

Developer Controlled Homeowner Associations

The situation that many new homeowners find themselves in -- developers retaining power over the HOA -- is a common one that causes frustration and allows for abuse.

For the last few decades, developers have almost always preserved for themselves ultimate power in HOAs until a certain point when they turn the power over to the owners. Developers preserve this power to insure that they recoup their investment in their developments. Just when that point occurs depends on what the developer or its attorney wrote in certain documents for each HOA. Sometimes, the release of power is gradual and sometimes it is abrupt. Sometimes it occurs early and sometimes it never occurs.

Documents that reveal how long developers can retain power are the documents filed with the county clerk in the real property records relating to the developments (usually a plat and deed restrictions) and also the formation documents of the HOA such as the Articles of Incorporation and/or the By-laws, and later records such as resolutions passed by the board of the HOA.

There are several very unfortunate facts relating to these situations:

1. Most home buyers never think about this or even know about it when they buy their homes. They do not think about the consequences of the developer having continuing power over the HOA.
2. There is no statute governing this situation at all -- NONE. Developers can preserve power forever through certain mechanisms. There are numerous neighborhoods where the developer, or a successor in interest to the developer, still has control or at least veto power over certain things decades after the development began.
3. Because there are no statutes governing the situation, the rules concerning when the developers release power vary widely depending on what is in the documents described above. Homeowners need to obtain and READ those documents and see what they say.
4. Getting anyone (developers and/or HOA boards) to release power in an HOA is very difficult.