

ACNA Meeting Minutes October 25, 2018

The fourth quarterly meeting of the Allen County Neighborhood Association was held on October 25, 2018 in the Omni Room on the Garden Level of the Citizen Square Building. It was called to order at 6:30 by Kris Krishnan, ACNA Co-Leader. Forty residents were in attendance.

Kris thanked those in attendance for coming. Mike Green, Allen County Public Information Director, was also in attendance. Kris thanked Jim Armstrong and Marvel Embry for volunteering to assist the ACNA. Kris told the audience that this being the October meeting, it was mainly focused on legal questions for the two lawyers present.

Rob Grayless – ACNA Member

- Rob passed out a summary of the actions that the Indiana General Assembly took in the last session that affected homeowner associations.
- Page #1 detailed what HOA records need to be kept, where and for how long.
- Page #2 was a copy of an amended covenants from Lafayette Place that has wording in it for restricting rental properties. Rob told the group that these covenants are now in place and binding, unless some later court-action occurs. He told the audience that they could be used as a guide if any other association wants to stop rental properties.
- Page #3 was an amended covenant for Cheswick Place Addition that restricts temporary rentals. Rob told the group that the City can't regulate these short-term rentals but that an association can. Again, until some later legal action may change that.
- Finally, Rob told the group that he had copies of some newsletters and was willing to aid any association that may need help in writing one. Rob told the group he would stay after the meeting to answer any questions.

Bob Eherenman – Mark Banes, Attorneys

Note: The answers given to the questions presented at this meeting are answers to general questions. Please refer to the proper authority for answers to the specific questions pertaining to your association.

- Three legal documents that govern associations:
 - o Articles of Incorporation: these form the association and give it legal standing
 - o Covenants: these are a set of written restrictions that state the resident's property rights, property rules and collection of dues for the residents
 - o By Laws: these tell the board how to operate and spell out the member rights
- How to find out who owns an abandoned house in a subdivision? The best method would be to pay a Title Company to do a title search to find out the current owner. If the house is in foreclosure, this will also tell you who the bank is that holds the

- mortgage. If it is a large bank, they are generally not very helpful in dealing with abandoned homes. You can file liens against the property but if it is in foreclosure, the liens will probably be wiped out.
- Can you define the difference between easement, right of way and personal property? An easement is generally property that is not owned by the resident but allows the use of the property for utilities and related items. Streets are generally right of way areas. Private property is property that is owned by the resident.
 - How do you know if there is an easement on your property? Refer to the plat that is filed with your covenants at the Records office. On the plat, any easements are spelled out with dotted or dashed lines. What type of easement it is is also on this plat.
 - Can an association put a trail through an easement? If it is an easement, then yes you can. If it is across private property, the property owner must grant access.
 - A lift station is proposed on land that the city owns in the center of a development. The residents were not aware the City owned the property. Can the association stop this from happening? If the City owns the land, then no, there is nothing to stop it. You may be able to work with the City to find an alternative though.
 - A sign in a development is on private property that everyone thought was an easement. The current resident is fine with the situation. Can an easement be established so there are no issues later if that resident sells? There are two types of easements: Prescriptive Easements that must be court approved and Expressed Easements where the parties involved are in agreement. If the sign has been in place for many years, generally the courts will not take any action against it.
 - Residents found out that no taxes have been filed and the association lost its incorporation. How can you re-establish it? The process is very cumbersome. However, if the association has been in place for a long time and there are no other associations with the same name, you can reform it as a new association and just start the process from scratch. For tax returns that have not been filed, it is best to talk to an accountant and have them work with the residents to address it.
 - Does the spouse of a deed owner have the same rights as the deed owner? If both are listed on the deed, then yes, they both have the same rights. If only one name is on the deed, then only the person whose name appears has the rights.
 - How can you combine covenants for a development with many different versions? Developments are usually made in sections and if the developer used the same covenants for each section, they can be combined. However, to combine, you have to read the covenants and see the required percentage needed to approve the amendment. The percentage is also per section, not per the combined total. If each section requires 75%, you can't just get 75% of the combined total. Each section must agree.
 - No signatures have to be notarized? Yes, in every case. You must do a Title search to be sure you know the true owner.
 - Do you have to renew your association after twenty-five years? There is generally a statement in covenants that say they are valid for twenty-five years but it is generally agreed that they automatically renew for another twenty-five-year period.

- Can associations restrict signs? Yes, signs can be restricted but there are specific rules for the use of political signs that can't be restricted. Indiana Code regulates political sign usage and covenants can't over-rule them.
- Can a condo association restrict political signs on lawns? It depends on how the property rights are spelled out in the covenants. If the residents are given a percentage of the property, then they have the right to put signs on the lawn.
- An audience member noted that the notary fee recently increased from \$2 to \$10. Can a notary be on the Board? Yes, this is usually beneficial.
- Can you make a plan B for RV storage if they are restricted in the covenants? Only by amending the covenants and you will need the correct percentage of residents to approve. If your covenants don't spell out that percentage, it is then 100%. Good luck getting 100% approval!
- If the percentage is 100% required, can that be changed? Yes, but you need 100% approval to make the change. Good luck!
- If the covenants of a condo association are over thirty-five years old, do they need to be amended? They only need to be amended if there is a reason to amend them. There is no formal time frame for amending
- An association is over twenty years old and the wording in their documents state By Laws and Declarations. Declarations = covenants.
- Can proxy votes be restricted? There is a State Statute that spells out proxy rights.
- Resident wants to build a 4,000 square foot garage that would meet all requirements in the covenants. Association fears he is planning to run a business out of the garage. Can they deny the request? The association would require evidence of the business being run. Code Enforcement or the Department of Planning Services would then be involved, but to deny the request on that fear? No, you can't.
- Can a resident secede from an association? You would have to be removed from the plat and that requires vacating the plat. Usually, this will not be done.
- The HOA is very challenging to deal with. What can they restrict residents from doing or attending? State Statute regulates what the association can and can't restrict.
- Does the association have to make a budget? Yes, the budget is required for use in setting dues amounts. It is presented at the annual meeting and voted on at that meeting. Indiana Statute 32-25.5.
- What can be done if officers don't file tax returns? Tax returns are not regulated by covenants. They are controlled by the IRS.
- How can you see if a Property Management company has filed tax returns? Ask them!
- If a past board gave approval for a fence and the covenants did not allow, can future fences be restricted? Yes, but if legal action is taken, most courts won't enforce the current action.
- A resident allows the grass to overgrow, trash piled up and high weeds. Can the association take action? Covenants generally don't cover lawn issues. This would be Code Enforcement. For general trash or tall weeds, not much can be done.

- If a resident does not follow the covenants, you sue, what good is it? If you sue and win and the person ignores the judgement, they will be held in contempt. Most judges do not like it when their orders are not followed. In extreme cases, the person could get jail time or heavy fines!
- Can an association be left to go dormant? Nobody will step up to help. All three board members could resign. Board members are not forced to serve. But if you don't file required items, the association could dissolve.
- A resident stated that for those who repeatedly violate the covenants, the board needs to follow the process (letter, lawyer, court). Generally, word spreads quickly – people tend to comply if they know the board means business.
- Board meetings must be open per new Statute. Residents have to be allowed to attend but they don't have to be granted action at the meeting.
- Associations established prior to 2004 are not affected by the new State Statute
- A community drain is in a resident back yard and is blocked by debris. This is causing flooding. Can the resident be forced to clear it? Yes, if the drain is a natural waterway, it can be cleared. Most drainage issues are referred to the Surveyor office.
- When should a lawyer be hired by the association? If a Small Claims case is under \$1,500, you don't need a lawyer but it is still recommended. Most covenants have wording to allow collection of legal fees so why would you not use legal representation?
- Board members have been in place for over twenty years. What can be done to get them out? Good luck – get others to run and vote in new members.
- Are associations liable for injuries on established trails? If the trail is not owned by the association, then you would not be held liable.

Open:

A resident stated that they had a bad Gypsy moth issue this summer. He is trying to spread the word to get others aware. These moths will attack and kill trees. He has not been able to generate much action from local officials. The association affected was the Glenwood Association.

Rob Grayless had sample newsletters to pass out and information for any resident of St. Joe Township.

Kris closed the meeting at 8:00 PM. He thanked everyone for attending.

The next meeting will be January 24, 2019 at 6:30 pm in the lower level Omni Room in Citizens Square. The 2019 meeting dates are: January 24; April 25; July 25; October 24.