction, building, landscaping, development or installation of other Improvements within Greenvale Mews without compliance with this Article. The provisions of this Article shall preempt and supersede any inconsistent provision of any rules or restrictions of a Condominium Association to the extent that the Condominium Declaration or Condominium rules and regulations are in conflict with the provisions of this Declaration. The provisions of the Zoning Laws are incorporated herein by reference, and this Declaration shall be subject to the operation and effect of the Zoning Laws.

7.2. Exemptions. The following exemptions shall apply as provided in Section 7.3. below.

7.3. Declarant Exemption. Any building, Structure, Improvement, grading, fence, wall or landscaping erected or installed by the Declarant anywhere in Greenvale Mews or any personal property or fixture which is annexed thereto shall not be subject to the provisions of this Article VII.

7.3.1. Builder Exemption. A Builder shall be exempt from the provisions of this Article VII if the Improvements or Structure proposed to be constructed by said Builder have been approved in writing by Declarant.

Purchase Contract Provisions

The Maryland REALTOR® Association **Residential Contract of Sale** contract provides the following about HOAs:

30. HOMEOWNER'S ASSOCIATION: The Property is not part of a development subject to the imposition of mandatory fees as defined by the Maryland Homeowner's Association Act, unless acknowledged by attached addendum.

And, the addenda can be selected by checking an appropriate box in paragraph 18, Addenda / Disclosures:

- Condominium Resale Notice** **Homeowners Association Notice**

There are actually several forms to choose from as applicable for condos:

Condominium Resale Acknowledgement

Condominium Resale Disclosure and Transmittal of Documents from Seller As Unit Owner

Condominium Resale Disclosure Certificate from Council of Unit Owners

Condominium Resale Notice

And, there are many addenda to choose from as applicable for HOAs:

Maryland Homeowners Association Act - Disclosure to Buyer and Transmittal of Documents - Initial Sale - More than 12 Lots

Maryland Homeowners Association Act - Disclosure to Buyer and Transmittal of Documents - Initial Sale to Buyer Who Does Not Intend to Occupy or Rent Property for Residential Purposes

Maryland Homeowners Association Act - Disclosure to Buyer and Transmittal of Documents Resale Lot of Any Size OR Initial Sale 12 or Fewer Lots

Maryland Homeowners Association Act - Notice of Changes in Mandatory Fees and Disclosure of Substantial and Material Amendments

Maryland Homeowners Association Act - Notice to Buyer - Initial Sale - More than 12 Lots

Maryland Homeowners Association Act - Notice to Buyer - Initial Sale to Buyer Who Does Not Intend to Occupy or Rent Property

Maryland Homeowners Association Act - Notice to Buyer - Resale of Any Size - Initial Sale 12 or Fewer Lots

So as you can see, no matter how many units and regardless of how property is transferred – new construction or resale - communicating all of the appropriate information about the condo association and HOA is a big deal.

Transfer Fees

Definitely want to watch out for this one. Many, if not most, HOAs assess a fee upon transfer of property ownership. In Maryland, as elsewhere, this fee may go by different names. Some HOAs call it a “Buyer Transfer Fee” – maybe \$1,200 to \$1,300. Others call it a “Working Capital Contribution” or a “Transfer Process Fee” which may be \$400 to \$700 or whatever their going rate is. Other names include “Capital Preservation Fee” and “Community Enhancement Fee”. A few HOAs are actually charging as much as 1% of the sale price of the property. On a \$350,000 home, that’s \$3,500. Agreeing on who pays this fee in the purchase contract becomes pretty important when these significant figures come into play. Some buyers may simply not be able to afford such a hefty tab.

In early 2017, the Maryland legislature took a stand on this issue – as reported here by the Maryland Association of REALTORS®:

Section 11B-106 of the Real Property Article of the Maryland Code governs the fees that may be charged by a homeowners association. It provides as follows:

Within 20 days after a written request by a lot owner and receipt of a reasonable fee, not to exceed the cost to the homeowners association, if any, up to a maximum of \$250, the homeowners association, the management agent of the homeowners association, or any other authorized officer or agent of the homeowners association, shall provide the information listed under subsection (b) of this section.

(2) In addition to the fee under paragraph (1) of this subsection, the homeowners association is entitled to a reasonable fee:

(i) Not to exceed \$50 for delivery of the information within 14 days after the request for the information; and

(ii) Not to exceed \$100 for delivery of the information within 7 days after the request for the information.

Restrictions on Rental Property and Resale

Some homeowner associations have decided that is not in their best collective interest to allow property owners to rent, lease or sublease their properties. Obviously, if you are considering buying a house with this purpose in mind, it would be beneficial to be aware of the details of such restrictions or prohibitions. There are many variations on this type of restriction. In some cases, it is an outright ban, sometimes there is a restriction on how many properties can be rental properties at one time, other HOAs may require that rental periods be of certain length. There may also be strict notification requirements regarding property rental to sometimes include providing the HOA with a copy of any lease agreement entered into. Some HOAs even go so far as to reserve the right to approve the selection of the tenant(s) on a case-by-case basis.

A few HOAs have restrictions on how soon after a purchase the property can be resold. This kind of provision is intended to discourage investors and property “flippers” who do not intend to live in the property, but sell it at a profit in the near future.

HOA Dues

Keep in mind that the regular dues assessment, whether is \$100 per month paid quarterly, or \$12 per month paid annually – is subject to change in the future. It may be worthwhile to get in touch with the HOA contact or talk with other people living in the neighborhood to find out what’s been going on lately and if there are any significant changes coming in the future.

Maybe there's been talk of installing a community pool that will require an assessment of thousands of dollars six months from now. And maybe thereafter, the monthly dues are going to double to maintain it.

Perhaps the roadways are privately owned and are going to require repaving in two years causing a huge assessment on each property. This kind of thing does happen.

Your Future Plans for Property Improvement

If you are going to want to do any property improvements after moving in – is it going to be OK with the HOA? It may be a good idea to find out beforehand. Will it be permissible to build that storage shed you are going to need? How about those Bermuda shutters you want to install to shield the windows from the sun? Sometimes the seemingly simple and reasonable thing that you want to do – just won't be allowed. It will be much better to find out now than be disappointed and upset later.

Flag Display

The "Freedom to Display the American Flag Act of 2005" was signed into law by President Bush on July 24, 2006. This new law prohibits restrictions on displaying the United States Flag on residential property by homeowner associations. Full information about this legislation is available at:

<http://thomas.loc.gov/cgi-bin/bdquery/z?d109:h.r.00042:>

Some older CC&Rs may still have such restrictions in them – but they are now clearly unenforceable.

Incidentally, the entire U.S. Code regarding the flag is available at:

http://www.access.gpo.gov/uscode/title4/chapter1_.html

Satellite Dishes

Many HOAs have had restrictions on placing satellite dishes on houses or in yards for any purpose. However, such restrictions have been illegal since 1996. Therefore any such CC&R provisions are unenforceable.

For more complete information on this topic, take a look at this FCC fact sheet.

<http://www.fcc.gov/mb/facts/otard.html>

For Sale Signs

Home owner associations (HOA) and Condominiums sometimes have restrictions on, or do not allow the display of any signs – much less real estate for sale or rental signs. This restriction may be specific to location: front and or rear yard / fences or windows, or common areas. Or, there just may be restrictions on the size and type or number of signs. The reasons for such restrictions vary. Some claim that it is just unattractive and adversely affects property value and quality of life. Others have stated that their real concern is when too many (however many that is?) for sale or lease signs are up at the same time, it may send out a negative vibe about the neighborhood. Whatever the reason, there have been countless heated battles between neighbors, HOA and Condo Boards and Committees and Property Management companies over the issue of real estate signs.

The underlying truth though may be as simple as the fact that many times these restrictions or prohibitions against real estate for sale and or lease signs were originally written into the covenants, bylaws and rules by the developer / builder. Understandably, if a new housing development is still in the process of building new homes, they don't want the sales competition of resale homes in the same development. And, if there happen to be lots of resale homes during this period, the concern might be that the impression to potential new construction buyers is that something is wrong with the houses or community.

When developers finish a subdivision and turn over the ownership of common areas and responsibility for the administration of the rule book, they are rarely motivated to pull out the sign restrictions and other such requirements – even though the original reason for them has expired.

In some locations, government authorities have stepped in with regulations that negate these Association rules and restrictions. Some Associations do not allow For Sale Signs of any description, or location. Other HOAs and Condos may just have restrictions about size and placement. If you live in a planned community, you may want to read your HOA regulations before placing a sign in your yard.

Pet Restrictions

It is not uncommon for CC&Rs to restrict the number and type of pets permitted to be kept on the property. Obviously, to a pet owner or someone that plans to be, this can be a very important consideration

Busybodies with Clipboards

One of things that can happen in an HOA is that some people get a little carried away with their enthusiasm for rule enforcement and take it upon themselves frequently walk around the neighborhood, with clipboard in hand, taking notes on alleged infractions by their neighbors. For example, “The trash can on lot 42 was left at the curb past the 5:00 pm deadline on trash pickup day – the homeowner was seen taking the container in at 5:10 pm.” Or, “the homeowner at 123 Appleseed Lane was observed operating a shop-vac for five minutes on Sunday afternoon in violation of the rule on operating power tools on Sundays.” These reports are then delivered to the Board of Directors with a demand for action. Again, depending on what side of the fence you are on regarding the friend or foe status of the HOA, this type of behavior can be very annoying or welcomed.

And, it doesn't have to be the lone busybody, sometimes there is an entire committee of clipboard carriers who regularly take a walking tour of the community and find deficiencies in their neighbors' properties and discover rule violations. These committees are sometimes empowered to send warning notices and demand corrections by a deadline. They may also be able to impose fines and penalties – in some cases rather significant amounts of money – and almost always with the cost of high emotion and stress.

This writer once helped a friend in another community in town (that had a very aggressive HOA landscape committee) by replanting and improving the landscaping in the friend's front yard. While working in the yard, a gentleman drove by very, very slowly and observed everything going on with a very stern look. Nothing was said at the time, but a week later, the friend got a rather nasty letter from the Board advising her to never do anything again to her front yard landscaping without the advanced, express written permission of the Board of Directors. She was fined \$95 for not seeking permission. The plants and landscaping fortunately were in compliance otherwise – so they very kindly waived the \$500 fine they had considered.

Parking

Parking of even small vehicles can be a real challenge with the small garages typically built these days – not to speak of larger vehicles or SUVs. And then there are trailers, motor homes, and boats, etc. Prospective buyers will want to make sure that the CC&Rs are going to allow for adequate parking of the types and numbers of vehicles on their own property or perhaps on common areas or designated parking/storage areas. Some HOAs have very strict and aggressively enforced rules about parking. Some communities don't allow vehicles of any description to be parked in the owner's own driveway for more than a short period of time. A few HOAs prohibit street parking overnight. There are lots of variations.

In some jurisdictions, exceptions may be provided by law to the HOA's ability to restrict parking as it applies to property owners who drive public safety emergency vehicles.

Bigger Brothers

Another layer of influence over any given residential property may possibly be the existence of a Neighborhood Association. These organizations sometimes come into existence when there are significant issues in the area that affect multiple HOAs or also when HOAs in older communities become inactive. An example of one of these organizations and their website can be found at: <http://www.lcmna.org/index.php>.

Other really good sources of information about and for HOAs are the Community Associations Institute: <http://www.caionline.org/index.cfm> and the National Institute of Community Management: <http://www.nicm1.com/home.php>. There is also some information available on the American Homeowners Resource Center website: <http://www.ahrc.com/new/index.php/src/home>.

Disputes

When friendly discussion with the HOA doesn't produce the desired result, homeowners may consult with a qualified attorney for assistance.

DISCLAIMER

John P. Hale is a licensed real estate agent in Maryland and Pennsylvania. He is affiliated with Coldwell Banker Residential Brokerage in Westminster, Maryland. John has been licensed since 2000 and also practiced in Tucson, Arizona for many years. Mr. Hale holds the following designations and certifications awarded by the National Association of REALTORS® (NAR) and other authorized institutions: ABR-Accredited Buyers Representative, AHWD-At Home With Diversity, CNE-Certified Negotiation Expert, CRMS-Certified Risk Management Specialist, CRS-Certified Residential Specialist, CTA-Certified Tourism Ambassador, e-PRO-Online Real Estate Practice, GRI-Graduate of Realtor Institute, MRE-Master of Real Estate, MREP-Mortgage Real Estate Professional, and MRP-Military Relocation Professional.

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