

10 HOA Myths ---- By George K. Staropolis

1. MYTH: The HOA attorney represents you, and will assist you in your claims of wrongdoing against the board.

REALITY: The attorney represents the HOA as reflected by the board. He defends the board.

2. MYTH: In spite of your contractual CC&Rs, your civil and fundamental rights are still protected by the Constitution.

REALITY: As a private contract, your CC&Rs have priority over the Bill of Rights, unless those particular rights are so enumerated by the US Supreme Court, such as the Fair Housing Act. People have the freedom to contract and can surrender their rights as happens, many times unexpectedly, as stated by the CC&Rs.

3. MYTH: Disputes are resolved by an independent tribunal with an opportunity to examine witnesses and the charges.

REALITY: Generally, the board issues complaints and decides the issue.

4. MYTH: You can file a complaint with the local government for enforcement of state law violations by the board.

REALITY: HOA disputes are treated as private disputes, and local police / attorneys do not get involved. Filing a civil suit is generally required, even in the case of a state law violation

5. MYTH: If unhappy with the board, homeowners can vote the board out in any election as elected public officials can be voted out.

REALITY: There are no protections against violations of the election process, nor oversight of fair elections since the incumbent board, like a corrupt political machine, controls the elections and hears any claims of voting irregularities.

6. MYTH: The HOA fosters vibrant, healthy communities with the general welfare of the homeowners as an important goal.

REALITY: HOAs are created to maintain property values, and to exercise police powers to regulate the use and operation of the common areas and amenities. There is no equivalent Bill of Rights to protect homeowner

fundamental rights as with public government. HOAs do not have to be fair, reasonable or competent.

7. MYTH: Not actually having read, actually signed, or acknowledged the provisions within the CC&Rs invalidates its legality.

REALITY: Just the mere posting of the CC&Rs at the county clerks office is sufficient to create a binding agreement when you accept your deed.

8. MYTH: As in the case of a dispute with your credit card company, in a dispute with your HOA you can send a certified letter to your HOA and no action can be taken until the dispute is resolved.

REALITY: You must always make your payments regardless of any dispute. Buying in an HOA is equivalent to pledging your home as collateral for the timely and continuous payment of assessments. Your home can be foreclosed and sold at auction by the HOA.

9. MYTH: The home you buy in an HOA is your private property to do and act in any manner as you please that is not contrary to municipal ordinances

REALITY: The CC&Rs represent a surrender of your property rights to the HOA, granting it broad, discretionary powers not envisioned at the time of purchase nor clearly stated within the CC&Rs.

10. MYTH: As with any other contract, you are protected by the version of the CC&Rs in effect at the time of purchase.

REALITY: The courts have upheld subsequent amendments to be binding on all homeowners regardless of when they bought their homes, and these amendments can have far reaching financial consequences beyond the reasonable expectations of the purchaser. In other words, those CC&RS can be a meaningless piece of paper.

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