

HABITAT FOR HUMANITY OF FLATHEAD VALLEY

TRAINING: UNDERSTANDING YOUR HOMEOWNER COVENANTS



If you buy a Habitat for Humanity of Flathead Valley home, you may find that it is compulsory that you join a Homeowners Association in the neighborhood in which your home is located. Regulations and directives are usually set out in what is known legally as CC&R's. CC&R's are an abbreviation for Homeowner Covenants, Conditions and Restrictions, Articles of Incorporation and Bylaws.

What Exactly Is A Homeowner Association? A homeowner association is typically a non-profit corporation that is created by a developer when a community is in the planning stages and prior to sale of the first home. Membership in the homeowner association is mandatory. The association is governed by a board of directors which initially is the developer and his representatives. Control of the association remains with the developer until a specified percentage of homes are sold (usually 2/3 or higher). The developer then transitions control to a new board of directors which are elected by the residents.

Practically all incorporated homeowner associations are subject to state laws governing nonprofit corporations.

Practically all homeowner associations have their own governing documents in the form of restrictive covenants and bylaws. The restrictive covenants prepared by the developer are recorded with the deed and are legally binding. The restrictive covenants are intended to define the standards of the community so as to protect property values. The restrictive covenants vary widely from one association to another. The covenants can control everything from parking to fences, paint colors, sheds, any architectural improvements such as porches, pools, and home additions. People who buy homes in a community with a homeowner association typically place value on community appearance. Neighbors cannot let their yards grow up in weeds,

park boats and RVs in the driveway, ignore exterior maintenance, or paint their house with psychedelic colors.

Many homeowner associations benefit from shared amenities such as private roads, hiking trails, green spaces – and the list goes on. The cost of operating and maintaining the community amenities as well as other expenses are paid by the members in the form of assessments. The assessments are mandatory and failure to pay assessments typically lead to fines, restrictions of services, property liens, and can ultimately include foreclosure. Associations are supposed to set aside funds for large capital improvements such as repaving of streets or replacement of mailboxes and street signs. When associations do not set aside adequate funds, residents usually must pay special assessments which can be substantial.

As mentioned previously, the association is governed by a board of directors who are elected after the developer turns over control. The board has a fiduciary responsibility to act in the best interest of the community. This includes attending board meetings, keeping records, making or amending rules, collecting assessments, paying bills, providing financial reports, holding an annual member meeting, and generally operating the association like a business. Often, when the duties of operating the association become overwhelming for volunteers on the board, a management company will be hired to perform the day to day duties. However, only the board of directors have the authority to govern the community; not the management community.

Ten Things Every Homebuyer Should Know!

1. You have to do your HOA Homework!
2. Know who is in control. Almost always the association is a non-profit corporation and is governed by a board of directors. This is either the declarant (developer/builder) or elected residents. Only 20% of associations contract with a professional management company for day to day operation.
3. Know if your association is pre or post transition. The process of transferring control from the developer to the association residents is called “transition”. The developer has wide latitude to amend the documents and change development standards when in control.
4. Ask and read the governing documents. Read, know, understand, apply the CC&R's.
5. Ask for and review the association financials. Review the operating budget and make sure the reserve fund is adequate for future capital projects.
6. Know that association fees (assessments) are required and that the board usually has the authority to impose special assessments.
7. Know that you must live by the rules or gain the support of the community to amend the governing documents and rules.

8. Know that the board has the power to assess fines, restrict access to services, place liens, and foreclose.
9. Know that HOA laws vary widely by state and can be complicated. Right or wrong, lawsuits are expensive, time consuming and stressful! Better to educate yourself rather than becoming involved in a lawsuit.
10. You can always step up to make things better in your neighborhood by becoming involved in your community.

Ten things Every HOA Resident Should Know!

1. Know the rules. Understand and comply with the restrictive covenants, by-laws, and other rules and regulations.
2. Know that you must pay your assessments on time.
3. Do not ignore communications from your homeowner association, especially notices that may regard outstanding assessments, rule violations, or fines. The board has the responsibility to govern fairly and consistently in the interest of all the members, which includes placing liens or foreclosing for nonpayment of assessments and fines. Don't let a minor fine escalate to the point that the association board must turn the matter over to an attorney. A fifty-dollar fine can easily lead to five hundred dollars to five thousand dollars.
4. You must maintain your property according to the governing documents and rules.
5. Know that an Architectural Review application and approval is generally required before making improvements. This typically includes sheds and outbuildings, fences, above or inground pools, playground equipment and much more. This may also include paint colors, door styles, landscaping and mailboxes.
6. Know that your association has certain responsibilities to the membership including compliance with federal and state laws, fiduciary responsibility by board members, elections, meeting notices, meetings, due process and much more as defined in the covenants and by laws.
7. Stay informed and participate in the business of your homeowner association by reading meeting minutes, attending the annual meeting, understanding the budget, and volunteering to serve on a committee or the Board.
8. Maintain a current address with your homeowner association. This is critical if you are a member of a homeowner association but do not live in the community. Examples include rental property, second homes, homes used by children in college or retired parents, or investment property. **NOTE: #8, and the situations provided are not approved by Habitat for Humanity of Flathead Valley and could result in the loss of your home. #8 is provided as information.**
9. Know that if your home is rental property or occupied by others, ensure that tenant/occupants understand that they must also comply with certain restrictive covenants such as parking, pets, architectural changes, and other requirements. **NOTE: #9, is not an approved use for your home by Habitat for**

Humanity of Flathead Valley and could result in the loss of your home. #9 is provided as information.

10. Know who is in charge. Maintain contact information for an association representative. This may be a management company, a board member, or the builder/developer.

Ten Things Every HOA Board Should Know!

1. Your primary role should be to protect and enhance the value of your community.
2. As directors and officers of a non-profit corporation, you have a legal fiduciary duty. Your actions and liability as a board member are generally protected by governing documents or state statutes governing non-profit corporations based on duty of care, duty of loyalty, and acting in good faith. The board should also be protected with directors and officer's insurance.
3. The board should adopt and adhere to a written Code of Conduct.
4. The board must comply with federal, state, and local laws and ensure that the association's governing documents are followed in a fair and consistent manner.
5. Board members have no individual authority separate of the board and should not make any commitments on behalf of the board. Sensitive communications with other board members should be done by phone since email may be introduced by discovery in the event of a lawsuit.
6. Know the basics of parliamentary procedure, participate with etiquette and support the chair.
7. The board president does not vote on motions unless there is a conflict of interest.
8. Communication with members is key. Do not govern in secrecy except when executive sessions are required. Treat residents with the same respect that you would expect. Provide residents with an opportunity to address the board. This is usually done in a resident's forum at the beginning of some or all board meetings.
9. The board should not become "condo commandos" by overly aggressive enforcement or fining practices. There are first time infractions that usually result from a resident's lack of knowledge and misunderstanding. There are minor issues, major issues and safety issues. There are repeat offenders. There are the few that commit obvious rule violations, challenge the authority of the board, and stir up disharmony in the community. The challenge for the board is finding the right governing balance that includes objectivity, fairness, consistency, diplomacy, tolerance and measured response.
10. Always work to recruit new volunteers that have the time and skills to serve on the board and on committees. The board should also have an orientation or training plan in place for new members.

Review Your Documents!

- **CC&R's – Declaration of Covenants, Conditions and Restrictions**
- **Articles of Incorporation**
- **Bylaws**