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26 de novembro de 2023

**Caro Senhor Presidente da Assembleia da República e povo de Portugal,**

Na sequência de correspondência anterior, junto envio mais informação e comentários para consideração da Comissão de Assuntos Constitucionais, Direitos, Liberdades e Garantias, bem como à Comissão de Economia, Obras Públicas, Planeamento e Habitação. A legislação sobre propriedade horizontal tem-se revelado propensa a abusos em muitas jurisdições do mundo, através de acções como a má gestão de fundos comuns, a manipulação de processos de votação e a exploração de lacunas para obter vantagens injustas.

A atenção contra a corrupção pode ser valiosa a todos os níveis da sociedade. Em Espanha, encontrei advogados que abusam das complexidades jurídicas do direito de propriedade horizontal em proveito próprio, agindo contra o espírito da legislação. Em Portugal, falei com vários leigos que estranhamente consideram que o mercado negro é sancionado pelo seu governo.

Estou relutante em assumir o papel de administrador provisório do meu condomínio (de acordo com o Artigo 10.º-A do DL n.º 268/94, de 25 de outubro) devido ao facto de perceber lacunas no direito de propriedade horizontal que são vulneráveis à exploração. A minha preocupação prende-se sobretudo com a possibilidade de abuso de poder por parte do administrador. Já fui vítima deste tipo de crime numa "comunidade de proprietários" numa zona turística de Espanha (na qual - tal como em Pedras d'el Rei - a maioria das casas não é usada como residência principal) e ouvi histórias semelhantes de outras jurisdições.

- O n.º 1 do artigo 3.º do DL n.º 268/94, de 25 de outubro, exige um aviso físico que identifique o administrador, o que não é útil para os proprietários não residentes.
- O artigo 3.2 prevê: "Os condóminos devem informar o administrador do condomínio do seu número de contribuinte, morada, contactos telefónicos e endereço de correio eletrónico e atualizar essa informação sempre que a mesma seja sujeita a alterações."
- O n.º 4 do artigo 3.º refere-se a "despesas inerentes à identificação do novo proprietário"; ora, é uma omissão legislativa que impede a identificação de um novo proprietário (e não um obstáculo económico).

O cerne da questão é que todos os comproprietários de imóveis valiosos necessitam de meios para comunicar diretamente uns com os outros a qualquer momento (a capacidade de comunicar não deve estar confinada a um qualquer "administrador"!)

O artigo 3.º do DL n.º 268/94, de 25 de outubro, parece destinado a fornecer desculpas legais para o abuso de poder de um administrador desonesto, mas essas desculpas seriam praticamente irrelevantes se todos os proprietários tivessem sempre o mesmo direito de acesso às informações de contacto de todos os seus comproprietários.

Os n.ºs 4 e 5 do artigo 6.º do DL n.º 268/94, de 25 de outubro, são abusivos, tendo em conta que o custo de uma ação judicial é provavelmente superior ao montante da maioria das dívidas; os únicos beneficiários destas cláusulas são os advogados.

Anexo um documento interessante de um grupo de trabalho de proprietários de casas nos EUA sobre a questão da legislação relativa à propriedade horizontal; as questões parecem semelhantes em várias jurisdições: quando uma propriedade valiosa é partilhada entre várias pessoas, torna-se um alvo para o crime. Isto pode ser um problema para os idosos e reformados que trabalharam arduamente ao longo das suas vidas (cujo património pode estar ligado à sua casa) - e para os trabalhadores ocupados - porque é uma mina de ouro para os criminosos profissionais. Penso que a legislação portuguesa que permite a propriedade privada de unidades imobiliárias em empreendimentos turísticos é uma estratégia muito retrógrada para a economia portuguesa: incentiva o investimento de retalho numa única entidade empresarial, quando é um facto estabelecido que os fundos de índice são melhores para os pequenos investidores.

Com os melhores cumprimentos,



Graeme Walker

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### **Ao cuidado de: Ministério Público e Polícia**

Na noite de sexta-feira, 24 de novembro, ocorreu um incidente que exemplifica ainda mais um padrão de irregularidades em Pedras d'el Rei.

Por volta das 22 horas, um segurança veio à minha porta e começou a interrogar-me sobre uma queixa dos moradores da casa vizinha. O segurança confirmou que o seu patrão era Vasco Queiroga; eu respondi que Vasco Queiroga não tem nada que ter uma polícia privada a intervir em conflitos privados numa zona residencial urbana. O mesmo segurança regressou mais tarde na companhia de dois agentes da GNR, que não se demoraram. A minha noite já tinha sido perturbada e estes acontecimentos só vieram aumentar o stress.

O segurança tinha sido chamado pelos moradores do apartamento vizinho do meu prédio, porque eu tinha batido à porta para lhes pedir que baixassem o tom de voz (a gritaria contínua e furiosa entre um homem e uma mulher tinha-me perturbado em casa durante quatro horas; a mulher tinha atendido a porta e tinha-a imediatamente fechado e ameaçado chamar a "recepção"). O papel do segurança privado de Vasco Queiroga é estranho. Na "prestação de serviços" que me facturou em 2023, há um valor de 50.960,00 euros para "Serviços de segurança e vigilância", mas nenhum serviço foi oferecido para proteger os meus bens. A sua função aparente é intervir em litígios, não proteger a propriedade privada; além disso, o não pagamento dessa fatura resultou no roubo dos meus bens pelo Sr. Queiroga e seus capangas.

Os actuais ocupantes temporários do apartamento 244 são um homem e uma mulher que falam espanhol; recusaram-se a falar sobre a forma como combinaram a utilização do imóvel, mas estranhamente fizeram questão de dizer que "não há troca de dinheiro". Os empregados de Vasco Queiroga afirmam que não têm qualquer envolvimento no aluguer do imóvel. Durante o ano de 2023, observei pelo menos 10 diferentes ocupantes de curta duração do apartamento 244 (todos espanhóis ou portugueses), alguns dos quais com um comportamento perturbador, com gritos furiosos ou festas. Todos os ocupantes a quem perguntei disseram-me que são "amigos" do proprietário e que este não quer comunicar com os vizinhos. Pesquisei o registo nacional de turismo e não encontrei qualquer prova de que a propriedade esteja registada como Alojamento Local para arrendamento turístico.

No registo predial, os proprietários do 244 (desde 1991) são um casal da zona de Lisboa. Os anteriores proprietários da minha casa dizem que nunca conheceram este casal nem tiveram qualquer contacto com eles. Contactei a junta de freguesia da morada que consta no registo, cuja resposta se encontra em anexo. É simplesmente impossível acreditar que a sucessão de ocupantes temporários do apartamento 244 sejam todos "amigos" do proprietário. É óbvio que alguém (que pode ou não ser o proprietário) está a alugar o imóvel para fins turísticos e a fazer esforços para esconder esse facto.

O engano há muito calculado pelo "Grupo Pedras" - e a sua ação para impedir as pessoas de viverem em Pedras d'el Rei - está obviamente na origem de muitos prejuízos para a economia portuguesa, bem como de violações das liberdades individuais. Vasco Queiroga opera um esquema de proteção para extorquir dinheiro aos proprietários, no qual muitos dos seus empregados são cúmplices e capangas. Hoje, o pessoal da recepção impediu uma nova tentativa de enviar uma mensagem ao meu coproprietário.

Com os melhores cumprimentos,



Graeme Walker

**From:** Apoio Presidente - Juntas de Freguesia da Póvoa e Forte da Casa <apoio.presidente@jf-povoaforte.pt>

**Date:** 22 November 2023 at 15:40:43 WET

**To:** graemewalker@mac.com

**Subject:** FW: Pode ajudar?

Exmo. Senhor  
Graeme Walker

Acusamos a receção do e-mail infra o qual mereceu a melhor atenção.

Em resposta informamos que não é legalmente possível utilizar os dados constantes na base de dados do Recenseamento Eleitoral para prestar informações a terceiros.

No entanto os proprietários não constam do recenseamento da Freguesia, por já terem falecido ou por terem mudado de morada.

Com os melhores cumprimentos.

*Rosária Silva*  
*Gab. Apoio à Presidente*



Freguesia de Póvoa de Santa Iria e Forte da Casa  
Sede – Rua Raul Alves, n.º 5 - 2625-138 Póvoa de Santa Iria  
Telefone: 219 540 670  
Delegação - Rua Padre Américo, 2-A - 2625-391 Forte da Casa  
Telefone: 219 533 100

-----Mensagem original-----

De: Graeme Walker [<mailto:graemewalker@mac.com>]

Enviada: 11 de novembro de 2023 14:44

Para: [geral@jf-povoaforte.pt](mailto:geral@jf-povoaforte.pt)

Assunto: Pode ajudar?

Olá,

A minha casa situa-se numa aldeia chamada Pedras d'el Rei, perto de Tavira, no Algarve. Pretendo contactar o proprietário da casa ao lado da minha, pois está a ser utilizada para alugueres turísticos sem a devida licença. A conservatória do registo civil de Tavira forneceu a informação em anexo, que indica os proprietários da seguinte forma:

ALDINA MARIA MORAIS CAVALINHOS DORES Casado/a com JOSE PEDRO RAMOS DA SILVA DIAS no regime de Comunhão de adquiridos. Morada: Quinta da Piedade, lote 29, 6°. Dtº Localidade: Póvoa de Santa Iria

O registo de propriedade indica que este casal comprou a casa em 1991. Suspeito que estes proprietários possam já ter falecido e que a sua propriedade ainda esteja registada em seu nome, mas que esteja a ser ilegalmente alugada a turistas para lucro privado por terceiros. Por conseguinte, estou a tentar descobrir se os proprietários ainda estão vivos.

Poderão ajudar-me nesta questão, uma vez que a morada acima referida se situa na vossa freguesia?

Com os melhores cumprimentos,

Graeme Walker

DESCRIÇÃO FRACÇÃO AUTÓNOMA

COMPOSIÇÃO:

RÉS-DO-CHÃO - Apartamento n°.244 - Habitação, exploração hoteleira ou para hotelaria.  
Reprodução por extractação da descrição.

O(A) Escriurário(a) Superior  
Lígia Teresa Furtado Conceição Gonçalves

INSCRIÇÕES - AVERBAMENTOS - ANOTAÇÕES

AP. 10 de 1975/06/25 - Constituição da Propriedade Horizontal

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AP. 1 de 1991/09/11 - Aquisição

CAUSA : Compra

SUJEITO(S) ATIVO(S) :

\*\* ALDINA MARIA MORAIS CAVALINHOS DORES

Casado/a com JOSÉ PEDRO RAMOS DA SILVA DIAS no regime de Comunhão de adquiridos

Morada: Quinta da Piedade, lote 29, 6°. Dt°.

Localidade: Póvoa de Santa Iria

SUJEITO(S) PASSIVO(S) :

\*\* ANTONIETTA ANGELLA WEISBECKER

Reprodução por extractação da inscrição n.º 17 876 a fls.17vº do G-30.

O(A) Escriurário(a) Superior  
Lígia Teresa Furtado Conceição Gonçalves

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REGISTOS PENDENTES

Não existem registos pendentes.  
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HOA Reform Leaders National Group (HRLNG) is a volunteer association that seeks to examine and propose legislation regarding personal real property rights of the homeowners managed by Homeowner Associations (HOAs). The term "HOA" includes Homeowner Associations (HOAs), Property Owner Associations (POAs), Condominium Owner Associations (COAs), and Common Interest Communities (CICs). Our proposed legislation would especially include, but not be limited to, the relationship and balance of power with the other homeowner-members, developers, property managers, and the Homeowner Association Board of Directors (BOD).

In purpose, an HOA exists to create a beneficial living environment and preserve the property values of the homeowner-members. It has been estimated that over one-half of the homes in the United State fall under management of HOAs. In most cases, HOA contracts are tied to the land and are perpetual across the owner of the land or development.

Yet, across most of the US, punishable enforcement of HOA law is non-existent toward the HOA Boards of Directors defined in the governmental property statutes. Should a homeowner-member be at odds with their Board of Directors, their only option is to file a civil lawsuit. This option is out of reach for most homeowners, due to the high cost and time of litigation and the ability of the BOD to retaliate with harassment. Furthermore, state and local governments rarely address these issues in their HUD planning.

In addition to requiring the government to enforce the related property codes outside of civil court, what follows is an outline of proposed legislation that would be beneficial to homeowner-members, the Board of Directors, and the entire community. The Proposed Legislation has been put forward by HRLNG and reviewed by a wide swath of homeowner-members across the country.

## **SUMMARY**

(The term HOA is used in this document to include CIC, HOA, COA, Property Owner Associations and all other forms of Common Interest Communities.)

SEE FULL DETAIL IN SEPARATE POST NAMED: |

2023 Proposed Changes to HOA Laws Nationwide Full Detail

## **Definitions:**

**Covenants:** A set of restrictions, and legally-binding written agreements which govern the properties of an HOA and are usually attached to the deed, meaning that when the property is sold, the new owner must also abide by the agreements.

**Declaration:** The instrument, however denominated, that creates a common interest community, including any amendments to the instrument. It is made up of the Covenants, Conditions and Restrictions ( CC&Rs ), and rules and regulations.

**Governing documents:** The organizational documents, maps, declaration, covenants, rules, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction.

HOA Seller Certification: A document that must be given by the HOA to members upon request to certify that the seller's property meets all the covenants, has paid all applicable dues and assessments and all known upcoming assessments.

HOA Seller Packet: All governing documents including but not limited to the governing documents, articles of incorporation, bylaws, covenants and rules, Certification, percentage of properties rented vs owner occupied, financial statements for the last 3 years, the reserved study and the current amount in the reserve account.

Member: A corporation or person(s) that own property in an HOA, or owns other corporations that own property in an HOA.

"Organizational documents" The instruments filed with the secretary of state to create an entity and the instruments governing the internal affairs of the entity including, but not limited to, any articles of incorporation, certificate of formation, bylaws, and limited liability company or partnership agreement.

"Rule" A policy or procedure, of an association, however denominated, that is not set forth in the declaration, covenants or organizational documents and governs the use or appearance of common property or conduct of persons while using common property but not including the private property. Rules might include requirements such as procedures for submitting and handling complaints or maintenance requests, quiet hours or swimming pool policies. Nothing in the rules shall contradict, impose on, or supersede anything in the Governing Documents. Nothing in the rules shall impose on or supersede the member's right to free speech or other constitutional rights or rights granted in state or federal law.

## **1. Penalties in the Law**

- To protect homeowners, there must be penalties in the law for Board Members and Property Managers that violate the state or federal laws or their own governing documents.
- **Problem:**
  - Homeowners have to risk their life savings, retirement savings and their home to fight corrupt and abusive Board Members or Property Managers.
  - Board Members and Property Managers use the collective funds of the HOA and the insurance of the HOA to pay for their attorney's fees. Should the HOA lose a lawsuit against a homeowner, the amount awarded to the homeowner is paid by the HOA insurance, which is paid for by the collective funds of the homeowners. The corrupt Board Members and/or Property Managers in violation are not at risk. The average homeowner, and especially low-income homeowners typically do not have enough money to challenge the HOA in court. This gives HOA Board Members and Property Managers no incentive to follow the law.
  - Additionally if there are no penalties in the law for Board Members or Property Managers, the homeowner who won a financial award in court, is effectively suing himself and the other homeowners. The penalties should be applicable to the Board Members personally and/or Property Managers who violated the laws, not all the members of the HOA, who did nothing wrong.
- **Solution:**

- Enforcement of the HOA laws should fall under a separate “HOA Department” of the Consumer Protection Division of the Attorney General’s office, and should be given the authority to fine and levy other penalties against individual Board Members and Property Managers that KNOWINGLY violate the federal, state and HOA laws and/or the governing documents of the HOA.
- The HOA Department should be funded by contribution through HOA dues and paid to the Secretary of State by each HOA when they renew their license annually. It is suggested that each HOA member pay an amount of \$3 per year. It should be required that all HOAs must be registered in order to operate and enforce their declarations and governing documents. The collected funds shall be put in an account exclusively for the use of the HOA Department to use for handling HOA law enforcement and compliance. The amount of the dues should be adjusted annually in order to fund the effort to be able to investigate all HOA complaints within 60 days.
- HOAs may have requirements for internal dispute resolutions by an HOA Board of Directors Hearing before a member can file a complaint with the HOA Department.
- **Process**
  - 1. Member writes complaint to Board includes quoted law or governing doc.
  - 2. Board responds, and refuses change or doesn’t respond within 10 days.
  - 3. Member files complaint with summary of issue, the correspondence sent to and from the HOA regarding the issue, and quoted law and/or governing docs to HOA Dept.
  - 4. HOA Dept investigates and finds the member correct.
  - 5. HOA Dept writes to Board, Cease and Desist letter
  - 6. By definition, the Board Member(s) now KNOW that their actions are in violation of the laws or governing documents of the HOA.
  - 7. The insurance company would cover the costs of the attorney fees to defend the Board Members, up to the point where they are found guilty by a court. If found guilty the insurance company would require the offending Board Members to reimburse them for incurred attorney fees.
  - 8. If the Board does not correct the situation in 5 days, the HOA Department will file a lawsuit against the offending board members. If the HOA Department wins the suit, the Board Members will face fines and/or other penalties as the court finds fit, such as one or a combination of the following:
    - removal from their existing Board position;
    - enjoining them from serving on any HOA board for a certain period of time or in perpetuity;
    - personal fines or other financial penalties;

- serve of a term of incarceration, probation, community service, or other similar penalty as the presiding judge finds applicable.
- Either party may appeal the decision and the Attorney General's office will defend the decision of the HOA Department
- If damage was done to the homeowner, then they may file a suit against the offending Board Members under the Consumer Protection Act, thus allowing triple damages. In our opinion, as the Board Members have already been proven guilty, the lawsuit would most likely be to address the financial loss. Most likely the offending Board Member would want to settle.
- These policies and procedure would not deter honest people from serving on the Board but would strongly deter people who saw serving on an HOA Board as a financial or power opportunity.

## **2. Member Communication; Free Mandatory Member List with Email and Phone**

### **Problem:**

- Once one group has control of the Board, they have control of all the communication, the HOA's website, weekly newsletter, Facebook and other social networking platforms and most importantly the member email list while frequently denying that list to the other members.
- There cannot be justice or fair elections if those in power have free communication with all the members, but those attempting to be elected do not have free communication.

### **Solution:**

- HOA Boards must provide a free MANDATORY Member List including name, HOA address, mailing address, email and phone should be available to all members.
- All HOA Members MUST provide all the information above to the HOA with one exception, any member may choose to keep their **phone number** off the list.
- Members may use their existing email address or create a special email address to be used for all communications to and from the all members and staff of the HOA. This is the email address that will be shared in the Member List and the only one used by the HOA and staff.
- To assure that no member of the HOA can have unauthorized access to the members email, the HOA will not provide email services in any manner. All email services must be through outside sources including but not limited to Gmail, Outlook, Yahoo or other similar services. Generally these email services are free.
- The Board shall assure that those without knowledge of email use receive basic training on how to use email, and how to change their password.
- Members may choose to have all their communication sent also through USPS mail.
- All members and all HOA Staff with access to the list will sign an agreement to not share the email addresses or phone numbers with anyone outside the HOA and to not use the email or phone numbers



for commercial purposes. All phone numbers are to be included unless specified to be unlisted by the property owner.

- Members are free to block other members from their phone or email.
- Does not apply to witness protection or other government protection programs requiring secrecy of contact info.

### **3. Fines and Foreclosures**

#### **Problem:**

- The goal of an HOA should be to benefit its Members, not to financially damage them or steal their homes. In too many HOAs this is not the case as the abilities for HOAs to levy fines, place liens on homes, and foreclose on homes is quite often used too liberally, illegally, unethically and to excess.

#### **Solution:**

- All HOA/CONDO dues should be paid from homeowner's escrow accounts, making it impossible to be late in paying assessments.
- If the owner of the home does not have a mortgage, then the HOA owner should have a choice to pay all dues up front, or pay quarterly or monthly with no interest.
- Reasonable time periods to fix CCR violations are required.
- 30 day written notice for all fines and debts, and 30 days for member to file dispute.
- All debts under \$10000 must be handled through small claims court (or the HOA Dept). Boards should not be the legislative group, accusers, judges and enforcement of the HOA.
- All fines, late fees and interest stop once dispute is filed in writing with HOA, until it is resolved in small claims court or the HOA Department.
- Minimum debt to allow Foreclosure should be \$10000 or \$1000 per unit in the HOA, whichever is less.
- All efforts should be taken to minimize damage to the property owner and minimize property owner legal costs.
- Properties sold in foreclosure to be sold through a realtor chosen by the seller at market value in the current real estate market, not at Sheriff's sales.
- After deducting debts attached to the property, and the sale of the property, the member to receive the balance of equity.
- HOA violations of the above fall under the HOA Department, and are considered Consumer Protection Act violations with treble damages and attorney fees as penalties.
- All laws relating to fair housing, fair lending, collections and consumer protection should apply to members and Boards of HOAs.

#### **4. Fair Voting Laws for HOAs**

**Problem:** HOA Board Members control the entire voting process. It is far too easy for them to manipulate the voting. Often, people controlled by the Board or even the Board members themselves are the ones receiving and/or counting the votes. They also may have access to the proxies or ballots before they are counted. There are too many ways that the Board Members can manipulate any election.

**Solution:**

- All HOA election voting or other voting must be conducted completely by an independent outside election company. Anyone on the current board will be disqualified from running for a position again if they do not hold the election according to when their term is up, and they are immediately removed from their position. (The purpose of this rule would be to eliminate any incentive for current members to hold onto their seat when their term it up)
- No felons on the board. No felons may run for the Board. If a board member is found to be a convicted felon they will automatically be removed and replaced with the candidate that had the next highest votes in the last election to complete their term.
- Board members who are caught embezzling or receiving “kickbacks” cannot run again on any HOA Board and cannot participate on any committee. Their spouse and anyone living with them in the same unit or parcel may not serve on the Board or any committee.
- The HOA attorneys, property managers or any member of the current HOA Board, their families or anyone living with them in their unit or parcel, cannot organize the HOA elections. An election committee must be elected by the membership that organizes and schedules the election. Board members and family members of anyone running on the ballot or currently holding Board Positions are prohibited from sitting on the election committee.
- Board members are not allowed to use HOA funds, resources, social media, mailing lists or other communications belonging to the HOA that other members are not allowed to use for free to send out any communications, pro or con, regarding any of the candidates, members, policies or to make any political commentary, any time of the year.
- Elections cannot be held on any holiday weeks and must only be held on weekends.
- All candidate’s bios, and information must be mailed to every member at the same time and in the same manner at the expense of the HOA. HOAs shall include an elections fund provided for in their budgets.
- Homeowners should have at least sixty days to mail in or otherwise submit their ballots from the day they are sent to them, or cast their vote electronically if an electronic voting system is in place. The envelopes for the ballots must have prepaid postage, the mailing address of the election company and the member’s return address on it.
- Homeowners should be allowed to vote electronically. The electronic voting system cannot be operated, licensed or in any way have any connection or affiliation with current board members, members of the HOA, property management company, HOA attorneys and or subsidiaries of any of the previous mentioned bodies.
- No ballots should be sent to the HOA nor should any board members, other member, staff or employee have any access to the ballots before they are counted. The ballots should be mailed directly to the election company. No Board members, other members, staff or employees should have any access or participate in any way with the process of the elections or voting on issues or in any way shape or form

in the processing of the election documents. This shall not be superseded by any governing documents in the declaration, bylaws, articles of incorporation or CCR's.

- Current board members are not allowed to change bylaws, articles of incorporation or CCR's. All changes must be accomplished by a majority vote of the members.
- Any increase in HOA election quorum votes must be accomplished by a vote of the membership and not the HOA board of directors on their own accord.
- Board members are limited to 3-year terms and then cannot run again for another 3 years. This statute is retroactive.
- Members who contest an election and are forced to use their own funds in arbitration or in a civil law suit will be reimbursed all cost of litigation for exercising their right if Judgement is ruled in their favor. If it is not in their favor both parties will pay their own fees as an honest contest of an election is considered a service to the HOA.
- Any Board Members who are found to tamper with the election process in any way shape or form will automatically be removed from the board and their parcel number will be prohibited from running in the election indefinitely until a new parcel owner has been established. A board member taking their name off the deed to circumvent this rule will still be prohibited from becoming a sitting board member.

## **5. Uniform Enforcement**

**Problem:** Selective and unequal enforcement runs rampant in HOAs. Unequal enforcement is often used to harass individual homeowners and sometimes used to chase them out of the community or even to force them into foreclosure on their home.

### **Solution:**

- All covenants must be fully and equally enforced on all, or removed.

## **6. Usurping Authority**

### **Problem:**

- HOA Board Members will often usurp authority of the local governing body such as the City or County. They may try to enforce County codes or speed limits by fining those that don't follow the Boards interpretation of the City or County ordinances.

### **Solution:**

- The laws will clearly state that HOAs have no authority to enforce Federal, State, County or City laws or ordinances.
- An HOA's authority is limited to the enforcement of covenants and levy fines only as stated specifically in their CC&Rs and Rules. HOAs do not have authority to enforce laws or ordinances or usurp authority from government enforcement agencies. General statements in the HOA's governing documents indicating that members must follow all applicable laws and/or ordinances does not give the HOA the

authority to enforce laws or ordinances. HOAs cannot enforce or fine for speed limits, building codes, zoning or other laws, State or County ordinances, etc. that are enforced by other government agencies.

## **7. Hidden Covenants and Fines**

### **Problem:**

- In many cases homeowners buy into an HOA not being aware of the covenants or even that the property they are buying is in an HOA. Often times there are other “rules and fines” that are not in the covenants. Some HOAs will not provide the governing documents or HOA Seller Packet as described in the definitions above.

### **Solution:**

- All governing documents including but not limited to the articles of incorporation, bylaws, covenants and rules must be provided to the buyer of an HOA controlled property and signed by the potential buyer before the buyer places an offer.
- The process to change those governing documents must be in the bylaws.
- All fines for covenant violations to be required to be included in the covenants and fines for rules violations written in the rules.
- The HOA is responsible to deliver the certification and all governing documents to the seller within 15 days of the seller’s request.
- All documents must be written in plain English and in 6<sup>th</sup> grade language.

## **8. Creation and Modification of Covenants and Rules**

### **Problem:**

- Buyers buy into an HOA that is being run in an appropriate and lawful manner, but another Board takes over and begins to modify the original contract in a way the benefits them but hurts the other members. These are often large investors.

### **Solution:**

- A homeowner by buying in an HOA or COA is agreeing to a contract that contains covenants. Once the original covenants are completed, and the first home is sold, no additional covenants should be allowed to be added or be made more restrictive. Under current laws in most states, those covenants could change the next day.
- All changes to the covenants or rules should require a member vote, majority of those that vote decides.
- All members should receive one vote, no matter the number of properties owned by that member
- One vote per household or master corporation.
- Covenants should be removed by a membership vote, majority of those that vote decides.

## **9. No Profit from Ownership of any Individual Property**

**Problem:**

- Corrupt Boards will take money from Insurance Proceeds of one damaged building but spend it on other projects.
- HOAs will charge members more for using an HOA property or facility than the actual costs of operations and maintenance, thus in effect charging them twice for the same thing and charging certain members more than others.
- HOAs unnecessarily force members into foreclosure then the HOA, Board Members or their associates buy those homes for pennies on the dollar.
- Members of properties damaged must approve how the insurance reimbursements are spent.

**Solutions:**

- Board Members should NEVER be the ADJUSTER for an insurance claim.
- All insurance payments should be used to make the repairs for the insured building. Remainder if any to go to the general fund. Repairs should leave insured building in as good or better condition than before damage.
- HOAs must not make a profit from members through ownership any individual property.
- No sitting Board member or family member/relation of a sitting Board member is allowed to purchase a home, unit, or property being foreclosed upon in the community their Board manages.

**10. One Set of Laws, in easy to read, plain 6<sup>th</sup> grade level English.****Problem:**

- In some states there are different laws for HOAs created in different years.
- Some states laws allow developers and HOA Boards to not follow the HOA laws by stating covenants or rules in their declaration that do not match the laws.
- Many of the laws are written in such a confusing manner that even the attorneys and legislators can't understand what they say. It is therefore impossible for the layman homeowner to understand them.

**Solution:**

- There should be one set of laws in each state, that applies to all forms of HOAs, that are simple to read, plain English, in 6<sup>th</sup> grade language to make them understandable to the average homeowner and Board Member.
- Wherever a law refers to another part of the law, both the numeric representation of the section of the law and the name of the section should be stated to assist in easier reading and to cross-reference.
- Old declarations should be required to be modified to meet the current laws.

**11. Transparency****Problem:**

- Lack of transparency leads to poor management, embezzlement, homeowner abuse, unequal enforcement, special treatment, theft and many other problems.

**Solution:**

- All information of the HOA should be easily copied, or electronically sent to any member, in common formats, as requested by the member, with very limited exceptions of current litigation, and then only items that have attorney client privilege and then only if related to members.
- All financial records including but not limited to Financial Statements, Budget to Actual Report, check register, all contracts signed and related bids, must be posted on the internet with access to the members only within 14 days after the end of each month.
- Members must be the co-beneficiaries on all HOA contracts.
- All lawsuits filed against the HOA must be proactively shared with all members.
- All records of CC&R violations and fines must be accessible by all members including the name of the person filing the complaint. Accused members should be able to face their accuser.
- Costs of obtaining records must be the actual cost of providing those records to the member or provided at no cost.
- All governing documents and applicable laws, or internet address of the laws must be clearly posted on the HOA website and FB page or equivalent.

## **12. Full Detail and Full Funded Reserves**

### **Problem:**

- HOA reserve accounts are very frequently far below the required funds to adequately cover the reserves study.
- Early owners are running up debt because they are not paying enough dues to cover the reserve study costs. In effect this is stealing from future buyers.
- This practice at some point will cause large assessments which can then lead to foreclosures. This can also lead to unsafe buildings causing injury, illness and possibly deaths.

### **Solution:**

- All new HOAs should have reserve studies at least every 3 years and maintain a 100% funded reserve account. This means that there is money in the reserve for all common assets equaling the current percent of the straight-line depreciation of each asset times the current replacement cost. As an example, if a roof has a projected 30-year life, at year 15, half of the current cost of replacement should be in the reserve.
- Requirement for all existing HOAs to move to fully funded Reserve accounts over a 10-year period.
- All HOA damage and repairs should be listed and briefly described in a report each year, along with the cost associated with the repair.

## **13. Budget Vote**

### **Problem:**

- Many HOA Budget votes require more than 50% of the total membership to vote down a budget. Most HOAs don't get that number of people to vote at all. Thus it is virtually impossible to vote down a budget.
- Members need the ability to vote down individual line items in a budget

**Solution:**

- Budgets to require more than 50% of members that vote, to pass instead of 50% of full membership to deny.
- Individual line items may be voted in or out by the members.
- Budgets are required to meet fully funded reserve accounts as well as all other legal requirements and cannot be voted out of the budget.

**14. HOA Attorney and Property Manager Responsibilities**

**Problem:**

- HOA Attorneys and Property Managers often protect Board Members that are making illegal or unethical decisions.
- HOA Attorneys and Property Managers also often appear to be helping the corrupt Board Members and Property Managers to take advantage of the homeowners.

**Solution:**

- HOA attorneys by law should be required to represent the membership as a whole, not the Board, in all issues.
- Board Members may be the day-to-day interface with the HOA attorney, but the loyalty of the attorney should be to the members as a whole.
- HOA attorneys and property managers should be mandatory reporters of illegal or unethical actions of the Board and the Property Managers.
- HOA Members should be co-beneficiaries on all HOA Vendor contracts

**15. Require member vote every 3 years to determine if the HOA should be dissolved.**

**Problem:**

- Many HOAs no longer enforce their declarations, and don't want to.
- Other HOAs are so bad, the members no longer want the HOA, but those in control of the Board won't release control.
- In some cases the number of votes required to dissolve the HOA is so high it is virtually impossible.

**Solution:**

- Requires 65% of those voting to dissolve the HOA.

- This law would apply to multi-building COAs, but then would require the creation of single building COAs.
- Obviously, this can not apply to single building COAs.

## 16. Rental Caps and Rental Covenants

Problem:

- If there are too many rentals in an HOA, the FHA and VA will not approve loans. This results in denying veterans and others access to housing.
- Some HOAs create covenants to not allow rentals. This decreases the number of rental homes available and raises rental prices.

Solution

- HOAs should be required to maintain their FHA, VA and government subsidized loan certifications.
- Require a 35% rental CAP, lower CAPs restrict renters decreasing the availability of affordable housing for renters. Higher than 50% cause FHA and VA to not approve loans.

**SEE FULL DETAIL IN SEPARATE POST NAMED**

**2023 Proposed Changes to HOA Laws Nationwide Full Detail**





## 1. Penalties in the Law

Although there are laws that are aimed at controlling the power of the HOA Board and Board Members, because those laws are civil and not criminal, and there are no penalties in the law for Board Members or Property Managers that violate the law, enforcement is general left to the HOA member-homeowners themselves. When the board violates the laws, the member-homeowners is in the position where they must risk their money on attorney' fees and court costs to enforce the law. Conversely, the offending Board Member is either using the HOA insurance money or the collective HOA money for their attorney's fees and court costs. Thus, HOA Board Members often violate HOA laws or governing documents of the HOA, knowing they have no liability or risk. Adding the Attorney General as oversight is needed. The AG's office should be able to fine Board Members for the violation of the law and CC&Rs, just as homeowners are fined for violating the CC&Rs.

Because of this dynamic, often property owners have to surrender to illegal and/or unethical actions of the Board, simply because they can't afford the legal costs. Member-homeowners and member-board member are not on unequal footing. This has created a situation ripe for abuse of power. If we allow corporations to act as governments and give them the power of municipality, if there is no government oversight of these corporations, we end up with tyrannical dictatorships. Legislators should protect our rights, not give them away.

Property owners buying into an HOA generally don't realize that they are in effect, buying into the equivalent of a foreign dictatorship, where those in power have no oversight. All corporations are under the governance of the government, but many State governments ignore these corporations.

The HOA Board Members should be required by law to sign that they have received the governing documents and are aware of the laws, and their ability to inquire of the HOA attorney if there is a legal question, and held responsible for their knowing violations of the State HOA laws and the governing documents of their HOA.

As Property Managers are held harmless, they allow the board to violate the CC&Rs for profit and sometimes even take control of all the documents and financials and refuse to even give them to the Board.

Adding penalties to the law would change the entire dynamic. The property owner's money would no longer be at risk, the Board Member could no longer hide behind the corporation when knowingly violating laws. Instead of the property owner's money being against the HOA's collective funds or the HOA's Insurance Company, it would be the State Prosecutor against the violating Board Member. This would offer much more protection for property owners and would act as a major deterrent to corrupt HOA Board Members, Property Managers and Attorneys.

HOAs are not like any other business. They are not just providing a product or a service, they are given the power of municipality to a group of un-trained volunteers. Allowing uneducated "volunteers" to run unofficial governments with no oversight that control multimillions of dollars of homeowner's money, is irresponsible and wrong. Legislators have created Uniform Acts that leave homeowners defenseless and on unequal ground.

Violations of these laws by Board Members or Property managers that knowingly violate these laws should be considered Consumer Protection Act violations giving the authority to the State Attorney General to investigate and file suit against the Board Members or Property Managers knowingly violating the laws. If found guilty a private cause of action may take place with treble damages and attorney fees as penalties.

### **Solution to Problem #1 Full Detail**

(1) The attorney general may issue a cease-and-desist letter to any Board Members of the association of HOAs or agent of an association of HOA owners to restrain and prevent a pattern of failure to follow the requirements of this chapter. If the recipient of a cease-and-desist letter does not comply within five calendar days of receipt of the letter, the attorney general may file an action in superior court at any time thereafter to enforce the cease-and-desist letter. If the court finds that the association of apartment owners or agent of an association of apartment owners violated this chapter and failed to comply with a cease-and-desist letter, the court shall enjoin the association of apartment owners or agent of the association of apartment owners from engaging in conduct that violates this chapter and shall impose a civil penalty of not more than \$5,000 per violation of the cease-and-desist letter. In any successful action to enforce a cease-and-desist letter under this chapter, the court shall award the attorney general the costs of bringing the action, including reasonable investigative costs and reasonable attorneys' fees. The remedies under this subsection are in addition to any other remedies a court may order under subsection (2) of this section.

(2) The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act. A11 pattern of violations of this chapter by the Board of an association of apartment owners or an agent of an association of apartment owners, evidenced by the issuance of two or more cease and desist letters pursuant to subsection (1) of this section, is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for purposes of applying the consumer protection act.

(3) Remedies provided by the this chapter and the consumer protection act are cumulative and not exclusive.

{4} All HOAs must carry D & O insurance for their Board Members.

(5) HOA Board Members and Property Managers are required to follow the HOA Laws and the Governing documents when dealing with the members of the HOA.

(6) The HOA Board Members and Property Managers should be required by law to sign that they have received the governing documents and laws that apply to the HOA or know where they are posted and understand what laws and governing documents apply to their HOA, are aware of the laws and governing documents, and their ability to inquire of the HOA attorney if they have any question about the laws or the governing documents, and that they are aware that the will be held responsible for their knowing violations of the HOA laws and the governing documents of their HOA.

## **2. Member Communication**

HOAs to be required to offer a free MANDATORY member list including name, HOA address, mailing address, email and phone should be available to all members. This can be done in a way that there are

no privacy concerns. To allow free and convenient communication between HOA members, all members must supply an email address that will be shared electronically with all of the other members at no cost for the list.

Once one group has control of the Board, they have control of all the communication, the website, weekly newsletter, Facebook and other social networking platforms and most importantly the email list.

In many HOAs, especially those with a large number of properties or many that are rentals, second homes or vacation properties, it is very difficult for the members to communicate freely with each other. Consider an association with more than 500 members, mine had about 2800 properties.

Homeowners have no way of communicating with neighbors. How do they have Fair Elections, if the homeowners cannot communicate with one another? How would the members be able to reasonably get enough signatures on a petition to remove a board member or meet other votes required by the governing docs to make member decisions?

### **Solution to Problem #2 Full Detail**

To allow free and convenient communication between HOA members, all HOAs will maintain a true and correct member list. The list must include the HOA property owner's name, HOA property address, mailing address, email address and phone number. For property owners without knowledge of email use, the HOA will show them how to create a free email address on a free service such as Gmail or equivalent, in a manner that the HOA organization is not able to read, or control the private email of the property owner. All members and all office staff with access to the list will sign an agreement to not share the email addresses with anyone outside the HOA and to only use the email for HOA related issues. All phone numbers are to be included unless specified to be unlisted by the property owner.

For privacy concerns the email address can be an email address created by the member solely for business and to be shared with the members. All emails sent by the HOA will be sent to this address. This is the email address to be shared with the members.

HOA to provide free list to all members, no opt out except for phone number should the member choose not to have that shared.

Does not apply to witness protection or other government protection programs requiring secrecy of contact info.

### **3. Foreclosure and Collection of Fines**

**In many states, late fees and fines have additional fees added, such as late fees, administration fees, attorney fees. These fees are due in 30 days or Liens and Foreclosure with begin, with NO DUE Process offered for a homeowner to defend their actions!**

Fines, late fees and attorney's fees often far exceed the value of the fine, back dues and/or assessments. Recently a woman forgot to pay her annual dues of about \$350 and ended up paying almost \$8000 with the fines, late fees and attorney's fees. Attorneys know that in order to foreclose in WA a homeowner has to be 3 months past due in Assessments, and the amount must be more than \$200. It does not seem at all reasonable that a person could lose their home over a \$200 debt and three months late hardly seems like enough time.

There are lots of ways to collect bad debt. Foreclosure should be the last effort not the first, and should not be allowed for debts under \$10,000.

All laws relating to fair housing, fair lending, collections and consumer protection should apply to members of HOAs.

All HOA dues MUST be collected and paid from the Homeowners Escrow Account to minimize the risk of a homeowner accidentally falling behind.

If the owner of the home does not have a mortgage, then the HOA owner should have a choice to pay all up front, or pay quarterly or monthly with no interest.

All debts under \$10,000 must be handled through small claims court.

No foreclosures for debts under \$10,000

30 day written notice for all debts, and 30 days to file dispute.

All fines, late fees and interest stop once dispute is filed in writing with HOA, until it is resolved in small claims court.

Homeowners to receive 90-day notice before Foreclosure efforts start and be referred to free foreclosure counsellors.

All efforts should be taken to minimize damage to the property owner and minimize property owner legal costs. We are looking for a fair solution, not to destroy a homeowner.

Properties sold in foreclosure to be sold at market value in the current real estate market, not at Sheriff's sales. Properties must be sold at the current market value of that property, through a realtor chosen by the homeowner, at a price determined through realtor comps and agreed by both parties, with disagreement resolved by the County Mediation Centers.

All challenged fines should be handled in small claims court, with NO Attorneys. This allows for due process and an impartial tribunal.

HOA violations of the above are considered Consumer Protection Act violations with treble damages and attorney fees as penalties.

The association and the member are entitled to recover any costs and reasonable and allowed attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in a suit being commenced or prosecuted to judgment. The prevailing party is also entitled to recover costs and reasonable attorneys' fees in such suits, including any appeals, if it prevails on appeal and in the enforcement of a judgment or in the case where the association files but then drops the suit before the judgement, the member is entitled to recover attorney's fees.

Board Members or Property managers that knowingly violate the above are considered Consumer Protection Act violations with treble damages and attorney fees as penalties.

#### **4. HOA/COA Voting Laws**

#### 4. Fair Election Laws

- All election voting or other voting must be conducted completely by an independent outside election company. Anyone on the current board will be disqualified from running again to retain their seat if they do not hold the election according to when their term is up. (The purpose of this rule would be to eliminate any incentive for current members to hold onto their seat when their term it up)
- No felons on the board. If a board member is found to be a convicted felon they will automatically be removed and replaced with the candidate that had the next highest votes in the last election to complete their term.
- Board members who are caught embezzling or receiving kickbacks cannot run again on the HOA Board and cannot participate on any committee, and neither can their spouse or anyone living with them in their unit or parcel.
- The HOA attorney, property management company and any member of the current board cannot organize the HOA elections. There has to be an election committee elected by the membership that organizes and schedules the election. Board members and family members of anyone running on the ballot are prohibited from sitting on the election committee.
- Board members are not allowed to use HOA funds, resources, social media, mailing lists or other communications belonging to HOA that other members are not allowed to use for free to send out any communications pro or con regarding any of the candidates, members, policies or to make any political commentary, any time of the year.
- Elections cannot be held on any holiday weeks and must only be held on weekends.
- All candidate's bios, and information must be mailed to every member at the same time.
- Homeowners should have at least sixty days to mail in their ballots from the day it is sent to them, or cast their vote electronically if an electronic voting system is in place. The envelopes for the ballots should have prepaid postage, the mailing address of the election company and the member's return address on it.
- Homeowners should be allowed to vote electronically. The electronic voting system cannot be operated, licensed or in any way have any connection or affiliation with current board members, members of the HOA, property management company, HOA attorneys and or subsidiaries of any of the previous mentioned bodies.
- No ballots should be sent to the HOA nor should any board members, member or employee have any access to the ballots before they are counted. The ballots should be mailed directly to the election company. No Board members, members or employees should have any access or participate in any way with processing of the election documents. This shall not be superseded by any governing documents in the declaration, bylaws, articles of incorporation or CCR's.
- Current board members are not allowed to change bylaws, articles of incorporation or CCR's. All changes must be accomplished by a majority vote of the members.
- Any increase in HOA election quorum votes must be accomplished by a vote of the membership and not the HOA board of directors on their own accord.
- Board members are limited to 3-year terms and then cannot run again for another 3 years. This statute is retroactive.
- Members who contest an election and are forced to use their own funds in arbitration or in a civil law suit will be reimbursed all cost of litigation for exercising their right if Judgement is ruled in their favor. If it is not in their favor both parties will pay their own fees as an honest contest of an election is considered a service to the HOA.
- Any board members who are found to tamper with the election process in any way shape or form will automatically be removed from the board and their parcel number will be prohibited from running in the election indefinitely until a new parcel owner has been established. A board member taking their

name off the deed to circumvent this rule will still be prohibited from becoming a sitting board member.

## **5. Uniform Enforcement**

Unchecked Power Corrupts. Currently Boards are left to monitor themselves. Board members violating the Covenants and the law is overlooked.

In many HOAs small groups of people with special interests take over Boards and make decisions for their own property benefit while damaging the other properties. Board Members have the fiduciary responsibility to make decisions that benefit at least the majority of the community, but preferably equally to the entire community. Board Members, Property Managers (PMs) and attorneys are responsible to the homeowners. At any point that a PM or attorney is aware of any violations of this section by a Board Member, it is the fiduciary responsibility of the PM or attorney to advise the Board member and if the situation is not immediately rectified, to report the violation to the State.

All CCRs must be enforced equally or removed. Boards cannot engage in selective enforcement or make wavers for one member but not others for similar issues. Often property owners are fined for covenants that don't exist and are assessed fines. Boards incorrectly interpret vague language in their CCRs resulting in large variations in enforcement. If a homeowner can prove the Board, Property Manager (PM) or Attorney have knowingly violated the equal enforcement of CC&Rs, the Board or involved Board Members must step down and PM or Attorney must be replaced immediately. The PM and Attorney should NEVER be held HARMLESS. They should have the liability of prosecution for allowing a board to violate the property owner's rights.

### **Solution to Problem #5 Full Detail**

Board Members, PMs and Attorneys working for HOAs have the fiduciary responsibility to make decisions that benefit at least the majority of the community, but preferably equally to the entire community as well as protecting the rights of the individual property owners. Board Members, PMs and Attorneys are responsible to the homeowners, both individually and as a whole, not to the Board or the HOA organization. At any point that a PM or attorney is aware of any violations of the State HOA RCWs by a Board Member, it is the fiduciary and legal responsibility of the PM or attorney to advise the Board member of the laws, and if the situation is not immediately rectified, to report the violation to the State and copy the offended property owner. All CCRs and Rules must be enforced, enforced equally or removed. Boards must not engage in selective enforcement. No individual wavers of the CCRs or Rules must be allowed. Enforcement of the CCRs is limited to specific stated requirements within the CCRs. General statements such as "properties must be maintained in an attractive manner" are not enforceable by an HOA. CCRs must be specific such as "grass lawns may not be more than 6" tall."

Association as trustee.

With respect to a third person, other than Attorneys and Property Managers, dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third

person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

### **Officers and board members—Removal.**

(1) Unit owners present in person, by proxy, or by absentee ballot at any meeting of the unit owners at which a quorum is present may remove any board member and any officer elected by the unit owners, with or without cause, if the number of votes in favor of removal cast by unit owners entitled to vote for election of the board member or officer proposed to be removed is at least a majority of the votes in the association held by such unit owners or (b) majority of the votes cast by such unit owners at the meeting, but:

(iii) The unit owners may not consider whether to remove a board member or officer at a meeting of the unit owners unless that subject was listed in the notice of the meeting. Any petition to remove an officer or board member to the Association, containing the property owners' names, addresses in the association, and signatures, of 2% of the total membership or 50 signatures, whichever is less, requires that a vote take place at the next meeting that is held within 60 days from the delivery of the petition to the Association.

(2) The board must, without a unit owner vote, remove from the board a board member or officer elected by the unit owners if (a) the board member or officer is delinquent in the payment of assessments more than sixty days and (b) the board member or officer has not cured the delinquency within thirty days after receiving notice of the board's intent to remove the board member or officer. Unless provided otherwise by the governing documents, the board may remove an officer elected by the board at any time, with or without cause. The removal must be recorded in the minutes of the next board meeting.

## **6. Usurping Authority**

Association Boards have MORE POWER THAN THE MUNICIPALITY and are HELD HARMLESS for ALL ACTIONS.

Often HOA Boards overstep their authority. They have been known to usurp the power of local governments, and attempt to enforce the Boards "interpretation "of a regulation or ordinance.

### **Solution to Problem #6 Full Detail**

An HOA's authority is limited to the enforcement rules and fines stated specifically in their CCRs. HOAs do not have authority to enforce laws or ordinances. General statements in the HOA's governing documents indicating that members must follow all applicable laws and/or ordinances does not give the HOA the authority to enforce laws or ordinances.

## **7. Hidden Covenants and Fines**

**Consumers have no idea that a Board can change the Covenants and Rules at any time or can charge a special assessment for any reason. Who is training the homeowners? NO ONE should have to pay to learn how to live in their home. What happened to the TRUTH IN LENDING?**

Many times people buy properties in HOAs either not knowing the property is in an HOA, that covenants exist, or not aware that there are additional rules or fines that are not mentioned in the covenants.

### **Solution to Problem #7 Full Detail**

All rules of the HOA and all applicable fines must be in the covenants. The HOA Seller Packet as defined in this section must be presented to prospective property buyers before they make an offer on the property. The CCR document must be signed and dated by the prospective property buyer and included in the offer documentation when a prospective buyer is making an offer on a property that is in an HOA. Resale certs found to be fraudulent, should be prosecuted as fraud.

All governing documents including but not limited to the articles of incorporation, bylaws, covenants and rules must be shown to the buyer of an HOA controlled property and signed by the potential buyer before the buyer places an offer.

The process to change those governing documents must be in the bylaws.

All fines for covenant violations to be required to be included in the covenants and fines for rules violations written in the rules.

The HOA is responsible to deliver the certification and all governing documents to the seller within 15 days of the seller's request.

## **8. Creation and Modification of Covenants and Rules**

Property owners buy into an HOA under a set of covenants. A new group of Board Members may take over and completely change the rules, impinging on the property owners' rights. HOAs should not be able to take away property rights by making more restrictive covenants after the first property in the HOA was purchased under one set of Covenants.

### **Solution to Problem #8 Full Detail**

Once the first property in an HOA is sold, no additional covenants or fines on private properties may be added. Covenants and/or fines may be removed by a majority vote of the total membership at any time. Rules for common areas may be adopted, amended, or repealed by a majority vote of the total membership at any time.

#### **Covenant and Rule Changes.**

Members may propose a Covenant Repeal, partial repeal, or Rule Change by obtaining petition signatures from 2% of the members or 50 members, whichever is less. The petition must include the exact wording of the current Covenant or Rule and the exact changes desired.

#### **Covenant Repeals.**

(1) The board must, before amending, or repealing any Covenant, give all unit owners notice of:

(a) Its intention to amend, or repeal or partially repeal a covenant and provide the text of the covenant and the proposed change; and



(b) A date by which the members must vote on the change. The change is passed if more than 50% of the votes cast are for the change. Voting may be by paper and/or electronic through an impartial third-party voting company. Voting must be completed within 100 days of the submission of the petition and voting ballots must be sent at least 30 days before the end of the voting period. The last day of the voting period must be 3 days before the Board Meeting or longer if the independent voting company requires more time to tabulate the votes.

(2) All members should receive one vote, no matter the number of properties owned by that member. One vote per household or master corporation.

(3) Following the vote to repeal or amend a covenant, the association must give notice to the unit owners of its action and provide a copy of the revised covenants.

(4) An association's internal business operating procedures need not be adopted covenants but cannot add to, delete from, or contradict the covenants.

(5) Every Covenant must be reasonable and apply and be enforced equally to all members. Question of reasonableness to be determined by the State Attorney General's office.

#### Rule Changes.

(6) The board must, before adopting, amending, or repealing any rule, give all unit owners notice of:

(a) Its intention to adopt, amend, or repeal a rule and provide the text of the rule and the proposed change; and

(b) A date by which the members must vote on the change. The change is passed if more than 50% of the votes cast are for the change. Voting may be by paper and/or electronic. Voting must be completed within 100 days of the submission of the petition and voting ballots must be sent at least 30 days before the end of the voting period. The last day of the voting period must be 3 days before the Board Meeting or longer if the independent voting company requires more time to tabulate the votes.

(2) Following adoption, amendment, or repeal of a rule, the association must give notice to the unit owners of its action and provide a copy of all the rules in updated form.

(3) An association's internal business operating procedures need not be adopted as rules but cannot add to, delete from, or contradict the rules.

(4) Every rule must be reasonable and apply and be enforced equally to all members. Question of reasonableness to be determined by the State Attorney General's office.

#### 9. Fines, Assessments, Collections.

Attorneys representing an association often charge more the debt in many cases.

Property owners get in unexpected situations, like Covid or a loss of a job or loved one. They have good intentions to pay their HOA dues, assessments but an emergency comes up and they can't. Often liens and foreclosures are filed without the property owner aware.

A solution would be similar to what banks do with house loans, collect HOA fees through the mortgage escrow with a monthly payment. All HOA/CONDO dues should be paid from homeowner's escrow accounts, making it impossible to be late in paying assessments. If the owner of the home does not

have a mortgage, then the HOA owner should have a choice to pay all up front, or pay quarterly or monthly with no interest.

Small claims court must be used for all challenged fines or assessments, under \$10,000, therefore. All fines, late fees and interest stop once dispute is filed in writing with HOA, until it is resolved in small claims court

Challenged CCR violations, assessments and fines under \$10,000 MUST be taken to small claims court only, before being fined. This would eliminate unnecessary attorney fees and provide an impartial tribunal. Boards should not be the legislative group, accusers, judges and enforcement of the HOA.

All other collection routes should be taken, such as alternative payment plans, lien, small claims court, garnishments, etc. before foreclosure can be started. Homeowner should receive 90-day notice before foreclosure can start.

All efforts should be taken to minimize damage to the property owner and mitigate the legal costs.

### **Solution to Problem #9 Full Detail**

Reasonable times to fix CCR violations are required.

Challenged CCR violations and fines MUST be taken to small claims court only before being fined. Boards should not be the legislative group, accusers, judges and enforcement of the HOA.

All fines, late fees and interest stop once dispute is filed in writing with HOA, until it is resolved in small claims court.

All HOA dues and assessments, must be collected through the mortgage escrow with the property monthly payment or paid in full annually at the option of the property owner. All assessments to be allowed to be spread over one year, more if possible. If the owner of the home does not have a mortgage, then the HOA owner must have a choice to pay the HOA all up front, or pay quarterly or monthly, prior to being due. HOAs must provide a monthly bill/invoice for dues and assessments showing the due date, monthly charge and the total balance. HOAs may charge interest on all payments up to the current lowest mortgage interest rates.

For any collection, whether for dues, assessments, fines, etc., all other collection routes must be taken, such as alternative payment plans, small claims court, garnishments, etc. before liens, or foreclosure can be started. All collections under \$10,000 must be handled through small claims court.

Homeowner must receive at least 30-day notice of late payment with a 30-day period to file a dispute. The notice must include instructions on how to dispute the claim and how to file with the HOA for a hearing before the HOA Board. If the HOA management cannot resolve the issue with the property owner, the owner has the right to an appeal hearing before the Board. If the property owner disputes the charges, all fines, late charges and interest must stop until the issue is resolved. The Board's decision must be in writing, mailed or emailed within 7 days and include a complete explanation for the decision. Should the Board hearing not resolve the situation, the Board must file in small claims court to enact a fine.

All efforts must be taken to minimize damage to the property owner and mitigate the collection and legal costs.

HOA violations of the above are considered per se Consumer Protection Act violations with treble damages and attorney fees as the penalty.

## **10. No Profit from Ownership of any Individual Property**

Fair and Equal insurance laws currently do not apply to Condo Owners. Board Members should NEVER be the ADJUSTER for an insurance claim. WA State has "IFCA", but that does not apply to HOA/Condo owners. Who protects homeowners and why isn't the law fair and equal?

HOAs should not make a profit through ownership any individual property. HOAs should not be allowed to redirect funds from insurance claims or other incomes connected to one property to improve other properties. For example, HOAs may not charge homeowners for RV or boat storage, charge them more than the actual costs to the HOA, and then use the additional funds to make improvements or maintenance to a different property or put it in the general fund.

HOAs, Board Members, and Property Managers of HOAs should not be allowed to purchase properties that have been foreclosed by the HOA.

### **Solution to Problem #10 Full Detail**

HOAs must not make a profit from members through ownership any individual property. Rentals of HOA common properties must be at cost. This does not include rentals to non-members.

HOAs, Board Members, and Property Managers of HOAs should not be allowed to purchase properties that have been foreclosed by the HOA.

HOAs must not redirect funds from insurance claims or other incomes connected to one property to improve or maintain other properties or put those funds in a general fund. All revenues and incomes derived from a property must be used to repair, improve or maintain that specific property.

Any loss covered by the HOA property insurance policy must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association. The insurance trustee or the association must hold any insurance proceeds in trust for the association, unit owners, and lienholders as their interests may appear. The proceeds must be disbursed first for the repair or replacement of the damaged property to bring it back to original condition before the incident, and the association, unit owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or replaced, or the common interest community is terminated.

## **11. One Set of Laws**

Board Members and Homeowners of HOA are generally volunteers from different walks of life and most are not attorneys. There should be one set of laws, that applies to all forms of HOAs, that are simple to read, in 6<sup>th</sup> grade language to make them understandable to the average homeowner and Board Member

Wherever a law refers to another part of the law, both the numeric representation of the section of the law, and the name of the section should be stated to assist in easier reading.

Old declarations should be required to be modified to meet the current laws. Declarations should not be allowed to vary from the law.

## **12. Transparency**

Homeowners have to fight Boards, Property Managers and Attorneys to access the documents of the association that they are entitled to see. Boards and Property Managers often charge excessive fees to see the documents.

Full transparency must be required by every HOA. The property owners in the HOA are part owners of the HOA.

All financial records including but not limited to Financial Statements, Budget to Actual Report, check register, reserve study and reserve account, all contracts signed and related bids, must be posted on the HOA website or equivalent with access to the members only within 14 days after the end of each month.

All information of the HOA should be easily, copied, or electronically sent to any member, in common formats, as requested by the member, with very limited exceptions as outlined below.

All lawsuits filed and court actions involving the HOA must be must be posted on the internet with access to the members only within 14 days after the end of each month along with all associated costs and attorney's fees.

All records of CCR violations and fines must be accessible by all member including the name of the person filing the complaint.

Costs of providing records must be the actual cost of providing those records to the member.

All governing documents and applicable laws, or internet address of the laws must be clearly posted on the HOA website and FB page or equivalent.

To allow free and easy communication between members, a member list with name, address in the Association, phone and email address must be collected by the HOA and be free and available to members only to be used by the members for Association business only.

We understand that some expressed some privacy concerns about this but as the members would be informed that the email address they are giving would be shared, and it is free and easy to create another email address that would be exclusively used for this purpose, there would be no privacy issue. Most corporations share email addresses of all their members/employees.

(1) An association must retain the following:

The current budget, detailed records of receipts and expenditures affecting the operation and administration of the association, and other appropriate accounting records within the last seven years;

- (b) Minutes of all meetings of its unit owners and board other than executive sessions, a record of all actions taken by the unit owners or board without a meeting, and a record of all actions taken by a committee in place of the board on behalf of the association;
- (c) A complete and accurate list of unit owners, including the names of current unit owners, telephone numbers unless member opts out of giving phone number, addresses in the HOA, mailing address, email addresses , and the number of votes allocated to each unit;
- (d) Its original or restated declaration, organizational documents, all amendments to the declaration and organizational documents, and all rules currently in effect;
- (e) All financial statements and tax returns of the association for the past seven years;
- (f) A list of the names and addresses of its current board members and officers;
- (g) Its most recent annual report delivered to the secretary of state, if any;
- (h) Financial and other records for the last 7 years.
- (i) Copies of contracts to which it is or was a party within the last seven years;
- (j) Materials relied upon by the board or any committee to approve or deny any requests for design or architectural approval for a period of seven years after the decision is made
- (k) Materials relied upon by the board or any committee concerning a decision to enforce the governing documents for a period of seven years after the decision is made;
- (l) Copies of insurance policies under which the association is a named insured;
- (m) Any current warranties provided to the association;
- (n) Copies of all notices provided to unit owners or the association in accordance with this chapter or the governing documents; and
- (o) Ballots, proxies, absentee ballots, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate.

(p) Information retained pursuant to subsection (1)(d) of this section must be accessible on an association's website, Facebook or equivalent.

(2) All records required to be retained by an association must be made available for examination and copying by all unit owners, holders of mortgages on the units, and their respective authorized agents as follows:

- (a) During reasonable business hours or at a mutually convenient time and location; and
- (b) At the offices of the association or its managing agent.

(3) Records retained by an association may be withheld from inspection and copying to the extent that they concern:

- (a) Personnel and medical records relating to specific individuals;
- (b) Contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated;
- (c) Current or potential litigation or mediation, arbitration, or administrative proceedings
- (d) Current or potential matters involving federal, state, or local administrative or other formal proceedings before governmental tribunal for enforcement of the governing documents;

- (e) Legal advice or communications that are otherwise protected by the attorney-client privilege or the attorney work product doctrine, including communications with the managing agent or other agent of the association;
- (f) Information the disclosure of which would violate a court order or law;
- (g) Records of an executive session of the board;
- (h) Personal phone number of member if requested to be held confidential by member.
- (i) Security access information provided to the association for emergency purposes.

(4) An association may only charge their actual cost for producing and providing copies of any records under this section and for supervising the unit owner's inspection.

(5) A right to copy records under this section includes the right to receive copies by photocopying or other means, including through an electronic transmission if available upon request by the unit owner.

(6) An association is not obligated to compile or synthesize information other than the member list.

(7) Information provided pursuant to this section may not be used for commercial purposes.

(8) An association's managing agent must deliver all of the association's original books and records to the association immediately upon termination of its management relationship with the association, or upon such other demand as is made by the board. An association managing agent may keep copies of the association records at its own expense.

### **13. Full Detail and Funded Reserves**

Under current RCWs, Associations pass the buck of creating a proper reserve and funding it, to property owners purchasing years later, thus transferring debt they created to other unsuspecting property owners.

All new HOAs should have reserve studies at least every 3 years and maintain a 100% funded reserve account. Which means that there is money in the reserve for all common properties equaling depreciation of that property. As example, if a roof has a projected 30-year life, at year 15, half of the cost of replacement should be in the reserve.

Requirement for all HOAs to move to fully funded Reserve accounts in equal dollar amounts over a 10-year period.

#### **Solutions to Problem Full Detail #13**

(1) All new HOAs should have full detail reserve studies at least every 3 years and maintain a 100% funded reserve account. Which means that there is money in the reserve for all common properties equaling depreciated percentage of the replacement cost of that property. As example, if a roof has a projected 30-year life, at year 15, half of the cost of replacement should be in the reserve.

(2) One or more unit owners may file a complaint with the State Attorney General's Office if this section is not followed by the Association Board. This section gives the Attorney General the authority to investigate, send an order to correct, and if ignored may fine the Board Members on a monthly basis until Board Members can prove that corrective action has been taken.

Corrective action would entail calling a member meeting to correct the budget to meet the 100% reserve requirements stated in this section. This would require an assessment to and/or increase in dues to meet the requirements.

#### **14. Budget Vote**

Budgets to pass should require 50% vote of members that vote, instead of 50% of the full membership to vote down the budget. This change will force the Board to adequately explain the budget to the members to convince them that they are making the correct and best decisions.

The budget meeting should be led by a non-Board Member voted for by the membership as the first motion of the meeting.

Individual line items may be voted in or out by the members.

Budgets are required to meet the law requiring fully funded reserve accounts as well as all other legal requirements and cannot be voted out of the budget.

#### **Solution to Problem #14 Full Detail**

(1)(a) Within thirty days after adoption of any proposed budget for the common interest community, the board must provide a copy of the budget to all the unit owners and set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than fifty days after providing the budget. The budget will be put to the vote of the membership by paper or electronic, and will pass if 50% or more of the votes approve, whether or not there is a quorum votes. Members may assign their votes to those that can attend by proxy which will be supplied by the HOA to the members with the notification of the meeting.

This is a member meeting and all budget meetings should be led by a non-Board Member chair voted for by the membership present at the meeting as the first action of the meeting. The Board will supply the chair a recommended agenda. The second action in the meeting will be for the Treasure or their assign to explain the budget. The chair shall move forward with discussion and voting from there. The chair will loosely follow Roberts Rules of Order to make the meeting as efficient and fair as possible.

Individual line items may be discussed and voted in or out by the members.

Budgets are required to meet the law requiring fully funded reserve accounts as well as all other legal requirements and cannot be voted out of the budget.

#### **15. HOA Attorney and Property Manager Responsibilities**

HOA attorneys by law should be required to represent the membership as a whole, not the Board, in all issues.

Board Members or their assigns may be the day-to-day interface with the attorneys, but the loyalty of the attorney should be to the members as a whole.

HOA attorneys and property managers should be mandatory reporters of illegal or unethical actions of the Board and the Property Managers. The Attorney or Property Manager should attempt first to explain the correct actions to the Board and assure that they are aware that their actions are unethical or illegal. Should the Board not correct their actions within 10 days the Attorney or Property Manager shall report their actions to the Attorney General office for further action.

## **16. No Covenant Restricting Private Property of Members**

### **PROBLEMS:**

#### **No Due Process.**

Homeowners are being fined into foreclosure with NO DUE PROCESS. The unbalanced system of HOA, takes away our constitutional rights and leaves a homeowner on unequal grounds.

US Constitution, 14th Amendment, Section 1, All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. **No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

(\*Note, fining members for CCRS without due process, violates the US Constitution, 14th Amendment, Section 1)

**CIVIL RIGHTS LIABILITY UNDER 42 U.S.C. § 1983 demands that the government protects United States Citizens from anyone who breaks Due Process and our Civil Rights.**

*Due Process, a plaintiff must show: (1) that he possessed a constitutionally protected property interest; and (2) that he was deprived of that interest without due process of law. Due process property interests are created by "existing rules or understandings that stem from an independent source such as state law--rules or understanding that secure certain benefits and that support claims of entitlement to those benefits." To have a property interest protected by the Due Process Clause, "a person must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it.*

*There is no requirement to sue in federal court because state courts have concurrent jurisdiction, and the usual rule is exhaustion of administrative and judicial state remedies is not a prerequisite to a section 1983 action. Local governments have no immunity from damages flowing from their constitutional violations, and may not assert the good faith of its agents as a defense to liability. Further, state law sovereign immunity and state law limitations on damages do not protect local governments from liability under section 1983, and state laws requiring pre-suit notification prior to initiating an action against the state or its subdivisions similarly do not apply.*

#### **HOAs Given Rights of Municipality.**

HOAs are corporations that have been given the right to violate our Constitution and are being treated as public government bodies, (according to the Uniform Act, HOA and Condo Laws), independent of the oversights that all other governmental bodies in the USA have.



Many HOAs have covenants that are aimed at keeping the elderly, poor, disabled, people of color and others of protected classes out of the community. These can be as simple as rules such as grass being required to be taller than 2" and shorter than 3" or changing the rules of what housing colors are allowed to force people to repaint their homes, or enforcing certain covenants on some but not others. The elderly, poor, disabled and other protected classes may have more difficulty meeting these unnecessary and unreasonable requirements than others for obvious reasons. There are city and county laws that already forbid properties to look like junkyards and also to maintain health and safety conditions.

A vast majority of the problems in HOAs are related to covenants that restrict personal property. The remainder seem to be mostly related to unethical foreclosures, and failure of the HOA to maintain the common property properly, but even many of those are related to covenants that restrict personal property rights.

HOA covenants controlling private property are the most frequent covenants abused by HOA Boards and Property Managers, used to extort and control the HOA homeowners, and force unethical foreclosures. Boards can file false claims against the Homeowners, assume guilt without proof, no due process, then hire attorneys with HOA funds to force members to pay, and potentially file foreclosure on their homes for not paying, without ever taking the homeowner to court. They can also do all this with the intention to intimidate Homeowners with opposing views out of running for board positions, or just speaking up against the Board. Board will often use these covenants to force opposition out of the community.

#### **Solution to Problem #16:**

Modify the RCWs to clearly state that HOAs have no authority over private property, they make covenants and rules only over property owned by the HOA corporation. This should be one of our end goals but we may need to make changes slowly to get there.

Board Members who knowingly violate the HOA laws, or knowingly mis-enforce or misrepresent the HOA CCRs will be considered in violation of the Consumer Protection Act. The Attorney General should be given the power and duty to enforce the HOA laws. Repeat offenders should receive the appropriate fine and banned from being on any HOA Board in the future.

State Fair Collection Laws must apply to all HOAs and any representative participating in collections for the HOA, Board Members, employees, attorneys, collection agencies or others. All Federal and State Fair Housing Laws must apply to HOA and Condo Associations

Board Members must be responsible to the same government ethics requirements, investigation and additional penalties as the mayor of a city. There should be a 6-year statute of limitations on the reporting and prosecution of these laws.

#### **17. Rental Cap, FHA and VA approved loans.**

We suggest that the law require a 35% minimum rental CAP, lower CAPs restrict renters decreasing the availability of affordable housing for renters. Higher than 50% cause FHA and VA to not approve loans.

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We are not attorney's. All communications are opinions and beliefs.  
Nothing in our communications should be considered to be legal advice.

"The only thing necessary for the triumph of evil is for good men to do nothing." - Edmund Burke