



Residential Homeowners Association - Basics

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**Disclaimer- Not Legal
Advice**

Agenda

- History/Background of HOA's
- Legal Status – Restrictive Covenants (Contract law)
- Items that are often regulated
- Indiana specific items
- Management of HOA
- Challenges
- Questions



History/Background of HOA's

- The first planned community in the United States was Levittown, New York, a community built in Long Island in the late 1940's, intending to offer low-interest homes to veterans. Though there was no formal association, community rules and regulations did exist. Other similar developments were built in the 1950's.



History/Background of HOA's

- In an effort to control water pollution, the U.S. Clean Water Act of 1977 required that all new real estate developments had to detain storm water so that flow to adjoining properties was **no greater than the pre-development runoff**. As a result, nearly all residential developments had to construct detention or retention areas. Since these detention areas serve multiple residences, they are almost always designated as "common" areas. This requirement was a reason for developers to establish a homeowner association. Having established the HOA, the developers have expanded their scope, giving them authority to regulate changes to residences, landscaping and maintenance requirements, color of houses, etc., a variety of other requirements and amenities that the developers believe will make their project more desirable to the market.
- An estimated **70 million US residents live under HOA governance** in more than **342,000 communities** across the country. That is more than 1 in 5 Americans.
- There are more than **5,000 new HOA communities** being built yearly.

Legal Status – Restrictive Covenants (Contract law)

- Homeowner Associations (HOA) are **private associations** often formed by **real estate developers** for the purpose of marketing, managing, and selling homes and lots in a residential subdivision.
- Any person who purchases a residence within the residential subdivision become a member, and therefore must obey the **governing documents** including **Articles of Incorporation**, **Bylaws**, and **Restrictive Covenants**, which may limit the owner's choices.
 - Articles of Organization establish the HOA as a legal entity – usually a nonprofit organization.
 - Filed with the Indiana Secretary of State
 - Bylaws establish the rules for the governance of the HOA
 - Restrictive covenant is an express contract between grantor and grantee that restrains the grantee's use of his land. Restrictive covenants are used to **maintain or enhance the value of land** by reciprocal undertakings that restrain or regulate groups of properties.
 - **Must be properly recorded** with the Porter County Recorder.
 - Indiana Fair Housing Act – Restrictive Covenants cannot contain language that VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

Items That Are Often Regulated

- **Fencing.** Many HOAs regulate the type of fencing homeowners can use, including the height of fences and what materials are allowed.
- **Landscaping.** Your HOA may have rules stating what flowers you can plant and the number/type of trees.
- **Pet Restrictions.** Prohibit farm animals or certain breeds of dogs.
- **Renovation Plans.** HOA may have an architectural review committee (“ARC”) that must approve construction plans.
- **Business Use.** Your HOA may prohibit you from using your place of residence as a business.
- **Sheds, Pools.** HOA may prohibit sheds and pools.
- **Short-Term Rentals.** Renting your home can be prohibited
- **Color Palette.** A lot of HOAs impose limitations on what colors you can paint your house’s exterior. This is in line with keeping a consistent look across the neighborhood.
- **Exterior Maintenance of Home.** Paint, windows -- good condition and repair, including cleaning and painting.
- **Solar Panels/Wind turbine.** Unclear.
- **Important** – this list is **not exclusive**, and regulations can be **more restrictive than local law**.

Indiana Specific Items

- **Prohibit the rental of home.**
 - **This issue was litigated in** VILLAS WEST II OF WILLOWRIDGE HOMEOWNERS ASSOCIATION, INC. v. EDNA MCGLOTHIN (885 N.E.2d 1274)(2008)
- **Prohibit the parking of motor homes**
 - **This issue was litigated in** – JOSEPH BEARD v. LAKE SANTEE PROPERTY OWNERS ASSOCIATION, INC. (829 N.E.2d 217)(2005)
- **Allow the Collection of fees**
 - **This issue was litigated in** – PHYLLIS GADDIS v. STARDUST HILLS OWNERS ASSOCIATION, INC. (804 N.E. 2d 231)(2004)
- **Political Signs**
 - **Indiana Legislature provided limited ability of HOA to prohibit signs** -- Indiana Code § 32-21-13
 - The statute provides that an HOA may not adopt or enforce a rule that prohibits a homeowner from displaying a sign on the homeowner's property during the period: (1) beginning thirty (30) days before; and (2) ending five (5) days after; the date of the election to which the sign relates. An HOA may adopt and enforce rules relating to a sign.
- **Indiana Homeowners Association Act** (Indiana Code § 32-25.5-1)
 - The Act governs the formation, management, powers, and operation of a HOA established after **June 30, 2009**, that is authorized to impose mandatory dues on the HOA members. The Act also regulates associations established before July 1, 2009, if a majority of the members of the HOA elect to be governed by the Act.
- **Restrictive Covenants must be drafted well and unambiguous** – ambiguity will be held against enforcement. Courts prefer free use of property.
- **Acquiescence**– Need to enforce uniformly (not “arbitrary and capricious”) – although non-waiver clause in Restrictive Covenants can be a defense.

Management of HOA

- Board of Directors/President (Articles of Organization/By-laws)
 - Elections/appointment
- HOA's (especially larger ones with common areas) may hire management company to handle the governing duties.
- Individual homeowners are often given the **independent right** to enforce Restrictive Covenants.

Challenges

1. Getting people to be involved – always difficult.
2. Management of Common Areas. (mowing, insurance)
3. Collection of Association Fees – **if allowed** under the Restrictive Covenants.
4. Reengaging HOAs that go defunct – **very difficult**.
5. Renewal/Expiration.
6. Amending Articles of Incorporation, Bylaws and Restrictive Covenants – **often very, very difficult**.



Questions?

Resource: <https://www.hopb.co/indiana>