

ALLEN COUNTY HOMEOWNERS ASSOCIATION
Meeting Minutes
10-27-09

Opening:

The Meeting was called to order at 7:00pm by Kris Krishnan, ACNA co-coordinator. Introductions were made by Kris. Present were Co-Chair Joanne Bergman, Rob Green, ACNA Secretary, and Mike Green Public Information Officer. Elected officials present were Nelson Peters and Bill Brown, County Commissioners, as well as Larry Brown, Allen County 4th District Councilman. Approximately 70 association members were in attendance.

Neighborhood Resource Center:

After introductions were made, a brief video on the Neighborhood Resource Center was shown. A 2009 Achievement award was given to the Allen County Records Office for scanning and putting free online all the recorded association covenants in Allen County. This video, created by the Association of Indiana Counties, was shown to those in attendance to inform them that most everything from a legal record is available on the Allen County Records Website (www.allencountyrecorder.us/neighborhoods/index.htm). Simply type in the Association name of any Association in Allen County and you can view their Covenants. The site has many other features for residents to use, including detailed maps of the County.

Attorneys Robert (Bob) Eherenman and Carrie Hawk Gutman:

Attorneys Bob Eherenman and Carrie Hawk Gutman were present to discuss Covenants, By-Laws and Liens.

Bob explained that there are three areas of Association terminology to discuss:

1. Article of Incorporation
2. By-Laws
3. Covenants.

#1: Articles of Incorporation:

How you can govern your Association is established in the Article of Incorporation. Information on your Association Articles is available from the Indiana Secretary of State website. Under the INBIZ tab, conduct a Business Entity Search. Your Association name should come up. If it does not, it is possible that your Association is not incorporated. It is very important to be incorporated in order to have the Authority to enforce your Association rules. If the Bi-annual Report is not filled out, your Association's Corporation will be dissolved.

#2: By-Laws:

Your By-Laws are not typically kept in any format accessible online. It is very important that you maintain your By-Laws for this reason. The By-Laws basically tell you how to govern your Association. They will tell you the number of Directors required for your Association. It will tell you what constitutes a quorum, a Director Quorum, Officer Titles, Responsibilities and steps required for dissolution of the By-Laws.

The By-Laws help you govern your annual meetings, Director Meetings, notices of meetings, etc. Association should review the By-Laws to know what is required for an official meeting to take place. By-Laws can tell you if multiple signatures are required for checking accounts. By-laws also contain indemnity clause that are very important as these clauses protect the Directors from liability in Association matters.

#3: Covenants:

Covenants basically tell you what to govern. They tell you use restrictions for common areas, how to develop and maintain the Association and how to enforce the rules of the Association. As stated above, Convents can be found on the Allen County Recorders office website for all incorporated Associations.

Questions and Answers:

After the discussion on the three different terminologies, Bob and Carrie began to answer pre-suggested questions from the Audience members:

- How to collect dues without the expense of a legal battle?
 - o The Board needs to set the process for collecting dues. It is extremely important to maintain uniformity!!!! Set the rules and follow the rules.
- What are your rights as an Association?
 - o Check your Covenants. They will tell you your rights. Each Association's Covenants will have the policy spelled out. If the normal collection process does not work, a lawsuit may be filed. It is strongly recommended to consult an attorney if this is necessary. The case will normally be heard in Small Claims Court. As long as the Association is incorporated, the rules spelled out in the Covenants are fully enforceable. You may win the judgment for dues as well as any interest or attorney fees.
- How to file liens?
 - o There is anew statute governing Liens. The Indiana Statue governing Liens is IC 32-28-14-1. Liens for past dues can be filed and are valid for a five year period. They are in place for one year from file date before any suit can be filed. If the house sells, both the seller and the buyer are responsible for past dues. It is best to consult an attorney prior to filing a lien to be certain that all steps are properly followed.
 - o Another new Statute concerning Associations is House Bill 1071, Statute # 32-25.5-3. This statute covers Homeowner Associations incorporated after July 1, 2009. Associations incorporated prior to this date can choose to opt in to this new statute. There are certain advantages to the new statute: it spells out that a list of members must be collected and maintained, the legal description of each member and must be provided if requested (for Association business) and steps to be taken if money needs to be borrowed over the \$5000 amount. If you decide to not opt in to the new statute, your existing By-Laws remain in effect.
- Pond Liability Issues:
 - o Ponds are normally water retention areas. Storm drains feed the ponds. Storm drain requirements are spelled out through the Allen County Storm Drain Board. It is important to know if the Association actually owns the

common area or if the developer owns it. Signs need to be posted on ponds for No Trespassing, No Swimming and any other rule you have in place. Your liability insurance policy should cover the Association responsibility.

- How to handle petty vandalism to Association signs?
 - o Check with your insurance agent for the policy that your Association has.
- Liability Insurance:
 - o Associations need to carry liability insurance for property (street lights, signs, etc) and injuries on property.
 - o It is a good idea to carry Officers / Directors insurance. Check your By-Laws to see what you are required to carry, but remember, anyone can sue anyone!
- What to do with property that has been abandoned?
 - o Check your Covenants to see what they say.
 - o There is very limited action that Associations can take unless it is specifically spelled out in the Covenants.
 - o Places will perform the upkeep on abandoned property to keep the rest of property values up. You can try to recover the costs to maintain these properties from the bank or lending institution.
- What is the grievance provision for Association issues?
 - o Check the Covenants and By-Laws. The new Statute states that steps must be spelled out, with detailed steps to file a grievance.
- Should Association books be audited?
 - o Probably not required, but as a non-profit Corporation, it would be a good idea to talk to an accountant about an appropriate review.
 - o You should have an accountant review your financials for any discrepancies.
 - o Check your By-Laws for any statements directly pertaining to your Association.
- What if you hire a Property Management Firm?
 - o Still need insurance for Officers. The Management Firm may be managing the day to day for the Association, but the Officers / Directors are still responsible.
- What if the Officers fail to uphold their duties?
 - o If derelict, they may be sued.
 - o Officers can be removed if not performing their duties.
- What if an Officer steals money from the Association?
 - o Good idea to have a Fidelity Bond in place.
 - o Check with an Accountant to see if you need one. Requiring two signatures on your check can help prevent thefts.
- What papers should an Association keep and for how long?
 - o General rule is to follow what you would do at home. Papers include tax returns, By-Laws, Covenants, Insurance policies, minutes, lawn maintenance contracts, and any correspondence that do business with the Association.
- How do you amend Covenants?
 - o Hire an Attorney. Steps must be correctly taken or the changes are not valid.
- Do sidewalks in common areas need to be kept clear of snow in winter?

- Not required unless spelled out in the Covenants. Liability will depend upon whether it is a public or private sidewalk. A good idea to keep them clear to help prevent slip and falls and potential liability.
- What do you do if your Covenants have never been enforced and you want to enforce?
 - If there is a non-waiver provision in the Covenants, they remain valid.
- What do you do if the bank won't give information to new Board member?
 - Provide the bank with an official resolution that shows changes were made. Try to keep the Association banking in the Association name.
- How do you enforce Covenants?
 - Hire a lawyer if needed to sue, asking the court for a judgment to enforce.
- How to find the Statutes?
 - All available online. Google "Indiana Code", "Homeowners Associations".
- How to enforce street parking?
 - Police won't enforce unless there are rules backing them from the city.
 - There is usually no clear authority spelled out.
 - This would have to be taken to the court and see how the courts handle it.
- What are the costs to become incorporated? To have Covenants written?
 - Approximately \$95.00 through the Secretary of State.
 - Hire a lawyer. Usually charge an hourly rate.
- What are the advantages to opt in to the new Statute?
 - Check with your current Covenants. Are they complete? Probably no need to opt in. Do they need work? Opt in and it is all clearly spelled out.
 - If you want more clearly spelled out authority for individual members, it is an option you might consider. Once you opt in, you can't opt out.
- How do you file for Tax Exempt status?
 - Best to have an Accountant handle the process.
- Association formed in 1972. Where to start to find covenant information?
 - Start with the Allen County Recorder. Won't have By-Laws, but if there were Covenants, they will have them.
 - Check with the Secretary of State for info they might have.
- If a lien is filed, what is the responsibility of the Board?
 - Bring suit if no resolution or dismiss lien
 - Release lien once judgment satisfied.
- How long are Covenants valid?
 - Unless a time frame is spelled out, they will remain valid.
- General Statement:
 - By-Laws tell how to govern.
 - Covenants tell what to govern.
 - Remember, you are talking about suing your neighbor for enforcement
 - Try to work out the disagreement to keep the peace.
 - Try to leave a lawsuit as a last option.

Meeting Adjourned at 8:30pm

Next Meeting: Tuesday January 26, 2010 in the City County Building, Omni Room at 7:00pm.