

Real power nonexistent in some associations

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Q. The dues for my HOA in Concord are voluntary at \$60. They do not elect a board. There is no budget or bylaws and they do not communicate with members. They have an annual meeting but hold no votes. There is a committee to handle the restrictive covenants. Do they have any real authority? I took me almost a year to find anyone who knew who to contact about building a shop. What a mess. Are there any state guidelines or requirements for a HOA?

I often see this situation in communities developed in the 1970's or early '80's. HOAs were not common for single-family communities then like they are now.

Often we will see a set of restrictive covenants for an older community that specifies minimum lot and house size, perhaps building setback lines, and imposes restrictions on use, nuisances, etc, but the covenants make no mention of an HOA

Other times, the covenants will mention that an HOA "may be established," but the document does not specify whether membership in the HOA will be mandatory, nor what's its authority is, or even who is a member of it.

It sounds like your community is like one of those. If your covenants do not have provisions for the establishment of an HOA with specifics on what its purpose and authority are, then your HOA is probably a purely voluntary one.

There's a good chance that the HOA is not incorporated, and thus is operating as an "unincorporated association," which is actually an entity recognized by state law (Chapter 59B of the N.C. General Statutes, the Unincorporated Association Act).

If that's the case, your HOA is purely voluntary, with no real legal authority to enforce the restrictive covenants or to demand payment of assessments from owners.

While you may have a committee for architectural review or other issues, it is likely that the real enforcement authority for the covenants lies with the individual property owners, not the HOA. I can't say for certain without reviewing your governing documents.

If your HOA is as I have described, then the N.C. Planned Community Act does not apply, and the answer to your question would be, no, there are not any state guidelines or requirements for your HOA other than the Unincorporated Association Act, which doesn't address the issues you have concerns with



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