

## HOMEOWNERS' ASSOCIATION DISPUTE RESOLUTION IN FLORIDA

If you live in a subdivision, you're probably a member of a homeowners' association which enforces your subdivision restrictions, maintains the common areas and collects assessments for expenses. If it's an older subdivision, the developer is probably long gone and the current officers and directors are fellow homeowners. Because homeowners aren't always good neighbors, it's not uncommon for owners to get into disputes with one another and the association.

Disputes can range from something as simple as your neighbor's pet barking at night, to something as complicated as a proxy fight for control of the board of directors by competing factions of homeowners. If you're a homeowner for long enough, you'll probably experience a dispute at some point. If you are lucky (or unlucky) enough to be an officer or director, you may experience more of them than you'd like.

The affairs of a homeowners' association are governed by the board of directors, which is elected by the homeowners and is responsible for establishing policy and appointing officers. The officers usually consist of a president, vice-president, secretary and treasurer, whose duties are to implement the policies of the board and administer the daily affairs of the association. Directors frequently serve in dual roles by being officers, as well. There may also be committees which perform specific functions of a recurring nature (such as architectural control).

Homeowners' associations are non-profit corporations governed by a number of constraints imposed by law and by the documents pursuant to which they were established. The number, manner of election (or appointment) and duties of directors, officers and committees are established by the Articles of Incorporation and Bylaws of the association. The Declaration of Covenants, Conditions and Restrictions for the subdivision may also address some of these matters. The Declaration also establishes the purpose and method of levying assessments and specifies the restrictions by which the homeowners and the association are bound. The association may have rules and regulations approved by the directors, if permitted by the association documents. If you are involved in a dispute with your neighbor, you'll need to read the Articles, Bylaws, Declaration and rules and regulations to see just what your rights are.

Because there are so many homeowners' associations in Florida, the state legislature established minimum requirements for the administration of associations and the rights of homeowners in associations. These address liability of officers and directors to homeowners, rights of homeowners to use common areas, and voting, election, accounting, budgeting and records-keeping requirements. These are found in Chapter 720 of Florida's Statutes (the Florida HOA Act), available at many libraries as well as on the internet at [www.leg.state.fl.us](http://www.leg.state.fl.us).

After you have researched your rights, try and work out any dispute informally with your

neighbor. If that fails, you should send him a letter specifying your complaint, what you feel should be done to correct the problem, and pointing out the provisions of the association documents which address the subject of your dispute. Remember to send a copy of your letter to the association, since you may need to register a formal complaint later if your neighbor refuses to cure the problem. If it persists, send the association a letter, with a copy to your neighbor, asking the association to enforce the restrictions by whatever means are appropriate. If the association can't or won't resolve the problem, consider whether the dispute is significant enough to warrant hiring a lawyer to assist you. Your association documents should allow you to bring a court action against your neighbor (and perhaps the association) to enforce your rights. However, you should be aware that before filing suit against the association, you may be required to submit the matter to mediation. Disputes between an association and a parcel owner regarding use of or changes to the parcel or the common areas and other covenant enforcement disputes, disputes regarding amendments to the association documents, disputes regarding meetings of the board and committees appointed by the board, membership meetings not including election meetings, and access to the official records of the association are the types of disputes that require pre-suit mediation under the Florida HOA Act. Even if pre-suit mediation is not required by statute, the judge hearing your case will typically require it. If you win in court, many association documents, as well as the Florida HOA Act, require the losing party to pay your lawyer's fees.

Disputes between neighbors are always stressful situations. If it's significant or poses immediate harm or risk to your family or property, it may be a police matter. If that doesn't help, you should contact a lawyer early on and provide him or her with copies of the association documents and a summary of the problem. Frequently the involvement of a lawyer can precipitate a quick resolution of the dispute, since no one wants to go to court (or pay someone else's lawyer's fees) if they can avoid it.