

General History and Purpose of Homeowner Associations

Homeowners associations first emerged in the United States in the mid-19th century. Their growth was limited, however, until the 1960s, when several factors led to a period of rapid national growth, including,

1. a push towards large scale residential development by the Federal Housing Authority and the Urban Land Institute
2. an increasing cultural preference for architectural uniformity; a decline of readily available land
3. rising construction costs
4. a modification of federal mortgage insurance rules to include cooperatives and condominiums

Another primary driver in the proliferation of single family homeowners' associations was the U.S. Clean Water Act of 1977, which required all new real estate developments to detain storm water so that flow to adjoining properties was no greater than the pre-development runoff. This law required nearly all residential developments to construct detention or retention areas to hold excess storm water until it could be released at the pre-development flow level. Since these detention areas serve multiple residences, they are almost always designated as "common" areas, which become a reason to create a homeowner association. Although these areas can be placed on an individual homeowner's lot, eliminating the need for an association, nearly all U.S. municipalities now require these areas to be part of a common area to ensure an entity, rather than an individual or the municipality itself, has maintenance responsibility. Real estate developers, therefore, have established homeowner associations to maintain these federally mandated common areas. With the homeowner association already in place, the developers have expanded their scope to provide other requirements and amenities that they believe will help them sell homes.

A homeowners association is incorporated by the developer prior to the initial sale of homes, and the Covenants, Conditions, and Restrictions (CC&Rs) are recorded when the property is subdivided. There is no mutual agreement between buyer and seller regarding the CC&R's; they are legally defined to "run with the land". If an owner sells the encumbered land/ home, he ceases to be a member of the association and the new owner is forced to become a member. All members must pay assessments to and abide by the restrictions of the association.^[9]

Association boards are composed initially of developer-appointed members, then of homeowners elected at the annual meeting to maintain the common areas and enforce the governing documents. The change occurs to the homeowners as the percentage of land/home ownership shifts away from the developer.

Homeowner association fees pay a share of common expenses, these expenses generally arise from common property, which varies dramatically depending on the type of association. Some

associations are almost like small towns, complete with private roads, street lights, services, and utilities, amenities, commonly owned buildings, pools, and even schools.

When determining what the monthly/annual assessment should be, it is important to consider what funds are required. There should always be a minimum of two funds. An operating fund and a reserve fund. The operating fund is used to pay for the operating expenses of the association. A reserve fund is used to pay for the infrequent and expensive common area assets maintenance, repair and replacement costs.

An HOA provides people with shared neighborhood values, an opportunity to enforce regulations, consistent with overarching statutory constraints, to achieve a community representative of such values.

Many homeowners' associations include management of a development's recreational amenities, maintained for exclusive use of its members. This can allow an individual homeowner access to a maintained pool, clubhouse, gym, tennis court or walking trail that they may not be able to otherwise afford to maintain on their own.

Each member of a homeowners' association pays assessments that are used to cover the expenses of the development. Some examples are landscaping for the common areas, maintenance and upkeep of the subdivision's amenities, insurance for commonly owned structures and areas, mailing costs for newsletters and other correspondence, employment of a management company or on-site manager, security personnel and gate maintenance, and any other item delineated in the governing documents or agreed to by the board of directors.

HOAs have been mandated by municipalities for decades either directly or indirectly. This is often accomplished by conditioning plat or other approval on the creation of amenities such as roads, open areas, greenbelts, retention basins, etc. and an obligation to maintain them.

Homeowners association can foreclose a member's house without any judicial procedure in order to collect special assessments, fees and fines, or otherwise place an enforceable lien on the property which, upon the property's sale, allows the HOA to collect otherwise unpaid assessments

Boards carry appropriate liability insurance to indemnify the association from any wrong-doing. The large budgets and expertise required to run such groups are a part of the arguments behind mandating manager certification (through Community Association Institute, state real estate boards, or other agencies).

Keith Collins Company, LLC is a professional management company and Association Managers, have their CMCA's (Certified Manager of Community Associations) and AMS (Association Management Specialist) thru The Community Association Institute.

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