

HOA Documents – Flawed Interpretation

Alabama is possibly the worst state for failing to provide purchaser/owner protection before and after an individual purchases a home in a common interest community with a Homeowners Association (HOA). Efforts to regulate and exercise disclosure and accountability have been thwarted by special interest groups and their lobbyist's. Of course, the goal of the original HOA documents is to insulate and protect the developer/declarants during the construction and sales period prior to transitioning day-to-day management and accountability to a homeowner board of directors.

One of the biggest issues of the homeowner HOA is inexperience but specifically not understanding authority and enforceability. Most homeowner boards fail to recognize that their control is limited to managing common areas and facilities, and architectural control of owner properties.

The experience level of elected board members responsible for managing owner funds, common areas and facilities, and architectural control of individual properties is virtually nonexistent, and most boards fail to recognize their limitations. Many individuals who have served on other community boards often bring their bad habits with them. Critical thinking does not exist in many HOAs as a general practice.

Governing documents are created while the declarant/developer owns all property within the boundaries of the community prior to sale of any of any residences. The governing documents can regulate parking, speed limits, and pretty much anything not a violation of law, which in Alabama, is truly little. A major change occurs when the declarant turns the HOA over to the homeowners and a municipality takes public areas like streets, right-of-way, drainage infrastructure, and sometimes even lakes and/or drainage ponds into maintenance. While the original documents may still indicate authority, this jurisdiction is lost upon transfer. Unlike deeded common areas, there is no deeded community ownership for this once transfer occurs.

A good example of flawed interpretation is highlighted in a portion of the example below:

Other Rights of Association- The Board shall have the right to provide services, the cost of which shall be paid out of the charges provided for in Article ** hereof, and adopt rules, regulations, procedures and policies with respect to: (a) garbage and trash collection and removal; **(b) motor vehicle operation; (c) parking of motor vehicles on streets or roads in the Property;** (d) Lake use and maintenance, and (e) such other matters including the general welfare of the Property as a whole.

If a board had such authority, it could levy fines for speeding and parking violations, install speed bumps, change traffic signs, and more. But this is not the case and any such authority the HOA claims is unenforceable. Some boards knowingly exercise such authority and such behavior is wrong on many levels. The exception is for this authority is, private, often gated, communities.

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