

HOA_s EXPLAINED

HOMEOWNER ASSOCIATIONS



Vital knowledge HOA property owners must know, and the questions buyers are obliged to ask, about investing or living in an HOA community

Chuck Fowler, CMCA™

Glossary of Terms

Excerpted from HOAs Explained

HOA lingo

Annual Assessments/Dues (Assessments) – levied against HOA/Condo properties by the Board in accordance with the Declaration and usually paid monthly; the purpose of Assessments is to fund the administrative, maintenance and Replacement Reserve responsibilities of the Association; Assessments are both a lien on the Owner’s HOA property and a personal obligation of the HOA Owners, which means that if an Owners fails to make timely Assessments to the Association when they are due, the Board has the legal authority to foreclose the Assessment Lien (created by the Declaration) as well as petition a court to seek a judgement against the Owners personally for payment

Special Assessments – (Special Assessments) levied by the Board of Directors in accordance with the Declaration; Special Assessments typically fund unexpected and unbudgeted expenses caused by any number of unforeseen events; Declarations describe the Special Assessment levy process but typically they are paid pro rata by all Owners; unforeseen events may include a high wind/hail deductible after a major storm or replacement of a major HOA component such as a burst underground utility pipe or a failed retaining wall; some Declarations may require a majority vote of the Property Owners to ratify the Special Assessment levied by the Board

Individual Purpose Assessments – Assessments levied by the Board against just one Owner, or a small group of Owners, for Covenant or Rules violations (fines), late payment fees, legal fees, collection fees, and reimbursements for damaged Association property (Common Area) or facilities

Architectural Control or Design Review Committee (ACC or DRC) – a standing committee usually appointed by the Board or president who administer and enforce the HOA’s design/architectural standards; architectural standards (roofing material, windows/doors, paint colors, etc.) may be expressed in the Declaration with Board/DRC authority to refine and adopt more specific standards and modification procedures in the Rules and Regulations, or a stand-alone Board policy may set standards; modification’s made by Property Owners to their properties without first obtaining DRC review and approval may be fined and compelled to remove the modification per the Declaration or face a fine for non-compliance

Board of Directors (Board) – individuals either appointed by the Declarant to the primary governing body of the Association, or, elected by HOA Property Owners; Boards have a fiduciary duty to act in the best interests of the entirety of the Owners and not their own personal interest or the individual interests of any member or group of members; authorities, obligations and duties of the Board are expressed in both the Association’s Declaration and Bylaws; if a conflict exists in the language of the Bylaws and Declaration, the Declaration language typically prevails

Bylaws – a document drafted by an attorney that regulates the organizational conduct of the Association as a non-profit corporation, specifically regarding: regular and annual meeting notice requirements for both Board and membership meetings, meeting quorum, proxy requirements, voting rights and procedures, qualifications and procedures for electing directors to the Board, procedures for Board Officer election (usually elected by the Board), general authorities and duties of the Board and Officers, provisions for indemnification of Board members; Bylaws typically amended by Board action only but must comport with state laws regulating non-profit corporations

Common Area – real estate owned by the Association and maintained by it for the benefit of all Association Property Owners; may include landscaped areas between dwellings, entrance areas, roads, drainage basins, parks and amenities such as pools, tennis courts, etc.; Common Area is typically exempt from paying property taxes; Common Areas are depicted as such on Recorded Plats; in Condominiums, Common Area would include hallways, elevators and stairwells

Condominium (Condo Association) – a building of similar multiple units in a vertical building of multiple floors (stories); where the property Owner owns his unit’s “air space” and a non-exclusive percentage of the Common Area (hallways, elevator, landscape area) based on the square feet of his unit; Condo Associations typically do not own any property and often levy the annual Assessment based on unit square footage rather than a uniform Assessment as required by some Declarations; insurance requirements and Replacement Reserve objectives are also different for Planned Communities

Declaration of Covenants, Conditions and Restrictions (Declaration) – drafted initially by the developer/builder (Declarant) of the Community Association and recorded in the public records; in states with statutes regulating HOAs and Condominiums, the Declaration must be structured around those laws; the Declaration is the primary legal document that grants the Association its administrative duties, enforcement authorities and maintenance obligations; defines the rights and responsibilities of both the Association and the Property Owners; establishes the mechanisms and restrictions for governing the Community, including rule-making authority; sets-up funding options and procedures to pay the Association’s common expenses/reserves; creates a property lien (foreclosure) process for ensuring payment of Assessments; Declarations are typically amendable with approval by a super majority (67% – 75%) of Property Owners called to a meeting for that specific purpose; Declarations sometimes expire after a period of time if stated in the document

Declarant – the original owner/developer/builder of a property designed and organized as an Community Association; works with attorney to draft the initial Declaration; enjoys special development and/or Declarant rights during the Declarant Control Period; rights wane as Lots are sold; well-managed HOAs amend the initial Declaration to remove all Declarant rights soon after the Declarant Control Period has expired and the Owners have complete control of the Board

Declarant Control Period – a specific period of time stated in the Declaration where the original owner/developer/builder enjoys Special Development Rights, sometimes referred to as Declarant Rights, that assures his ability to market and construct the HOA Community and Dwellings per the development plan; such rights include appointing Board members who may not be Owners of property in the HOA (often times such appointees are employees or other business associates of the developer/builder); reduced or delayed payment of Assessments; the right to add additional Lots to the HOA; the right to use a unit as a sales model and to place promotional signage in and around the property; Declarant Rights typically wane as properties are sold and the Declarant owned properties shrink in number (especially regarding Board appointments); the original Declaration (or state law) may require the Declarant to provide an audit of the HOA bookkeeping during his Declarant Control Period along with other expressed requirements in the Declaration related to turning the HOA over to Owner control

Dwelling – (Dwelling, Unit) – a residential housing Unit situated in a subdivision as a single-family home, or within a building of other residential Units in a Townhome or Condominium building

Easements – a written, recorded use right granted by the real estate owner to allow another party access to his property for a specific purpose; utility easements are the most common type of easement whereby the property owner grants a utility company engineered (surveyed) access across his property to install utility lines; in Community Associations, developers frequently use easements when one access driveway serves two or more Dwellings; often, the property owner granting the easement access is the Community Association, when the underlying real estate is owned by the HOA as Common Area

Governing Documents – the printed set of HOA legal documents that: incorporate (create) a homeowner’s Association (Articles of Incorporation); establishes property covenants, conditions and restrictions and the authority to enforce them (Declaration of Covenants, Conditions and Restrictions); regulates the organizational conduct of the Association as a non-profit corporation (Bylaws); maps the development’s engineered components of the community and establishes its legal boundary (plat); in addition, the following HOA working papers are sometimes included: monthly Board meeting minutes; annual meeting minutes; Board resolutions; financial reports including annual budget, balance sheet, income and expense statement; budget report, analysis of HOA reserve components (as determined by the Declaration) that calculates current funding requirements for future replacement of concrete sidewalks, asphalt streets, roof shingles, etc. (Reserve Study)

HOA (Association, Community Association) – usually a non-profit corporation organized to enforce the legal responsibilities and obligations of the Association’s Governing Documents; governed by an elected Board of Directors (Board) typically made up of Property Owners who own property within the Association’s legal boundary; Boards have a fiduciary responsibility to carry out its duties for the benefit of all Property Owners; Boards are also protected by the Business Judgement Rule whereby Directors are shielded from liability if they conduct themselves in good-faith and in the best interests of the Association

HOA Community – Dwelling units designed and platted within a specific surveyed boundary that are subject to a Declaration recorded for the purpose of forming a homeowners Association (HOA); typically Townhome, Planned Communities (single-family and Patio Home lots), and Condominiums

HOA Manager (Manager) – an individual or business who contracts with HOA Boards to administer the business affairs of the Association, including collecting Assessments, paying operating expenses, managing bank accounts, generating financial and other operating reports, supporting the ACC and other committees, administering a website, organizing meetings, and enforcing the Rules & Regulations

HOA Owners or Members (Property Owners) – Owners of real property situated within the boundary of an HOA Community; Owners have rights, duties, and obligations as expressed in the Declaration and Bylaws

Home Inspection Report – Prepared by a certified inspection professional, the Report itemizes repair or replacement issues with a Property under contract for purchase; typically, the buyer orders and pays for the Inspection Report; the buyer also assumes that the problems identified in the report will either be repaired by the seller or the HOA if the repair involves an HOA maintenance responsibility; frequently, the buyer and seller (and HOA) will negotiate who will pay for what and when to keep the transaction on track to close

Limited Common Area – real estate owned by the Association where use rights are restricted to one or a limited group of Owners for their exclusive and private use as expressed in the Declaration; maintenance responsibility of Limited Common Areas is specified in the Declaration; parking spaces and garages may be Limited Common Areas as would a front or rear deck or porch; in Condominiums Limited Common Areas could be a balcony, basement storage areas or garage

Lot – a surveyed (platted) building site within an HOA peripheral boundary of a Planned or Townhome Community; Owners usually own their platted Lot in a Planned Community (single-family dwelling); in Townhome HOAs the outermost dimension of a Townhome dwelling unit (concrete foundation walls) forms the boundary of the Lot with a Party Wall separating Units as the interior Lot boundary (Owners own to the center of the Party Wall)

Master-planned Community - a large mixed-use development of at least 1,000 residential units and designed and platted (mapped) with varied land uses such as single-family, Townhome and Condominium Dwellings, commercial uses and buildings, schools, churches, streets, sidewalks and trails and Community amenities such as parks, recreational centers and athletic fields; such large communities will often have one Master Association that all residential properties belong to, and, smaller Sub-Associations for individual sub-divisions of homes

Patio Home HOAs - typically single-family detached Dwellings where all homes match in architectural style and detail, including color; landscape maintenance is performed by the Association, even though the Property Owner may own the Lot; Owners maintain their own Dwelling inside and out and obtain their own insurance policies; dwellings are usually subject to architectural standards through the Declaration

Planned Community (PUD) - a Community of residential dwellings mapped (platted) out to depict Lots, streets, sidewalks, Easements, Common Areas, Limited Common Areas, utility locations and other community Components such as trash barns and detached garage structures; Townhome and Patio Home developments are often PUDs where the dwelling and the ground beneath it are owned by the property Owner and all real estate beyond the building foundation is owned by the Association as Common Area (Townhome); PUD Townhome Associations often maintain building components such as roofs, siding, windows and doors and other unit Components as required by the Declaration; frequently, Associations within a PUD own and maintain the interior streets, curbs and gutters and drainage features

Recorded Plat - a surveyed map (usually 24"x 36" sheet) depicting the HOA perimeter boundary, building Lots, Common Area, streets, drainage basins, shared driveways, Easements and any other community Components that the Association will manage; Plats can also contain various notes that express maintenance responsibilities and use restrictions for community components; plats typically available for purchase from a county clerk of records or recorder; in the event that a Declaration provision and a Plat provision are in conflict, the recorded Plat provision typically prevails

Replacement Reserves (Reserves) - funds collected through the annual Assessment to pay the future replacement/maintenance of HOA components, such as exterior painting, roof and siding replacement in Townhome HOAs, plus asphalt, concrete curb/gutter/sidewalks, signage and entrance monuments, lighting, underground utility lines, fences, retaining walls, tennis courts and other recreational facilities situated on the Common Area; Reserve Studies are reports prepared by Reserve Specialists who periodically inspect HOA Components, determine their remaining useful life and then calculate a future replacement cost for each; a percentage (Percent Funded) of that replacement cost should be included as part of the annual budget; HOAs/Condos with low Replacement Reserve percentages are at risk of costly Special Assessments which can signal to real estate agents and their buyers that the HOA is poorly managed; once Reserves have been budgeted, collected and deposited into a segregated bank account, they may not be used for operating expenses, though the Board can borrow Reserves to pay operating expenses but they must be paid back per a Board approved schedule

Status Letter – a legal document ordered by a title company and prepared by the HOA Manager or attorney as part of the Property sale process; sometimes called an estoppel certificate; the document discloses any unpaid Assessments, unresolved Covenant violations or other issues that may affect the transfer of property from a seller to a buyer; typically, buyers accept any unresolved HOA issues with a property, including Assessment account balances owed by the seller, which then become the buyer’s burden to resolve after the transfer of sale is completed; seller typically pays the Status Letter preparation fee charged by the HOA Manager, which fees can sometimes be unreasonably high; buyers should read the Status Letter very carefully and seek professional assistance to fully understand what they are “inheriting” from the seller

Townhome – a multi-family housing design where a number of similar and connected Dwelling Units are constructed horizontally (side-by-side) within one building; Townhomes are separated from adjacent units by a Party Wall; Townhome Owners own from the middle of the Party Wall to the outside dimensions of the other perimeter walls of the unit; annual Assessments are often calculated per the “assessable” square feet of each unit, rather than a uniform rate that all Owners pay; Townhome Owners typically purchase Dwelling insurance (called HO-6 policies) to cover liability risks (personal injury) within the unit, as well as their personal property (furniture, computers, etc.) and Loss Assessment coverage that covers high insurance deductibles required under the Declaration for major property insurance claims (hail, wind); a high percentage of Replacement Reserves cover maintenance and replacement of Townhome components such as roofing, rain gutters and siding in accordance with the Declaration

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