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HOMEOWNERS ASSOCIATIONS

Is the Cure Worse Than the Disease?

by Neil Stein
Land Use, Zoning and Development
610.941.2469
nstein@kaplaw.com

Homeowners associations are increasingly common in new housing developments. An estimated four out of five houses built since the late 1990s belong to such an association, according to the Community Association Institute.

Residents in these neighborhoods pay periodic dues to help maintain common areas such as roads, stormwater basins and common open space. An association is typically governed by a set of rules often encompassing everything from the architectural style of homes to parking regulations. Homeowners associations are governed by a volunteer board of directors and property management is often performed by a management company.

Homeowners and community associations are becoming increasingly more popular among developers as a response to local government's concern with assuming ownership and maintenance responsibility for infrastructure. A municipality continues to receive real estate tax revenue but is no longer responsible for the maintenance of stormwater basins, open space or other improvements which do not benefit all residents of the municipality. However, the creation of an association to maintain such improvements is no guarantee that the developer or local government will be free from future responsibility. While many residents are happy in their common-interest communities or developments, homeowners associations and their myriad of covenants, codes, and restrictions, often generate disputes based upon perceived violations of residents' rights. To ensure that these disputes do not result in the developer and municipality becoming parties, association documents must not be mere "forms" but must be carefully tailored to meet all competing concerns.

Despite the benefits of associations, there can be problems. Short-term issues revolve around the rights of individual homeowners, "double taxation" (association fees and local taxes), and contradictions between municipal codes and the homeowners associations' covenants, codes, and restrictions. And over the long haul, local government may have to face the fact that poorly capitalized or managed associations cannot maintain aging developments. This situation is ripe for controversy. The battles fit into four broad categories:

- Homeowners complain about double taxation. They pay fees to their association and taxes to their municipal government. Although their tax rates are similar to or even higher than those of homeowners living in other types of developments, they do not receive the same public services.

- The covenants, codes, and restrictions are frequently more restrictive than municipal ordinances and as private voluntary agreements, they can prohibit acts that would otherwise be constitutionally protected; for example, flying a flag or posting a political sign in the front yard.

- The quality and nature of governance varies from association to association. Some homeowners associations are well run and their officers take their fiduciary responsibilities very seriously; others do not always rise to such a level.

- Approving changes to covenants, codes, and restrictions often requires a super-majority, and sometimes can be stymied by mortgage agreements or the need for municipal approval.

> *"Proper disclosure is the order of the day."*

All homeowners associations serve property owners within a specific common-interest development rather than an entire municipality. However, associations have a broader impact on local finances and land use. For example, a municipality may desire to link common open space within a community to other public open space areas by means of a public trail connection. However, an association may rebel at the notion of inviting outsiders into their community. These issues can often plague a developer and municipality as the transition from developer control to homeowner control occurs.

One criticism of associations is that homebuyers often do not understand all of their obligations until it's too late to back out. This is a fertile source of lawsuits against developers - therefore, proper disclosure is the order of the day for the developer. As a homebuyer, a thorough reading of the stack of association documents is critical to determine whether the community's regulations are compatible with your lifestyle. Ask to see the association's financial records so that you fully appreciate not just the current level of assessment, but the potential for future increases as well. If these documents are complex, consult an attorney.

Associations are here for the foreseeable future. More oversight from the state is likely. Weak associations face the danger of bankruptcy, particularly as their communities begin to age. Proper consideration of all the issues is a critical step for developer, municipality and homebuyer alike in order to ensure that an association accomplishes its intended purposes.