

November 2022

HOT TOPIC ALERT

Homeowner Associations



Introduction

Over half of the owner-occupied households in the U.S. are part of a homeowner association (HOA). [One estimate](#) says that there are over 370,000 homeowners' or community associations, representing more than 40 million households. These associations act as governing boards for a diverse range of living spaces, including condominiums in high rises, townhomes, and single-family homes in master-planned communities.

HOAs can serve a variety of functions. In a condominium or cooperative, where the homes are all in the same building or complex, the association takes care of [basic maintenance of the building and of the common areas](#) or amenities, such as swimming pools or fitness centers. In a planned community of detached single-family homes, the HOA may act more like a city

government than as a group of neighbors. An HOA may [provide amenities](#) such as parks or community swimming pools, but will also enforce a set of rules. These rules can cover everything from requirements that yards be kept up, to more particular restrictions on what color a house may be painted.

Benefits and drawbacks

Being a part of an HOA has a number of advantages. As noted above, a condominium association will have the responsibility of maintaining a building and its common areas, leaving residents with one less thing to worry about. There are also intangible benefits. Many homeowners say they welcome the [sense of community](#) that comes from being a part of an association. Others appreciate the uniformity of home appearance in a community with restrictive rules on design and decoration, as well as the enhanced value of a home in a neighborhood with [aesthetic standards](#).

However, the uniformity that appeals to some is a major drawback to others. Some HOAs may be extremely detailed in what is allowed or prohibited, to the extent of having a [rule regarding how long a garage door may be left open](#). Others may find that [paying an additional fee](#) over and above a mortgage payment makes living in an association less attractive, particularly if they don't use the amenities offered like a pool or a gym.

Restrictions on animals

Many HOAs have rules regarding the pets residents may have. Common restrictions are limits on the number or size of pets, or requiring pets to be [leashed or restrained](#). Some limit the types of pets: dogs or cats will be allowed, but [dwarf horses](#), for example, are not. If dogs are allowed, some [breeds may be prohibited](#). Some HOAs may even prohibit having any pets. Reasons for restrictions vary. [Pets may be limited](#) because of the noise or mess that they can cause, or to protect other residents from aggressive or dangerous animals. Protecting residents with animal allergies or phobias is also a consideration.

Bans on pets may become less popular, as more and more [buyers turn away](#) from “no pets allowed” properties. As a general rule, an HOA's restrictions or bans on pet ownership are [legally enforceable](#). [Problems arise](#) when an association changes the rules on pets and tries to evict animals that have been properly living in a building or development before the change. Inconsistent or [selective enforcement](#) may also be an issue. A homeowner may be able to defend against enforcement of a no-pets policy if the HOA is applying the rule arbitrarily, by letting some residents keep pets that violate the rules, but enforcing the rule strictly against others.

Service animals

A no-pets policy may not, however, be used to keep out a service animal. Section 804 of the [Fair Housing Act](#) requires housing providers, including homeowners' associations, to make reasonable accommodations in rules, policies, practices, or services to allow a person with a disability the equal opportunity to use and enjoy the housing. The U.S. Department of Housing and Urban Development (HUD) has [stated](#) that this law may mean that service animals are to be allowed, even if the provider has a “no pets” policy.

HUD is careful to note that service animals are not pets. A service animal must be allowed if a person has a disability (a physical or mental impairment that limits one or more major life activities), and if that person has a disability-related need for a service animal. The pivotal question is, “[D]oes the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability?” If so, a particular animal may be excluded only if that animal is dangerous or would cause significant property damage, or if the housing provider demonstrates that granting the person’s request would impose an undue financial and administrative burden or would fundamentally alter the essential nature of the housing provider’s operations.

Note that the definition of “service animal” in the housing laws is broader than the definition in the [Americans with Disabilities Act \(ADA\)](#). The ADA, which applies to buildings or spaces open to the public, defines a service animal as a dog trained to accomplish a specific function. [Regulations](#) extend ADA coverage to certain miniature horses. However, animals kept for emotional support or comfort [are excluded](#) from the definition. HUD, on the other hand, says that any species of animal could be a service animal. [Emotional support animals](#) are included in that definition if the emotional support is related to a person’s disability.

While statistics [vary](#), recent estimates indicate that between [50](#) and [70 % of households](#) in the United States own one or more pets. As more and more of those households become subject to the rules of homeowners’ associations, it seems likely that more and more of the rules against pets will start to disappear.

Comparison of Service Animals or Assistance Animals:

Fair Housing vs. Americans with Disabilities Act

	Fair Housing Act	ADA
Real Estate coverage	Dwellings, common spaces in residential buildings such as lobby, laundry and pool/gym	Places of public accommodation, businesses that serve the public, including leasing offices and spaces in residential buildings required for access to places of public accommodations, for example the lobby and access to a convenience store in a residential building
Animals covered	Any animal that assists including emotional support or alleviates identified symptoms of a disability	Dogs and miniature horses trained to work and perform tasks. Not covered are emotional support animals
Request required?	Yes - A request to allow an animal as an accommodation to existing rules limiting animals	No

How is right determined?	Two questions – If not readily apparent, may ask if the person making the request has a disability and does the person have a disability-related need for the animal. If yes, animal must be allowed.	Animal need only meet the definition to be allowed into a facility. If not readily apparent, may ask if the animal is required because of a disability and what work or tasks has the animal been trained to perform
Documentation	May request documentation only that there is a disability and that the person has a disability-related need for the animal.	None
Exceptions	If the specific animal (not a general assumption about breed, size or weight) poses a direct threat to others, or would cause substantial physical damage , only if risk cannot be reduced through an additional accommodation; or if an additional accommodation would impose an undue financial and administrative burden or would fundamentally alter the essential nature of the housing provider’s operations. May limit size of miniature horses.	Animal out of control and handler does not take action to control, animal not housebroken, direct threat to health and safety that cannot be reduced through additional reasonable accommodation

Chart provided by Fred Underwood, NAR Director of Diversity

Foreclosure for non-payment of fees or assessments

In a traditional city or town, necessary services, such as refuse hauling and maintaining and public areas, are provided by the municipal government and are paid for by taxes. In many condominium or cooperative developments, and in many planned residential communities, some or all of these [services are provided](#) by a homeowners’ association. HOAs get their financial support from fees or assessments paid by members.

The amount of these assessments or fees will vary, depending on the location of the property and the amenities or services provided by the association. However, such fees are rapidly [increasing](#). According to the [U.S. Census Bureau](#), the average monthly assessment for a single-family home is \$250, and the average monthly fee for HOA housing of any type, including condominiums and common interest communities, is \$170.

Unlike property taxes or insurance, HOA assessments are [seldom included in a monthly mortgage](#) payment. If payments are not made as required, many states say that the association has a [lien on the property](#) for the unpaid assessments. The [HOA may then foreclose on the home](#), just as a bank or other lender might. A HOA will be able to foreclose even if the property is subject to a mortgage.

Super Liens

In many states, HOAs are allowed to claim “[super liens](#)” for unpaid assessments. These super

liens are currently permitted in [22 states and the District of Columbia](#). Super liens have priority over all other liens on the property, including all or part of a first mortgage.

In [Nevada](#), for example, a super lien will have priority over a mortgage for up to nine months' worth of delinquent fees. The Nevada Supreme Court has interpreted this law as giving the association lien priority over all other liens, so that foreclosure by an association will extinguish a first mortgage, even though the mortgage was in place before the HOA's lien. The U.S. Court of Appeals for the Ninth Circuit did [find](#), in 2016, that notice to the lender was required before an HOA foreclosure extinguishes the first deed of trust, and Nevada's statute was amended to require notice of default and notice of sale to all with recorded interests. However, in late 2020, the same court [rejected](#) a lender's claim that the HOA "superpriority scheme" violated its constitutional rights, finding that it neither amounted to an uncompensated taking of property nor violated due process requirements.

The District of Columbia Court of Appeals has also [held](#) that a HOA's "super-priority lien" in the District had priority over a lender's mortgage lien, allowing condominium associations to collect up to six months of unpaid assessments upon foreclosure on a condominium unit. A later [2018 ruling](#) in the District held that a condominium association could not foreclose on its super-priority lien while leaving the property subject to the unsatisfied balance of the first mortgage or deed of trust, even if the terms of the sale specified that the condo unit could be sold subject to its first deed of trust.

Uniform Condominium Act: property management perspective

The [Uniform Condominium Act](#) was created in 1980, and has been enacted by fourteen states¹ as of 2022. It originally provided for the recovery of up to six months of community association assessments through a lien of first priority. The [Institute of Real Estate Management](#) (IREM-NAR affiliate) welcomed this balance between protecting the security of the lenders and the need to enforce collection of assessments. IREM has also maintained that the priority lien should apply only to monthly or periodic common expense assessments made by an association, pursuant to an annual operating budget, and due during the six months immediately preceding institution of an action to enforce the lien.

An [amended version](#) of the Uniform Condominium Act was published in 2021. Under the amended Act, the association's lien is not capped at only six months of unpaid common expense assessments, but at six months per year throughout any period of delay by a foreclosing lender. The notes to the amended version indicate that this change attempts to strike a more appropriate and equitable sharing of the costs of preserving the value of the mortgagee's security. As of November 2022, no state has adopted the amended Act.

Speedy foreclosures

Before the COVID-19 pandemic, the number of foreclosures by HOAs had long been [increasing](#),

¹ Alabama, Arizona, Kentucky, Louisiana, Maine, Minnesota, Missouri, Nebraska, New Mexico, Pennsylvania, Rhode Island, Texas, Virginia, West Virginia.

even as the number of other mortgage foreclosures had declined. [Moratoriums](#) drastically reduced foreclosures in 2020 and 2021, but they have been [rising quickly in 2022](#).

Associations have been criticized for moving too quickly to foreclose, even when the delinquency is [comparatively small](#). According to a report by the [Community Associations Institute \(CAI\)](#), as of early 2021, 5% of homeowners were more than 90 days delinquent in paying assessments. An earlier [study of 200,000](#) homes with owners who owe delinquent association assessments found that the average delinquency is \$7,200.

HOAs will also move swiftly on delinquencies to protect the marketability of homes in the community. Fannie Mae [guidelines](#) say that a project is ineligible for financing if more than 15% of the units in the project are 60 days or more past due on their association fees. Letting too many delinquencies go for even a relatively short amount of time can thus cut off a source of financing for future purchasers. [New homeowners will be less likely to purchase](#), and current owners could see the value of their homes drop, as the market for homes in their development dwindles.

Home foreclosures are unfortunate occurrences, but where some see misfortune, others see opportunity. [Investors](#) are eager to buy properties foreclosed on by HOAs. In many states, HOAs are prohibited from making a profit, so when a property is sold at auction, the successful bid may often be at an extremely low price. The property can then be resold by the buyer for a [substantial profit](#). Yes, this is a bit shocking!

Limitations

There are some limitations on an HOA's power to foreclose. In [California](#), an HOA may not collect a delinquent assessment by foreclosure unless the total assessment, excluding late charges, interest, or the costs of collection, is at least \$1,800. Alternately, an HOA may pursue foreclosure if assessments are more than 12 months overdue. HOAs in [Delaware](#) may not start a foreclosure unless assessments are at least three months overdue, and unless the executive board of the HOA votes to foreclose. Foreclosure is not allowed solely for fines or related sums unless the HOA first gets a judgment against a homeowner. In North Carolina, a [condominium association](#) or [community association](#) may use non-judicial foreclosure only if assessments are at least 90 days overdue. Judicial foreclosure must be used if only fines or attorney's fees are overdue.

Recent legislative initiatives regarding liens include a [new law](#) in [Colorado](#) that specifically prohibits foreclosure on liens that only contain fines or the costs of collecting them, requires several notifications about delinquencies and fines, and gives homeowners the opportunity to seek longer debt repayment plans.

Amateur Radio Parity Act

HOA rules usually have restrictions on what a homeowner can build or install in the yard around the home. For example, an HOA may restrict whether or where an owner can place a [swing set](#) or a [garden shed](#). These restrictions are common, and disputes about them are left to the HOA and the homeowner to resolve. They certainly are not federal issues, though repeatedly proposed

legislation relating to radio antennas underscores that federal law can be relevant in such disagreements.

A [ham radio antenna](#) can be a fairly substantial structure. Except for portable units, antennas are visible, and there is no way to disguise them. Although most of us think of ham radio as just a hobby, operators also provide important [backup communications](#) in emergencies. This emergency function has led the Federal Communications Commission (FCC) to [adopt rules](#) that preempt local zoning rules that ban antennas. However, the FCC has not moved against restrictions by HOAs.

The [latest version](#) of the proposed Amateur Radio Parity Act tried to change this situation. Specifically, the introduced in the U.S. House of Representatives in 2019 sought to direct the FCC to amend its rules so as to prohibit applying certain private land-use restrictions to amateur stations. However, like its multiple [predecessors](#), the bill was not enacted.

NAR Advocacy

Madison, Wisconsin

Most people would not think of homeowners' associations as standing in the way of an important goal such as affordable housing. There would seem to be no reason for an HOA to oppose that goal, but recently, in Madison, Wisconsin, a group of HOAs tried to do just that. Thanks in no small part to the REALTOR® Party and the REALTORS® Association of South Central Wisconsin, the HOAs were unsuccessful.

Madison – as in most cities in the US – has a critical shortage of affordable housing. The shortage is expected to get worse, as demand for housing continues to increase. To help address the problem, Madison Mayor Satya Rhodes-Conway and several members of the city's Common Council (the city council) proposed easing zoning restrictions to allow increased housing density. Much of the opposition to that proposal came from HOAs, which cover large areas of Madison and have an outsize influence on zoning matters (according to the City of Madison, there are approximately 140 HOAs in Madison, a city with a population of just under 270,000 people). An Issues Mobilization campaign and a consumer Call For Action sponsored by the REALTORS® Association of South Central Wisconsin with help from the REALTOR® Party countered the HOAs' efforts. The campaigns showed that there was widespread support for the zoning measure.

The measure passed, by a vote of 11 to 9.

Texas legislation

In Texas, the laws relating to homeowners' associations were due for reform. A petition from Realtors helped spur the legislature to take action. [SB 1588](#), a bill signed into law by Governor Abbott on June 18, 2021, enacted the following:

Limitations on how much an HOA and/or HOA management company can charge for a

resale certificate fee. Prior law had no limit;
An appeal process to allow HOA members resolve disputes with the HOA;
Increased transparency by imposing a new requirement that HOAs post their managing documents, meeting notices, agendas, and minutes online for members to access;
A new requirement that HOA management certificates include a phone number, email address, and website; and
Creation of a publicly accessible statewide database of HOA information. No such database existed under the prior law.

Texas REALTORS® (May 2021) put out a Call For Action with the petition in May 2021. The Call asked REALTORS® to reach out to their state house members to urge them to support the legislation, and the support for the bill was strong: SB 1588 passed the Senate by a vote of 28 to 3, and passed the House by a vote of 139 in favor, four opposed (two of whom later said they meant to vote in favor), and one not voting.

NAR Resources

NAR's Field Guide to Homeowners Associations compiles several resources, including articles and eBooks, that provide further insight into HOAs. The [guide](#) is available on NAR's website.

The Virginia REALTORS Association has informative [podcasts](#) on legal issues surrounding HOAs.

Conclusion

HOAs are an increasingly common part of the homebuying experience in the U.S., and are as diverse as they are plentiful. The rules and services they entail inevitably bring both benefits and drawbacks, and compromise is part of the experience. Clear, reasonable and evenly applied rules can help avoid common pitfalls of HOAs and allow homeowners across the country to make the best of shared living.

Hot Topic Alerts are prepared for NAR by Legal Research Center, Inc.

To review NAR's other Hot Topic Alerts, text **HOT TOPIC** to **30644** to sign up for REALTOR® Party Mobile Alerts and a link will be sent directly to your mobile device. All Hot Topic Alerts can also be found on the REALTOR® Party webpage.

Questions or concerns contact Melissa Horn

Email: MHorn@nar.realtor

Phone: 202-383-1026

ADDITIONAL STATE & LOCAL RESOURCES

White Papers: Comprehensive reports prepared for NAR on issues directly impacting the real estate industry. Examples include: Rental Restrictions, Land Banks, Sales Tax on Services, State & Local Taxation, Building Codes, Hydraulic Fracturing, Foreclosure Property Maintenance, Climate Change, Private Transfer Fees.

Growth Management Fact Book: Analysis of issues related to land use and modern growth management topics include density — rate of growth, public facilities and infrastructure, protection of natural resources, preservation of community character, and affordable housing.

All available on [REALTOR® Party webpage](#) under the *State & Local Issues* tab.