

CHAPTER 16 WHAT TO REVIEW BEFORE YOU BUY INTO AN HOA.

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Most of the information a buyer needs to know can be provided by a Realtor. When a property is found to be of interest and it is in an HOA, the buyer should request the following documents and answers to these questions;

1. Will copies of the Covenants and Bylaws be provided in time to be reviewed by buyer before closing? Review these at least a week before closing. Is there a transfer fee being charged to the sell and maybe the buyer.
2. What State laws affect this HOA? The Realtor should have the name of a lawyer who is familiar with this HOA who can give you a quick report on the court recordings of any past litigations concerning this particular HOA.
3. Are there any services offered by the Property Management or Association Lawyer who is listed as a member of the CAI (Community Association Institute)? If there is any membership in this national organization, stop all interest in the home and save yourself future problems. The CAI organization is one of the worst abusers of HOA members for their own profit. See website AHRC Newsletter <ahrc@ahrc.com> .
4. Who is the property manager and how long has this company been involved with this HOA? The same question of who is the Association Attorney and how long has he been involved with this HOA. These two work together on many HOA as a team. The lawyer will never find fault with any actions of the property manager.
5. Names of all directors and how long each have been on the board. If the directors have been on the board longer than two terms (4 years each) there is a possibility the directors have been on the board too long. Any directors who have served over two terms can be an indication that no other members want to be on the board and this can spell trouble. What is today a smooth running honest Board of Directors can turn in one year into a problem board against the membership.
6. Ask to see past newsletters published by the Board of Directors to see what information is provided. Is there a complete financial statement published? Is there a space for HOA members to publish a letter in the HOA newsletter from the membership?
7. More importantly, how easy is it to inspect the HOA books for at least three years back. If the books are not available without Board of Directors discretionary approval, this is one of the first red flags not to buy in this HOA.
8. Ask to see the last three audits by a CPA. If there are none available this is another red flag. The first area to review is in the Audit, what are the legal fees paid each year for

litigation? If the annual amount is over \$3,000 there may be too much involvement by the lawyers in this HOA. A good lawyer's job is to keep the HOA out of court, but that is not the purpose of a CAI lawyer. This is one area where the property managers can hide the true cost.

9. The Association lawyer will have some delinquent assessments which may require a lawyer's attention. For this function in collections the lawyer will submit his fees for the month which can average over \$1,000. These fees are paid sometimes without the Board of Directors approval. They are then divided up between the individual homeowners that are delinquent in their assessments. These legal fees can reach as high as \$2,000 to \$10,000 - against one homeowner. Payment of these fees by the member can take several years especially when all payments must go to first payoff the legal fees before any payments can be credited against the homeowner's delinquent assessments. A homeowner can have a medical financial crisis which can cause delinquent assessments. Seldom are delinquent assessments caused by the homeowner hiding money in a Swiss bank account.

10. Here is where the accounting can fool the member. As the prepaid legal fees are reimbursed, it reduces annual legal fees as being owed so the financial statements will under report the annual legal fees that have been paid. The CAI tells the Treasurer to show the legal fees as delinquent assessments and then combine the two, calling them assessments. The Treasurer tells the homeowners at the annual meeting it is a tragedy that the association has \$48,000 in delinquent assessments.

The truth is the delinquent assessments accounts are for \$3,000 of the total, and the remaining \$45,000 are all legal fees prepaid to the CAI Association lawyer and now charged individual members account for repayment.. When a CAI lawyer has 20 or more HOAs under contract he can make on average over \$30,000 per year times 20 (**\$600,000**). This is a gold mine for lawyer and that's why they work so hard to protect this income through the State Legislature.

11. Property managers are not licensed in Colorado. This is one agency that must be brought under the license control of the State Real Estate Commission. Lawyers who are in the State legislature will fight this move since it will effect Tort Twisters (lawyers) income. (There is a high percentage of lawyers that are State Senators and Representatives) It would reduce legal fees by HOA members reporting violations against property managers who could lose their required license. This would mean a HOA member could get relief by filing a complaint with the Real Estate Commission which costs nothing as apposed to filing a lawsuit with the court and hiring an attorney. Two years and lots of legal fees later the complaint is finely heard in court.

12. What is the limitation provided in the Covenants on how the money is authorized to be spend by the Board of Directors? It is legendary how Board of Directors have created ways of spending HOA general funds not authorized by the Covenants. I know of one HOA that used \$30,000 of General fund in legal payment to a lawyer to put a member in jail for 60 days. (Dam East Homeowner Association in Aurora.) This HOA documents doesn't allow funds to be used for personal agendas like revenge and harassment against

a critic of the Directors. All actions by a Board of Directors must be ratified by a motion and vote of the directors at a duly held meeting and the minutes report this vote. Without this action the one Director who carried out an action is known to be Ultra Virus Legal term meaning action outside of the corporation. This means the action is illegal and the Association can not defend the Director for his actions and he is liable for all his actions personally. If the Directors are violators of Ultra Virus for long period of times the entire Association becomes liable for reelecting the same Directors who are not following the Covenants and Bylaws.

13. Ask to see a copy of the most recent member's delinquent assessments list. See what the balance is owed and how much of that is legal fees and assessments. If the powers to be refuse stop looking at houses in this HOA.

14. When a buyer purchases a home in an HOA he agrees to follow the recorded documents known as Articles of Incorporation, Covenants and Bylaws. Some problems occur when the membership will follow these rules but the Board of Directors will not. You have a major investment now controlled by a Board of Directors who refuse to follow the rules of the HOA and in most cases the State Laws governing HOAs. There is very little an owner can do to cause the enforcement of all rules. This subject is covered by another chapter in this book.

15. Some of the best run and managed HOAs are self-managed. They have a public accountant who manages the accounting and bank accounts. All the rest of the HOA activities are handled by the members on committees and the Board of Directors who contribute lots of time each week to the Association.

Since there are no property managers to mislead the board, the board needs very little legal advice on how to stay out of lawsuits and the courts, which makes the annual costs much lower than any HOA who claims the need of a property manager and lawyer full time.

You would think that you could ask a neighbor to the home you are interested in buying what their opinion is of the HOA Board of Directors. If they are afraid of the Board you will not get a straight answer. If you get a raving report ask if he is a director which you would be buying the house next door.

I also cover this subject in another chapter in this book.

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