

HOA Non-disclosure agreements (NDA) highly questionable, likely illegal
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The Colorado HOA Forum conducted a survey of its' members located in nearly 700 HOAs in the State of Colorado on the use/abuse of non-disclosure agreements as a requirement to serve on the HOA Board. The practice is the exception and not the rule with most HOAs finding the practice unnecessary and that it would be threatening to homeowners and be a big impediment to encouraging homeowners to serve on the Board. In addition, the NDA's we reviewed attempt to suppress a Board member from discussing confidential and **non-confidential information** with fellow homeowners which appears to be outright illegal. The following details our findings:

A non-disclosure agreement (NDA) is a legal contract or part of a contract between at least two parties that outlines confidential material, knowledge, or information that the parties wish to share with one another for certain purposes, but wish to restrict access. Why are HOA Board members being asked to sign such an agreement? The answer seems to be quite clear and it has no good results for homeowners and Board members and should end.

The problem with these Board NDAs is that they are being used to not only threaten Board members with legal action against them for disclosing confidential information but they often go one step further in specifying that NO Board member can talk with members of the community about any information concerning the governance of the community. Is this good governance and promoting volunteerism?

It is easily understood and defined in State law and most likely in an HOA's governing documents what is confidential information and what is not to be shared with the community at-large. For example, details on active litigation, personal information about any HOA member or proprietary information relating to HOA contracts. All other non-confidential information concerning governance and operations can be discussed by any Board member with fellow neighbors. For example, snow removal or lawn maintenance policies, debt collection issues, any of the controls, covenants or restriction or financial matters related to collections and disbursements. There is no mention in State law or in all likelihood in any HOA governing document directing Board members to sign an NDA to ensure good governance. Board members have a dual role: one as a Board member with responsibilities in governance and one that retains their rights as an individual homeowner. Confidentiality is one thing, stepping on one's individual rights is out of line.

Threatening a Board member with a legal suit and financial penalties for discussing non-confidential issues with whomever, wherever and whenever they want using an NDA is out of bounds, threatening and totally inappropriate and yes illegal. Penalizing a Board member for refusing to sign an NDA by restricting their access to confidential information has no legal basis and should not continue.

This practice has an impact on volunteerism. Who would want to serve on an HOA Board when the first issue they are presented with upon taking office is an NDA and threatening penalties therein for non-compliance if they discuss any HOA issues with a neighbor? The practice of requiring NDAs is typical of "bully-Boards" and Boards involved in questionable practices to ensure those in power continue to operate without accountability and in secret. Worse yet, some HOA lawyers and property management

companies support this practice and participate in issuing threatening letters to any Board member who will not sign an NDA: what are they hiding? If the idea is to stifle information dissemination in the community about non-confidential matters that may earn the Board President and other Board members the ire of homeowners the NDA can work.

There is no need or justification for an NDA as a prerequisite to serve on an HOA Board. The purpose doesn't appear to be to ensure confidential information is not disclosed but rather to keep homeowners unaware of any questionable Board practices. Homeowners will not want to serve on a Board under such legal threats presented by signing an NDA that subjects them to financial risk by simply talking about non-confidential issues with fellow homeowners. Requiring an NDA to serve on a Board ensures there will be a lack of accountability in the community and little transparency in governance. An NDA that prohibits a Board member from discussing non-confidential issues with fellow homeowners appears to be outright illegal. The practice of NDA's for Board members is bad medicine for any HOA.