

**US ARMY SUPPORT ACTIVITY, FORT DIX, LEGAL BRIEF**

A PREVENTIVE LAW SERVICE OF THE LIMITED LEGAL ASSISTANCE OFFICE

***KEEPING YOU INFORMED ON YOUR PERSONAL LEGAL NEEDS***

**Homeowner & Condominium Associations**

 Membership in the association of a common interest community involves balancing private rights of ownership and the collective interest of the whole community. A Condominium Association (COA) is made up of unit owners in a condominium. A Homeowners Association (HOA) is made up of home owners within a subdivision. The driving force behind a COA/HOA is to protect the value of the properties in the condominium/subdivision. Certain standards are set that all members of the community are expected to abide by.

 The association’s documents contain restrictions and covenants (promises to do or not do specified actions) that apply to a subdivision. You may have heard the phrase “Restrictive Covenants.” The Declaration normally contains restrictions related to vehicles, parking, signs, use, nuisance, architectural changes, easement rights, and covenants related to maintenance and assessments of units, common elements, and limited common elements.

 Use Restrictions can relate to occupancy of a unit, having a business, trash, garage storage, pets, vehicles allowed on premises, parking limitations, and use of common elements such as swimming pools and recreational facilities.

 Architectural Restrictions can relate to landscaping (planting and removal of trees), exterior modifications (ex: paint color), ornaments, storage sheds, decks, gazebos, arbors, patio covers, fences, roofing, window coverings, exterior lighting, swimming pools, playground equipment, driveway changes, and satellite dishes. There may be an “Architectural Review Board” that approves/disapproves home improvement projects.

 Bylaws are generally operational documents, although it is not unusual for bylaws to contain some restrictions which are usually binding upon the community.

 Rules and Regulations supplement the restrictions and covenants in a Declaration. Rules and Regulations are adopted by vote of the association executive board; should not conflict with the Declaration; and are based upon the need to address certain behavior that affects the whole community. If it is a rule/regulation and everybody knows about it and it is not discriminatory or against public policy, the rule can probably be enforced.

 There is often a Property Management Company (PMC) that maintains the condominium/subdivision and enforces the Restrictive Covenants. Some examples of PMC services are upkeep of neighborhood signs, yard care of common areas, and maintenance of a community swimming pool. The PMC may also handle neighbors’ complaints about violations of the Restrictive Covenants. COA/HOA dues or assessments, collected from each condominium unit owner/homeowner, are used to pay for PMC services and other operating costs in the COA’s/HOA’s budget.

 Some of the expenses found in a COA’s/HOA’s budget may be for insurance, garbage collection, common area utilities, maintenance, administration, pest control, and capital reserves (money set aside to pay for anticipated future expenses, such as a new roof for the community center).

 Special assessments are in addition to regular assessments. Special assessments come about when the COA/HOA has an unanticipated expenditure not included in the budget (ex: a storm caused a large tree to crash into the community center’s roof). Special assessments also come about when there is not enough money, in the budget, for certain expenditures.

 If, for whatever reason, you want to sue your COA/HOA, consider the following: Owners pay their own attorney fees. You are, in part, suing yourself. COA/HOA governing documents allow the allocation of costs of a legal action to its members using a special assessment. If you win your case, you may have to pay part of your awarded monetary damages to yourself and also your share of the COA’s/HOA’s legal fees to defend against your legal action.

***ASA DIX LEGAL BRIEF is one of a series of Information Papers from the Limited Legal Assistance Office containing general legal information on topics which Legal Assistance Attorneys frequently advise on. Information provided is general in nature and does not constitute formal, specific legal advice. Consult an Attorney for specific legal advice for your particular situation. You may schedule a legal assistance appointment by calling the Joint Base McGuire-Dix-Lakehurst Legal Assistance Office at 609-754-2010. 2021***