

About this Guide

This directory of Frequently Asked Questions (FAQS) presents a list of common questions the Office of Neighborhood Relations and other departments receive on a regular basis concerning neighborhood, homeowner, and condominium associations. These questions have been compiled based upon the most common requests for information and gathered using information from various county departments and resources from around the country.

Questions from Homeowners Associations

What is a homeowner's association?

This type of association includes lot owners who join together for the betterment of their subdivision or neighborhood. There are two types of associations: 1) voluntary, and: 2) mandatory. A voluntary association means owners do not have to be a member of the association and the association does not have the authority to force lot owners to do anything. A mandatory home owners association means that owners automatically belong to the association by virtue of their property deed and MUST pay dues. These associations have the authority to enforce rules and regulations and may be able to place liens against an owner's property if the owner is not paying dues.

A homeowners association is typically a non-profit corporation registered with the State and managed by a duly elected Board of Directors. Its purpose is to maintain all common areas and to govern the community in accordance with the provision of the legal documents: covenants, conditions and restrictions (CC&R's), bylaws, and articles of incorporation.

What is the Board of Directors?

The Homeowner's Association is a corporation and therefore a governing body is required to oversee its business. The Board of Directors is elected by the homeowners, or as otherwise specified in the bylaws. The limitation and restrictions of the powers of the Board of Directors is outlined in the Association governing documents.

I don't remember joining an homeowners association; could I be a member without having signed up?

The deed restrictions that apply to all of the lots in your subdivision state that by accepting a deed to property, all lot owners become members of the association. You did not need to "join" to become a member. You will be a member for as long as you own your home, and when you sell it, the person who buys from you will become a member.

My house is in the name of both my spouse and me. Are we both members?

Yes. However, all assessments and costs of being in the association, and all voting rights, are determined by lot, not by member, so a lot that is owned by 5 members, for example, will not pay any more, or have more votes in the association, than a lot owned by 1 member.

Do I have a vote in how and what the Association does?

Yes. Once the association is turned over by the developer, you and your neighbors control the association, and each lot has one vote in all matters submitted to the association for a vote.

How are the annual mandatory homeowners association dues determined, and where does the money go?

Dues are determined based on estimates of the total costs of taking care of all association responsibilities will be, and then dividing that number by the number of lots in the subdivision. Dues include the estimated costs of maintaining the common spaces (lawn, landscaping, and pond maintenance, utilities if applicable, taxes, insurance, and management fees if applicable, etc.), and maintaining a reserve account for those needs that occur infrequently (e.g., a new roof on the community center). Unanticipated emergencies are usually paid for by imposing a special assessment. The 2004 Legislature established some new financial and record keeping requirements for associations governed by 720 F.S.

What happens to people who don't pay their dues?

The homeowners association has the right to file a lien against the home of a person who does not pay his/her dues. That lien can be foreclosed, and, just like deed restriction violations, all of the costs have to be paid by the person who didn't pay the dues in the first place.

Our homeowners association no longer wants to pay for upkeep of community infrastructure (streets, sidewalks, street lights, and common areas). Will the county take responsibility of our commonly shared streets, sidewalks, street lights, and common areas?

Most homeowners associations (HOA's) were created for the purpose of maintaining common property under an agreements between the County and developers. HOA's are fully responsible for the upkeep of community infrastructure. The County will not, under any circumstance, take over responsibility of infrastructure in a community.

Our Homeowners Association Board of Directors is not complying with its own articles of incorporation and by-laws. How should I handle the situation?

If the board of directors is not complying with its own articles of incorporation, declaration or by-laws, you should bring this up with them. If a verbal request to an officer of the board fails, you can write a letter. Keep copies of any letters that you send, and notes of telephone conversations (date, time, who called whom, and gist of the discussion) in case the matter is not quickly resolved.

If your problem is one that others are affected by, it is worth organizing the other members. If you do, and the attempt to change the situation is not successful, the organized group can always seek to elect new directors at the next annual meeting.

Where do we go to find legal expertise related to Homeowners Associations?

It is a good idea to select someone with experience in handling HOA problems. You could begin looking for an attorney by talking with members in other HOA's and with attorneys in other specialty areas. If this fails, you should contact the local Bar Association (813-221-7780) for referrals or the Suncoast branch of the Community Association Institute at (727) 345-0165.

Is a Homeowners Association required to submit a copy of their covenants, codes and restrictions to the Florida Department of State when they register as a corporation?

No. Only the Articles of Incorporation are filed with the Department of State. Once registered as a Corporation, annual reports are due to the same office. The CC&R's have to be filed with the Clerk of the Circuit Court.

Our association board is only interested in lowering dues and not in maintaining our common properties. The board does not enforce the restrictions and covenants because they are afraid of legal fees. What should we do?

Let the board know that they have a duty to the members to maintain the common areas and protect the interests of the community. When they fail to maintain the common areas, they are in violation and can be sued by their own members. Homeowners have a right to expect that their property values are maintained or increased. There is a direct correlation between property values and association maintenance.

Who reports violations of our HOA and how, and who is responsible for enforcing them? Should we try to get a committee to patrol and enforce violations?

Enforcement is a responsibility of the board of directors. Sometimes a committee of homeowners is appointed to make inspections and turn written reports over to the board for enforcement. The board should create a printed form owners can use to report problems or Email the problem to postmaster@parktrace.com. Procedures should be uniform. The policies should be communicated to the owners, and there should be a mechanism for feedback. The Office of Neighborhood Relations has samples of notifications used in several communities where these efforts have been successful.

Our homeowners association has a lack of homeowner interest. Our committees rarely have quorums, so they can't deal with violations and many residents are getting away with violations. If the lack of interest is so low can the board members step in?

Yes. The board is responsible for the operations of the association. There is only one exception where the board members cannot be a committee member; that is the fining committee (FS 720.305), which requires three independent members. Almost all other committee positions can be held by board members. If you cannot get members to volunteer to sit on the fining committee, then refer all rule enforcements where there is noncompliance to your attorney to enforce the rules.

Can you identify the Florida statute that allows the board of directors to implement new reserve accounts without a vote of property owners?

Florida Statute 718.112 addresses the budget requirements. The board is obligated to create three budgets each year. The three budgets are the expense budget, the reserve budget, and the income budget. All three are the best estimates to meet expected obligations. The board is obligated to provide an adequate reserve budget. Each year at a properly called members meeting the members may vote to implement, reduce or eliminate the reserve account. The income budget is based on providing the exact funds to meet the expense and the reserve budget. The board must maintain the common areas and must have the necessary funds to perform this duty.

I want a subject placed on the ballot at the board of directors' annual meeting of the homeowners association. What is the procedure? Can a resident make this request?

You must put your request in writing and submit it to the board. The board must process the request in a board meeting for approval to be added to the agenda and placed on the ballot. If you are planning to request a change in your covenants or other legal documents, there are certain notice requirements that have to be met. The board will review the proposed change and determine if it can be approved by the board at a board meeting rather than having the members vote on the issue.

When we purchased our home two years ago, it was not until after we signed all the papers and all funds transferred that we found out the home was located in an area with a homeowner's association. Neither the seller nor real estate agents mentioned this fact. We did not want a home in this type of area and now we are stuck. Were any of these people in violation of the law? If so, what can we do about it?

The seller, agent and title company all have an obligation to advise you of deed restrictions and provide you with a copy of them. If you had become aware of these prior to or at closing, you could have cancelled your contract to purchase. However, at this point, it is too late to do anything other than move to another, non-restricted community.

Is it legal for a man and his wife to be on the board, which consists of three people? Our bylaws say that each parcel shall be entitled to one vote.

There is no state limitation on qualifications to serve as a director when it comes to husband and wife, parents and children, brothers and sisters, or non-related friends and lovers. If there were limitations, it would be found in the documents of the association. If they were elected as directors, each would have a vote at board meetings but only one vote at annual meetings.

Our board meets quite often with the property manager in his office to discuss various issues. One of the board members has stated that these meetings are illegal, unless residents are invited to participate. Even though the board is not voting when they meet with the manager, must the meeting be open to the homeowners?

Florida law specifically states that a meeting of the board of directors occurs whenever a quorum of the board gathers to conduct association business. Since a quorum of the board is meeting with the manager to discuss association business, it is considered an official meeting. All meetings of the board must be open to all members, except meetings between the board and its attorney with respect to proposed or pending litigation. You can find the law on this topic at Chapter 720.303 of the Florida Statutes.

Are boards permitted to have workshop meetings without notice and attendance by homeowners' owners?

The laws for homeowner associations and condominiums require that any meeting at which a quorum of directors gather to discuss association business is considered a meeting of the board of directors. A 48-hour notice is required. Minutes must be recorded and the meeting must be open to all members. At present there is no provision in the statutes for workshops.

We are a small homeowners association in the process of electing officers to fill upcoming vacancies on our board. If no one volunteers to serve and a board is not established, we understand the state of Florida takes over the management. Is that correct?

There is no state agency to take over associations. Any owner can petition the courts to appoint a receiver. The receiver's duties would be to operate the association as the board of directors under the guidance of the courts. Not only would the association be responsible to pay court costs, they would also be responsible to pay the fee for the receiver along with the normal operating expenses. Receivers are not your average manager. They are usually highly skilled and have much experience operating associations. As such, their fees are high. Along with ongoing legal fees and court costs, you would find that fees will multiply many times over. A better idea might be to bring in a management company to do most of the work and assist your board in your operations. While the management company cannot replace the board, they can help with the operations and free the board members from the daily activities.

Must our association hold an annual Homeowners' Meeting?

Yes, Florida Statute 720 requires that an annual meeting of the association's members be held. The Bylaws of the association usually state something like "the annual meeting will be held on the second Tuesday of November, or such other date as is selected by the Board."

What is a "management company," and what do they do?

A management company is contracted by the Board of Directors to provide such services as: collection of assessments, supervision of subcontractors, obtaining bids for subcontracted services, providing financial statements and collection reports, as well as a general clearing house for problem solving, communications with homeowners and the Board of Directors and to serve in an advisory capacity. The management company reports directly to the Board and all decisions are made by a majority vote of the Board of Directors.

Do we need a property manager?

Yes. The question is, can you do this internally, or should you hire a company that specializes in homeowner association and subdivision management. There are some criteria to consider in making this decision. There are also some differences of opinion on the interests of property management companies that are making a profit from your business, and their various other relationships with, for example, lawn maintenance companies or foreclosure specialists.

To manage your responsibilities internally, you must have an experienced manager who already is, or becomes licensed by the State. The major benefits are that he/she, as a resident, has the best interests of the subdivision at heart, and knows the community and its aspirations.

The benefits of hiring an outside company are the wealth of resources they have at their disposal and their experience with a multitude of issues that are common to homeowner associations.

How do we select the right property management company?

There are different types of property management companies, and, if you decide to hire one, you need one that specializes in homeowner associations. Two ways to get a listing of these are to ask other members of your umbrella organization, or get a listing from the Community Association Institute (CAI) at (www.caionline.org).

The first requirement is that the manager must be licensed by the Florida Department of Business and Professional Regulation.

You want an individual and/or company that has other clients of a similar age, size and economic level, and in the same municipality as your subdivision.

You want references, and want to be able to speak directly to those references and ask questions, not just receive a written reference.

You want to know about the experience of the company and the assigned manager, any professional designations the company and manager have, who supervises that manager, and what the complaint or appeal process is if you are unhappy with manager.

You want to find out if the company can and will subcontract maintenance of common areas or legal assistance, if you so choose, and what the terms and conditions will be relating to subcontracting in your contract. Will they handle bidding for unique repairs or enhancements that the association Board of Directors has approved?

You want to be sure the manager will attend all association meetings and want to know how often he/she will visit and drive the subdivision.

Be sure their standard contract addresses how they handle delinquent payments and subsequent foreclosures. Check with references to be sure they adhere to those standards and procedures.

Ask what reports they provide and how often, including analyzes of trends in properties within the subdivision. What kind of information do they distribute to homeowners?

Be sure they have a 24 hour emergency contact number and procedure. Review the termination clause in their standard contract to see that it is acceptable to you.

What can I do if a neighbor starts using my property?

If a neighbor starts to build on what you think is your property, do something immediately. When one person uses another's land for a long enough time, he can gain a legal right to continue to do so and, in some circumstances, gain ownership of the property.

Talk to your neighbor right away. Possibly a mistake has been made because of a conflicting description in the neighbor's deed or just a mistaken assumption about the boundary line. If your neighbor does not desist, have a lawyer get a judge's order to temporarily stop the neighbor until you can bring a civil lawsuit for trespass before the judge.

How high can I build a fence on my property?

In residential areas, local or association rules commonly restrict artificial (constructed) backyard fences to a height of six feet. In front yards, the limit is often four feet.

My neighbor's fence is in poor repair. Can I do anything about it?

Yes, you can call code enforcement and have an inspectors evaluate it for a citation.

How should I approach my neighbor about a noise problem?

Let your neighbor know that their noise is bothering you. If complaining doesn't work, get a copy of the local noise ordinance. If it appears the neighbor is in violation, send a copy to him with a note repeating your request to keep the noise down and explaining that you'll be forced to ask the Environmental Protection Commission to look into the complaint. If you do have to notify the EPC, you will want to provide details on the problem, including the dates and times of the noise.

Can I trim the branches of the neighbor's tree that hang over my yard?

You have the legal right to trim tree branches up to the property line. But you may not go onto the neighbor's property or destroy the tree itself.

Most of a big oak tree hangs over my yard, but the trunk is on the neighbor's property. Who owns the tree?

Your neighbor owns the tree. It is accepted law that a tree whose trunk stands wholly on the land of one person belongs to that person. If the trunk stands partly on the land of two or more people, it is called a boundary tree, and in most cases it belongs to all the property owners. All the owners are responsible for caring for the tree, and one co-owner may not remove a healthy tree without the other owners' permission.

My neighbor dug up his yard, and in the process killed a tree that's just on my side of the property line. Am I entitled to compensation for the tree?

Yes. The basic rule is that someone who cuts down, removes or hurts a tree without permission owes the tree's owner money to compensate for the harm done. You can sue to enforce that right -- but you probably won't have to once you tell your neighbor what the law is.

If a neighbor's addition or growing tree blocks my view, what rights do I have?

There is no right to light, air or view, unless it has been granted in writing by a law or subdivision rule. The exception to this general rule is that someone may not deliberately and maliciously block another's view with a structure that has no reasonable use to the owner.

Our neighborhood is full of fruit trees and the fruit just seems to be falling off and going to waste. Do I have the legal right to pick fruit from trees overhanging common areas, including trees located in sections other than my own?

No. The trees belong to someone else. If the trees are on the common area and belong to the association, they are still not yours. The board of directors can authorize the distribution of the fruit.

What is the difference between becoming incorporated and becoming a tax-exempt 501(c)(3) organization?

Legally incorporating an organization recognizes by law that the organization exists and carries out certain functions with powers. This occurs when proper, completed articles of incorporation are filed with the Florida Division of Corporations. 501(c)(3) is an Internal Revenue Code that represents a nonprofit organization. A nonprofit organization can be a charitable, religious, educational, scientific, literary, etc. establishment. If the organization meets the requirements of 501(c)(3), then donations to the organization are deductible by the donor.

We have a problem with on street parking in our neighborhood. What is allowable in most County's ?

On street parking is allowed as long as certain parameters are met these include:

1. No parking in front of a public or private driveway.
2. No parking within 15' of a fire hydrant.
3. No parking within 20' of a crosswalk at an intersection.
4. No parking within 30' upon the approach to any flashing signal, stop sign, or a traffic control signal.
5. Parked vehicles must be facing the direction of traffic flow and be within 12" of the curb or pavement edge. These laws are enforceable by the Sheriff's Office. If you notice a consistent problem contact the Sheriff's Office and find the Community Resource Deputy (CRD) in your area.

Our neighborhood is plagued by constant speeding. No one ever seems to obey the posted speed limits. What can we do to slow ars down and protect our residents? How can I get speed humps on my street?

Sarasota County was given the authority by the State in 1995 to lower the residential speed limit to 25 MPH in subdivisions (the State Statute speed limit for residential or business districts is 30 MPH). The County Residential Traffic Control Program (RTC) is available for residents where speeding concerns exist. They can assist residents in identifying alternative methods of traffic calming including the installation of speed humps/bumps. For information on this program contact the Traffic Engineering Section

Can our association post signs or plant trees and shrubs on a county right of way?

Yes. However, your association must obtain a right of way permit from the County Planning and Growth Management Department before work can begin. All plantings or signs must be approved by the county, and not interfere with visibility and recovery.

How can we get a permit to temporarily close a street for a our neighborhood festival/party?

The association will need to contact the Transportation Maintenance Division. The division will review, issue and monitor permits for road and lane closures and special.