

**Notes taken during the 8/8/2013 General Membership Meeting  
of the Federation of Greater Baton Rouge Civic Associations (FGBRCA)  
at which meeting the assembly was addressed by Attorney Elliott Atkinson**

***Disclaimer:** The following text is presented as a resource for ideas about how to run a homeowners' association or civic association. It is not legal advice.*

A homeowners' or civic association is a corporation, no different than Exxon. They too, by law, must have an annual meeting. You need to have a quorum of members at the annual meeting, which is a majority of the membership, unless community documents say otherwise<sup>1</sup>. A notice must be delivered to all members of the association. Proxies may be taken door-to-door to get a quorum. If you do not get a quorum at the meeting that results from this first attempt, you may mail everyone a notice of a second meeting and whoever shows up is considered a quorum. Quorums and elections are very important.

In older neighborhoods the restrictions say 51% of the owners must approve amendments to the restrictions, but only after the passage of a certain number of years. Some newer ones may have different percentages, or allow the developer or owners by a greater percentage to change the restrictions at any time. Read your community documents. "Building restrictions" from before year 1949 are in the form of "deed restrictions" and appear in each deed or earlier deeds rather than a standalone document..

Think of creative ways to get people active. Plan for speakers or discussions of "hot" topics to get owners to a meeting. Have food, door prizes, or a fun activity along with the meeting.

You should have the official restrictions and amendments for your neighborhood recorded in the conveyance records at the courthouse. The Clerk of Court's Research Room in the basement of City Hall has them. Very old restrictions continue in effect until they are terminated, abandoned by neglect, or have been amended.

In regard to restrictions vs. city-parish zoning laws: the law is whichever one is most restrictive. Restrictions can override city-parish zoning, and even waivers. But note that the city-parish will not enforce private building restrictions. Also, Crime Prevention Districts do not enforce restrictions.

The statute of limitations is two years from the time a noticeable violation of a restriction occurs. To enforce restrictions you must initiate a lawsuit within two years. If someone has painted their house in a color not in harmony with the rest of the neighbor and the restrictions require approval of the color or of any construction by an architectural control committee, and no one does anything for two years, it is too late. The restriction is lost for

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<sup>1</sup> See LA Revised Statutes 12:230 & 12:231 for the definition of quorum ("majority") that applies if the community documents do not specify the quorum.

that house, but perhaps only for that lot. To lose a particular restriction because of a failure to enforce it you usually must have 25% or more violations of the same restriction before the restriction is considered abandoned for the entire community.

Each filing is independent of the others. To amend your restrictions check your community documents to see when the next time period starts. You must amend and record the amendment before the next period starts. Many restrictions have an initial period of twenty-five years and then they are automatically renewed for ten year periods thereafter. The date starts on the date the papers were recorded. Each filing could have a different date.

Amendments to a homeowners association's Articles of Incorporation usually need a 2/3 vote of all owners unless the articles state otherwise. Bylaws usually may be amended by the board of directors. Bylaws are not usually recorded in the courthouse except for condominiums.

Problems: Certain activities that cause a problem to neighbors can become a nuisance. One remedy is to file a petition for a Prohibitive Injunction to stop the activity where a specific restriction is not being relied upon. To force the removal of a structure built in violation of a specific restriction would involve a petition for a Mandatory Injunction. These suits for injunctions are usually combined with a Petition for Declaratory Judgment that the restrictions of record are in full force and effect and the general plan of the neighborhood is still capable of being preserved.

Once there is an injunction, it is the court order that they must follow, and the owner in violation can be held in contempt of court if they fail to correct the violation.

The terms "Civic Association" and "Homeowners' Association" generally have the same meaning, and the use of one or the other should not be a concern.

The importance and authority of your community documents are, in descending order:

- 1) Restrictions, or condominium declarations
- 2) Articles of Incorporation
- 3) Bylaws
- 4) Rules and Regulations

Enforcement of restrictions is a private matter. It does not involve the city. When someone is not following the restrictions, try to work with them. Send several letters to request that the violation be corrected and to show the court how hard you have tried to work with the owner before filing suit. For example, in the case of invoices followed by a demand for payment of dues, state that if a lien is necessary the property owner will owe a substantially greater amount. Send one copy of the letter by certified mail, and a second copy by regular mail. Be very polite and warm and fuzzy in your demand letter. Do a survey of your

neighborhood to see how many violations there are. Keep track of them – how many instances exist for each violation and for how long.

Mandatory membership and dues are often needed when there is common property that requires maintenance. Dues must be collected from all owners to be fair. There are bills to pay and everyone must contribute their fair share.

Remember:

- 1) Keep good books.
- 2) Send dues letters and impose a late fee if need be and if authorized by community documents.
- 3) If they don't pay, send a certified letter politely asking for dues and late fees to avoid additional attorney's fees and court costs.
- 4) If they don't pay turn the matter over to an attorney to file a lien and suit to collect the dues.
- 5) Paying dues is also a restriction with a two-year statute of limitations unless a lien is filed.
- 6) A lien is good for only five years, not forever. It only establishes a ranking date.
- 7) A regular collection lawsuit must be filed before five years of filing the lien.
- 8) A judgment is good for ten years. The judgment refers back to the date the lien was filed.
- 9) A lien refers to priority in payment in case other judgments exist against the owner.
- 10) A judgment gives seizure of asset authority; a lien does not.

Wages can be garnished. Many people won't pay until the constable knocks on the door.

With foreclosed houses, once the mortgage company takes title, they must abide by restrictions and they owe dues.

If a previous treasurer will not surrender control of the association's money, that person needs to be reminded that (s)he works in a fiduciary capacity with someone else's money. Send a very nice, polite letter. Then have an attorney send a letter. Or, you might have a sheriff's deputy speak to him or her. You must be able to prove that it is the association's money. It is not their money, so the District Attorney will become interested. A "Rule for an Accounting" might be ordered. This is why holding the money in someone's personal account is not a good idea. It's also prudent to give more than one person access to the bank account, and to require that checks be signed by a minimum of two officers, if for no other reason for convenience for when people are out of town, go to hospital, or move away.

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