



## Ten Things You Need to Know About HOAs

### 1. "We Can't Wait to Get Our Hands on Your Money -- Or Even Your Home."

A gardening violation. That's what landed Jeffrey DeMarco in hot water with his Rancho Santa Fe, Calif., homeowners association a few years ago: He planted too many roses on his four-acre property. Peeved, the association fined him monthly and sat back as the bills mounted. Then it placed a lien on his property and threatened to foreclose, according to DeMarco.

He took the board to court, but lost on the grounds that he had violated the association's architectural design rules. (In addition to planting roses, he also had regraded the site.) In the end, he got stuck with the association's \$70,000 legal bill and lost his home to the bank. "Mr. DeMarco came into the community and wanted to step outside the rules," says Walt Ekard, the association manager. "That's a detriment to everyone."

Think it couldn't happen to you? Think again. Many people who belong to homeowners associations do not understand just how much power these groups have over them -- until they miss a payment or otherwise run afoul of the board. Fall a single day behind in paying your monthly dues, for instance, and the association may slap you with a fine. Fall 90 days behind and it may place a lien on your home and threaten to foreclose unless you pay up immediately. And because you often hand over the right of property trustee to the association when you agree to the by-laws, in some cases "you don't even get to go to court," says Evan McKenzie, a lawyer turned political science professor in Chicago and the author of *Privatopia: Homeowner Associations and the Rise of Residential Private Government*.

Your best defense, if you can afford it: paying what the association says you owe, then arguing. Most associations work on a "balance forward" accounting system, in which your payments go toward the outstanding balance. By delaying, you'll just accumulate more late fees.

### 2. "We're More Secretive than the CIA."

Like corporate boards, which have a fiduciary responsibility to make disclosures to shareholders, a homeowners association board is supposed to be upfront with its members. But all too often, boards play things close to the vest. "The board will say everything is confidential and they can't tell you anything," says Willowdean Vance, president of the American Homeowner Association, a consumer group based in Lake Forest, Calif. "They're just on a power trip and it's absolutely deceitful."

Some boards can be impossibly stubborn about disclosure. When a few members of the Columbia Foundation, a Maryland homeowners association, tried to gather some information, another faction of the board was so miffed at not being consulted first, that they went so far as to try and impose a rule that would have required members to get permission from the entire board before asking an outside agency for information. Larry Holzman, an attorney with Ochs, Holzman and Rosen, a firm specializing in homeowners litigation, says the rule was voted down only after a major publicity campaign put forth by the Maryland Homeowners Association. Homeowners who feel shut out should first write a letter to the board formally requesting access to the records, suggests Debra Bass, a spokeswoman for the Community Associations Institute.



If the board is still mum, "ask for a letter from the association attorney that explains why you can't see the records," she adds. And if you still aren't satisfied with the board's response, move somewhere else, or hire a lawyer and sue. "The entire budget should be open and available to every homeowner," says Bass. "It should not be kept a secret."

### **3. "When in Doubt, We Sue."**

Board members will tell you that the last thing they want is to go to court. But it happens all the time. Experts estimate that in California, 75% of the homeowners associations are embroiled in a legal tangle of some kind. Chicago attorney Mark Pearlstein, who represents associations, figures that 60% of all condo boards and homeowners associations in Illinois are involved in some kind of legal suit.

It's partly a reflection of our increasingly litigious society. But that's not the only reason. "The association lawyers tell the board to enforce every rule," says author Evan McKenzie. "They say, 'If you make one exception, the whole neighborhood falls into chaos.' But who gets paid every time you take an owner to court?"

The lawyers, of course. But the litigation option can be hard for board members to resist. For instance, Margurette Nicholson was board president in 1991 when her association in Portola Hills, Calif., took a neighbor to court for installing a satellite dish in his backyard. "Nobody wanted to take this thing to court," says Nicholson. "But one of the homeowners was a lawyer and she was friends with the association's lawyer. They both campaigned for it. They both said we would win. I knew we wouldn't." Indeed, the owner's lawyer argued that the rule infringed on his client's First Amendment rights and he won. The board's legal fees: more than \$40,000.

### **4. "You Won't Be Able to Sell When You Want."**

Besides being expensive, lawsuits often mean that you won't be able to sell your home when the time comes to move. "Would you want to go out and buy a property that was in the middle of a lawsuit?" asks Oliver Burford, executive director of the Executive Council of Homeowners, a trade group for California associations. "I wouldn't."

Naturally, banks don't like lending money for homes on which lawsuits are pending, either. But there are exceptions. "There will always be some lenders who are willing to lend you the money," says Larry Holzman, a Maryland attorney. "The problem is you will not be able to get the same rates set up because banks have very strict lending criteria." If you find out a condo you're interested in is embroiled in litigation, use that information to negotiate a lower price, Holzman advises. If you're the seller of such a property, you'd better not hold out for top dollar.

### **5. "We're Poorer than We Look."**

Every association has a reserve fund. It's like a savings account, and it's meant to be tapped when things go wrong or the property falls into disrepair. But often these funds are in terrible shape themselves.

Ron Williams, an engineer with R.J. Moore, a consulting company that specializes in reserve accounting, once worked with a Northern Virginia condominium that had a paltry \$100,000 set aside. "Closer to \$1.25 million would have been considered healthy," says Williams. When



power-plant equipment gave out in early 1994, the association didn't have the \$400,000 needed to replace it. The solution: A \$2,400 special assessment to each of the 170 unit owners and a 22% increase in monthly dues.

When it comes to checking up on a reserve fund, there are two good rules of thumb. First, about 20% to 25% of your dues should go toward the reserve fund, says Robert Nordlund, president of Association Reserves, a California company that specializes in reserve accounting. Second, there should be a long-term schedule for the reserve fund in the annual budget, including a projection of upcoming expenses for each common-area item: elevator repairs, painting, pool maintenance and so on. Reserve accountants suggest that the account should contain no less than 70% of the projected reserve budget. If the account is 30% funded or less, you can expect to be hit with some big assessments down the road.

#### **6. "We Can Make Up the Rules as We Go Along."**

By law, a majority of the homeowners in an association have to approve any change in the bylaws. But many boards sidestep this by simply changing their house rules, which are as binding as bylaws but can usually be rewritten without asking all the homeowners. "Even if you were to be given the rules today, they're probably already out of date because [boards are] constantly making changes to the rules at whim," says Elizabeth McMahon, a co-founder of the American Homeowners' Resource Center, a San Juan Capistrano, Calif., consumer group. "And they couldn't care less if you don't like them."

At the Reston (Va.) Homeowners Association, for instance, only residents who used the swimming pools and tennis courts had to pay for their upkeep. But then in 1990, the board decided everyone ought to chip in, and it polled members. More than 70% of those who voted opposed the new rule, but it didn't matter. In the end, the board pushed it through anyway, and fees climbed 26%. "They disregarded the will of the people," says Thierry Gaudin, a Reston homeowner, "and that was wrong."

It may be wrong, but it's the board's right. Period. "Bottom line, the board has to have the right to run the show," says attorney Benny Kass, who represents associations. About all you can do is keep up to speed on any changes the board makes in the rules, and if you don't like them, complain. The sooner you raise a fuss, the better: Rules that have been around for a while tend to be the hardest to change.

#### **7. "We Don't Want You at Our Meetings."**

Monthly meetings are open to all homeowners. At least in theory. "A lot of times, however, meetings are moved at the last minute to limit the questions from homeowners or to keep information from them," says Willowdean Vance, president of the American Homeowner Association, a consumer group based in Lake Forest, Calif., which has fielded a number of complaints from homeowners who were shut out of meetings.

Even when you can attend, the board may not acknowledge you. "Board members won't come out and say that they don't want you at their meetings," says Vicki Satern, co-founder of Common Ownership Alliance, a Washington, D.C., consumer group. "But basically, that's what their goal is."



She knows from firsthand experience. The board at her Virginia vacation home once decided to hire a new management company. The problem: "They cost double the money," says Satern. "They wanted 6% of refurbishing contracts, 10% on engineering contracts, plus we had to buy their copyrighted software and the equipment to use it."

Outraged, Satern raised her hand at a board meeting. "They ignored me," she says. "Finally, I just spoke up. They yelled at me and said I was not allowed to speak." The new management company was hired.

"When you come to a board meeting," says B. William Smink, the association's attorney, "you can sit, you can observe, but you cannot speak because the board is there to exercise its business judgment. And that's in compliance with national and state community-association laws." Satern would have done better, according to Smink, if she had contacted the board members individually before or after the meeting.

Other options for homeowners who feel ignored: "Put your complaint in writing," says attorney Michael Nagle, who represents associations. "That's hard to ignore." If that gets you nowhere, petition other homeowners and call a special meeting to discuss the issue or to remove some of the board members. "And if it's really bad, take the board to court," suggests Nagle.

#### **8. "We're in Over Our Heads."**

Most board members are volunteers, and they generally get their training on the job. Sometimes their inexperience means they bungle the bookkeeping, resulting in higher fees or assessments. Sometimes they fail to do their homework on outside contractors, meaning that you get shoddy workmanship in your common areas. And sometimes, as Mary Lindsey knows all too well, they can cause much bigger problems.

While involved in a divorce in 1992, the Pomona, Calif., family therapist fell behind in her monthly dues. Back dues, late fees and interest quickly mushroomed, so Lindsey tried to work out a payment plan with the board and a credit-counseling service. But they couldn't agree on exactly how much was owed. "I thought I owed them less than \$800," says Lindsey. "They said it was over \$1,000." The dispute wound up in court as the association threatened to foreclose on her home.

In the end, it turned out that Lindsey was right about the money she owed. The board had goofed. But the association won its lawsuit anyway. The judge ruled that she was wrong not to make back payments while the matter was in dispute. To her dismay, Lindsey was left with a \$22,000 bill for the association's legal costs, late fees and interest.

#### **9. "We Work for Nothing but Get Compensated in Other Ways."**

Being on the board is a thankless job, board members will tell you. That's probably true much of the time. But strictly speaking, it's not always so. The thanks they often get may surprise you.

Special favors and perks for board members are fairly common. The potential for abuse is inherent in the way these things are organized. The board members give themselves and their



friends privileges and they never get hassled. The worst-case scenario: The board retains a contractor and board members get kickbacks.

"This goes on, no question," says Virginia real estate attorney Fredrick H. Goldbecker. "It's usually done legally, so it's bulletproof, but that doesn't make it right." When the roof needs repairing, for example, "the board says the work needs to be done a certain way, and the only roofer in town who can do it that way is related to a board member," Goldbecker says. Because many associations have no formal system of checks and balances, homeowners often have no idea how their boards make decisions about contractors. About all you can do is keep a careful eye on the board. Big expenditures, no matter how mundane, are worth looking into.

#### **10. "We're Incredibly Petty."**

In many associations being hard-nosed about the rules is practically the board's *raison d'etre*. "Some of these board members have nothing better to do. So instead of taking care of the property, they censor people's lifestyles," says Vicki Satern of Common Ownership Alliance. She needn't tell Allen Warshaw. To ward off a neighbor who had attacked him with a log, he asked his Rockville, Md., board to bend the rules. He wanted a six-foot fence, two feet taller than allowed. When the application was denied, he sued -- and lost. Warshaw wound up with the association's bills, too. The total: \$23,000 in legal fees, court costs and interest.

Humbled but determined, he built a shorter fence. "I wasn't really worried because the board had told me that they don't go out and measure fences," he says. As soon as the fence was up, several board members walked over to Warshaw's yard and measured it. And indeed, in some areas the fence was a few inches over four feet. The dispute continued. "They put a lien on my property," Warshaw says. "They took all my savings, and they're garnishing my paycheck. It's like I am a common criminal. It has been devastating." Says Jeffrey Van Grack, the association's attorney: "The board made numerous offers to try to work out the payments, but Mr. Warshaw refused."

Sometimes the pettiness is more subtle. When one Virginia homeowner asked for permission to hang Christmas tree lights in 1992, the board didn't like the idea but didn't know how to prevent it. "We struggled with this one," says lawyer Benny Kass, who represented the association. "But we finally concluded that the restriction against hanging lights was valid because you were pounding nails into the wood, and that was a fire hazard." Ho-ho-ho.