

Do HOAs have any clout in prohibiting sex offenders?

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Q. We live in a small neighborhood in Union County with a volunteer board of directors. A few families are interested in adding a amendment to our covenants, conditions and restrictions (CCRs) prohibiting sex offenders from residing in our neighborhood. The board went to our attorney last year and was informed that we could spend the money to try to do this, but he doubted it would hold up in the courts if the sex offender is registered and living by the law. Your advice?

Dealing with residents who are convicted felons or sex offenders is a growing concern. It is possible to ban such persons from renting a home by amending the CCRs to adopt specific leasing restrictions that give the HOA board the authority to approve or reject all proposed leases.

But attempting to ban such persons from purchasing a home likely would be found unenforceable by the courts. While felons and sex offenders are not considered a "protected class" under anti-discrimination laws, it is possible that a restriction that prohibits sex offenders from purchasing a home in your community would not be upheld by the courts, or worse, expose the HOA to a potential civil rights claim.

If you have reason to believe that a registered sex offender is residing in your community, the safest method of dealing with the issue is to ensure residents are notified of this fact.

The board should first confirm that the person is in fact a registered sex offender by visiting the local sheriff's Web site and/or obtaining a copy of the official registration form. Once the facts are confirmed, the board should direct residents to the appropriate registration Web site, or make the registration form available for inspection by residents on the HOA's Web site or at the manager's office.

The board should absolutely avoid the proactive distribution of information that identifies the registered sex offender by name or address, due to the potential liability for the HOA in the event a resident acts on the information in an illegal manner.

Charlotte attorney Michael Hunter specializes in community and condominium association law for the firm of Horack Talley. E-mail questions to home@charlotteobserver.com.

COLUMNISTS »

[Michael Hunter](#)



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Michael S. Hunter