

TOPIC

Homeowners Associations

ADVICE

Homeowner associations (HOA) can be tricky business, especially when developers are still involved. Perhaps the antagonist's mantra in Robert Frost's poem "Mending Wall" should be heeded: "Good fences make good neighbors."

Fortunately, HOAs come with built-in fences. The association's condominium documents define the relationship and rules among the condo owners. Typically, the condo docs also provide for the developer to retain control of the board of directors until 75% of ownership interests have been transferred.

Despite the protections contained in the condo docs, however, developers sometimes run roughshod over the homeowners. If this happens to you, be proactive. Demand the transparency that the condo docs—and the law—affords you. Alabama's condo laws provide that all financial and other records must be made reasonably available to any unit owner. These records include budgets, income and expense statements, assessment reports, and statements of insurance coverage.

Be especially mindful of insurance coverage. The homeowners at a well-known project in Birmingham recently began investigating their developer-controlled HOA. A mere cursory review of the financials revealed that the developer owed the HOA a substantial sum in back dues. And when a CPA reviewed the financials, it came to light that the HOA's master insurance policy premiums were four months overdue! Not good for anyone.

These homeowners may have a claim against the developer-directors of their HOA. Alabama condo laws require developer-appointed HOA board members to exercise the care required of **fiduciaries of the homeowners**. That is an extremely strict duty, and where the interests of the developer and the homeowners conflict, the developer-directors **must** take the side of the homeowners.

Developers, though, need not take on this fiduciary duty without protection. They can indemnify themselves through directors' liability insurance or a fidelity bond. Alabama law allows the expense to be charged to the HOA.

A personal note to condo developers: Remember that what is a commercial project to you is the home of the residents who live there. The Golden Rule is a good standard to follow in your dealings with the HOA. Good relationships also make good neighbors.



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