

FREQUENTLY ASKED QUESTIONS

What is a homeowner association?

A homeowner association is a legal entity comprised of all lot owners in a subdivision. It is required in communities that have open space or other common facilities that are to be owned jointly by the homeowners. The association is responsible for maintaining the open space and common facilities specified on the record plan and in the maintenance declaration.

Why do some communities not have a homeowner association?

Some smaller or older communities may be designed with no open space and common facilities and do not require a homeowner association. Some communities were developed with common facilities or open space that is County parkland. The parkland is maintained by New Castle County and open to all County residents.

When should a community accept responsibility for its homeowner association?

The transfer of control of the homeowner association from the developer to the homeowners is a legal and mandatory process. The Office of Community Governing may serve as a resource for the developer and the homeowners to ensure the process is completed correctly.

Transfer of control of the governing body from the developer to the homeowners, should be initiated by the developer prior to the issuance of seventy-five (75) percent of the building permits within the subdivision, and must be completed by 90%..

When should the community accept responsibility for the common facilities?

For sub-divisions that received exploratory plan approval after December 14, 1997, once the deed has been legally transferred, and the homeowners control the association, the homeowner association becomes responsible for maintaining the land.

What happens if the homeowner association refuses to accept the open space or refuses to organize?

Joining a homeowner association after you have accepted the deed to a lot is not an option. If a community fails to organize or accept the land, through no fault of the developer, New Castle County will do the necessary maintenance. The County has authority to enter the premises for the purpose of maintaining the common facilities to

comply with the Code. If the land is owned by the homeowner association, the County may place a lien on each home in the subdivision until it recovers all cost incurred by maintaining the open space or common facilities.

Can a homeowner association refuse to accept open space until complaints about home construction are addressed?

No. The transfer of open space to the homeowner association and complaints about home construction are independent issues. If you have issues relating to construction, and if you have lived in your home for less than one year, consult your home warranty company, or call New Castle County.

How does a community set up a homeowner association governing body and run elections?

The bylaws of the association provide the election procedures. Homeowner associations operate similar to any association. Generally, the members of a governing body are elected by the other members. Positions of the governing body usually consist of a President, Vice President, Secretary, and Treasurer. However, the bylaws for your individual community should be reviewed prior to the election.

Prior to the election, nominations for the governing body should be solicited. Many communities have formal resumes submitted. To ensure equality, the election must be open to all lot owners of the community. The entire community must be properly notified and be given information about each candidate. This can be achieved orally at a meeting or in writing to each lot owner.

Generally, each household has one vote. If two parties are listed on the deed, each party has one-half (1/2) vote. The amount of votes given to each lot may vary in older developments - check the bylaws. If a lot owner cannot attend the meeting, a proxy vote may be sufficient. The proxy transfers the voting rights to another eligible voter.

Once the election is complete, the governing body may begin running the affairs of the homeowner association. Within thirty (30) days after the election, the new governing body must contact the Office of Community Governing to provide it with the information about the members of the governing body. This must be completed in order to stay registered with New Castle County.

How does a homeowner association make assessments?

Once the budget has been approved according to your bylaws, the collection of assessments may commence. Written notice is sent to the owner of each lot indicating the amount owed, including the developer if he or she still owns lots in the subdivision. If the governing body does not have the names and addresses of all of the lot owners, this information can be obtained from the developer or Office of Community Governing.

What if a homeowner does not pay the annual assessment?

By accepting the deed to a lot in a subdivision with a homeowner association, an individual automatically becomes a member of the homeowner association. Thus, the homeowner is now obligated to pay the annual assessment. If the homeowner fails to pay the annual assessment or any “special assessment” the homeowner association may place a lien on the homeowner’s property.

How does a homeowner association file a lien on a homeowner’s property?

First the homeowner association must comply with the procedures established for the collection of assessments as defined in the governing documents. If the homeowner fails to timely pay the assessment, the association may file a claim in the appropriate Justice of the Peace Court. A nominal fee will be collected for the filing of the claim. If judgment is awarded to the homeowner association, a lien may then be placed on the property by transferring the judgment to Superior Court.

The process for transferring a judgment to Superior Court is delineated in title 10, section 9569 of the Delaware Code. Essentially, the judgment creditor, the homeowner association, must file a certified transcript of the docket entries of the judgment in the Office of the Prothonotary. Once the judgment is entered, it becomes a lien on all the real estate of the debtor in the County.

Where can I get a copy of my governing documents?

The developer should be able to provide a copy of all of the governing documents for your community. Once control of the association is in the hands of the homeowners, the governing body should have current copies of all governing documents including the certificate of incorporation, the maintenance declaration, and the bylaws.

Is there a minimum maintenance standard for storm water management facilities?

Yes. There are four routine maintenance tasks that must be performed. The four tasks are; grass mowing, grass trimming, debris removal, and minor sediment removal.

How do I know if my community’s open space is tax exempt?

Private open space (providing it contains no pool) is tax exempt. If you are receiving tax bills, contact the Office of Community Governing for assistance.

Should my community have insurance?

New Castle County does not require insurance on open space or insurance for the governing body. Insurance coverage may be in your community’s best interest. The governing body should discuss insurance options with reputable insurance agents and

assess the risks that the association and the governing body may be subject. For additional information, you may contact the Insurance Commissioner (*see* useful phone numbers).

How does a homeowner association remain in good standing with the Secretary of State, Division of Corporations?

To remain in good standing with the Secretary of State, Division of Corporations, a homeowner association must file a report each year and pay the franchise fee, currently twenty dollars per year. Whenever the governing body changes, you should file a change of registered agent form with the Secretary of State, Division of Corporations, then the annual report will be mailed to some responsible person in the association.

Division of Corporations
P.O. Box 898
Dover, DE 19903

Does a homeowner association have to file each year with the IRS?

Yes. The association must still file a tax return (form 1120H) and declare all non-exempt income, such as interest. You may obtain the appropriate form by contacting the IRS (*see* useful phone numbers) or stop by the local office at:

844 King Street
3rd Floor
Wilmington, DE 19801

Who is responsible for snow removal prior to the roads being dedicated to DelDOT?

Currently, there is no legislation that requires any entity to remove snow in residential subdivisions. However, an owner of property must maintain his or her property in a safe and sanitary condition. Arguably, the developer has the legal burden of ensuring internal subdivision roads are safe. Most developers or builders will clear the subdivision streets as a courtesy to the new homeowners.

Who is responsible for snow removal after the roads are dedicated to DelDOT?

DelDOT will not clear snow from residential streets. It is up to the members of the community to arrange for snow removal. DelDOT will provide reimbursement for snow removal under certain conditions.

How does a Homeowner association qualify for snow removal reimbursement?

The Delaware legislature adopted House Bill No. 544, as amended, on July 1, 1996. This bill stated “the Department of Transportation shall be responsible for reimbursing certain eligible organizations up to seventy-five (75) percent of its costs for snow removal services within residential developments or communities”. A policy statement is issued each year. Your community must register with the Department of Transportation by the first of November of each year, by contacting DelDOT at 323-4480.

How can a community get street signs?

Some communities would like additional signs in their area, for example, “Children at Play” signs. Contact DelDOT for these types of requests.

How does a community get streetlights installed?

The establishment of a special tax assessment district may authorize streetlights in residential areas by action of the County Council. A petition must be signed by fifty one percent (51) percent of the lot owners within the subdivision. To obtain a street light petition form, call New Castle County Tax Assessment Office at 395-5400. The homeowners will be taxed for the cost of the electricity.

Who should be contacted for speed bumps?

Speed bumps are funded by your State Senator or State Representative through his or her suburban street fund account. If your community is interested, please contact your elected State officials.

How does a homeowner association force a homeowner to remove personal property, such as sheds or fences, from the open space?

First, the homeowner association should notify the homeowner that the homeowner's property is encroaching on the open space. Often, the encroachment is unintentional and the homeowner simply misjudged the property line. If the encroachment continues, the homeowner association should send the homeowner a certified letter delineating the encroachment and demand removal of the encroachment in a specified time.

If this fails to correct the problem, the homeowner association can file a trespass action in Chancery Court. The homeowner association may want to seek the assistance of an attorney to file the claim.