

Martinez: The dark side of HOAs

By José Martinez, The Denver Post

Posted:

DenverPost.com

I've lived in HOA communities for more than 30 years. A few years ago, I noticed that HOA residents had crossed an important line: The conflicts got darker and more insidious. The gloves came off.

Today, like Congress, these homeowners are polarized and occupy entrenched positions. Depending on your source of information, it's either an insurrection or a small civil war.

An escalating number of HOA residents claim they face intractable problems they can't solve without state help, issues that surpass the traditional "P" problems (pets, parking and paint). They say that a small group of HOA residents cannot stand up to the power of HOA boards and professional management companies (PMCs).

The power imbalance is extreme and abusive. State legislators do need to step in, and the sooner the better.

To clarify this growing conflict, Colorado's HOA Information Office and Resource Center (IORC) last year compiled data on issues facing HOA residents. This state office processed more than 3,000 queries and complaints and quickly learned the offended homeowners were right: The Ps are misdemeanors; the serious crimes are committed by the boards and the PMCs.

In short, board members and managers don't follow their own rules; finagle bylaws; play free and loose with contracts and money; and won't release documents. Then they retaliate against anyone who opposes them.

The IORC's 2011 report lists these problems as "the failure to follow corporate governance rules and procedures of the HOA; the transparency of the board directors, particularly as it related to the finances of the HOA; and harassment and bullying of homeowners by the board of directors and management company by arbitrary fining, preclusion from providing input into the associations' affairs, and verbal harassment. These complaint types ... substantially interfered with a homeowner's ability to enjoy his property and to have avenues of democratic participation in the HOA to remedy their issues."

Given that catalog of crimes and misdemeanors, the solutions could come from the judicial system and community politics. But court is too expensive and time-consuming for most homeowners and in essence they would be suing themselves while paying for both lawyers. And they can't throw the bums out of office because board members exploit the power of incumbency and use other political tactics to stay in power.

I recently observed four board members and three PMC managers deal with a loud stereo complaint, the kind of problem a good rental apartment manager handles in two days and campus housing managers solve in minutes. This team spent more than two months working on this minor issue — and in the end, didn't solve it. During those weeks, they illustrated the dysfunction of the board and the ineptness and incompetence of the professional managers.

The same team worked on enforcing a visitor parking bylaw for two years and couldn't do it, partly due to personal conflicts of interest.

The 2011 report succinctly describes these kinds of issues and more: "Responsible governance complaints included issues dealing with the enforcement of covenants, following corporate procedure, failure to adequately address disputes, investment of monies, accounting issues and conflict of interest transactions by board members."

Three things are needed:

- The state needs to license and regulate PMCs. These "managers" often lack the education and expertise to handle the necessary legal, budget and managerial tasks assigned to them.
- HOA legislation needs to be amended to provide rules, enforcement and penalties for noncompliant HOA boards.
- Binding, out-of-court arbitration panels are needed to settle disputes.

More than 2 million Colorado citizens live in HOA communities. They need these these protections.

José Martinez of Littleton taught politics, history, culture and literature at the University of Colorado Boulder for 14 years.