

The Role of the Community Association Attorney

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People often view Community Associations as simple collections of rule-obsessed homeowners that do little more than debate the color of the

flowers under the monument signs leading into the community.

But at their best, Community Associations are the epitome of the concept of a neighborhood—a like-minded group that comes together to live under a shared set of rules and guidelines that improve property values, deliver benefits like community services and facilities to the members that would not otherwise be available, and otherwise lift up the group. Said another way, Community Associations are the modern manifestation of a collective vision of amenity, quality, and order.

So why does an attorney need to be involved? Well, to make the collective ownership vision a reality, the owners in the community must agree to give up some of their property rights, and that is a tall order under the law, which "jealously guards" the free use of land. The result is a complex collage of corporate and property law, involving non-profit corporations, covenants restricting property rights, and specific statutory regimes—the land of lawyers and their kin. This article briefly touches on just a few—but certainly not all—of the ways that the association attorney can serve the interests of the Community Association and help it realize the vision.

Education

Unfortunately, it is all too common for people to purchase lots or units in a community association without appreciating the true nature of the community, the restrictions involved, and the roles and responsibilities of the various players. Too few Associations proactively address this knowledge gap, electing instead to make the assumption that its members are fully apprised of these things. The community association attorney can, if engaged to do so, occupy a critical educational role, not only for those that run the community but also

those that live under that regime. Education advances understanding, and understanding prevents conflicts. All communities would be better served with an informed membership and the community association attorney can help get them there.

Corporate Governance

Community Associations are run by non-profit corporations most commonly known as "homeowners' associations." Left to run these corporations and to navigate the aforementioned nest of legal issues often is a volunteer board comprised of members that may or may not have any experience in that arena. Corporate law, especially when combined with restrictions on land, requires strict adherence to times, notice, meeting schedules, meeting content, and other similar formalities. Failure to adhere to them can negate the corporation's actions. Whether the Community Association is holding its annual meeting, seeking to pass a special assessment, or looking to amend its governing documents, the procedure is paramount. An attorney well-versed in community association law can help to master these requirements, both to train those who are learning on the job and to guide those that have their feet under them already.

Enforcement of the Governing Documents

Perhaps the most controversial role of the Community Association is the enforcement of the governing documents. As mentioned above, owners do not even know the full breadth of the rules and restrictions until they have violated them and are facing enforcement, and it often is an unwelcome realization. The law protects members from arbitrary and capricious enforcement, and due process ensures that their right to be heard is protected even in instances of proper enforcement. The Community Association would be wise to navigate these channels with care, as it is in this arena that the effective community association attorney can blend elements of education and representation to hopefully achieve compliance with the applicable rules and restrictions and, if that is not a possibility, to advise the directors on achieving compliance through judicial means.

Collections

This is one area that actually does seem to come to mind as a regular and usual role of the Community Association attorney. Only enforcement of the governing documents eclipses collections in the minds of the residents of community associations. Regular and special assessments are the lifeblood of the community, paying for community services, funding amenity upkeep and operation, and securing the future. The critical importance of these funds drives grave legal consequences for failure to pay, ranging from lawsuits to foreclosure. Procedure and due process are also paramount here, from including the correct statutory verbiage in demand letters to observing all applicable rules of claiming a lien on the property to selling a home on the courthouse steps.

Engaging and actively involving an experienced community association law attorney lends value to both the members and the boards of directors of a Community Association. We can help.

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