

Check bylaws for how to boot board directors

Posted: Saturday, Aug. 14, 2010

Q. Our HOA's bylaws state that the only way a board director may be removed from the HOA board is by a majority vote of our HOA members. Recently, three of our five board members voted into effect and implemented a "Code of Ethics" for our board members to abide by. The final section of this code states that any board member who violates these ethics provisions "will be subject to potential ramifications and/or expulsion from the board of directors." This expulsion power seems to be in violation of our bylaw that gives this authority only to our HOA members. Can this expulsion be enforced?

Most HOA bylaws require a vote of the homeowners to remove a director from office. In fact, the requirement is usually a two-thirds or three-fourths "supermajority" vote of the owners.

If your bylaws do not give the board the power to remove a director, then the only way to remove a director is by member vote. If the owners want to give the board members the authority to remove a director, then your bylaws will need to be amended to grant the board that power. Amendment of the bylaws typically requires at least a majority vote of the members, and sometimes a supermajority vote.

There should be provisions in your bylaws that set forth the process for adopting an amendment.

'Opt out' HOA loophole

Q. I recently moved into a retirement community. The first two homes in the community were built and sold before the restrictive covenants and bylaws were created and before an HOA was formed. The homes' occupants recently "opted out" of the HOA as a result of this loophole, so they don't pay monthly dues to the HOA.

I have been advised that they made this decision after consulting an attorney. Now that the developer has deeded the common areas over to the HOA, the HOA is financially responsible for the maintenance and insurance on these common grounds. There are other amenities that the homeowners are entitled to use, such as walking trails. My question is whether the homeowners who opted out of the HOA and the monthly dues should be responsible for being part of the HOA and paying their share of the maintenance and upkeep for the entire community?

I have seen cases where developers, usually through oversight, have left portions of a

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community out of the restrictive covenants when developing a subdivision. Unfortunately, there is nothing the developer or the HOA can do to force the owners of these "orphaned" properties to be bound by the restrictive covenants and join the HOA.

So the answer is "no," these owners cannot and should not be assessed a share of the common area maintenance expenses; nor should they be allowed to use the common areas and amenities, which are typically reserved for members of the HOA.

While their homes may be physically located within the subdivision as envisioned by the developer and the municipal planning authorities, they are not members of the HOA.

The HOA has no authority to impose or enforce restrictive covenants on their property, and the owners do not have the right to participate in HOA activities, meetings, or use the common areas and amenities.

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