

HOMEOWNER'S ASSOCIATIONS: OPERATIONS AND LEGAL CONSIDERATIONS

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Overview

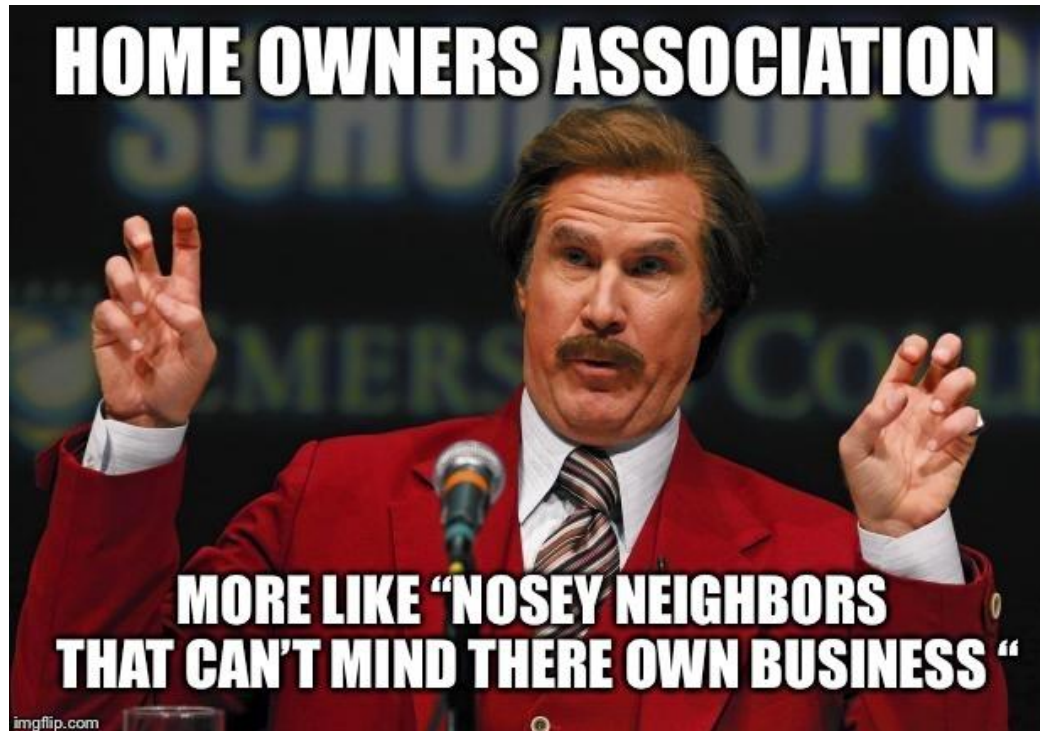
- ❖ General Purpose & Authority
- ❖ Trustee Roles & Responsibilities
- ❖ Municipal vs. Private Violations



General Purpose & Authority

What is an HOA?

An HOA is an organization composed of owners of neighboring properties which is responsible for administering the covenants, conditions and restrictions (“CCRs”) that are applicable to those properties.



General Purpose & Authority

Three types of HOAs:

1. Non-profit corporations

- A. Must adopt and follow Articles of Incorporation and By-laws.
- B. Must file an Annual Report with the Missouri Secretary of State.
- C. Statutory procedures to follow when there are gaps in the CCRs.
- D. Provides limited liability to the board members.

2. Unincorporated Association

- A. Possesses no status apart from its members and is not a legal entity.
- B. Does not provide any liability protection for the board members.
- C. Cannot institute lawsuits or own real property.

3. Indenture Trustees

- A. Holds common property in trust for the benefit of the lot owners.
- B. Statutory procedures to follow when there are gaps in CCRs.

General Purpose & Authority

The authority of an HOA is primarily derived from the following:

1. CCRs and plat(s);
2. State law; and
3. If incorporated, Articles of Incorporation and Bylaws.

HOAs usually have the authority to adopt rules and regulations. Rules and regulations should cover basic operational or administrative items, such as:

1. Restrictions on using pools, parks, or other common facilities;
2. Requirements to keep dogs on leashes; or
3. Public safety restrictions (fireworks, BBQ grills, etc.).

General Purpose & Authority

CCRs are the most important document for the HOA. CCRs set forth:

- ❖ Procedures for operating the HOA,
- ❖ Restrictions on the use of property,
- ❖ Architectural standards, and
- ❖ Assessments for covering the expenses of the HOA.

CCRs are strictly construed by Missouri courts—this means that if the CCRs are ambiguous, that ambiguity will be construed in a manner that is beneficial to the property owner.

Trustee Roles & Responsibilities

Primary roles of the Trustees include:

- ❖ Management of the subdivision;
- ❖ Maintenance of common property;
- ❖ Collecting assessments; and
- ❖ Enforcing the CCRs.

**Mister Rogers did
not adequately
prepare me for the
people in my
neighborhood.**

Trustee Roles & Responsibilities—Management



Trustee Roles & Responsibilities—Maintenance

COULD YOU PLEASE TELL ME...
WHAT THE HOA NEEDS THIS MUCH MONEY FOR?!

...

AND WHEN WILL YOU FIX ALL THE ROADS?!



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Trustee Roles & Responsibilities—Assessments

Five point plan for an HOA's financial viability:

1. Impose the assessments on time.
2. Collect
3. **Collect**
4. **COLLECT!!!**
5. File a lien

Trustee Roles & Responsibilities—Enforcement



Trustee Roles & Responsibilities—Enforcement

HOAs typically enforce CCRs in one of two ways:

1. File a lawsuit seeking an injunction or declaratory judgment to remedy the violation; or
2. If allowed by the CCRs, impose a fine or suspend services provided by the HOA.

The CCRs may provide that the fines imposed by an HOA become a lien on the property.

“Self-help” is rarely an authorized, or viable, remedy.

Beware of waiver!

Municipal vs. Private Violations

A city and an HOA both have authority to enforce regulations on the use of property.

However, the interests of a city and an HOA may not be aligned, and their respective authority is different.

Example:

A property owner operates an in-home daycare. Both the city and the HOA will have an interest in addressing this issue, so an individual might contact both entities with a complaint in the hope that the issue is more likely to be resolved. Operation of the in-home daycare may require a permit or license from the City, but it might not be prohibited. However, CCRs might prohibit all commercial activities.

Conclusion

- ❖ Active HOAs are an important part of the community because they often serve as liaisons between local governments and residents.
- ❖ Follow the CCRs!
- ❖ Consider using outside help to collect assessments, send out meeting notices, file liens, and perform other duties.
- ❖ Enforce and collect!
- ❖ Running an HOA is hard work, but it can improve the lives of the residents of the subdivision.

THANK YOU!!

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