

002 HRLNG Proposed Legislations National

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HOA Reform Leaders National Group (HRLNG) is a volunteer association that seeks to examine and propose legislation regarding personal real property rights of the homeowners managed by Homeowner Associations (HOAs).

We use the term “HOA” as an umbrella term that includes all forms of HOAs including Homeowner Association (HOA), Property Owner Association (POA), Condominium Owner Association (COA), and any Common Interest Communities (CIC). Our proposed legislation addresses the relationship and balance of power between the homeowner-members and the developers, property managers, and the Homeowner Association Board of Directors (BOD).

In purpose, an HOA is to create a beneficial living environment and preserve the property values of the homeowner-members. It has been estimated that 30% to 50% of the homes in the United State fall under some form of HOA. In most cases, HOA contracts are tied to the land and are perpetual across the owner of the land or development.

Yet, across most of the US, punishable enforcement is non-existent towards the HOA Board of Directors defined in the governmental property statutes. Should a homeowner-member be at odds with their Board of Directors, their only option is to file a civil lawsuit. This option is out of reach for most homeowners, due to the high cost and time of litigation and the ability of the BOD to retaliate with harassment. Furthermore, state and local governments rarely address these issues in their planning.

[Link to HRLNG Proposed Legislation PDF](#)

Below is a simple list of our Proposed Legislation. Below the list is the details of each part of our Proposed Legislation.

- 1. Definitions Needed
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- 2. Penalties in the Law for Board Members and Property Managers that Violate the Law
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- 3. Member Communication, Mandatory Member List with Emails and Phone Numbers
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- 4. Foreclosures and Liens, Prevention, \$10,000 minimum, 90 day notice, No non-judicial
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- 8. Usurping Authority, HOA can only enforce what is in its covenants.
- 9. Hidden Covenants and Fines, all restrictions and fines must be in the covenants.
- 10. Creation and Modification of Covenants and Rules, no additional restrictions or fines after 1st house is sold.
- 11. No Profit from Foreclosures, or Member's Use of Common Properties.
- 12. One Set of Laws, easy to read, plain 6th grade language.
- 13. Full Transparency.
- 14. Fully Funded Reserves, can only be spent on Reserve Study Items, full documentation.
- 15. Budget Vote – members can vote down individual items or amounts, majority rule, but must meet legislative requirements. Requires more than 50% of the votes to pass, not of the entire membership.
- 16. HOA Attorney and Property Manager Responsibilities
- 17. Require member vote every 3 years to determine if the HOA should be dissolved.
- 18. FHA and VA approved loans, maintain certification, 35% Rental CAP.
- 19. Developer Control (new 12/23/2023 still under discussion)
- 20. Limit of Percentage of HOA Units.

1. Definitions:

Problem:

- In many states the laws lack basic definitions that required to understand the laws. For example in Washington the laws state that the Declaration can not be changed without a vote of the members. However, what must be included in the Declaration is not defined and the covenants are not necessarily included in the Declaration.
- Similarly in many States, the difference between Covenants and Rules are not defined. Rules appear to be covenants that are not in the covenants and can be changed without following the requirements to change the covenants.

Solution:

- All definitions in the State HOA Laws, should be in the Definitions section of the law. The definitions may be in other sections also as deemed helpful to the reader.
- Capital Upgrade - is the optional addition of a permanent structural change or the improvement of some aspect of a property that will either enhance the property's overall value, prolong its [useful life](#), or adapt it to new uses. These are not repairs such as replacing rooves or repaving streets or parking lots. These would include optional projects such as remodeling a lobby that is not in disrepair, adding a tennis court, or expanding a clubhouse.
- Covenants or CC&Rs: A set of restrictions, legally-binding written agreements and fines which govern the privately owned properties in an HOA and are usually attached to the deed, meaning that when the property is sold, the new owner must also abide by the agreements. Nothing in the Covenants shall impose on or supersede the member's right to free speech or other constitutional rights or rights granted in state or federal law.
- Declaration: The instrument, however denominated, that creates a common interest community, including any amendments to the instrument and must be registered with the state or county. It is to define the land included in the HOA, including but not limited to plat maps defining the private and common interest parcels and allocated interests, the master deed, amenities, Organizational Documents, Governing Documents, the Covenants, Conditions and Restrictions (CC&Rs), the Rules and Fines. Nothing in the Declaration shall impose on or supersede the member's right to free speech or other constitutional rights or rights granted in state or federal law.
- Governing documents: The organizational documents, bylaws, covenants, rules, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction. Nothing in the Governing Documents shall impose on or supersede the member's right to free speech or other constitutional rights or rights granted in state or federal law.
- HOA Seller Certification: A document that must be given by the HOA to members upon request to certify that the sellers property meets all the covenants, has paid all applicable dues and assessments and all known upcoming assessments.
- HOA Seller Packet: All governing documents including but not limited to the governing documents, articles of incorporation, bylaws, covenants and rules, Certification, percentage of properties rented vs owner occupied, financial statements for the last 3 years, the reserved study and the current amount in the reserve account.
- Member: A corporation or person(s) that own property in an HOA, or owns other corporations that own property in an HOA.

- **Organizational Documents:** The instruments filed with the secretary of state to create an entity and the instruments governing the internal affairs of the entity including, but not limited to, any articles of incorporation, certificate of formation, bylaws, and limited liability company or partnership agreement. Nothing in the Organizational Documents shall impose on or supersede the member's right to free speech or other constitutional rights or rights granted in state or federal law.
- **Rule:** A policy or procedure, of an association, however denominated, that is not set forth in the declaration, covenants or organizational documents and governs the use or appearance of common property or conduct of persons while using common property but not including the private property. Rules might include requirements such as procedures for submitting and handling complaints or maintenance requests, quiet hours or swimming pool policies. Nothing in the rules shall contradict, impose on, or supersede anything in the Governing Documents. Nothing in the rules shall impose on or supersede the member's right to free speech or other constitutional rights or rights granted in state or federal law.

2. Penalties in the Law for Board Members and Property Managers that KNOWINGLY violate the Law

Problem:

- There are no penalties in the law for Board Members or Property Managers that KNOWINGLY violate the laws or the governing documents.
- Homeowners have to risk their life savings, retirement savings and their home to fight corrupt and abusive Board Members or Property Managers.
- Board Members and Property Managers use the collective funds of the HOA and the insurance of the HOA to pay for their attorney's fees.
- Should the HOA lose a lawsuit against a homeowner, the amount awarded to the homeowner is paid by the HOA insurance, which is paid for by the collective funds of the homeowners.
- The corrupt Board Members and/or Property Managers in violation are not at risk.
- The average homeowner, and especially low-income homeowners typically do not have enough money to challenge the HOA in court. Therefore there is only justice for the rich.
- HOA Board Members and Property Managers have no incentive to follow the law or governing documents.
- Penalties against the HOA are punishing the innocent members, not the Board Members or Property Managers that violated the laws.

Solution:

- To protect homeowners, there must be penalties in the law for Board Members and Property Managers that KNOWINGLY violate the state or federal laws or their own governing documents.
- Enforcement of the HOA laws should fall under a separate “HOA Department” of the Consumer Protection Division of the Attorney General’s office.
- HOA laws should fall under the Consumer Protection Laws.
- The HOA Department should be given the authority to fine and levy other penalties against individual Board Members and Property Managers that KNOWINGLY violate the federal, state and HOA laws and/or the governing documents of the HOA.
- The HOA Department should be funded by contribution through HOA dues and paid to the Secretary of State by each HOA when they renew their license annually.
- We suggest that each HOA member pay an amount of \$3 per year in their dues to support the HOA Dept.
- The collected funds shall be put in an account exclusively for the use of the HOA Department to use for handling HOA law enforcement and compliance.
- The amount of the dues should be adjusted annually in order to fund the effort to be able to investigate all HOA complaints within 60 days.
- Required that all HOAs must be registered in order to operate and enforce their declarations and governing documents.
- All HOAs must carry D&O insurance for their Board Members
- Board is required to arrange a member appeal at the next Board Meeting which must be held within 30 days, and the Board vote on the further action. The vote of each Board Member must be recorded.
- These policies and procedure would not deter honest people from serving on the Board but would strongly deter people who saw serving on an HOA Board as a financial or power opportunity.

Process

- Member writes complaint to Board includes quoted law or governing document that the Board Members are violating including false CCR accusations.
- Board is required to arrange a member appeal at the next Board Meeting and the Board vote on the further action. The vote of each Board Member must be recorded.
- Board responds, and refuses change its position or doesn’t respond within 10 days.

- Member files complaint with summary of issue, the correspondence sent to and from the HOA regarding the issue, and quoted law and/or governing docs to HOA Dept.
- HOA Dept investigates and finds the member correct.
- HOA Dept writes to Board, Cease and Desist letter
- By definition, the offending Board Member(s), once receiving the Cease and Desist, if they continue to violate the law or governing documents, are KNOWINGLY violating the law.
- Should the offending Board Members not rectify the problem within 5 days, the HOA Dept will order the offending Board Members removed from the Board. Another election will then be held to replace the removed Board Members. The HOA Dept will help the members to create and run the election. The HOA Dept can also choose volunteer members as temporary Board Members until the new election is complete. The HOA Dept can also appoint a receiver(s) to run the HOA until the election if necessary.
- If the Board does not correct the situation in 5 days, the HOA Department will file a lawsuit against the offending board members. If the HOA Department wins the suit, the Board Members will face fines and/or other penalties as the court finds fit, such as one or a combination of the following:
 - removal from their existing Board position;
 - enjoining them from serving on any HOA board for a certain period of time or in perpetuity;
 - personal fines or other financial penalties;
 - serve of a term of incarceration, probation, community service, or other similar penalty as the presiding judge finds applicable.
 - reimbursement of member losses due to the Board actions.
- The insurance company would cover the costs of the attorney fees to defend the Board Members, up to the point where they are found guilty by a court. If found guilty the insurance company would require the offending Board Members to reimburse them for incurred attorney fees.
- Either party may appeal the decision and the Attorney General's office will defend the decision of the HOA Department
- If damage was done to the homeowner, then at the option of the member they may file a suit against the offending Board Members under the Consumer Protection Act, thus allowing triple damages or may request that the AGs office include member reimbursement in the AG's suit against the offending members.

- In our opinion, as the Board Members have already been proven guilty, the lawsuit would most likely be to address the financial loss. Most likely the offending Board Member would want to settle.
- These policies and procedure would not deter honest people from serving on the Board but would strongly deter people who saw serving on an HOA Board as a financial or power opportunity.
- Supporting Laws
 - Minnesota:
 - https://www.ag.state.mn.us/Consumer/Publications/FiduciaryDuties.asp
 - Enforcement of These Duties: If a director breaches his or her fiduciary duties, or fails to act in accordance with the standards described above, at least 50 members with voting rights or ten percent of members with voting rights, whichever is less, or the Attorney General's Office, may bring an action for equitable relief, including awarding attorney fees and disbursements to members.

3. Member Communication; Free Mandatory Member List with Email and Phone

Problem:

- Once one group has control of the Board, they have control of all the communication, the HOA's website, weekly newsletter, Facebook and other social networking platforms and most importantly the member email list while frequently denying that list to the other members.
- This section will not apply to witness protection or other government protection programs requiring secrecy of contact info.
- In many HOAs, especially those with a large number of properties or many that are rentals, second homes, or vacation properties, it is very difficult and expensive for the members to communicate freely with each other. This stifles member organization, activism, as well as elections.
- There cannot be justice or fair elections if those in power have free communication with all the members, but those attempting to be elected do not have free communication.

Solution:

- HOA Boards must provide a free MANDATORY Member List including name, HOA address, mailing address, email address and phone number should be available to all members.
- All HOA Members MUST provide all the information above to the HOA with one exception, any member may choose to keep their phone number off the list.

- No privacy concerns. Members may use their existing email address or create a special email address to be used for all communications to and from the all members and staff of the HOA. This is the email address that will be shared in the Member List and the only one used by the HOA and staff.
- To assure that no member of the HOA can have unauthorized access to the members email, the HOA will not provide email services in any manner. All email services must be through outside sources including but not limited to Gmail, Outlook, Yahoo or other similar services. Generally these email services are free.
- The Board shall assure that those without knowledge of email use receive basic training on how to use email, and how to change their password.
- Members may choose to have all their communication sent also through USPS mail.
- All members and all HOA Staff with access to the list will sign an agreement to not share the email addresses or phone numbers with anyone outside the HOA and to not use the email or phone numbers for commercial purposes. All phone numbers are to be included unless specified to be unlisted by the property owner.
- Members are free to block other members from their phone or email.
- Does not apply to witness protection or other government protection programs requiring secrecy of contact info.

4. Foreclosures

Problem:

- The goal of an HOA should be to benefit its Members, not to financially damage them or steal their homes. In too many HOAs this is not the case as the abilities for HOAs to levy fines, place liens on homes, and foreclose on homes is quite often used too liberally, illegally, unethically and to excess.
- In many states, late payments of dues or assessments have additional fees added, such as late fees, administration fees, and attorney fees and even if payment is made, more fees are added trapping the homeowner in a pyramid fee scheme they can't escape.
- Often, liens and foreclosures are filed without the property owner's awareness.
- Fines, late fees, and attorney's fees often far exceed the value of the fine, back dues, and/or assessments. Recently a woman forgot to pay her annual dues of about \$350 and ended up paying almost \$8000 with the fines, late fees, and attorney's fees. Attorneys know that in order to foreclose in WA, a homeowner has to be 3 months past due in Assessments, and the amount must be more than \$2000. It does not seem at all reasonable that a person could lose their home over a \$2000 debt, and three months late hardly seems like enough time.

- In a recent study done by HOA Fight Club, studying multiple counties around Seattle, 90% of the foreclosures were for HOAs not for non-payment of mortgages.
- There are many ways to collect bad debt. Foreclosure should be the last effort, not the first, and should not be allowed for debts under \$10,000.

Solution:

- All laws relating to fair housing, fair collections, fair lending and consumer protection should apply to all members and Boards of HOAs.
- All HOA dues should be paid from homeowner's escrow accounts, making it impossible to be late in paying assessments.
- If the owner of the home does not have a mortgage, then the HOA owner should have a choice to pay all dues up front, or pay quarterly or monthly with no interest.
- 30 day written notice for all fines and debts, and 30 days for member to file dispute.
- All debts under \$10000 must be handled through small claims court (or the HOA Dept) with no attorney's allowed to present in any fashion. Boards should not be the legislative group, accusers, judges and enforcement of the HOA.
- All fines, late fees and interest stop once dispute is filed in writing with HOA, until it is resolved in small claims court or the HOA Department.
- No fines, fees or attorneys fees are allowed before going through either small claims or the HOA Dept.
- Attorneys fees in excess of 10% of the original amount owed not including any fees or interest, can not be charged to the homeowner, and not until the case is decided through small claims, or the HOA Dept. and all appeals are concluded.
- Minimum debt to allow Foreclosure to be \$10000 or \$1000 per the number of units in the HOA, whichever is less. This minimum should not include anything but the original assessment or dues amount, no late fees, interests, attorney fees or other.
- All efforts should be taken to minimize damage to the property owner and minimize property owner legal costs.
- 90 day notice before foreclosure and the notice must include the amount required to stop the foreclosure and the contact information for all state free or low cost foreclosure counselors.
- Mediation must be started at least 30 days before the foreclosure date.
- Non-Judicial foreclosures can only be allowed if agreed upon by both parties.

- Properties sold in foreclosure to be sold through a realtor chosen by the seller at market value in the current real estate market, not at Sheriff's sales.
- Homeowners of foreclosed homes must move out of the property within 30 days of foreclosure.
- After deducting debts attached to the property, and the cost of the sale of the property, the member to receive the balance of equity.
- HOA violations of the above fall under the HOA Department, and are considered Consumer Protection Act violations with treble damages and attorney fees as penalties.
- Board Members or Property managers that knowingly violate the above are considered Consumer Protection Act violations with treble damages and attorney fees as penalties.

5. Covenants, Fines and Collection of Fines

Problem:

- Unequal covenant enforcement and FALSE covenant violations are often use as retaliation, harassment, intimidation or weapons against homeowners that ask questions, ask to see financial documents, disagree with Board Members, run for a Board position, for discrimination purposes, or as retaliation in member disputes.
- Attorney's fees and late fees often exceed the value of the original fine or amounts owed.
- The goal of an HOA should be to benefit its Members, not to financially damage them or steal their homes. In too many HOAs the abilities for HOAs to levy fines, place liens on homes, and foreclose on homes is quite often used unnecessarily, illegally or, unethically.
- In many states, late payments of dues or assessments have unreasonable additional fees added, such as late fees, administration fees, and attorney fees and even if payment is made, more fees are added trapping the homeowner in a pyramid fee scheme they can't escape.

Solution:

- All laws relating to fair housing, fair collections, fair lending and consumer protection should apply to all members of HOAs.
- Reasonable and consistent time periods to fix CCR violations before fining are required, must be documented and readily available to the members.
- 30 day written notice for all fines, and 30 days for member to file dispute.

- All fines, late fees and interest stop once dispute is filed in writing with HOA, until it is resolved in small claims court or the HOA Department.
- The Board is required to arrange a member appeal at the next Board Meeting and the Board vote on the further action. These appeals must take place in the beginning of the Board Meeting. The vote of each Board Member must be recorded.
- No fines, fees or attorneys fees are allowed before going through either small claims or the HOA Dept.
- Attorneys fees in excess of 10% of the original amount owed not including any fees or interest, can not be charged to the homeowner, and not until the case is decided through small claims, or the HOA Dept. and all appeals are concluded.
- Challenged CCR violations and fines MUST be taken to small claims court or the HOA division of the AGs office once created before being fined with no attorneys allowed to be involved. Boards should not be judges.
- All HOA records and arguments to be presented in court or HOA Dept must be given to the member at least 30 days before the court or hearing date.
- All fines, late fees and interest stop once dispute is filed in writing with HOA, until it is resolved in small claims court or the HOA Department of the AGs office once created.
- All records of CCR violations and fines must be accessible by all member including the name of the person filing the complaint and the document on which the complaint was filed and all communications between the accuser and the Board and employees of the HOA.

6. Fair Voting Laws for HOAs

Problem:

- HOA Board Members control the entire voting process.
- It is far too easy for them to manipulate the voting.
- Often, people controlled by the Board or even the Board members themselves are the ones receiving and/or counting the votes.
- They also may have access to the proxies or ballots before they are counted.
- There are too many ways that the Board Members can manipulate any election.
- Often Property Managers will conspire with the Board Members to distort the elections to keep the HOA as their customer. Property Management companies should not be involved with the elections in any way.

Solution:

- All members should receive one vote, no matter the number of properties owned by that member. One vote per household or master corporation.
- All HOA election voting or other voting must be conducted completely by an independent outside election company. The election company can not be indemnified by the HOA.
- Anyone on the current board will be disqualified from running again in perpetuity if they do not hold the election according to when their term is up.
- No felons on the Board. If a board member is found to be a convicted felon they will automatically be removed and replaced with the candidate that had the next highest votes in the last election to complete their term.
- Board members who are caught embezzling or receiving kickbacks are immediately removed from the Board cannot run again on the HOA Board and cannot participate on any committee, and neither can their spouse or anyone living with them in their unit or parcel.
- There must be a three or more person independent election committee, not under the control of the Board, elected by the membership that organizes and schedules the election.
- The HOA attorney, property management company, any member of the current board, members running for the Board and their family members are prohibited from sitting on the election committee.
- Board members are not allowed to use HOA funds, resources, social media, mailing lists or other communications belonging to the HOA that other members are not allowed to use for free to send out any communications, pro or con, regarding any of the candidates, members, policies or to make any political commentary.
- Elections cannot be held on any holiday weeks and must only be held on weekends.
- All candidate's bios, and information must be mailed to every member at the same time and in the same manner at the expense of the HOA. HOAs shall include an elections fund provided for in their budgets.
- Homeowners should have at least thirty days to mail in or otherwise submit their ballots from the day they are sent to them, or cast their vote electronically if an electronic voting system is in place. The envelopes for the ballots must have prepaid postage, the mailing address of the election company and the member's return address on it.
- Homeowners should be allowed to vote electronically. The electronic voting system cannot be operated, licensed or in any way have any connection or affiliation with current

board members, members of the HOA, property management company, HOA attorneys and or subsidiaries of any of the previous mentioned bodies.

- No ballots from members should be sent to the HOA nor should any board members, other member, staff or employee have any access to the ballots before they are counted. The ballots should be mailed directly to the election company. No Board members, other members, staff or employees should have any access or participate in any way with the process of the elections or voting on issues or in any way shape or form in the processing of the election documents. This shall not be superseded by any governing documents in the declaration, bylaws, articles of incorporation or CCR's.
- Current board members are not allowed to change bylaws, articles of incorporation or CCR's. All changes must be accomplished by a majority vote of the members.
- Quorum of the meetings must be set in the Declaration. Quorum must be no less than 10% of the membership and not more than 20%. Any changes in meeting quorum must be accomplished by a vote of the membership and not the HOA board of directors on their own accord. Quorum is required for all meetings except elections. Election meetings have no Quorum.
- Board members are limited to three year consecutive service and then cannot run again for another six years. This statute is retroactive.
- Members who contest an election and are forced to use their own funds in arbitration or in a civil law suit will be reimbursed all cost of litigation for exercising their right if Judgement is ruled in their favor. If it is not in their favor both parties will pay their own fees as an honest contest of an election is considered a service to the HOA.
- Any Board Members who are found to tamper with the election process in any way shape or form will automatically be removed from the board and their parcel number will be prohibited from running in the election indefinitely until a new parcel owner has been established. A board member taking their name off the deed to circumvent this rule will still be prohibited from becoming a sitting board member.

7. Uniform Enforcement

Problem:

- Selective and unequal enforcement runs rampant in HOAs.
- Currently Boards are left to monitor themselves.
- Unequal enforcement is often used to harass individual homeowners and sometimes used to chase them out of the community or even to force them into foreclosure on their home.
- Board Members, PMs, and Attorneys working for HOAs have the fiduciary responsibility to make decisions that benefit at least the majority of the community, but preferably

equally to the entire community as well as protecting the rights of the individual property owners, but they ignore this responsibility.

- In many HOAs, small groups of people with special interests take over Boards and make decisions for their own property's benefit while damaging the other properties.

Solution:

- Board Members, PMs, and Attorneys are responsible to the homeowners, both individually and as a whole, not to the Board or the HOA organization. At any point that a PM or attorney is aware of any violations of the State HOA RCWs by a Board Member, it is the fiduciary and legal responsibility of the PM or attorney to advise the Board member of the laws, and if the situation is not immediately rectified, to report the violation to the State and copy the offended property owner.
- All covenants must be fully and equally enforced on all or removed.
- No individual waivers of the CC&Rs or Rules must be allowed.
- Enforcement of the CC&Rs is limited to specific stated requirements within the CC&Rs.
- All CC&Rs must be enforced equally or removed. Boards cannot engage in selective enforcement or make waivers for one member but not others for similar issues.
- General and subjective statements such as "properties must be maintained in an attractive manner" are not enforceable by an HOA. CC&Rs must be specific, such as "grass lawns may not be more than 6" tall."

8. Usurping Authority

Problem:

- HOA Board Members will often usurp authority of the local governing body such as the City or County, or even create Bylaws, Covenants or Rules that violate the Constitutional Rights of Members.
- They may try to enforce County codes or speed limits by fining those that don't follow the Boards interpretation of the City or County ordinances.
- It becomes impossible for members to follow two different interpretations of the same laws.

Solution:

- HOAs can only enforce what is clearly stated in the covenants and rules.

- The laws will clearly state that HOAs have no authority to enforce Federal, State, County or City laws or ordinances.
- Nothing in the rules shall impose on or supersede the member's right to free speech or other constitutional rights or rights granted in state or federal law.
- An HOA's authority is limited to the enforcement of covenants and levy fines only as stated specifically in their CC&Rs and Rules.
- HOAs do not have authority to enforce laws or ordinances or usurp authority from government enforcement agencies.
- General statements in the HOA's governing documents indicating that members must follow all applicable laws and/or ordinances does not give the HOA the authority to enforce laws or ordinances.
- HOAs cannot enforce or fine for speed limits, building codes, zoning or other laws, State or County ordinances, etc. that are enforced by other government agencies.
- HOA Covenants may not contradict or supersede laws or ordinances.

9. Hidden Covenants and Fines

Problem:

- In many cases homeowners buy into an HOA not being aware of the covenants or even that the property they are buying is in an HOA.
- Often times there are other "rules and fines" that are not in the covenants.
- Some HOAs will not provide the governing documents or HOA Seller Packet as described in the definitions above.
- Often times there are other "rules and fines" that are not in the covenants.
- Many times, people buy properties in HOAs either not knowing the property is in an HOA, that covenants exist, or not aware that there are additional rules or fines that are not mentioned in the covenants.

Solution:

- The HOA Seller Packet as defined in this section must be presented to prospective property buyers before they make an offer on the property.
- A cover sheet listing all the components of the Seller Packet must signed and dated by the prospective property buyer and included in the offer documentation when a prospective buyer is making an offer on a property that is in an HOA.

- All fines for Covenant violations must be written into the Covenants.
- All Rules of the HOA and all applicable fines must be in the Covenants.
- Seller Certifications found to be fraudulent should be prosecuted as fraud.
- The process to change those governing documents must be written in the bylaws and require more than 50% of the total membership to vote in favor of the change.
- The HOA is responsible to deliver the Seller Certification and all governing documents to the seller within 15 days of the seller's request.
- Seller Certification fee should be "actual cost" with detailed receipt of how the cost was calculated, not to exceed \$275 and no fees to be added by any other vendor for these documents. \$100 update fee is the only exception, but must be actual cost not to exceed \$100.
- All documents must be written in plain English and in 6th grade language.

10. Creation and Modification of Covenants and Rules

Problem:

- Buyers buy into an HOA that is being run in an appropriate and lawful manner, but another Board takes over and begins to modify the original covenants (contract) in a way that benefits the Board Members but hurts the other members. These are often large investors.

Solution:

- Once the first home is sold in an HOA, no additional covenants to be allowed to be added or be made more restrictive.
- A homeowner by buying in an HOA or COA is agreeing to a contract that contains covenants. Under current laws in most states, those covenants could change the next day.
- All members receive one vote, no matter the number of properties owned by that member.
- One member per household or master corporation.
- Covenants can be removed or made less restrictive at any time by a membership vote. The majority of the total membership decides at any time.
- Bylaws and the Declaration, other than Covenants can be adopted, amended, or repealed by a majority vote of the total membership at any time. (added 12/23/2023)

- Rules for common areas may be adopted, amended, or repealed by a majority vote of the total membership at any time.
- Members may propose a Covenant Repeal, partial repeal, or Rule Change by obtaining petition signatures from 2% of the members or 50 members, whichever is less. The petition must include the exact wording of the current Covenant or Rule and the exact changes desired.
- The election committee must give all members:
 - A copy of the petition for the change in the Covenants, Rules or Fines;
 - A date by which the members must vote on the change.
 - And electronic or paper ballots to vote.
 - The change is passed if more than 50% of the votes cast are for the change.
 - Voting may be by paper and/or electronic means through an impartial third-party voting company.
- Voting must be completed within 60 days of the submission of the petition and voting ballots must be sent at least 30 days before the end of the voting period.
- All members should receive one vote, no matter the number of properties owned by that member. One vote per household or master corporation.
- Following the vote to repeal or amend a covenant, the association must give notice to the unit owners of its action and provide a copy of the revised covenants.
- An association's internal business operating procedures need not be adopted covenants but cannot add to, delete from, or contradict the covenants.
- Every Covenant must be reasonable and apply and be enforced equally to all members. Question of reasonableness to be determined by the State Attorney General's office.
- Following a change to the Covenants or Rules, the association must give notice to the unit owners of its action and provide a copy of all the total Covenants/Rules in updated form.
- An association's internal business operating procedures need not be adopted as rules but cannot add to, delete from, or contradict the Covenants or Bylaws
- Every rule must be reasonable and apply and be enforced equally to all members. Questions of reasonableness to be determined by the State Attorney General's office.

11. No Profit from Foreclosures, or Member's Use of Common Properties

Problem:

- Corrupt Boards will take money from Insurance Proceeds of one damaged building but spend it on other projects.
- Boards charge more for the production of copies of HOA records than the actual costs.
- HOAs will charge members more for using an HOA property or facility than the actual costs of operations and maintenance, thus in effect charging them twice for the same thing and charging certain members more than others.
- HOAs unnecessarily force members into foreclosure then the HOA, Property Managers, Board Members, or their associates buy those homes for pennies on the dollar.

Solutions:

- Members of property damaged must approve how the insurance reimbursements are spent.
- All insurance payments must be used to make the repairs for the insured building. Remainder if any to go to the reserve fund.
- Repairs should leave insured building in as good or better condition than before damage.
- Members should be mutual beneficiaries of HOA insurance.
- HOAs must not make a profit from members through any individual common property.
- Example: HOAs may not charge homeowners for RV or boat storage, charge them more than the actual costs to the HOA, and then use the additional funds for any other purpose.
- HOA may not charge members for use of common areas including clubhouse. They can charge non-members.
- HOAs may charge for damage caused by a member and the actual cleanup costs if any.
- No sitting Board member or family member/relation of a sitting Board member or Property Manager is allowed to purchase a home, unit, or property being foreclosed upon in the community their Board manages.

12. One Set of Laws, in easy to read, plain 6th grade level English.

Problem:

- In some states there are different laws for HOAs created in different years.

- Some states laws allow developers and HOA Boards to not follow the HOA laws by stating covenants or rules in their declaration that do not match the laws.
- Many of the laws are written in such a confusing manner that even the attorneys and legislators can't understand what they say. It is therefore impossible for the layman homeowner to understand them.
- Board Members and Homeowners of HOA are generally volunteers from different walks of life and most are not attorneys, yet they need to understand and follow the HOA laws. They must be simplified.

Solution:

- There should be one set of laws, that applies to all forms of HOAs, that are simple to read, in 6th grade language to make them understandable to the average homeowner and Board Member.
- Wherever a law refers to another part of the law, both the numeric representation of the section of the law and the name of the section such as "Transparency of Records", should be stated to assist in easier reading.
- Old declarations should be required to be modified to meet the current laws.
- "Unless stated otherwise in the Declaration" and similar statements should be removed from all HOA law.
- The term "May" as in "may require" should be replaced with must or must not in all laws and governing documents.

13. Full Transparency

Problem:

- Lack of transparency leads to poor management, embezzlement, homeowner abuse, unequal enforcement, special treatment, theft and many other problems.
- Homeowners have to fight Boards, Property Managers and Attorneys to access the documents of the association that they are entitled to see.
- Boards and Property Managers often charge excessive fees to see the documents.

Solution:

- All records required to be retained by an association must be made available for examination and copying by all unit owners, holders of mortgages on the units, and their respective authorized agents, on line, in a website or equivalent AND; at the offices of the association or its managing agent during reasonable business hours or at a mutually

convenient time and location.

All financial records, contracts, Declaration and amendments and Governing Documents must be available to the general public on line in a website or equivalent.

An association must retain the following in permanent electronic record available on a website or equivalent with only the exceptions specified in this section:

- The current budget, detailed records of receipts and expenditures affecting the operation and administration of the association, and other appropriate accounting records within the last seven years;
- Minutes of all meetings of its unit owners and Board other than executive sessions, a record of all actions taken by the unit owners or Board without a meeting, and a record of all actions taken by a committee in place of the Board on behalf of the association;
- A complete and accurate list of current unit owners, including the names of current unit owners, telephone numbers unless member opts out of giving phone number, addresses in the HOA, mailing addresses, email addresses, and the number of votes allocated to each unit;
- Its original declaration, governing documents, organizational documents, rules all amendments to the declaration, governing documents and organizational documents, and rules; and complete current forms of each.
- All financial statements and tax returns of the association for the past seven years;
- A list of the names and addresses of its Board members and officers and the dates they served;
- Its most recent annual report delivered to the secretary of state, if any;
- Financial for the last 7 years.
- Copies of contracts to which it is or was a party for seven years after the end of the contract;
- A permanent record of materials relied upon by the Board or any committee to approve or deny any requests for design or architectural approval and the reasons for approval or denial.
- A permanent record of materials relied upon by the Board or any committee concerning a decision to enforce the governing documents including the reason for the enforcement and related fines, court records, etc.
- Copies of insurance policies under which the association is a named insured;

- Any current warranties provided to the association to be held for one year after the warranty expires.
- Copies of all notices provided to unit owners or the association in accordance with this chapter or the governing documents; and
- Ballots, proxies, absentee ballots, and other records related to voting by unit owners for 7 years after the election, action, or vote to which they relate.
- A record of all CCR violations, related documentation, fines and results.
- Records retained by an association may be withheld from inspection and copying to the extent that they concern:
 - Personnel and medical records relating to specific individuals;
 - Contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated;
 - Attorney-client privileged details of current or potential litigation or mediation, arbitration, or administrative proceedings
 - Attorney-client privileged details of current or potential matters involving federal, state, or local administrative or other formal proceedings before governmental tribunal for enforcement of the governing documents;
 - Legal advice or communications current or potential matters that are otherwise protected by the attorney-client privilege or the attorney work product doctrine, including communications with the managing agent or other agent of the association;
 - Information the disclosure of which would violate a court order or law;
 - Records of an executive session of the Board;
 - Personal phone number of member if requested to be held confidential by member.
 - Security access information provided to the association for emergency purposes.
 - All Board Members shall have free access to all records.
- An association may only charge their actual cost for producing and providing copies of any records under this section and for supervising the unit owner's inspection and may not charge for access to or member downloading of electronic records stored on a website or equivalent.

- A right to copy records under this section includes the right to receive copies by photocopying or other means, including through an electronic transmission if available upon request by the unit owner.
- An association is not obligated to compile or synthesize information other than the member list.
- Information provided pursuant to this section may not be used for commercial purposes.
- An association's managing agent must deliver all of the association's original books and records to the association immediately upon termination of its management relationship with the association, or upon such other demand as is made by the Board. An association managing agent may keep copies of the association records at its own expense.

14. Fully Funded Reserves

Problem:

- HOA reserve accounts are very frequently far below the required funds to adequately cover the reserves study.
- Early owners are running up debt because they are not paying enough dues to cover the reserve study costs. In effect this is stealing from future buyers.
- This practice at some point will cause large assessments which can then lead to foreclosures. This can also lead to unsafe buildings causing injury, illness and possibly deaths.

Solution:

- All new HOAs should have reserve studies at least every 3 years and maintain a 100% funded reserve account. This means that there is money in the reserve for all common assets equaling the current percent of the straight-line depreciation of each asset times the current replacement cost. As an example, if a roof has a projected 30-year life, at year 15, half of the current cost of replacement should be in the reserve.
- Requirement for all existing HOAs to move to fully funded Reserve accounts over a 10-year period.
- Reserve funds can only be spent on reserve items.
- All HOA damage and repairs should be listed and briefly described in a report each month, along with the cost associated with the repair.
- The President, Vice President, Treasurer and Secretary, at least 4 Board Members must sign checks that remove money from the Reserve Account. A monthly report must be

posted with the financial statements showing where the Reserve Funds were spent.

15. Budget Vote and Special Assessments

Problem:

- Many HOA Budget votes require more than 50% of the total membership to vote down a budget. Most HOAs don't get that number of people to vote at all. Thus it is virtually impossible to vote down a budget.
- Board Members have total control of the budget and can often abuse this power.
- Members need the ability to vote down individual line items in a budget

Solution:

- Budgets to require more than 50% of a quorum of members that vote, to pass instead of 50% of full membership to deny. If the budget is rejected, or the required notice not given, the periodic budget last ratified by the unit owners continues until the unit owners ratify or approve a subsequent budget proposed by the board.
- Individual line items may be voted in or out by the members through the motion process.
- Within thirty days after adoption of any proposed budget for the HOA by the Board, the Board must provide a copy of the budget to all the unit owners and set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than fifty days after providing the budget.
- Members may assign their votes to those that can attend by proxy which will be supplied by the HOA to the members with the notification of the meeting.
- The Budget meeting is a member meeting not a Board Member meeting.
- Chair to be voted for by the membership present at the meeting as the first action of the meeting.
- The Board will supply the chair a recommended agenda.
- The second action in the meeting will be for the Treasurer or their assign to explain the proposed budget and answer questions.
- The chair will loosely follow Roberts Rules of Order to make the meeting as efficient and fair as possible.
- All motions to the budget must be addressed at the budget meeting.

- Budgets are required to meet fully funded reserve accounts as well as maintenance of all common assets and all other legal requirements and cannot be voted out of the budget.
- The budget must include: (modifications below still under discussion 12/27/2023)
 - The projected income to the association by category;
 - The projected common expenses and those specially allocated expenses that are subject to being budgeted, both by category;
 - The amount of the assessments per unit, the amount those assessments have increased or decreased expressed on a percentage basis from the most recently ratified budget, and the date the assessments are due;
 - The current amount of regular assessments budgeted for contribution to the reserve account;
 - A statement of whether the association has a reserve study that meets the requirements of the State and, if so, the extent to which the budget meets or deviates from the recommendations of that reserve study; and
 - The current deficiency or surplus in reserve funding expressed in total and on a per unit basis.
- **Special Assessments** The board, at any time, may propose a Special Assessment. Special Assessments should be avoided as they generally indicate poor management practices and surprise assessments put an unnecessary burden on the unit owners. The assessment is effective only if the board follows the procedures for ratification of a budget described in of this section, the purpose(s) of the special assessment is(are) clearly stated in the notice required by of this section, and the majority of a quorum of members at a meeting called for that purpose approve the assessment.
- Special Assessment Meetings must follow the same laws as Budget Meetings.
- Individual line items may be voted in or out by the members through the motion process.
- The special assessment must include:
 - The projected income to the association by purpose;
 - The amount of the assessments in total and per unit and the date the assessments are due;
- The board may provide that the special assessment may be due and payable in installments over any period it determines, and may not provide a discount for early payment, no finance or late fees will be charged but interest of the current T Bill rate plus 1% can be charged to the member if their payments are late. Unit owners must be allowed to pay the entire balance of their assessment at any time in advance.
- The association may spend funds paid on the special assessment only in accordance with the purpose(s) stated in the notice of the assessment ratification meeting. Reconciliation of specially assessed funds shall occur no later than sixty (60) days following the expenditure satisfying such purpose(s). Surplus funds, if any, remaining after such purpose(s) have been fulfilled shall be credited to the units in proportion to their allocated interests.

- If the purpose of a budget item or special assessment is to make one or more capital upgrade(s), there must be a separate motion to pass the capital expense budget item or special assessment.
 - If the capital upgrade portions of the budget and the special assessment combined is equal to or less than 5% of the budgeted gross expenses for that fiscal year, the motion requires a majority of votes of all units' owners in the association to pass;
 - for combined capital upgrade that exceed 5% but are equal to or less than 10% of the budgeted gross expenses of the association for that fiscal year, the approval of the unit owners of units to which sixty-seven percent (67%) of the votes in the association are allocated;
 - for combined capital upgrade that exceed 10% of the budgeted gross expenses of the association for that fiscal year, the approval of the unit owners of units to which ninety percent (90%) of the votes in the association are allocated.

16. HOA Attorney and Property Manager Responsibilities

Problem:

- HOA Attorneys and Property Managers often protect Board Members that are making illegal or unethical decisions.
- HOA Attorneys and Property Managers also often appear to be helping the corrupt Board Members and Property Managers to take advantage of the homeowners.

Solution:

- HOA attorneys by law should be required to represent the membership as a whole, not the Board, in all issues.
- Board Members may be the day-to-day interface with the HOA attorney, but the loyalty of the attorney should be to the members as a whole.
- HOA attorneys and property managers should be mandatory reporters of illegal or unethical actions of the Board and the Property Managers. The Attorney or Property Manager should attempt first to explain the correct actions to the Board and assure that they are aware that their actions are unethical or illegal. Should the Board not correct their actions within 5 days the Attorney or Property Manager shall report their actions to the Attorney General office for further action.
- HOA Members should be co-beneficiaries on all HOA Vendor contracts.

17. Require member vote every 3 years to determine if the HOA should be dissolved.

Problem:

- Many HOAs no longer enforce their declarations, and don't want to.
- Other HOA Boards are so corrupt, the members no longer want the HOA, but those in control of the Board won't release control.
- In some cases the number of votes required to dissolve the HOA is so high it is virtually impossible.

Solution:

- Requires 65% of those voting to dissolve the HOA.
- This law would apply to multi-building COAs, but then would require the creation of single building COAs.
- Obviously, this can not apply to single building COAs.

18. Rental Caps and Rental Covenants

Problem:

- If there are too many rentals in an HOA, the FHA and VA will not approve loans. This results in denying veterans and others access to housing.
- Some HOAs create covenants to not allow rentals. This decreases the number of rental homes available and raises rental prices.

Solution:

- HOAs should be required to maintain their FHA, VA and government subsidized loan certifications.
- Require a 35% rental CAP, lower CAPs restrict renters decreasing the availability of affordable housing for renters. Higher than 50% cause FHA and VA to not approve loans.

19. Declarant (Developer) Control

Problem:

- The whole concept of how the Declarant has complete control needs to be reconsidered and rewritten. Under the current laws the Declarant is in effect the dictator of the community. This should not be allowed in the USA.

Solution:

- There should be a standard set of CC&Rs written into the laws that create a checklist of CC&Rs that a Declarant can choose from.
- Once the CC&Rs chosen and submitted in the Declaration, no changes will be allowed to be made to any part of the Declaration, including any of the governing documents without a vote of the members.
- The HOA will have its own Board from the point at which all the units are sold or there are 10 units sold, whichever is less.
- The HOA Board and the Declarant must abide by the Declaration and cannot change the Declaration until all the units are sold or rented for the first time or 3 years has expired since the sale of the first home. At that time total control of that section of the HOA is turned over to the homeowners. The 3 year period then begins on the next section after the first home is sold in that section.
- All Board members and all members must be unit owners.
- The Declarant is a unit owner until the last unit is sold or rented for the first time. The Declarant holds one seat on the Board until the last unit is sold or rented for the first time.
- All Board Members must be voted in, not appointed, with the exception of a Board Member's resignation.
- All Members get one vote no matter how many units they own. In the case of Units owned by corporations, and those corporations are owned by one corporation we will call the Master corporation, the Master corporation gets one vote.

20. Limit of Percentage of HOA Units.

Problem:

- Currently 30% of all homes are under some form of HOA. Many counties and municipalities are requiring builders to create HOAs in all new developments. This limits the ability of citizens to buy outside of HOAs thus forcing them into these dictatorial HOA contracts. This especially applies to those looking for lower income housing.

Solution:

- States, counties, parishes, and municipalities may not require developers to create HOA developments in order to receive permit/s to proceed with construction.
- States, counties, parishes, and municipalities may not allow more than 30% of total units in their jurisdiction to be under any form of HOA. They may also not allow more than 30% of all dwellings in any financial segment in \$100,000 segments, based on the

average tax appraisals of the units in their jurisdiction, to be under any form of HOA.
Financial segments meaning \$0 to \$100,000, more than \$100,000 to \$200,000, etc.

- All EXISTING HOAs are grandfathered in even if currently there are more than 30% of homes in that jurisdiction.