the restrictive covenants or the powers of the association?

Q: Not in all cases. If you choose to purchase a restricted property, you agree to abide by the restrictions. Display of signs, flags or banners, certain uses of the property, storage of personal property (e.g., boats, RV’s, etc.), keeping of animals, and other practices can lawfully be controlled by restrictive covenants if they are properly created and enforced.

A: What if a purchaser doesn’t want to follow the restrictive covenants affecting the property?

Q: A purchaser who does not abide by the restrictions on the property can be fined. That fine can become a lien on the property and collected by sale of the property through foreclosure. If the association is subject to the Planned Community Act, it may impose a fine up to $100.00 per day, after giving written notice to the owner of the alleged violation and providing an opportunity to defend against the charge at a hearing.

A: What can I as an owner do if the association is not performing its duties or if other owners violate restrictive covenants or bylaws?

Q: Your remedy is to sue the association and/or the offending property owners in court for an order compelling them to abide by all lawful covenants and bylaws. But remember, these are private rights of the association.

A: Who pays my legal expenses if I am sued by my association?

Q: With only rare exceptions, you will be responsible for your own attorney fees and other legal expenses.

A: Roads and Common Areas

Q: Who owns the roads in a residential subdivision or planned community?

A: Unless the roads have been dedicated to public use and formally accepted by the appropriate government agency, neither the state nor any public agency owns legal title to the land over which a street runs. Where the developer has retained title to the streets (i.e., the lot lines border the edge of the street), it is liable under state law for erosion control and possible civil damages if injures result from a lack of maintenance. This is true even after all lots have been sold.

A: Who is responsible for road maintenance in a subdivision or planned community?

Q: Not in all cases. If you choose to purchase a restricted property, you agree to abide by the restrictions. Display of signs, flags or banners, certain uses of the property, storage of personal property (e.g., boats, RV’s, etc.), keeping of animals, and other practices can lawfully be controlled by restrictive covenants if they are properly created and enforced.

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Questions and Answers on: Residential Subdivisions and Planned Communities

As North Carolina becomes an increasingly urban state, more and more people are purchasing homes and lots in residential subdivisions and planned communities. In these subdivisions and communities, there is usually a homeowners association that may be responsible for maintaining the common areas of the development and the enforcement of "restrictive covenants." Many purchasers seek residential subdivisions and planned communities with restrictive covenants (sometimes referred to as "restrictions") because they believe the covenants will help ensure consistency in the neighborhood and the preservation of property value.

Restrictive covenants may have less formal voluntary associations, generally with less power than mandatory associations. Regardless of whether it is voluntary or "mandatory," membership in an association is typically required if the restrictive covenants are recorded in a property's chain of title. However, if membership in the association is mandatory, it controls the votes and thereby the association itself. The developer (or its successors) may have the power to amend the covenants and restrictions so long as it acts in accordance with the legal documents creating the association. The developer has a fiduciary obligation to act in good faith, in accord with law, and in the best interest of the association. Otherwise, if the developer fails to pay funds claimed by the association, the court can determine whether it is lawful.

What is the role of local government in HOA administration?
A: Generally, residential subdivisions and planned communities must be approved by a city or county zoning authority, depending upon the location of the property. When subdivision approval is required, and preliminary plat approval has been obtained, the developer may then offer lots for sale and enter into contracts so long as the contracts:
(1) incorporate any regulatory requirements relating to subdivision platting and plat approval;
(2) plainly and conspicuously notify the buyer that certain restrictive covenants are recorded in the preliminary plat; and
(3) provide that if the final approved plat is materially different from the preliminary plat, the buyer may not be required to close earlier than 15 days after delivery of a copy of the final recorded plat; and
(4) provide that if the final approved plat is materially different from the preliminary plat, the buyer may not be required to close earlier than 15 days after delivery of a copy of the final recorded plat. 

What happens if an owner (or the developer) fails to pay funds claimed by the association, including assessments, fines, fees or other charges?
A: The association must use the funds granted in the restrictive covenants to collect them. In developments subject to the North Carolina Planned Community Act, liens and foreclosures of the owner's property are permitted.

Do I have to pay association dues?
A: Under North Carolina law, the developer of any real estate project is the owner of all unsold lots or units in the project. As long as the developer owns a majority of them, it controls the votes and, therefore, prospective purchasers should consider the financial health of the association when determining whether they can afford it. If an existing owner believes an association has improperly imposed a charge of some kind, only a court can determine whether it is lawful.

What is a Homeowners Association ("HOA")?
A: It is an association of owners, typically in a residential subdivision or planned community, whose properties are subject to restrictive covenants limiting their use. The association may be responsible for the maintenance and control of the common areas in the development and enforcement of the restrictive covenants.

Is there any limit on what an owner has to pay to the association?
A: Not so long as the dues, charges and/or assessments are lawfully imposed in accordance with procedures established by the restrictive covenants. Sometimes, when assessments are for substantial undertakings (road maintenance, utility services, building maintenance, etc.), they can be costly; therefore, prospective purchasers should consider the amount of any current or pending dues, charges and assessments and the financial health of the association when determining whether they can afford them. If an existing owner believes an association has improperly imposed a charge of some kind, only a court can determine whether it is lawful.

What is the developer's role in a mandatory association? Must it pay dues, charges and assessments?
A: Under North Carolina law, the developer of any real estate project is the owner of all unsold lots or units in the project. As long as the developer owns a majority of them, it controls the votes and, therefore, prospective purchasers should consider the financial health of the association when determining whether they can afford it.

Do I have to join the association?
A: It depends on whether it is "voluntary" or "mandatory." Membership in an association is typically mandatory if the restrictive covenants are recorded in a property's chain of title. But some neighborhoods have less formal voluntary associations, generally with less power than mandatory associations. Regardless of whether it is mandatory or voluntary, if you are a member of the association, typically you will have a voice in its operation.

What is the业主 associations?
A: Homeowners associations are subject to restrictive covenants and other provisions in their declarations that bind them to the association.

What are the duties of the association?
A: The association has duties to manage the association's property and to act in the best interest of the association's members. In a voluntary association, it must use the funds granted in the restrictive covenants to collect them. In developments subject to the North Carolina Planned Community Act, liens and foreclosures of the owner's property are permitted.

What is the duty of the local government in regard to homeowner associations?
A: The local government is responsible for approving residential subdivisions and planned communities. If they do, they must be licensed by the North Carolina Real Estate Commission and act in accordance with Commission rules. Although the Commission cannot referee disputes between an association and its members, it has disciplined its licenses for failing to deliver the Subdivision Street Disclosure Statement, selling land at inordinately low prices, and not requiring members to pay assessments.