

Northwood Hills Property Owners Association Q&A

(The word association contained in this document refers to the Northwood Hills Property Owners Association.)

Question: Do we have to have a Board of Directors?

Answer: Yes. In order to move forward with an active association or to dissolve the association, we must have a Board of Directors in place.

MH: **It is highly suggested that a board be instituted, if one is not already, to either carry on duties in furtherance of the Association or to properly dissolve the Association.**

Question: Where is the "commons", "park" area?

Answer: The large park area is behind the homes on Northwood Hills Dr. by the telephone easement right a way and runs all the way to the railroad tracks. There is an entry way off of Timberway Lane N. and another one off of Timber Creek N. There is another area on Timber Way North by the railroad tracks, another section of land on Timberway Lane by the creek, and then all of the land that runs along the creek behind the homes going in a northerly direction.

Question: Who were the last known officers for the association and who has been paying the taxes and insurance for the last six years?

Answer: President – Chris Tong
Vice President – Bill Adkins (has moved)
Secretary/Treasure – Christine Ashwell (had moved)

Once the money that was given to the association by the developer was used (cutting grass, insurance, postage and taxes) there was no way to continue the grass cutting or insurance coverage. Chris and Denise Tong have been gracious enough to continue paying the taxes on the common areas.

Question: If the association is valid, why aren't fees collected at closing?

Answer: The association is valid because it has been chartered with the State and was done so by the developer. (Need legal help with this question)

MH: **It is not necessarily the duty of the closing attorney to collect fees at closing. Some attorney make this their practice, some don't. However, it is the responsibility of the purchaser/homeowner to pay the dues.**

According to the documents filed with the Mississippi Secretary of States Office, the Northwood Hills Property Owners Association (hereinafter "NHPOA"), Incorporated has been filed (filed on June 15, 1998) and is in good standing with the State. Therefore, since June 15, 1998 the State of Mississippi has recognized the existence of NHPOA.

Question: Is the association still valid if dues have not been collecting in several years?

Answer: The association is valid because it has been chartered with the State and was done so by the developer. (Need legal help with this question)

MH: **According to the State the Association is still in place. The lack of dues collection does not dissolve an association. Guidelines for non-profit dissolutions may be found in Mississippi Code Title 79 Chapter 11 – Nonprofit Associations.**

Question: Why are people still not being notified that there is a Homeowners Association? (I called several real estate agents with houses listed in our subdivision and none of them know about the association.)

Answer: Mississippi does not have a disclosure law requiring real estate agents or closing attorneys to reveal to the potential buyer that there is or will be a HOA either in existence or to be formed. This is a matter you would need to address with your real estate agent. You paid for their services, let them know you are not happy with what they provided.

MH: **Actually, each individual homeowner/purchaser is, according to Mississippi law, put on notice that there is an association so long as the formation documents have been filed with the county's chancery land records. This type of notice is called "Constructive Notice". It is the homeowner's/purchaser's responsibility to find out about the property that they are purchasing. Just because an owner/purchaser doesn't know about it, doesn't then give them a defense to being a member of the association.**

From review of the Desoto County Chancery Records, it seems as though all documents have been properly filed.

Question: Item #11 of the Rules, Regulations & Restrictions states that the park will be closed at 11:00 p.m. What park?

Answer: The large park area is behind the homes on Northwood Hills Dr. by the telephone easement right a way and runs all the way to the railroad tracks. There is an entry way off of Timberway Lane N. and another one off of Timber Creek N. There is another area on Timber Way North by the railroad tracks, another section of land on Timberway Lane by the creek, and then all of the land that runs along the creek behind the homes going in a northerly direction.

Question: There are several houses out of compliance with the Rules, Regulations & Restrictions. What happens to them, do they have to repaint their houses, move the four-wheelers, boats, campers, etc?

Answer: That will be up to the Board of Directors to decide; however, the builder's covenants and By-Laws give them some guidance.

Question: How was the \$5,000 that was initially put into an account for the association spent? How much was spent for taxes, insurance and maintenance?

Answer: When the task of trying to run the Association was given to Chris Tong on July 19, 2002, the balance in the account was \$3721.00. How the money was spent has never been a secret and as stated in the By Laws, the books have always been available for anyone to look at. The \$3721.00 was spent on taxes, insurance, grass cutting, legal fees and postage until it ran out.

Question: Item #13 of the Rules, Regulations & Restrictions states that boats, travel trailers or campers are not to be parked on lots. The original builder had a boat and designed an extended pad on his lot for that reason.

Answer: Item #13 clearly states that trailers, campers, boats, travel buses cannot be parked on the street or in the driveway. The homeowner is not being told that they cannot have one of these vehicles, just that the vehicle must be stored out of sight (garage or backyard).

Question: I cannot find where it is stated that the entrance signs belong to the association. (If you can show me that they do belong to the association, then I want the one in my yard removed.)

Answer: The entrance signs/structures were created with the intent that the association would maintain them to keep a uniform appearance into the neighborhood and not put a financial burden to maintain on the homeowner. However, they are not located on any easement or common area; therefore, if needed, it would come down to a judge deciding how to handle should a homeowner elect not to allow the association to maintain.

Question: Declaration of Covenants and Restrictions, Article 6.3, Committee Approval – This article states no tree shall be cut or removed with the initial or subsequent construction of a building or a fence. Since you haven't enforced this for the past six years and the previous owners of our property didn't keep the saplings maintained, do you expect me to get committee approval before cutting down these trees to put up a fence that I already have a permit from the city for?

Answer: A permit does not give the home owner the freedom to circumvent city ordinances or rules set forth in the Association's By Laws, Articles of Declarations, or builder's covenants.

Question: Since we are in the city limits, why not turn the common ground over to the city to maintain? There is no park, pool or anything that would really add value to the subdivision.

Answer: The city does not want the common area and has no use for it. The home owners are responsible for the upkeep, taxes and liabilities on the land. The payment of upkeep, taxes, etc. associated with the common areas must be paid or individual home owners would be charged via their individual yearly property taxes.

Question: What is the estimated cost per household, per year?

Answer: This will be decided by the board.

Question: I have a question about the two pets per household rule. I have more than two small pets inside my home and will sell my house and move before I part with them. What will happen if Northwood Hills does get the home owner association passed? When I bought my house years ago, there was no home owner association so this was not an issue. Will my pets be "Grandfathered" in?

Answer: This will be decided by the board.

- Question:** I would like to know who will enforce the rules and restrictions. As of now they are not being enforced. I see window type air conditioning, boats and campers in driveways, more then two pets, dogs not restrained and no collection of pet waste. I have a boat I pay storage on while others don't. I clean up after our dog and others in our yard. If no one is enforcing the rules then remove them so the ones that do follow can do as others are doing.
- Answer:** Rules and restrictions cannot be enforced until the association members vote a Board of Directors into place. Once this is done, the board can assign officers and move forward with assessing dues, enforcing rules and restriction, and working to make our community a great place to live for many, many years.
- MH:** **Pursuant to Article 5.1 of the filed Covenants, owners also have the right to enforce the rules and regulations.**
- Question:** What happened to the park we were supposed to get in Northwood Hills? When we bought our house we were told a park was in the plans. The survey papers we were given with all of the lots on them also included a park. We should all get a petition together for a park. If we had a park people could walk their dogs there instead of the dog going on peoples lawns.
- Answer:** It would be up to the board members to try to get Reeves Williams to put in the park.
- Question:** I am just concerned about paying association fees for a common area that is not available. If there is one I don't know where it is. Could you please let me know the whereabouts of this area? Also if there is going to be a monthly association fee and if so why? What would the reason be for any fee?
- Answer:** The association dues are much more than just for maintenance of the common areas. The dues are also used for taxes and insurance on the common areas, legal fees and postage for mailings.
- MH:** **To reiterate the answer above, members should keep in mind that the dues are for much more than just common area maintenance. Also, it should be kept in mind that once sufficient dues have been collected, an association may decide to lower its dues. Furthermore, the excess monies could be used to increase the value of the community by, for example, building a gazebo in the common area for all its members use.**
- Question:** If I am not notified that there is a home owners association in place when I purchase my home, am I liable for the dues? Should the realtor be responsible for the dues since I was not notified?
- Answer:** Mississippi does not have a disclosure law requiring real estate agents or closing attorneys to reveal to the potential buyer that there is or will be a HOA either in existence or to be formed. This is a matter you would need to address with your real estate agent. You paid for their services, let them know you are not happy with what they provided.
- MH:** **Once again, it is the buyer's sole responsibility to find out about the HOA. That is not to say that realtors should not be educated about the property, just that it is ultimately the buyers responsibility.**

Question: Why have the streets not been paved properly since the construction has been complete?

Answer: The streets are not the responsibility of the NWHPOA. However, the issue can be pursued by the Board of Directors.

MH: **The Board and/or the residents should contact the City about this. There should have been a performance bond in place to it that the final top coat of streets have been laid down by the developer. (This is assuming the street question is referring to the final top coat of paving.)**

Question: Doesn't each home owner's current personal home owner's policy protect the home owner from being liable if someone is hurt on the common area?

Answer: No. A personal home owner's policy does not protect a person from being liable for common areas in a subdivision.

Question: What will be regulated that the city does not already control?

Answer: The Board of Directors will be able to enforce the Bylaws Rules and Regulations, and Declaration of Covenants and restrictions that govern the Northwood Hills Property Owners Association. (This material was hand delivered to every association home owner.)

Question: How much will the yearly fees be and will there be any hidden fees?

Answer: This will be up to the Board of Directors.

MH: **The Covenants initially placed a maximum dues amount of \$200.00.**

Question: The contract I signed in January 2002 does not mention present or future development of a Home Owner's Association. If I choose not to join your association, what grounds do you have to hold it over my head?

Answer: Although you did not choose to be in the association, you are in the association by owning the property.

MH: **Pursuant to Article III of the Covenants, membership is appurtenant to ownership of a lot.**

Question: Is Section D part of the association since it is missing line 12 of the restrictive covenants stating it is part of the association?

Answer: Yes, The plat for Northwood Hills Section D Phase II that is on file with the Chancery Clerk states "Decelerations of covenants and restrictions recorded this the 20th day of July, 2001 in Warranty Deed Book 396 PG.335." The document that is on file in the warranty deed book that is referenced on the plot states the covenants and restrictions and defines the NWHPOA in regards to section D.

MH: **It is irrelevant that line 12 is not on the plat due to the fact that the plat does reference the covenants in Warranty Deed Book 396 Pg 335. However, one question of concern is Section "C", which is also missing line 12, and, additionally, does not make reference to any CC&R. I believe the pro-association argument could be made by stating that the omission was an unintentional filing error, and Section "C" is also part of the Association by inference.**