

Homeowners Associations: The Concept

This week, I have attended a number of Board meetings both condominium associations and homeowners associations. Several of those association meetings were with communities whose owners are relatively new to the concept of professional management in their community. Those meetings clearly demonstrated a lack of communication over the years from the Board to the members, a clear lack of understanding on the part of the members as to the basic concept under which their community is formed and a clear lack of understanding about the relationship of the members to the Board and the community. These meetings were hostile, disruptive, argumentative and down right nasty and worst of all, the time spent accomplished nothing except feelings of ill will and being disgruntled.

As we feel so strongly about the benefits of educational communication on a consistent basis, our communication to you this week is a primer about understanding the association concept. The homeowners association is the cornerstone of a planned residential community. It gives continuity to the community, it preserves the architectural integrity and it maintains the common properties. Properly run, it promotes the community concept and protects the community's property values. In many cases, it makes available recreational and other facilities that might not otherwise be affordable or available to homeowners and residents. The homeowners association can be the vehicle for community communication and security, and it can protect and maintain the common easements and common services that exist for the benefit of each member of the association.

Automatic and mandatory homeowners associations are part of an overall concept of residential property ownership. Purchase of the home or lot brings membership in the association which provides the structure for the operation and management of the residential community concept. Membership includes certain mandatory obligations, financial responsibilities and a commitment to abide by the use restriction and rules of the association.

The Association's responsibilities may be limited to basic maintenance functions, or they may be expanded to include sophisticated and elaborate maintenance for the property and delivery of special services to individual homes. Association membership generally brings with it the obligation to pay assessments and the responsibility for each individual to contribute to the overall community well-being. To be successful, the community must be properly run by its officers and directors, and it must have some level of participation by each of its members.

The collective goal of the homeowners association is to maintain the quality of the property and the lifestyle envisioned by the planned residential development. Apathy by individual members can render the association ineffective and can destroy the community concept. To maintain the quality of life that accompanies a well-maintained residential community, each individual member must do his or her part. The success of the homeowners association will depend on how well each member meets and keeps the responsibilities that are established by the covenants creating the overall community concept.

Interrelationship of the Parts

The parts of a planned residential community consists of (1) the individually owned lots or residences, (2) the common scheme of covenants and restrictions that govern the homes and their occupants, and (3) the homeowners association that administers to the shared property and the community regulations. The parts of the community are melded together by the recorded restrictions. They encumber each individual lot or parcel of real estate and they impose their conditions, responsibilities and restriction upon each lot owners. The recorded

restrictions also grant membership rights in the homeowners association to each owner as an incident to the ownership of the property in the community.

The parts of a planned residential community cannot be separated from one another once the covenants and restrictions are recorded and permanently encumber the parcels of property. Membership rights in the homeowners association are transferred automatically at the time that a piece of property in the community is transferred to its new owner. The covenants imposing financial obligations on each lot and restriction on its use also remain with the property as a condition of ownership. The benefits of ownership are also transferred at the time of sale including rights to use the common property and the benefits from the common services.

The Law and Legal Principles

The Association is formed by the creation of its legal documents. There are three separate documents which together are generally referred to as "The Documents". Each of the three parts create specific areas of compliance and responsibility and guidelines that govern how the Association is to be governed.

There is also a hierarchy in the documents that are applied to an association, meaning that one has priority over the other if there is a conflict in what they say. In all cases, the Declaration of Covenants is highest, the Articles of Incorporation is second followed by the By-laws and then any adopted Rules and Regulations, whether promulgated in the documents or amended and adopted by the Board of Directors. Governing or sometimes augmenting each section of the documents will be the highest authority which is the applicable state statutes for your particular state.

Next week: Defining the Covenants, Articles and By-Laws.