

Reclaiming Your HOA

After several years observing the HOA abuse issue and working through lawsuits and lobbying, I am convinced that the most effective method to stop HOA abuse is a grassroots effort to reclaim your HOA for the neighborhood. Do not wait for an attorney, a judge, or the legislature to help you. You and your neighbors have the power, but it will require work -- hard work. Your ultimate goals will be to elect a board that will protect owner's rights.

I would appreciate any feedback and comments on this paper, especially additional helpful hints for reclaiming an HOA.

Tom Adolph

Reclaiming Your HOA

Make sure your issue is serious and concerns fundamental rights.

Step-by-step guide to reclaim your HOA

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2. Identify the problems

Some Common Problems

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3. County real estate records
4. Your neighbors
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Reclaiming Your HOA

You have concluded that your neighborhood needs to reclaim your HOA and you want to know how to do it.

Probably, you had an unfavorable HOA experience. Perhaps your HOA threatened you with foreclosure. Perhaps an HOA attorney squeezed money from you. Maybe you feel harassed with violation letters. Maybe you feel that the HOA is doing nothing for the money you pay. Maybe you feel that a management company or attorney has taken control of your HOA.

Whatever your reason, I hope that this paper will help you to make your HOA more neighborly and more responsive to your neighborhood.

If you have any suggestions or additional advice, please email your thoughts to our website.

Ideas for this paper have come from many people who have more experience than I with reclaiming their HOAs, especially Wendy Laubach and Shu Bartholomew. Other homeowners who have provided much insight are Mary McGarr, Emily Pomrenke, Brenda Barbier, Don Wilson, Bruce Kyckelhahn, and Mitch Glassman.

Make sure your issue is serious and concerns fundamental rights.

Before you ever consider reclaiming your HOA, do some soul-searching. Ask yourself whether you have a serious issue that concerns fundamental rights. If your issue does not meet this criteria, then this paper should not concern you. I am convinced that the vast majority of HOAs are not abusive and serve a valuable purpose. The purpose of this paper is to assist someone facing a fundamental abuse, not to assist someone who has a minor dispute with how things are done in the neighborhood. Besides, you will never garner sufficient support from your neighbors for your efforts if your dispute is minor.

Unfortunately, many people living in an HOA do find themselves victims of a denial of fundamental rights. Current Texas law is seriously flawed in its failure to provide proper checks and balances to prevent HOA abuses. Unethical people can, within current law:

- commit what amounts to legal blackmail, or
- impose their will over their neighbors, or
- harass an owner, or
- carry out a vendetta through the HOA power, or
- deny due process, or

commit any number of serious, fundamental abuses by use of the legal powers granted to HOAs. These are the kinds of fundamental abuses that should spur you to reclaim your neighborhood and enable you to rally support from your neighbors.

Step-by-step guide to reclaim your HOA

1. Remember that the ultimate goal is to get the votes to elect a new board.
2. Identify the problems that you see in your HOA.
3. Investigate whether the problems extend to others and whether additional problems exist.
4. Enlist help.
5. Write a persuasive position statement.
6. Put together a slate of directors and officers.
7. Nominate your slate at the annual meeting, or, if necessary, call a special meeting to recall the current board and elect the new slate.
8. Insure that the election is proper.
9. Get the votes.

Get the votes.

The No. 1 rule – the only rule for making your HOA more responsive to your community – is to get the votes. The ultimate goal is to vote into power an HOA board that will be responsive to the wishes of your neighborhood. Everything else is a means to this end. Never forget this goal.

At the risk of being obvious, getting the votes means getting people on your side. From our experience, this will be a difficult task – not because your neighbors want an unresponsive HOA. Rather, it is unfortunately a predominant trait of many to be apathetic and to believe that the bad things that happen to someone else will never happen to them.

You will also face an initial fear by many that you are trying to do away with the HOA or make it impotent or that any tinkering with things will have an adverse effect on their property values. You must keep these fears in mind as you attempt to recruit supporters for your reforms. You must have answers for expressions of these fears -- good, honest answers.

Your job is to convince your neighbors that they should want to correct the problems. Your job is to answer the “What’s in it for me?” question.

Groundwork to Persuade Others - Identifying the problems.

To convince your neighbors to vote in a new board, you must first identify and describe the existing problems in a way that helps your neighbors see that the problems affect them and not just a few.

To recruit supporters and votes, you must show that the problems are widespread and affect large segments of the neighborhood. This requires investigation. It requires time.

Write a list of the problems.

Identify why you think action is necessary.

Identify a solution that fits your neighborhood. There is no one right answer to how an HOA should act other than that it should reflect the views and will of the neighborhood. In each neighborhood, opinions will differ. Some people want a strong HOA and strong rules. Some people want little or no control. Which view fits you? Which view fits your neighborhood?

Your initial list of problems will depend on your personal experience. It is a good starting point, but you will need more information to convince your neighbors to help. You will need to investigate.

Too often, a homeowner thinks that she is the only homeowner having troubles with the HOA. Sometimes, this may be true. But often, it is not true. Often, the HOA's violation letters, liens, and lawsuits occur without the knowledge of the neighborhood. A victim may think she is alone, but in fact she is one of many.

As you evaluate the problems identified, keep in mind that a sliding scale probably exists depending on (1) the severity or fundamental nature of the problem and (2) the number of neighbors effected.

One very serious, fundamental problem affecting one neighbor might galvanize an entire neighborhood. A lesser problem will probably not interest your neighbors unless you can show that it affects a significant percent of the neighborhood.

Some Common Problems

As you investigate your HOA, it may be helpful to know some common problems that others have encountered with their HOAs. These include the following.

1. **Assessment abuses:**
 - A. Assessments increased more than the rules allow
 - B. Assessment collections far exceeding reasonable need
 - C. A single assessment increase using several years of "accumulated" percentage increases (For example, rules often limit an annual increase to X% over the prior year. Some HOAs claim a right to increase assessments in one year using unused increases from several prior years. This method could lead to a single increase

exceeding 100%.)

2. **Management company and attorney abuses**

A. An unreasonable number of liens or lawsuits against owners

An HOA should represent the will of the neighborhood. If, in the last five years, your HOA has filed liens against 20% of your neighbors, there is a problem. What percent below that might still represent a problem is a matter for you and your neighbors to decide.

B. Squeezing money from homeowners by threats of lawsuits and attorneys fees.

C. Delegation of power to an attorney or management company to sue owners.

D. Indemnification of the attorneys and management company so that owners pay for the bad acts of the management company or attorney

E. Payment of “bounties” to attorneys or the management company for each violation letter or dispute

Creating incentives for attorneys and management companies to create disputes rather than to treat owners as neighbors

F. Improperly creating “late payments”

Waiting months before cashing a check
Not accepting payment
Sending a bill to a wrong address

G. Foreclosing when the majority of homeowners disapprove

If the majority opinion is against foreclosures, then an HOA that engages in foreclosures is not representative of the neighborhood.

H. Foreclosing against those down-on-their-luck.

These are times when neighbors should offer help. These are not times to add to someone’s burdens.

I. Foreclosing for trivial reasons

We have seen foreclosure filings for:

a \$1.00 debt
an oil stain on a driveway
to recover attorneys fees only (no assessment debt)
a two or three foot disagreement about placement of a lamppost
a window unit air conditioner where
(1) other homes had window units and
(2) the owner had orders from his doctor to have the window
unit with special filtering ability for his health condition.

J. Excessive management fees and attorneys fees

3. **Abuses taking the power away from the owners**

A. Creating new deed restrictions or similar rules without a vote by the owners

A very dangerous Texas law allows creation of new deed restrictions, bylaws, and rules without the consent of all owners and even without any vote at all by the owners.

B. Creating rules to retain preserve power and office

C. Executing agreements that bind the owners forever or for many years

An example is a perpetual agreement, without majority approval, obligating all owners to pay dues to a swim club (when the obligation did not originally exist).

D. Demanding new easement concessions as a condition to any services

E. Unfair tactics to eliminate opposition

Before you identify this as a problem, determine whether the board is actually entrenched or whether the directors are serving year after year because no one else is willing to step forward. Some unfair tactics include cancelling elections when the board sees that it will lose and eliminating elections.

F. Refusing disclosure of documents

Texas law requires HOAs to comply with “open records” requests. Determine whether your HOA (and its management company and attorneys) are complying with this law or refuse requests or use delaying tactics that effectively negate the open records requirement.

G. Denying the right to vote

Texas law currently permits an HOA to deny owners the right to vote. This is an extremely dangerous power that enables entrenched boards to remain in power. A frequent tactic is for the board to send violation letters to their opponents immediately before an election, thus disqualifying all opponents. Investigate whether your board has ever used this tactic.

4. **Vendettas and Harassments**

- A. Harassing phone calls – We have heard from more than one owner who has received harassing phone calls after appearing at a board meeting or voicing a complaint.
- B. Harassing violation letters – Often, owners who oppose the board or management company soon find themselves the recipient of numerous violation letters.

Some Helpful Arguments

In developing a persuasive position statement, you must be attentive to the unique facts of your situation. However, the following may be of help to you.

Deed restrictions and enforcement are often helpful and positive for a neighborhood. So be careful about responding to an argument such as the one above. Investigate the facts.

- Is the HOA charging more than is reasonably necessary for the services provided?
- Are the fees different from section to section?
- Can the HOA meet its expenses without foreclosing?
- What percent of owners are not paying dues?
- How much cash does the HOA have?

Also, with respect to foreclosure, consider the following arguments:

The doctor who saves your life cannot foreclose on your home to obtain payment. The doctor provides a much more valuable service than the HOA.

If you run up a \$10,000 bill at American Express, American Express cannot foreclose on your home to recoup their money.

How much money does the HOA actually get from a foreclosure? Often, the only persons who profit are the attorneys and the purchaser of the home at auction. The net effect may be detrimental to the HOA and the neighborhood. The home may actually become an eyesore if abandoned.

Will the taxing authority, MUD or school district foreclose if the HOA does not?
Will their claims preempt any claim or recovery by the HOA?

HOAs often claim that their actions are necessary to maintain property values. To counter these arguments, see:

1. hoadata.org
 2. Houston Association of Realtors' records
 3. Houston Chronicle, Business Section, April 6, 2003, pages 8D, 9D, and 10D
- Generally, property values are dependent on the individual property, its location and the economy, not the actions of an HOA.

Information Sources

The available sources for your investigation include the following.

1. The records of your HOA
2. Court records
3. County real estate records
4. Your neighbors
5. Internet sources

1. The records of your HOA

The organization documents may grant you a right to review or copy specific documents. Determine if you have that right and make any appropriate requests in writing, citing the provision that grants the right.

In addition, Texas law requires that an HOA comply with certain records requests by owners. Use this law to submit written requests to your HOA asking to view specific documents.

Under Property Code Chapter 209, I request copies of all violation letters sent by the HOA since _____ [date] [or all contracts, or all lawsuits, or whatever you are interested in.] .

Use this law also to obtain the names and addresses of all owners. Deliver your request in person and get a receipt, or send it by certified mail, return receipt requested. You may need to give the HOA a reason for your request. Some suggested reasons (you may come up with others) are:

1. To enable you as a member of the HOA to submit a petition pursuant to Property Code Chapter 201;
2. To enable you as a member of the HOA to obtain proxies for an election;
3. To enable you as a member of the HOA to campaign for office;
4. To enable you as a member of the HOA to review the actions of the board for violations of law;
5. To enable you as a member of the HOA to determine whether the actions of the board are capricious or arbitrary;
6. To enable you as a member of the HOA to determine your own obligations; and
7. To enable you as a member of the HOA to determine if you are being singled out unfairly or otherwise harassed.

This law changes with almost every legislative session. You can find the current law at <http://www.capitol.state.tx.us/statutes/py/py0020900.html#py005.209.005>.

However, current law provides:

Sec. 209.005. ASSOCIATION RECORDS.

(a) A property owners' association shall make the books and records of the association, including financial records, reasonably available to an owner in accordance with Section B, Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, Vernon's Texas Civil Statutes).

(b) An attorney's files and records relating to the association, excluding invoices requested by an owner under Section 209.008(d), are not:

- (1) records of the association;
- (2) subject to inspection by the owner; or
- (3) subject to production in a legal proceeding.

Section B, Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, Vernon's Texas Civil Statutes), referenced in Sec. 209.005(a) provides:

Art. 1396--2.23. Books and Records

A. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any authority of the board of directors and shall keep at its registered office or principal office in this State a record of the names and addresses of its members entitled to vote.

B. A member of a corporation, on written demand stating the purpose of the demand, has the right to examine and copy, in person or by agent, accountant, or attorney, at any reasonable time, for any proper purpose, the books and records of the corporation relevant to that purpose, at the expense of the member.

2. Court records

You may find lawsuits filed by your HOA in various court records.

In Harris County, your HOA can file suit in three separate courts: district court, county court, and justice of the peace courts. You should look for suits in each of these courts that include your HOA as a plaintiff. These records often have misspellings and abbreviations, so to perform a thorough search, you must be flexible and creative in your search techniques. District court records are available online at _____. County court records are available online at _____. Justice court records are not available online. However, you can review these records at the court. It is quite helpful to review the court papers in some or all of these cases.

Court records from other counties will be similar.

3. County real estate records

You may find liens, development plans, deed restrictions, management certificates and other records relating to your HOA in the county real estate records. An index of Harris county real estate records is available online. Full text is available only at the county clerk's office.

4. Your neighbors

Once you have identified liens and lawsuits, you now have a list of possible other victims of HOA abuse. Contact these neighbors. Tell them your goals, and listen to their stories. You should be able to recruit help from these lists.

5. Internet sources

www.hoadata.org

Provides information on the number of foreclosure-related lawsuits by HOAs.

<http://pages.prodigy.net/hoadata/refs.html>

Webpage from this website that has several useful links.

www.stoptexasforeclosures.com

Advocates to eliminate the HOA foreclosure power in Texas.

<http://www.capitol.state.tx.us/>

Website for the Texas Legislature.

<http://www.capitol.state.tx.us/statutes/statutes.html>

Texas statutes

<http://www.capitol.state.tx.us/statutes/pptoc.html>

Texas Property Code (Look particularly at Chapters 201-209)

Enlist help.

Do not do this alone. You must enlist help within your neighborhood. There is power in numbers.

An immediate source of helpers should become apparent from your review of violation letters, court records, and county real estate records. Talk to the people who have been sued by your HOA or who have liens filed against them. Often, these people will think that they are alone in their problems with the HOA. They may be very grateful to learn of other victims. But be careful and diplomatic. Some people are embarrassed by their victimization. Be prudent.

Write a persuasive position statement.

To win votes, you will need a persuasive written statement about why the neighborhood needs a change in the HOA.

Honesty and sincerity.

In everything you do in this effort, always tell the absolute truth. Do not embellish for effect. Honesty plays better than anything you can do. So does sincerity.

Just the facts.

Support your position with facts. Be persuasive. Be precise and accurate.

You will not win votes by generalizations or overstatements. Your credibility will be crucial throughout the effort. You must be prepared in advance with facts.

Use this summary as a flyer as described below.

Have a friend check the language to eliminate emotional words.

Absolutely NO emotional language, accusations, or defamation.

Emotional language, accusations, and defamation may make you feel good for a short time, but in the end, they will only hurt your efforts and may expose you to legal liability. You must take the high ground. No one needs to know how you feel about the personalities involved. All they need to know is that the board is pursuing policies that are not in your neighbors' best interest. All they need are the specific, immediate steps needed to change the policies.

Try to keep your flyer no more than one page. If you cannot meet this limit, you have not crystallized your thoughts sufficiently to convince your neighbors.

Remember that you are dealing with neighbors who may live near you for a long time. Remember also that you are trying to win votes. Accusations, defamation, and emotional language will hurt more than help by:

- (1) inflaming the emotions of the opposition,
- (2) turning away more votes than you might gain;
- (3) risking personal legal liability, and
- (4) weakening your credibility.

Know the audience.

You cannot reclaim your HOA if your neighbors do not support you. To enlist their support, you must know who is for you, who is against you, and who is undecided. You – or someone on your side – must be a vote counter.

Communicate, communicate, communicate

In everything you do in this effort, always tell the absolute truth. Do not embellish for effect. Honesty plays better than anything you can do. So does sincerity.

Talking to people and distributing a flyer are absolute necessities. Other methods of communicating will depend on your situation.

Personal delivery and conversations are much more effective than mail.

Flyer

Use your position paper as a flyer. Distribute the flyer everywhere. Walk your flyer door to door. Hand it to people and talk to them if you can. If no one is home, then roll it up and put it between the knob and the edge or inside the handle or under the mat.

DO NOT PUT YOUR FLYER IN MAILBOXES. You do not want to be charged with violating federal laws.

Do not put the flyer anywhere on a mailbox – not inside, not on the mailbox flag, and not taped or stuck to the outside of the mailbox. Remember that there are people who will oppose you. So try to avoid criticism for things that are not part of the issues (like where you put the flyer).

Do not tape the flyer to anything. Some people will take offense at this. Be as unintrusive as possible. Remember that there are people who will oppose you. So avoid criticism for things that are not part of the issues (like taping the flyer to something).

Talk to people

Talk to people. You will find others who agree with you and who will help you.

Website

Enlist the aid of someone who can put up a web site for your neighborhood.

To enable people to find your website:

1. Use the name of your subdivision in the web site address;
2. Use the name of the subdivision, the term Homeowner Association or HOA, your city, county, and state in the title.

Link your website to other websites that may be helpful. Some have found it useful to link to CAI websites to show its bias against homeowners and to CAI training sessions for management

companies and attorneys.

Neighborhood newspapers and other media

If you can get it, newspaper coverage is fantastic. Try:

Neighborhood newspapers
The Chronicle's This Week reporter for your area, and

Try any other media outlet you can find. You should be able to find at least one reporter sympathetic to your issues – if your issues are serious and fundamental.

Find out what stories resonate with people. Currently, it is useful to remind people of Wenonah Blevins. Relate your HOA issues to what happened to Ms. Blevins.

Write letters to the editor and get your supporters to do the same.

Meetings of neighbors

Arrange meetings with people who can organize a political effort. End each meeting with specific tasks and deadlines. Collect enough money to cover costs of printing, postage, and possibly a lawyer.

Attend your HOA board meetings and member meetings

Going to meetings of your association will serve at least two purposes. First, you will learn firsthand what is happening. Second, you will gain necessary name recognition that may serve you to garner support.

Insist on open meetings, and if the board refuses, record carefully any statements by the board in its refusal.

Stay until the end of the meeting. If you cannot stay until the end, partner with someone who can.

Take notes or a recorder. Prepare a summary promptly after the meeting. If your records do not agree with the official minutes, call the secretary or another board member to resolve the discrepancy. If you cannot resolve the discrepancy, then distribute your notes to neighbors noting the discrepancies. You might include your notes and the official minutes on a website.

Do not waste your time at directors meetings. You may not even have a right to attend these meetings.

Do not waste your time at association meetings by voicing ambiguous complaints. Focus on effective action. Have specific goals in mind. Prepare a written motion. Spend your effort to get the motion made, seconded, debated, and passed. Nothing that happens at a meeting has any legal effect without a motion voted on and passed. Have at least two people available to make the motion, and at least two more to second it. Practice doing it so you don't get confused.

Learn the rules of the game.

A crucial but tedious task that you cannot omit is to learn thoroughly the rules that you must follow to attain the ultimate goal of replacing the board. These rules may appear in some or all of the following:

1. The development plan
2. Deed restrictions
3. The HOA articles of incorporation
4. The HOA by-laws
5. HOA rules
6. HOA guidelines

These documents are often voluminous and difficult to understand. You may need legal help to fully understand all the rules. At the very least, you should read the applicable provisions many times.

The documents listed above will cover many different subjects.

Another source of applicable rules is the Texas Non profit Corporations Code. See <http://www.capitol.state.tx.us/statutes/vn/vn0003201toc.html>

Some questions that might be helpful include:

Association Meetings

When and where are association meetings?

How is the agenda set for a members meeting?

Usually, the members can set or raise agenda items before and during the members meeting. Do not allow others to preclude this right. Know the rules for doing so (See your by-laws and *Roberts Rules of Order*. You can purchase a copy of *Robert's Rules of Order* or find one of many versions on-line. One example is <http://www.nelsonpena.8m.com/>)

Can one or more members call a meeting? If so, how? Is the “called” meeting limited to specific purposes?

Calling a special meeting usually requires a petition signed by a number of members. The wording of the petition must be carefully crafted to insure that the meeting will cover any issue that you wish to cover.

Determine what information the HOA rules require for each signature (The rules might require a person to provide name, address, lot, block and section number, and a representation that he or she

is an owner.) If a person does not know the required information, explain how to access the Harris County Appraisal District's web site (hcad.org).

Add to the petition a statement that only the express items stated in the petition may be included in the meeting.

Choose the time and place wisely.

Check in advance about availability of the meeting site.

Choose a time and place when the most people can attend. Avoid holidays and summer vacations.

Choose a time and place that meet any time requirement of your HOA rules. A ten day notice is common, but check the precise rule.

Choose a time that allows for the time necessary to all that needs to be done before the meeting. Once your petition is successful, the HOA or management company will need to send out notice letters. Give sufficient time for the printing, copying, envelope stuffing, and other needed work.

Add to the petition the time, place and date of the meeting. If you fail to do this, the HOA or management company may delay sending the notices.

Get more signatures than required. Try to be at least 20% over the required amount.

Before turning in a petition, review each page for accuracy and completeness.

Before turning in a petition, make and keep copies.

Request that you or an objective person be present as the board reviews the petition. Insist on oversight.

Offer to help with any required mailing of a notice of the meeting.

Ask to watch the HOA or management company mail the notices.

Do not count on the HOA or management company to notify residents. Send or deliver your own notice.

Read, study, and keep handy a copy of *Robert's Rules of Order*. The opposition may run roughshod over you until you master these rules. They are not that hard. They are tools for running an orderly, civil meeting that gets results. The board probably does not understand them, so you may have an

advantage if you do.

Director Meetings

When and where are director meetings?

Can owners attend director meetings?

Elections

When are elections?

Who may run? What are the qualifications?

This is a very important issue. You should not offer any candidate who is not qualified according to the HOA rules. Also, often, an HOA does not police its own requirements and officers or directors serve without proper qualification.

You may wish to check if the current officers or directors are properly qualified. Try head.org.

What are the HOA rules concerning proxies?

Proxies are not permitted by all HOAs, and even an HOA that permits a proxy may not permit proxies for all votes.

Some common (but not universal) requirements for proxies include:

- Specific forms or language;
- Notarization;
- Filing with a specific officer;
- Execution within a certain time before the election;
- A description of a specific purpose for the proxy.

Know the requirements of your HOA.

Insure that each proxy is dated.

Also, make and keep a copy of any proxy before turning it in.

Counting the votes . . .

Demand an objective method of counting the votes. Demand oversight. Consider the League of Women Voters or electronic voting. One problem with electronic voting, however, is that a record

of each vote often does not exist. Paper printed copies of each vote is required for later review and challenge.

Voting rights

Who is entitled to vote?

Determining who may vote is a critical first step in understanding the rules. The rules will differ from HOA to HOA, so I cannot state an absolute rule. At least some possibilities include combinations of the following:

1. Owners of record
2. Lien holders
3. The developer
4. Renters
5. Only qualified persons in actual attendance at a meeting

The most common rule is that only owners of record may vote. Generally, an owner of record is a person whose name appears as an owner on a deed filed of record in the county real estate records.

Often, an HOA can deprive a member of the right to vote by sending a violation letter. Investigate whether your HOA has this power.

What proof, if any, is required to establish voting rights?

Often, HOA rules grant voting rights only to the owners named in recorded deeds or other title documents. Investigate these and other requirements for proof of voting rights.

How many votes per lot?

The most common rule is one vote per lot. However, this is not a universal rule. Some HOAs grant one vote to each named owner. In new developments, the developer is a member entitled to substantial voting rights.

Can the HOA take away voting rights by violation letters or other means?

Recall

Do the rules permit or prohibit a recall?