

## Portland Oregon Home Owners Associations

Many residential developments (and all condominiums) have a Home Owner's Association (HOA). HOAs frequently serve a useful function; however, the HOA and its members may also find themselves embroiled in conflict. When dealing with an HOA, consider the following points:

### HOAs Generally

When a particular development has an HOA, membership in the association is mandatory for all owners within the development. An HOA is a legal entity and has the capacity to sue and be sued. This gives an HOA the power to enforce the provisions of the Declaration and Bylaws.

### Declaration

The Declaration sets out legally required information about a common interest development. Some state laws provide that the Declaration is one of the governing instruments for a common interest development, and they set out the required subject matter of those instruments. Most of the provisions that are intended to satisfy regulatory requirements appear in the Declaration, which is recorded against title to the affected properties at the county recorder's office.

### Bylaws

The Bylaws of an HOA specifically define the rights and duties of Officers, Directors and members. Sometimes Bylaws are recorded with the County. The rules for association meetings, voting, proxies, and related matters are usually set forth in the Bylaws. The Bylaws generally have provisions for their amendment and modification.

### Board of Directors

HOAs are governed by a Board of Directors, which is elected or appointed. The authority of the Board is derived from the Bylaws. In general, the Board has the authority to maintain common areas, address legal and safety issues, and enforce restrictions that are applicable to the development. The Board members are normally subject to removal and replacement pursuant to the terms of the Bylaws.

### Budget

The Board is normally required to adopt a budget that indicates how assessments will be spent. Owners are entitled to receive a copy of the budget.

### Assessments

The HOA collects an assessment from all owners. The Bylaws normally set a cap on the amount that assessments may be increased within a given time period. General assessments are charged to all homeowner's equally. The Declaration or Bylaws may allow special assessments of particular members who violate the Declaration, or who fail to pay General Assessments.

### Failure to Pay Assessments

If an owner of the HOA fails to pay an assessment, the Board has the power to sue the owner to collect the assessment(s). There is often no defense to a claim for assessments by the Board. If the matter proceeds to

litigation, the delinquent owner will likely have to pay the court costs and attorney fees of the HOA. If the owner fails to pay a judgment obtained by the HOA, the HOA may place a lien on the owner's property. If the lien is not satisfied, the HOA may foreclose on the owner's property.

## Special Assessments

The budget normally requires that a portion of the collected assessments go to a reserve account. However, many times when an unexpected event occurs (e.g. major repair), the reserve account is underfunded. In this case, the Board is normally entitled to require owner/members to pay a special assessment (in addition to the general monthly or annual assessment) to pay for the event.

## Voting Rights

HOA members have certain voting rights. While the Board of Directors generally has broad authority to manage the affairs of the HOA, certain matters are subject to a vote by the owners. Generally, one (1) vote per lot or condo unit is allowed, regardless of how many parties actually own a particular lot or condo unit.

## Board Meetings

Board meetings are generally held at regularly scheduled intervals (e.g. monthly). The meetings are usually open to all owners; however, owner participation is generally very limited. Meetings are typically conducted pursuant to Robert's Rules of Order.

## Owner Input

If an owner has an issue(s) that the owner wishes to raise with the Board, the best idea is to send a letter to the Board and request that the issue(s) be addressed at the next Board meeting. If the Board refuses to comply, the Bylaws normally allow members to formally call a Special Meeting of owners. Pursuant to a Special Meeting, owners may vote to remove Board members and/or modify the Bylaws.



For more information or questions, please contact Michael J. Licurse at 503-228-8588 or by email at [ml@pmblaw.com](mailto:ml@pmblaw.com).

*Copyright © 2010 Powers McCulloch & Bennett. All Rights Reserved. (Revised 03/28/10)*

*The contents of this article are intended for general information only and should not be construed as legal advice or opinion on specific facts and circumstances.*

### **Powers, McCulloch & Bennett, LLP**

*PMB Law is a Portland, Oregon law firm representing and advising individual and business clients throughout Oregon. Our firm was founded in October of 1973 and we have over eighty-five years of combined legal experience. Visit our Web site at [www.pmblaw.com](http://www.pmblaw.com) for more information about our offerings and ways we can help you.*