



## ASSOCIATION POINTERS

### Who is the HOA?

“HOA” is an acronym for homeowners association. A homeowners association is a non-profit corporation that establishes a common interest among its members.

#### Is the Developer the HOA?

No, the Developer *creates* the HOA by establishing governing documents, including Articles of Incorporation that virtually *establish* the corporation once recorded. The HOA is a separate, stand-alone entity managed by the authority of a Board of Directors, which is initially *appointed by* the Developer and later transitions to homeowner involvement and eventual control.

#### Is the Developer’s Management Company the HOA?

First of all, the management company isn’t the developer’s! The Association’s Board of Directors hires the management company, establishing a contract between the Association and the Management Company, not the Developer. It’s true, that initial board is comprised of developer representatives initially, but they are under fiduciary obligation to use reasonable business judgment, making decisions that are *in the best interest of the association*. In addition, the management agreement must be negotiated each year, allowing the subsequent boards to have input and decision-making power over the management agreement. Secondly, the management company is not the HOA and does not define the HOA. It is the management company’s responsibility to carry out the provisions of the governing documents according to direction given to it by the Board of Directors and according to the requirements established by federal and state laws.

#### Does the HOA have optional membership?

No, one of the characteristics of an HOA is that it has mandatory membership by all owners of property. Membership is not optional.

#### Can the HOA be disbanded?

Yes, most governing documents have a provision for terminating the HOA; however the City or the County may have legally binding obligations passed to the Association that obligate its existence. Unless those obligations were met elsewhere to the City/County’s satisfaction, the HOA will be forced to continue. HOAs are rarely terminated. Sometimes they have provisions that allow them to merge with another HOA, but rarely do they cease to exist.

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1720 Jet Stream Drive, Suite 200, Colorado Springs, CO 80921

<http://www.warrenmgmt.com>