Tennessee Homeowners' Association Law:

A collection of federal, state, and local laws that govern the rights, responsibilities, and duties of people involved in HOAs.
City of Knoxville’s Office of Neighborhoods

The Neighborhood Conference
Knoxville Convention Center
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Legal Issues Part I: The Law and the Courts

Courtesy: Wayne Kline, Attorney
Hodges Doughty & Carson
http://www.hdclaw.com
What governs an HOA?

Chiefly, the Articles of Incorporation, CCRs*, Bylaws, and Resolutions adopted by the HOA.

*Conditions, Covenants, and Restrictions

The governance of the HOA must comply with federal, state, and local laws.

Naturally, developers and HOA boards can't create any kind of restriction they want.

Federal:
- Fair Housing Act
- Internal Revenue Code
- Americans with Disabilities Act
- Fair Debt Collection Practices, etc...

State:
- Non-profit Corporation Act
- Horizontal Property Act
- principles of contract, tort, employment law, etc...

Local:
- All local ordinances, regulations, zoning laws, building codes, etc...
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Federal:
Fair Housing Act,
Internal Revenue Code,
American Disabilities Act, Fair Debt Collection Practices, etc...

State:
Tennessee Non-profit Corporation Act,
Horizontal Property Act, principles of contract, tort, employment law, etc...

Local:
All local ordinances, regulations, zoning laws, building codes, etc...
State Law

HOAs can be affected by a wide array of law including legislation, case law, and rules and regulations adopted by various agencies.

Though there is proposed legislation, there is currently very little Tennessee legislation aimed directly at common interest communities....
Legislation directly impacting HOAs

**Tennessee Nonprofit Corporation Act**  
(TCA 48-51-101, *et seq.*)

Because HOAs are usually incorporated as nonprofits, they are subject to the above "Act."

This Act frames the parameters of how Articles of Incorporation are created and implemented.

**Requirements on filing.**

Not the same as a federal 501(c)(3) tax-exempt organization.

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**Horizontal Property Act & Tennessee Condominium Act**  
(TCA 66-27-101 to 507)

Set of laws which apply to apartments, condominiums, and other horizontal properties governed by common interest regimes.

Creates certain provisions for minimum standards for bylaws, etc..

**Requires insurance on common elements.**

No effect on single family developments.
# Tennessee Condominium Act

## Organization of Association
- Can be for profit or nonprofit
- Must be comprised of owners or owner's assigns.
- Must be organized no later than the date of the first conveyance of a condominium.

## Powers of Association
- Adopt and amend bylaws, rules, and regulations.
- Adopt budget, hire and fire managers, contract, regulate and maintain common elements, litigate, etc..
- Statute reasserts broad power invested in legal entity of the same type (nonprofit, for profit, etc...).
- The only limitation is that members cannot create special circumstances for themselves.

## Association Bylaws
- Must provide for number of members and titles of officers.
- Must provide for election of president, secretary, and any other positions the bylaws specify.
- Must specify length of terms, qualifications, etc...
- Must provide for method of amending.
- Reasserts broad power to include other provisions.

## Proposed Legislation
In 2014, HB2070/SB2110 was presented to a sub-committee sent the bill to TIR. It has been proposed and the committee continues to work towards passage. January 29, 2015:
- Require adequate insurance
- Require giving homeowners
- Transfer control of common areas
- Developers abandon responsibility
- Letters of credit for self evident
- Infrastructure in new PUDs
- Any prohibition on banning
- Time, place, and method of execution
- Keep determination of when elections are done
- HOA foreclosure ability should equal amount of fines and time
- Force local governments to take responsibilities for projects

[Non-exclusive list!](http://www.caionline.org/govt/advocacy/LAC/LAC%20Activities/Senate%20Bill%202935.pdf)
Proposed Legislation

In 2014, HB2070/SB2110 was proposed. The State and Local Government sub-committee sent the bill to The Tennessee Advisory Commission on Intergovernmental Relations for further study. A number of other bills had been proposed and the committee gave the following recommendations on January 29, 2015:

- Require adequate insurance on common interest areas and require giving homeowners notice of coverage.
- Transfer control of common areas from developers to HOAs if developers abandon responsibility. Create automatically renewing letters of credit from developers to ensure completion of infrastructure in new PUDs.
- Any prohibition on banning political signs should give specific time, place, and method of displaying them.
- Keep determination of whether HOAs can prohibit street parking at a local level.
- HOA foreclosure ability should be limited based on minimum amount of fines and time.
- Cause local governments to be able to sell properties within HOAs without being subject to the HOA fees.
- HB 2060/ SB 2198 also sought to limit additional fees for homeowners with multiple properties

http://www.state.tn.us/tacir/PDF_FILES/Agenda/2015January/2015Tab%209HOA_MEMO.pdf
Subsequently, Tennessee legislators proposed....

"The Tennessee Homeowners Association Act"

(Tennessee Senate Bill 0405/House Bill 610)

This act is designed to be a comprehensive body of law on common interest communities in Tennessee. Some portions will not affect condominium associations/owners and some portions will only affect HOAs formed after July 2015.

A few items of note:

- the Act confers power to determine parking regulations in and "adjacent to" to the common interest community.

- all charges, fines, and fees must be "reasonable" and located on a schedule available prior to the assessment of the fine.

- makes information available to potential buyers

- did NOT address the county/city immunity issue

Just as an FYI:

There is a Uniform Common Interest Owners Bill of Rights.

This is an example of a uniform set of laws that lawyers and legal scholars create to offer states an example of litigation that should be proposed in certain areas.

There is no indication that Tennessee has considered adopting these model rules, but a few states have.

http://www.uniformlaws.org/shared/docs/common%20interest%20owners%20bill%20of%20rights/uciohora_final_08.pdf
HOAs in the Court Room

When a dispute arises between a homeowner and the HOA or between an HOA and another entity, it is usually litigated in state court.

When the issue is appealed to the Tennessee Court of Appeals or the Supreme Court, the judges' decisions become the law.

Litigation

*Clear Water Partners, LLC v. Westland West HOA, et al.*

Developers submit plan to the MPC for a development that requires rezoning.

MPC approves the plan and the rezoning. Rezoning goes before the County Commissioners and the Development plan goes before the board of zoning appeals. Both bodies approve.

Collective HOA members file suit in Knox County Circuit Court to appeal the administrative decisions.

- Trial court holds administrative decisions are correct.
- Affirmative action by the Court of Appeals of Tennessee.
- Court's Appeal results in the County Commissioners or the Development plan.

*Travis v. Trustees of Lakewood Park, No.*

- Developer develops Lakewood Park - 3800 lot subdivision.
- Developer sets up trust, part of the covenants require payment of $350/ year.
- Several lots sell, but Developer goes bankrupt and does not finish development.
- County acquires a number of lots after owners do not pay taxes.
- County attempts to sell, but ends up purchasing several lots pursuant to Tennessee Code Annotated § 67-6-2401 et seq.
- County does not pay fees and suit is brought.
- In the meantime, County sells all lots.
- Trial court holds County does not have to pay, but appellate court disagrees.
- Final holding is the sovereign immunity does not protect counties from being required to pay HOA fees.

Various homeowners purchase over half of lots based on promotional materials saying 1,000 acres would remain in preservation.

2nd Developer buys 11 of 24 unimproved lots and 1,400 undeveloped acres.

2 of 13 homeowners bring suit for violation of restrictive covenants: express and implied.

Trial Court consolidated suits and found for developer, but enjoined developer from acting contrary to its corporate charter.

In the meantime, HOA (dominated by developer) changes amendments and restrictive covenants to address original issues.

Developer appeals to TN Supreme Court.

Supreme Ct. of Tennessee takes on appeal.

1st Developer passes away.

1st Developer develops property Cooley’s Rift in Monteagle, TN; a 24 lot development surrounded by wooded area.

2nd Developer calls association meeting and reveals plan to build 650 additional lots and golf course.

Homeowners file separate suit to challenge new amendments.

Homeowners appeal again, the court of appeals determines the procedure was correct, but tells the trial court to determine if the amendments were reasonable and whether plat had implied covenants.

Clear Water appears:

Developer wins, homeowners get an appeal, and appellate court sends back to trial to make this determination: "Whether a general plan of development, or the plat for the subdivision, gave rise to certain implied restrictive covenants."

Supreme Court of Tennessee (inter alia):

- Subsequent developer obtained all rights and interests of the initial developer, including the right to appoint an interim board.
- Amendments made by an HOA supermajority are not unreasonableness standard but are subject to an arbitrary standard.
The Supreme Court of Tennessee held, *inter alia*:

The subsequent developer obtained all rights and interests of the original developer, including the right to appoint an interim board,

Uniform amendments made by an HOA supermajority are not subject to a reasonableness standard but are subject to an arbitrary and capricious standard*,

and

There was no basis for implied restrictive covenants arising from the plat because it the forest preserves were illegible.

**Moral of the story:**

Know what you're buying into, especially if you are one of the first buyers in a new development. This case was ultimately decided on the language of the Master Plan and other relevant documents.

*A* This portion of the opinion was specifically designed around a 75% super majority vote of a uniform amendment in the HOA. The court distinguished it from *Wilson v. Woodland Presbyterian Sch.*, No. W2001-00654-COA-R3-CV, 2002 WL 1417064 (Tenn.Ct.App. June 25, 2002)
"Qualifying" language concerning reasonableness

"We acknowledge that a homeowner's Lockean exchange of personal rights for the advantages afforded by private residential communities does not operate to wholly preclude judicial review of the majority's decision. However, because of the respect Tennessee law affords private contracting parties, we are reticent to inject the courts too deeply into the affairs of a majoritarian association that parties freely choose to enter."


- Developer develops Lakewood Park - 3800 lot subdivision
- Developer sets up trust, part of the covenants require payment of $85/year
- Several lots sell, but Developer goes bankrupt and does not finish development
- County acquires a number of lots after owners do not pay taxes
- County attempts tax sale, but ends up purchasing several lots pursuant to Tennessee Code Annotated § 67-5-2401 et seq.
- County does not pay fees and suit is brought
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- Trial court holds County does not have to pay, but appellate court disagrees
- Final holding is that sovereign immunity does not protect counties from being required to pay HOA fees

Keep an eye out for legislation that could affect this, i.e. HB2430/SB3129
Litigation

**Clear Water Partners, LLC v. Westland West HOA, et al.**

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- Trial Court rules administrative decisions are correct
- Both sides appeal to the Court of Appeals of Tennessee
- Court of Appeals rules - The terms of the General Plan required by statute (T.C.A. § 13-3-304) in 2003 is advisory in nature and does not mandate a policy or framework for making day-to-day decisions about developments - which is left to the discretion of the planning bodies of the community.
Hollis v. Chestnut Bend Homeowners Ass'n

- Parents of two down syndrome children sued their HOA accusing the HOA of violating the Fair Housing Act by refusing to permit the parents to build a therapeutic sunroom addition for their children.
- After an unfavorable ruling in the Sixth Circuit, the HOA settled for $156,000.00.

Stratford Hall Home Owners' Association v. Haley

- HOA sued a resident that repeatedly refused to repaint his house.
- Although the resident argued that his house did not need repainting, the court ruled that the HOA had the authority and acted properly after reviewing evidence of the resident's house compared to the community-wide standard.
Civis Bank v. Willows at Twin Cove Marina Condominium and Home Owners Association, Inc.

- The master deed for a development project exempted the "declarant," which was defined as the developer, from HOA fees.
- After the developer defaulted and Civis Bank purchased the properties at a foreclosure sale, Civis Bank argued that it was the "declarant" and exempt from HOA fees, but the court disagreed and ordered Civis Bank to pay $68,113.41.
Thank you for attending.

Many additional issues are covered as we continue the presentation.

Stay Tuned!