

# Homeowner Association Disputes in Georgia

## Overview

Many types of residential property in Atlanta are governed by homeowners' associations (HOAs), including condominiums, townhouse complexes, subdivisions and other planned housing developments. The original developer of the complex establishes the HOA, which is set up to manage and maintain the property. Any owner of a property governed by an HOA is automatically a member of the association. No property owner can opt-out of HOA membership for as long as he or she owns property in the housing development.

An HOA is typically run by a volunteer board of directors or governors elected from within the HOA membership. This governing board is tasked with enforcing and overseeing the HOA's rules and regulations, which are also known as "covenants, conditions and restrictions" (or CCRs). CCRs can apply both to the properties and to the residents within the housing complex, and they may govern any aspect of residential life within the complex, from pet ownership to noise levels to landscaping practices. As a condition of owning property governed by an HOA, owners agree to comply with all CCRs established by the HOA. In addition, they are required to pay dues as well as special assessments to the HOA to help defray the costs of shared expenses.

If an HOA member fails to pay the required assessments or comply with the CCRs, the HOA is empowered to impose fines or other penalties, up to and including a forced sale of the property. Because failure to comply with CCRs is considered a contractual violation, it can also give rise to litigation. HOA disputes also often occur when property owners have grievances against the HOA leadership, including challenges to fines or assessments imposed. The property owners may contend, for example, that their dues were mismanaged or that the HOA hired an unqualified contractor to make facility repairs.

This article will address some of the common disputes involving HOAs. Whether you are considering buying property governed by an HOA or whether you are tasked with managing one, it is important to fully understand the rules and requirements that apply to you and to consult with an Atlanta real estate attorney who can help avoid the possibility of a serious legal dispute.

## Unpaid Assessments

HOAs typically collect dues on a monthly or annual basis to cover the costs of maintaining the complex,

including repair and maintenance of common facilities, landscaping, security, and salaries of HOA employees. The HOA may also levy one-time assessments (“special assessments”) to pay for large expenses such as roof replacement or repaving roadways. The governing board will usually divide these costs equally among the homeowners, based on the number of occupied properties in the complex.

Nonpayment of HOA dues and assessments is one of the most common disputes between HOAs and their homeowner members. If homeowners are delinquent in their dues or other payments, they could be liable not only for these costs but also for any late charges, collection costs, attorneys’ fees, fines and interest. Debts to an HOA can mount quickly and can be substantial.

HOAs are typically empowered to recover these costs by placing a lien on the delinquent homeowner’s property. The lien will automatically attach as of the date the original payment came due. If the debt remains unpaid, the HOA may elect to formally record a lien on the deed to your property to provide public notice of the encumbrance. Whether or not the lien is recorded, it can prevent property owners from selling or refinancing their homes, which could impact the overall value of property within the complex.

If the lien remains unsatisfied, the HOA may elect to foreclose on a property to clear the debt. Georgia law allows for both “nonjudicial” (or out of court) as well as judicial foreclosure proceedings. This means that the HOA may file a lawsuit against the property owner in court to force the foreclosure of the home, or it may initiate other foreclosure proceedings allowed by state law and by the HOA CCRs.

## Misappropriation of Funds and Violation of Fiduciary Duty

An HOA is a non-profit organization, which means that, legally, the primary aim of the organization is not to make a profit but to operate a residential development for the benefit of all residents of the community. A homeowners’ association board, therefore, has a fiduciary duty to act in the best interest of the homeowners. One common claim that an HOA governing board may face from its membership is that the leadership group failed to act in the community’s best interest by mismanaging the dues and other assessments the community members contributed to the HOA. Claims of mismanagement may range from incompetent or negligent mishandling of accounts to outright fraud or embezzlement.

As part of its fiduciary duty, an HOA board is required to make disclosures to homeowners, including ensuring that the HOA budget and accounts are transparent to all of the HOA members. The HOA’s books must also be independently audited, and HOA members should have access to the audit results. Taking these steps and strictly following the financial management rules set out in the HOA CCRs can help HOA governing boards guard against potential claims. Misappropriation of funds is a potentially serious charge against an HOA. It is important to work with an Atlanta real estate attorney to help protect against potentially significant liability.

Georgia law also allows HOA board members to be sued personally for a violation of fiduciary duty while acting as a member of the HOA. These types of claims may not be covered by the HOA’s insurance policy, which means that a director who is sued as an individual may be personally responsible for all costs associated with his or her defense.

## Covenant Violations and Fines

Homeowners may be subject to fines and other penalties imposed by an HOA for failure to comply with the HOA CCRs. However, an HOA is required to satisfy certain procedures before exercising its enforcement authority. Homeowners will often seek to challenge an HOA's decision regarding a CCR violation, not only on substantive grounds but also on grounds that the HOA failed to comply with required procedural steps.

For example, a homeowner may challenge the HOA's failure to provide adequate notice of a violation. Typically, notice must be in writing and must give the homeowner an opportunity to cure or correct the violation before any further action is taken. Homeowners may also challenge penalties imposed by an HOA if they are not first given an opportunity to be heard by the HOA board. If a hearing is held and the homeowner is dissatisfied with the board's determination, an HOA board decision may be appealed, either to an arbitration board that has oversight authority over HOAs or to a court.

Finally, homeowners may be able to claim that the HOA enforced the CCRs in an unfair or discriminatory manner. If the HOA has failed to be consistent in identifying violations and/or imposing penalties, a homeowner may have an argument for "selective enforcement," which means that the HOA enforces a particular rule against only one homeowner or group of homeowners and not against the wider community. The HOA board cannot act in an arbitrary or unreasonable manner in issuing notices of violation, and all rules must be applied fairly to all homeowners in the development. An Atlanta real estate attorney can advise on steps that an HOA can take to defend against claims of selective enforcement.

## Repair and Maintenance Disputes

One of the most common sources of disputes between homeowners and an HOA is repair and maintenance obligations. These types of disputes typically take one of three forms.

First, it is typically understood that a homeowner is responsible for making repairs to their own unit whereas common spaces are maintained by the HOA on behalf of all homeowners in the development. However, it may be difficult to determine who is responsible for maintaining external fixtures on an individual unit, for example. If the CCRs do not clearly set forth who is responsible for handling maintenance and repair of different portions of the complex, disputes may arise to clarify these responsibilities.

Second, homeowners may take issue with how an HOA is maintaining the areas for which it is responsible. If the homeowners feel that the HOA is not properly maintaining landscaping or parking lots or other common facilities, the homeowners may seek to have an HOA board member removed or may file a lawsuit to compel the HOA to perform its duties.

Finally, disputes may arise when a homeowner or a guest of a homeowner causes damage to common areas. If damage occurs, the HOA may initiate a repair and may impose a reimbursement assessment on the homeowner responsible. A reimbursement assessment is not a fine, and it should be limited to the cost of repairs. A homeowner may contest responsibility for any such charges.

# Permit Denials

HOAs may tightly control not only how homeowners use their property but also the improvements, remodeling or other construction that homeowners are permitted to undertake on their property. Any substantial renovations to property within an HOA-governed complex will typically require not only city-issued building permits but also a permit or other authorization from the HOA.

The HOA's primary concerns in considering whether to grant authorization for renovations or improvements will include:

- complying with the CCRs;
- maintaining the structural integrity of the complex,
- minimizing impacts to common property such as plumbing or wiring, and
- ensuring that construction noise levels are not excessive.

If an HOA finds that a planned improvement will compromise any of these duties or is otherwise contrary to the rules set out in the CCRs, the HOA may deny an application for modification.

In denying a permit, the HOA should provide an explanation to the homeowner setting out the reasons for the denial. A homeowner may elect to challenge a permit denial in court if the HOA's stated rationale is not supported by the CCRs.

# Suspensions of Rights

One of the penalties that an HOA may impose on a property owner for violation of the CCRs or nonpayment dues is to suspend some of all of the homeowner's rights or privileges. The Georgia Property Owners' Association Act (GPOAA) authorizes an HOA to penalize non-compliant owners by suspending voting rights or restricting access to common facilities and services. The suspension not only applies to an owner, but may also apply to an owner's tenants, guests, and invitees. An HOA cannot, however, restrict a homeowner's access to his or her own property or common elements that are needed to access that property, such as parking lots or elevators.

Because suspension of rights is a significant penalty, HOAs are typically required to provide written notice and an opportunity to be heard before a homeowner's rights or privileges can be suspended. A homeowner may file a lawsuit alleging that the HOA failed to provide adequate notice or a hearing. If the HOA board did grant the homeowner a hearing and the homeowner did not agree with the board's final decision, he or she may also file a lawsuit challenging the HOA's decision to suspend rights and privileges.

# Compliance with CCRs, Bylaws and State and Federal Laws

Frequently, HOA disputes take the form of an HOA contending that one of its members is in violation of the rules that govern life within the residential complex. However, the HOA also has rules and regulations that govern its own duties and obligations. Perceived violations of these rules may also give rise to homeowner

disputes.

Three sets of rules govern how an HOA must operate: the CCRs, the association's bylaws (i.e., the rules that establish the residential complex and the HOA), and state and local law. State law invests an HOA with certain broad rights and duties. The CCRs and the bylaws for the residential complex will spell out in detail how the HOA shall conduct its business. The CCRs and bylaws will establish procedures for imposing special assessments, for providing notice of violations, and for approving changes to individual units within the complex, for example. Homeowners may have grounds for challenging the actions of an HOA that fails to follow the procedures set out in its governing documents.

HOA leadership should also periodically review the CCRs and bylaws to ensure that they are compliant with current state and federal law. Laws change, which may render certain CCR or bylaw provisions illegal and, therefore, unenforceable against HOA members. For example, HOA rules may contain the following provisions that are not legally enforceable:

- rules that restrict HOA membership or facility use based on “protected characteristics” such as race, marital status or number of children;
- rules barring children under a certain age from using a communal pool;
- rules banning the use of satellite dishes; or
- rules banning or imposing fees on the installation of solar panels.

Any HOA rules that are unenforceable under state and federal law are easily subject to challenge by residents. It is always advisable to consult regularly with an Atlanta real estate attorney to ensure that HOA rules remain enforceable over time.

## HOA Governance Disputes

Homeowners may also challenge the procedures that govern how an HOA board conducts administrative business. HOA governance decisions that are frequently subject to challenge include:

- the determination of eligibility for board membership;
- how elections for board seats are conducted;
- whether and how to amend the HOA's governing documents, including bylaws and CCRs;
- how dues and assessments are calculated and divided among residents;
- how the HOA maintains its books and accounting records (and, specifically, whether those records are made accessible to residents); and
- whether and how HOA meetings are run, including how residents are notified of such meetings.

Because the HOA board is tasked with acting on behalf of the entire membership, the board is required to be transparent in all governance matters, and it must comply with the rules set out in the HOA bylaws and CCRs. Otherwise, homeowners may have grounds to challenge the board's decision.

## FAQs for HOA Disputes: Ask an Atlanta Real Estate Attorney

**What is the difference between HOA bylaws and CCRs?** CCRs are legally binding documents that are

recorded with the County Recorder. They govern the use of the property and what the HOA is responsible for maintaining and how. HOA bylaws are guidelines for the operation of the HOA. The bylaws define the duties of the various offices of the board, the terms of directors, required meetings and notices of meetings, and elections, as well as other specific items that are necessary to run the HOA.

**Are HOA rules legally binding?** Yes. The HOA can potentially fine or file a lawsuit against an owner who violates HOA rules. It can also hold the owner responsible for any attorney's fees or costs incurred by the HOA in enforcing that rule.

**Can the CCRs or bylaws be changed?** Yes. An HOA board can change the rules at any time upon following the required procedures that are set forth in its bylaws and/or CCRs. Homeowners can also propose amendments to the rules, and the process for proposing amendments is also typically specified in the CCRs. Any proposed amendments to the rules must be voted on by the HOA membership.

**What should a homeowner do if they receive a notice of violation from their HOA?** Upon receiving a violation notice, a homeowner should immediately contact the association and ask for a face-to-face meeting or a hearing. If the homeowner disputes the violation, then he or she should also send a letter to the board stating the reasons for the dispute. If the homeowner does not dispute the violation, the homeowner should indicate that they will comply with the notice and provide a timeline for coming into compliance. Once the violation has been corrected, the homeowner should notify the board in writing.

**How can an HOA protect its right to recover past due assessments from HOA members?** In most cases, as noted above, a lien will automatically attach to the property for any past due assessments. However, you must take certain legal steps to protect your lien and to notify both the owner and any potential buyers of your right to collect upon the lien. An Atlanta real estate attorney can represent and advise you in the collections process.

## Contact an Atlanta Real Estate Attorney to Resolve Your HOA Disputes

Because HOAs are entities created under state laws, they can be sued. An HOA may also seek to file a lawsuit against an individual homeowner for non-payment of dues or other contractual violations. If you are facing a potential HOA dispute, an Atlanta real estate attorney at the Robbins firm can advise you on your rights and your best course of action. With advice from a knowledgeable and experienced attorney, it may be possible to resolve disputes favorably before resorting to litigation. Contact our firm today to have an attorney review your case.