

## **Dissolving HOA to save costs possible, but complicated and impractical**

**Ryan Poliakoff**

Condo Q&A

**Dear Poliakoffs,**

Everything is getting more expensive. What happens when the HOA yearly budget for maintenance items such as lawn care, pest control, insurance, property management - all of the things that go into a functioning community - get so expensive that owners cannot afford the monthly and special assessments, but also can't afford to move? Can you dissolve an HOA?

*Signed, T.S.*

**Dear T.S.,**

An HOA is a unique construct where property owners join together and share the maintenance responsibility for commonly used property (ranging from roads and landscaping to gatehouses, clubhouses, pools and play facilities). They only work because the HOA is obligated to maintain the property; and the property owners are obligated to cover the cost of such maintenance. The HOA has the right to place a lien on every lot and foreclose on that lot if the assessments for common expenses are not paid. That is the essential nature of an HOA. In a home that is not governed by an HOA, there are no similar responsibilities; but also, there are no similar amenities, and people regularly find themselves living near neighbors that may not maintain their own homes, or are at the mercy of a municipality that may not properly maintain its own roads, landscaping and the like. There's pros and cons to both arrangements, and each individual person needs to determine if HOA living is right for them.

Due to a number of market factors we are experiencing the highest inflation rates since the 1980s. The cost of everything has increased, and that is particularly true of industries that are reliant on oil and gas (such as landscaping). There are really only two choices—stop maintaining the community or pay what's owed. Boards do have some latitude to make business decisions about how they maintain the property in order to cut costs. For example, a board may choose to only install annual flowers once per year, rather than summer and winter. Or a board may decide that the trees only need to be trimmed before hurricane season, rather than in the winter as well. In more extreme circumstances, a community may decide to cut security coverage or close facilities earlier in the day, saving

on the cost of electricity and staff. But, ultimately, there is only so much that can be trimmed from any budget, and fixed costs are all going up as well.

No one wants to leave their home, but by the same token HOA living is not for everyone. When you are maintaining your own home you can choose to ignore certain maintenance items—if you have a leak and decide to stick a bucket of water under it and live with it, knowing that you may be creating a bigger issue down the road, that is your right. But in an HOA, the board ultimately does have to meet some minimum level of maintenance to satisfy their obligation under their declaration of covenants and the relevant statutes. So, the time may very well come that a person living in an HOA has no choice but to sell their home and move, sometimes into a smaller and more affordable option (such as a smaller home, condominium or even a rental property). This is not just an issue that comes up due to increased maintenance costs—events like hurricanes and other disasters can spark huge repair and maintenance responsibilities, with assessments to match. So, while inflation is creating acute pain for a wide variety of homeowners, these issues are not unique.

It may very well be legally possible to dissolve a homeowner's association, but there are a number of complications and barriers. For example, in most HOAs the common property is owned by the HOA, which is obligated to maintain such property for the benefit of all of the owners. If you dissolve the HOA, who is going to own and maintain the common property? Take roads, for example. Does each homeowner maintain their own section of a common road? Can you imagine what the roads would quickly look like if that were the case? Or, would the local municipality agree to take over responsibility for those roads, despite the fact that the community was likely platted with an obligation that an HOA be responsible for their maintenance? And that says nothing of communities that have real shared facilities, such as a clubhouse and pool. What happens to those amenities, which were built for the benefit of all the owners?

That is, it may be technically possible to dissolve an HOA, but you would certainly need membership approval, and you would also have to resolve a number of significant complications—and it's just not likely that would happen. It's not as if you can just dissolve the HOA and "poof!" no one must pay assessments anymore. The purpose of those assessments remains, and so someone will always have to cover those costs, whether through assessments, taxes or some other manner.

*Ryan Poliakoff, a partner at Backer Aboud Poliakoff & Foelster, LLP, is a Board Certified Specialist in condominium and planned development law. This column is dedicated to the memory of Gary Poliakoff, pioneer of the community association legal industry, tireless advocate, and author of treatises, books and hundreds of articles. Ryan Poliakoff and Gary Poliakoff are co-authors of New Neighborhoods—The Consumer's Guide to Condominium, Co-Op and HOA Living. Email your questions to [condocolumn@gmail.com](mailto:condocolumn@gmail.com). Please be sure to include your location.*