

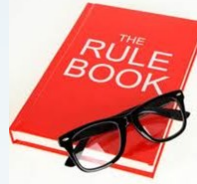


17. With few exceptions, when you sell your home the management company will be able to assess and retain a transfer fee, \$100 over \$1,000, without providing any explanation or detailed invoice and if not paid your home sale will be suspended.
18. Enforcement of HOA CCRs is generally a good thing that retains the aesthetics of the community, maintains property values and provides quality amenities.
19. The HOA can be an effective first line resource in resolving issues related to abusive home owners with such issues as pet violations and related annoyances, distractive elements on the property, crime control, parking, etc. through levying fines.
20. Gated communities generally own and maintain their own streets and local law enforcement will not enforce HOA parking rules (except for safety issues such as access to fire hydrant parking rules) and speeding violations.
21. HOAs define maintenance responsibilities of the home owner and HOA: if you don't comply can be fined/the HOA will complete the task and bill you for it.
22. State HOA laws can't be contradicted by HOA governing documents. An HOA rule can generally be more restrictive but not more liberal e.g. State or local government indicates fences can't be more than 8 ft, an HOA can set the limit lower but not higher
23. HOA funds should be invested prudently and according to limits in by-laws. It is a good idea to keep the HOAs investments in-State. The HOAs Treasurer and finance committee should understand the investment strategy and verify the existence of accounts periodically.
24. What home improvements are not allowed

## HOA Governance: CCR's

Read our Documentation Guide

The rules you live by, managing the HOA's affairs & finances and home owner's rights



Know the rules before you buy a home in an HOA then obey the rules!

[Explanation of HOA Articles of Incorporation, Declaration, CCR's, by-laws](#)

Know the basics about HOA Governance (your HOA Handbook may address and be more specific and place more restrictions on any of the items below, get a copy and read it before you buy)

1. You give up something (property rights) to get something (community aesthetics, amenities, improved property values)
2. Most home owner problems can be avoided by reading and understanding the HOA governing documents that include the controls, covenants, and restrictions (CCR) PRIOR to buying a home in an HOA
3. If you don't comply with the CCRs you will be fined (and should be)
4. Compliance and conformity not independent creativity are attributes of the HOA: rebels don't fit with HOAs
5. HOAs, although they have elected Board members, are generally run by professional property management companies (PMC). What is not understood and practiced by most HOA Boards is that PMCs work for the HOA and management and problems related to community services are first and foremost a problem with a Board allowing such services to decline.
6. PMC's are not a licensed profession in the State of Colorado in 2019.

7. HOA governing documents and CCRs can be changed via home owner vote
8. HOA governing documents and State HOA laws are basically unenforceable from the home owner's perspective. There is no State oversight of HOAs and even the most simple conflict between the HOA and home owner must be resolved through our costly, litigious and time consuming system and most home owners simply can't afford the legal process.
9. Home owners and HOA Boards are encouraged to settle disputes out of court via mediators. Although this process can work it has been mostly ineffective and adding cost to dispute resolution with most sessions ending in no agreement and moving the case to court. Mediators are not a licensed profession and anyone without a bit of knowledge of HOA law and governance can be the mediator. In some HOAs the Board selects the mediator.
10. Your home can be foreclosed for non-payment of HOA debt.
11. Unless restricted in your HOA governing document there are no limitations in the amount your HOA dues can be increased or in levying special assessments: home owner approval not required!
12. HOA reserve funds used to pay for community improvements and maintenance may be low to unfunded and require a special assessment to replenish.
13. HOA budgets are generally presented to but not approved by home owners
14. Capital improvements can be approved by the Board without home owner approval
15. The HOA can enter into litigation with notifying or gaining the approval of home owners.
16. Home improvement projects and landscaping projects must gain prior approval of the HOA.

## Who Really Manages Most HOAs? What you should know and enforcing CCRs

Most HOAs are managed by HOA Property Management Companies (PMC). HOA Board of Directors are elected by home owners to manage the community finances and affairs but too often concede these responsibilities to a PMC. This happens due to the lack of experience and knowledge of HOA operations and HOA laws. A partnership between the HOA Board and PMC should be very beneficial to the community taking advantage of the expertise and skills offered by the PMC to ensure compliance with HOA laws, implementing quality controls over finances and services and implementing industry best practices and planning.



Problems can surface when a PMC gains too much control over the decision making process within an HOA. The assignment of accountability for delivery of services and financial management becomes blurred and often confusing to home owners. Note, in practice a PMC should not complete any task without the approval of the Board and quality control over services is ultimately the responsibility of the Board. Home owners inquiring about services generally deal with PMCs but corrective action on deficiencies is at the direction of the Board.



HOAs can replace a PMC for cause. In States with PMC licensing a home owner can file a complaint against the PMC with penalties for non-compliance with their guidelines and code of ethics. Home owners can replace/recall Board members that are negligent in their fiduciary responsibilities related to financial management practices and ensuring delivery of quality HOA services through through PMC contracts.

Note, most HOAs use and need a management company. Volunteers simply don't have the expertise required to manage the community assets, operations, and finances. The Board and management company are partners and the board must have a level of trust with them but has a fiduciary responsibility to verify and oversee their work.

Fraud and mismanagement of funds: most misappropriation of funds and fraud are NOT committed by HOA Boards but HOA property management companies.

Resolving violations of home owner's rights under HOA governing documents and/or poor community maintenance should begin with the HOA Board not the PMC: the Board authorizes what the PMC does.

## HOA Property Management Companies Licensing can bring accountability but?

Less than ten states require HOA property managers (PMs) to be licensed. This billion dollar+ industry has little to no oversight by any government agency, standards for entering and operating a business are null, background checks on PMs who handles hundreds of millions of dollars are not required, there are no educational requirements, and home owners and HOAs must seek out costly and time consuming legal solutions when PMs violate State laws and the HOA's own governing documents.



In those States that have licensing few strong consumer protections are provided. Mostly these laws are written by the industry to be regulated, are vague meaning assignment of accountability and responsibility are difficult, most promote the sales of educational courses sold by the industry to be regulated, dispute resolution processes are mostly underfunded and understaffed, and costly practices of fees assessed home owners without documentation and justification are not part of licensing rules.

Most home owner complaints received by State agencies directly involve PMs. HOA Boards of course enable the acts of PMs. However, strong licensing rules with direct verbiage on accountability and responsibilities supported by enforcement and penalties can make licensing effective and work for consumers and justify any cost to the PM in compliance measures, educational requirements, license fees, insurance, and background checks. The burden on business to meet licensing requirements will not preclude any person from entering the profession, increase the cost of PM contracts with HOAs, or result in increased HOA dues to home owners.

Nearly all States lack an accessible, affordable, and effective means for home owners to pursue their rights under State laws and HOA governing documents.



Some states have requirements on mediation for dispute resolution between the home owner and the HOA but this process may only lead to more cost and time without agreeable solutions and ultimately end up in a court battle. Some states have Ombudsman with limited authority other than to hear and attempt to mediate a solution: simply doesn't work. State HOA Offices mostly don't get involved in dispute resolution and when they do often lack the authority to require HOA Boards to comply with the law driving even the most benign complaint such as refusal to allow access to HOA records into a costly legal case. Too often the home owner complaint directly involves the PM but with no licensing a home owner will find it next to impossible to gain a solution to the enforcement of their rights. However, with a strong licensing program with enforcement means most home owner complaints could be resolved. Optimally, an out of court binding dispute resolution process within a State HOA Office that could handle complaint filing, investigation, and render enforceable decisions could resolve all types of complaints for home owners that involve violations of either State law or HOA governing documents.

Who sets the fees, fines? Who determines the rules, restrictions, regulations? Can the rules be changed?

Your HOA Board "should" manage the affairs and financial resources of the HOA. The Board manages by the mandates in your governing documents. Boards are elected and can be recalled by home owners. Boards are assisted in governing and managing the HOA by the property management company. The property management company should and can be fired by the Board. Home owner dissatisfaction with the expected and paid for services of the community should vent their displeasure to the Board as the management company only does or gets away with what the Board allows. Well run HOAs involve a cooperative effort between the Board and management company. Boards should take the philosophy of "trust but verify" with Boards.

Fines and fees and assessments are set forth in HOA governing documents. In addition, an HOAs contract with the management company may allow for additional fees but such fees should only be allowed if they are the result of unique and extraordinary events causing expense to the management company. A copy of the contract is available to all home owners.

A management company should not be making any independent decisions for the community. They work for the Board! Enforcement of CCRs can be delegated to the management company but imposition of fines and fee and assessments should all require approval of the Board.

Ask about any rental restrictions!

