

Developer won't give up control of neighborhood

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Q. I live in a subdivision in Gaston County that is about 90 percent developed. There is a set of covenants, conditions and restrictions (CCRs) and a homeowners association. The developer has said he would turn over control of the neighborhood and the CCRs to the HOA but has failed to do so.

After a confrontation, he now says he has control of the neighborhood for 30 years and doesn't plan to relinquish it. Questions:

1. Does he have control of the CCRs for 30 years by law?
2. Since the neighborhood is mostly developed and has an HOA, can he be forced to turn over control?
3. Is he required to see that the state places the streets into their system? The development is now about 6 years old and this hasn't been done.

Developers have a vested interest in retaining control of the HOA until the neighborhood is nearly or completely sold out. Such control enables them to control the aesthetics of the neighborhood, hopefully maximizing home sale and re-sale prices.

There are various mechanisms by which a developer can retain control of the HOA.

For instance, the developer can reserve the right to appoint all of the members of the HOA's board of directors, or grant itself multiple votes on HOA matters for each lot it or homebuilders own, rather than the "one vote per lot" for owners other than the developer.

But most HOA governing documents (your HOA's Declaration of Covenants, Conditions and Restrictions and its bylaws) contain provisions that govern when control of the HOA will be turned over to the homeowners.

Sometimes control is ceded when a certain percentage of the homes are sold. Other times, control is ceded by a certain date, or when the developer files a statement that it is giving up its "declarant rights."

Answering this question would require a review of the governing documents. (See below.)

Most developers don't want to retain control of an HOA once most or all of the homes have been sold, as running an HOA brings with it certain liability. You should consult an attorney if you believe that the developer is exceeding or abusing its rights.

As to whether the developer is required to "dedicate" the streets for public use by turning them over to the appropriate county or state agency, again, that depends on what the governing documents and the county-approved subdivision plan say about the issue.

HOA rules, regulations

Q. I am a townhouse homeowner and pay monthly dues to a homeowners association. Why have I not gotten a copy of the rules and regulations? I have asked for them twice, and received no reply.

If you buy a condo, townhome, or house that's governed by an HOA, you should receive a copy of the governing documents at closing. If not, contact your closing attorney or real estate agent and request a copy.

Also, many HOAs maintain Web sites where these documents can be downloaded. Check with a member of your HOA's board of directors, your neighbors or the HOA's property manager. As a last resort, you can go to the Register of Deeds (either in person or on the Web) and search for the documents under the name of your community.

Charlotte attorney Michael Hunter specializes in community and condominium association law. He represents more than 500 homeowners' associations in Western North Carolina. E-mail questions to home@charlotteobserver.com



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