

# COMMON FOUNDATIONS

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## Municipal and Association Responsibility: Where does the Town End and the Community Begin?

**H**omeowners new and old to association living question why they have to pay monthly dues or assessments, particularly for items such as trash removal and sidewalk repair. Aren't those covered by the local municipal government? In reality, these services are quickly becoming the sole responsibility of community associations across the country.

While 'dues' is the correct term for what residents pay, the money collected by the association is actually a property maintenance and operating fee. Like a city, associations provide services, regulate activities, and levy fines. Most HOAs are considered private non-profit corporations (though it can vary from state to state) - thereby making associations and their Boards, residents, and covenants, conditions, and restrictions (CC&Rs) subject to corporation law but not the Constitutional law that public governments must abide by. This is how an HOA can

operate like a small town but legally be allowed to mandate such things as the exterior paint color and size and locations of fences on the communal and even resident-owned land within their association. An HOA can also enforce their rules and regulations under civil law through a private legal action.

Some associations are, literally, small towns with their own post office and schools funded by dues. For example, the town of Celebration, Florida is actually one large HOA fully developed by the Walt Disney corporation! On the other end of the spectrum, associations ranging from 4-unit condominiums to a sprawling 200-home community may have dues and CC&Rs that cover only the basic common properties such as landscaping and common outlying buildings. Still other associations have no common property but charge for municipal-type services such as mailbox upkeep and road repair.



As always, the bylaws of an association are superseded by the CC&R's and the municipal code. As awareness and popularity of HOAs grow, the law often follows suit, though it can be slower in catching up. Have a legal representative check the municipal code in your area to determine if your CC&R's match with their own regulations about the public services and who is responsible for them.

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## Survey Confirms Association Living Satisfaction

Over 70% of residents living in associations are happy with their communities, a new 2007 poll by Zogby International shows.

Nineteen percent of residents labeled themselves as "neutral" with only nine percent stating they were dissatisfied. The survey was sponsored by the Foundation for Community Association Research, a nonprofit organization in partnership with the Community Associations Institute.

The 2007 findings match the results

found in previous surveys performed by both Zogby and the Gallup Organization. Some highlights of the 2007 survey responses include:

- They believe their association board members strive to serve the best interests of the community.
- They think their community managers provide value and support to the association.
- They believe association rules protect and enhance property values.
- They are satisfied with the return they get on their association assessments.

\* They do not welcome additional government intrusion in their communities.

Resident-elected Boards also fared well in the survey. Eighty-eight percent of community association residents state that their board members do their best to serve the needs of the community as a whole.

Property managers also received praise by respondents: 73 percent said that their manager provides value and quality to their community.

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**Did You Know?**

The New Jersey Municipal Services Act (1993) requires every municipality within the state to either provide certain services to each qualified private community (including associations) within its borders, or reimburse the community for these services. The Act is an effort to eliminate double taxation of its community association residents. Some of the services covered include trash and recycling pickup, snow removal, and street and road lighting.

Although the Municipal Services Act has been in effect for 14 years, some associations in New Jersey have only recently been made aware of the law. Many associations in the state may be eligible for compensation—these monies could be used for capital reserves, necessary repairs, or to avoid a special assessment in the future. Check with your local attorney for more details.

## MUNICIPAL: Drawing the Line

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Conversely, items such as trash pickup are not the only discrepancy between municipal code and HOA bylaws, either by outright contradiction or an omission in the association's regulations. Over the past year, several issues of occupancy in rental units have come to the forefront. Every town has their own zoning ordinance regulating occupancy in a single-family neighborhood or dwelling. The line is blurred in terms of responsibility: is it the local zoning commission's charge to control the renters in a private gated community? When and how does the association enter as a party responsible for enforcing municipal regulation? The solution is most often a thorough review of

your CC&Rs alongside the local municipal code to ensure your CC&Rs contain both affirmative and restrictive covenants that align with the town's own regulations. (An affirmative covenant imposes a duty to perform an affirmative act, while a restrictive covenant is a restriction on the use of property. An obligation to provide for consistent roof repair is an example of an affirmative covenant. A restrictive covenant is a prohibition on more than 30% rental units, for example.)

When all the dues are factored in, and assuming the Board judiciously and appropriately handles the money, HOA living can prove to be a bargain for

individual homeowners and the local municipal government alike. The dues truly become the lifeblood of the community. Reserve dues are an important line item in the monthly assessment—consistently saving for items such as roofs, siding, and repaving greatly reduces the risk of a special assessment or need to take out a loan.

The collective buying power of an association is just one reason more than 60 million Americans live in an estimated 300,000 community associations.

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