

HOA 101: THE ESSENTIAL GUIDE TO HOMEOWNERSHIP AND HOAS

Your complete guide to HOA boards,
management, and rules and regulations.



If you have never owned a home that has a governing homeowners association (HOA), it can be difficult to sort out who does what, what rules apply to you, and why the rules are in place.

In HOA 101, we take a look at the relationship between residents, HOAs and management companies. We also provide a thorough explanation of the various rules involved in an HOA, including CC&Rs, Bylaws, Rules and Regulations, and Architectural Applications. HOA 101 is your guide to everything HOA-related.

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THE DIFFERENCE BETWEEN AN HOA BOARD AND HOA MANAGEMENT COMPANY

The HOA board and the HOA management company are two separate entities and have completely different roles in managing a community. By better understanding who does what, residents can address their concerns with the appropriate party and avoid any confusion about how each party supports the other.

The homeowners association board is comprised of elected volunteers who own property in the community and usually live there.

The HOA management company is a third party company who contracts with the homeowners association.

THE ROLE OF THE HOA BOARD

The homeowners association board has two main duties:

1. Acts a fiduciary for the non-profit homeowners association corporation.

This means the board is entrusted with making decisions that affect the values of the properties in the community. One of the board's primary responsibilities is to protect, preserve, and enhance the value of the physical property governed by the community association.

2. Facilitates the enjoyment of the community.

This involves setting the rules and regulations for residential conduct, including usage of common spaces, landscaping standards, and anything else that affects the overall residential environment of a community.

THE ROLE OF THE MANAGEMENT COMPANY

The management company is hired by the HOA board. The company act as an agent of the HOA corporation. The management company is a fiduciary and has two core duties:

1. Provides helpful business advice

As experts regarding the laws that affect property values in a particular area, HOA management companies offer unbiased direction and recommendations to help homeowners associations make the most prudent and effective decisions to preserve and enhance the value of the property.

2. Implements the direction of the HOA board and facilitates day to day operations in the community

While the HOA board establishes the rules and direction for the community, the management company helps implement the rules and direction. This can range from issuing notices to homeowners for minor infractions to acquiring independent bids for service providers that affect the community. The management company does not have the final say in how rules are written; they simply ensure that residents follow the HOA regulations and HOAs follow legal regulations.

WHAT TO EXPECT FROM AN HOA BOARD

Members of the board are elected volunteers who should act in the best interest of the homeowners association, no matter their private opinion or personal bias.

In addition, board members are expected to:

- Act in a fair and consistent manner
- Refrain from voting on issues or making decisions that present a conflict of interest
- Maintain confidentiality
- Treat homeowners and other board members with respect during discussions and throughout any dispute resolution

WHAT TO EXPECT FROM AN HOA MANAGEMENT COMPANY

The HOA management company does not establish any rules or regulations for a community. Their role is to implement the guidelines set by the HOA. They will simply act upon the rules that the HOA sets. The services provided by an unbiased management company ensure that the HOA is working in accordance with the Association's rules, state and national laws that protect homeowners.

HOW MANAGEMENT COMPANIES ASSIST THE BOARD

The management company is the board's closest and most trusted business relationship. They always have the best interest of the HOA top of mind and are always working to protect and increase property values in the community. They do this by implementing HOA management resources such as:

- Making sure the community common area looks great
- Making sure the corporations liability exposure is low
- Ensuring that the community manager working with the board is the right fit to provide outstanding service to the community
- Helping to build a sense of community
- Providing ongoing training and support for their community manager and board members

THE RIGHT FIT: HOA + MANAGEMENT COMPANY

One of the most common reasons that friction arises between a homeowners association and the management company is because the community manager (the management company employee who acts as a liaison to the HOA board) is simply not the right fit for the community. This can happen for a number of reasons, from personal to professional, but the most efficient way to handle this is to work with the management company to resolve the issue. HOA boards should ask the management company to address the issue or assign a new manager who is a better fit for the needs of the community.

THE GOVERNING DOCUMENTS OF AN HOA

A homeowners association has three types of governing documents: Covenants, Conditions & Restrictions (called “CC&Rs”), Rules & Regulations, and Bylaws. Frequently, the function of these documents or the role their property management company plays in implementing them can be confusing.

Below is an explanation of the purpose of each document and how you can work with your management company to develop guidelines that work best for your community.

COVENANTS, CONDITIONS & RESTRICTIONS (CC&RS)

The CC&Rs comprise a legally binding document that is officially recorded and filed with your state. CC&Rs cover the rights and obligations of the homeowners association to its members and vice versa.

CC&Rs often cover legal issues, such as:

- Property use restrictions
- Maintenance obligations for the HOA and individual members
- Mechanisms for rule enforcement and dispute resolution
- Lender protection provisions
- Assessment obligations
- Insurance obligations

Because this record is kept on file with the state, it can be difficult to amend and requires a vote by the membership to make any changes.

BYLAWS

If CC&Rs cover the “what” of the HOA, the bylaws cover the “how.” Your community’s bylaws establish the structure of day-to-day governance of your homeowners association.

This includes things like:

- Frequency of HOA board elections
- Process for nominating and electing new board members
- Number of members that serve at one time
- Length of board member service terms
- Meeting frequency and quorum requirements
- Duties and responsibilities of board members

Like CC&Rs, Bylaws are difficult to change, as they too require a vote by the membership to amend.

RULES & REGULATIONS

Rules & Regulations are a catch-all for the things that aren’t covered in the Bylaws or CC&Rs. These are often the rules that might need revising over time due to changes in the community. For example, an HOA might have a rule that states that no children are allowed in the community pool before noon. This rule would not be a part of the community’s CC&Rs because it might need to be changed based on community needs.

Rules & Regulations can be changed by an HOA board vote with review by the members of the community. Traditionally, the Board will adopt a rule then send a notice to the community members who will have 30 days to review it. After 30 days, the board will review the comments and concerns of members, considering the members’ feedback in the final decision.

CHANGING RULES AND RESTRICTIONS

CC&Rs, Rules & Regulations, and Bylaws are usually determined when a developer incorporates the community. The developer will try to anticipate the type of community or commercial property space they are creating, but the needs of a community often aren’t fully clear until residents move in.

Every rule, regulation, covenant, condition and bylaw can be changed—it’s simply a matter of which process is required to make the change. CC&R changes require re-filing with the state, so changes should be made sparingly and with the help of an experienced attorney. Meanwhile, Rules & Regulations are in effect at the community level and simply require a board vote with community member review.



RULES & THE ROLE OF A PROPERTY MANAGEMENT COMPANY

A property management company does not have final say in the development of your CC&Rs, Rules & Regulations or Bylaws; they simply act to implement the guidelines set forth by your board. The company often provides advice and guidance as a community's guidelines are developed to ensure they adhere to state and local laws. They should provide practical advice to ensure your board is making the decisions that best protect and enhance your community.

Your management company and property manager can show you the risks and rewards of changing your CC&Rs, Rules & Regulations or Bylaws and provide a useful framework to develop your community in a way that serves residents today and long into the future.

ARCHITECTURAL APPLICATIONS: WHAT YOU NEED TO KNOW

Modifying your home can be an exciting and challenging time. On one hand, you're finally able to customize your dream house but on the other hand, you must obtain approval from your homeowners association. Many homeowners experience frustration and confusion regarding this process, asking:

Why do I need to submit an application?

Who approves it?

How long does the whole process take?

Is all this really necessary?

Here we explain the why and how behind architectural applications to help you smoothly navigate the path to your dream home.

ARCHITECTURAL APPROVAL & PROPERTY VALUES

When you made the decision to settle in your community, you bought into a desirable neighborhood with a certain aesthetic. In order to keep the aesthetic cohesive, every resident must be conscientious when modifying his or her home. Not only does it keep your neighborhood looking pleasant and visually appealing, it has a measurable impact on ensuring high property values over time.

WHERE TO FIND ARCHITECTURAL GUIDELINES

Before you begin working with an architect or contractor, closely review your community's design guidelines, which are available from your community association management company or directly from your HOA. Many HOAs store these documents online for easy access, so check your community's website first. You are ultimately responsible (legally and financially) for keeping your home in compliance, so thoroughly reading and understanding your community's design guidelines before you begin construction is the single most important step you can take when updating your home.

AN OVERVIEW OF THE APPLICATION PROCESS

Once you have read your community's design guidelines and have developed a plan with your contractor, the first step is to complete your application. Check your HOA's website or contact your community management company for an application.

Once completed, submit your application with all associated fees (fees vary by community so check your community's website). Your HOA then has a set period of time to review and approve your application. The amount of time your HOA has for approval is outlined in your community's governing documents, usually 30-45 days. HOAs often delegate approval to a third party committee, called the Architectural Review Committee (ARC) or the Design Review Committee (DRC).

If your application is denied, you can amend your design plan (or the application itself, if it is incomplete) and resubmit. Once your application is approved, you may begin construction. After completion, the ARC will inspect your construction and you will receive a Letter of Completion indicating that your construction is complete and compliant.

WORKING WITH A CONTRACTOR

Many contractors offer to handle architectural application submission on your behalf but remember: you are ultimately responsible for your property. Make sure that your contractor has read your community design guidelines before drafting any plans. You, too, should read the design guidelines to ensure that your contractor is on track. Additionally, be sure to read your architectural application completely before signing off and stay aware of where you are in the approval timeline process.

Remember to incorporate your approval period into your project timeline, taking into account additional time needed if your application is denied the first time around. Approval periods are typically 30-45 days, and stated in the governing documents. Many homeowners choose to withhold the final 10% of their contractor's project fee until they receive their Letter of Completion, to ensure that their contractor stays involved in the process until the very end.

WHO IS THE RESPONSIBLE PARTY?



Remember that you are ultimately legally and financially responsible for ensuring that your updates comply with your community's design guidelines. Your close involvement in the approval process can ensure your compliance before you build, sparing you the additional expense of modifying your design after construction is complete. Do not simply forge ahead without obtaining approval then ask for a variance from your HOA. This is a risk that rarely resolves in the homeowner's favor and you will be responsible for any additional construction costs required to remedy the situation.

YOUR MANAGEMENT COMPANY CAN HELP

Your management company simply aids in facilitating the architectural application process. They have no authority over the development of the design guidelines and have no authority in whether an application is approved or denied. However, your community manager's expertise can help you throughout this process.

Consult with your community manager as you develop your architectural plans; they can point out obvious infractions that you might miss. Ask your manager to review your application before you submit it; they might catch small details that could cause your application to get kicked back for administrative reasons. Your management company will also help usher your application through the review process, ensuring that it is routed correctly to the ARC and it appears on the upcoming HOA meeting agenda. Finally, your management company can answer any additional questions as you navigate the process, which can relieve you of stress and overwhelm.

A little bit of proactivity goes a long way reducing the time and money spent to remedy problems after building. Do not undertake any modifications to your home without first obtaining official signoff from your HOA in the form of an approved architectural application. If in doubt, contact your HOA management company or your HOA board and ask specific questions. Failure to comply or starting construction without board approval can ultimately cost you a ton of time, money and frustration.

ABOUT KEYSTONE PACIFIC PROPERTY MANAGEMENT

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