

## Ten Damaging HOA Myths

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By Kelly G. Richardson, Esq.

Some myths are not only wrong, but harmful. Here are ten HOA myths which create problems for communities.

**Governing documents are boilerplate.** Most HOA homebuyers carefully read their purchase contract, and ignore the CC&Rs, bylaws and rules. However, those documents are binding whether or not the owner reads them. Avoid surprises – read the documents!

**It's my balcony.** In condominium associations, balconies are usually exclusive use common area. It is not "MY balcony; because it is "OUR balcony". The owner has the exclusive right to use it, but the HOA still controls how it is used and maintained. Owners often misunderstand that exclusive use areas are owned in common and therefore still under association jurisdiction.

**If the association is off course, I can withhold my assessment payments.** This is a potentially disastrous myth. Members cannot withhold or offset claims against the HOA as a defense to their assessment delinquency. Withholding assessments will result in late fees, collection costs and attorney fees increasing the problem. The better approach is to follow Civil Code 5658, by paying the disputed amount and then filing a small claims court claim seeking a refund.

**If it's inside my home, the HOA has no say.** Most (but not all) condominiums are defined by a subdivision map or condominium plan describing the unit as "airspace". This means the member often owns the carpet on their floor and the paint on their walls while everything underneath is common area, requiring HOA permission to alter. Before opening a new doorway, check the condominium plan and CC&Rs to see if HOA permission is needed.

**I can look at any record I want.** Members have rights to a large amount of records, including certain financial records (Civil Code 5200), annual disclosures (Civil 5300 and 5310), transfer

disclosure documents (Civil Code 4525) and draft board minutes (Civil Code 4950). However, if it is outside of these areas, it may not be available to member inspection.

**The association manager works for me.** The manager (and all other association service providers) work for the association. The association speaks through the board. Individual members do not direct association vendors.

**Officer or board vacancies and appointing committee members are "personnel" decisions.** While personnel decisions are reserved for closed board discussion under Civil Code 4935, volunteers (and vendors) are not "personnel". Only persons receiving paychecks on the HOA's account are employees and "personnel".

**The president is the boss.** Presidents are not the decider in associations – the board is. HOA presidents have much less power than a normal corporate president. Healthy associations understand this, and govern with a board led by (not controlled by) its president.

**Good boards will not increase assessments.** A basic board responsibility is to maintain and preserve the common area, and budget for reasonably anticipated expenses. The goal is not a zero increase, but an accurate budget. Budgets should track reality, and the reality is that expenses rise over time. Boards that "hold the line" often skimp on maintenance and fail to deposit money into the reserve fund.

**The state can take over if we need help.** A court-ordered receiver, appointed to run the HOA, will cost much more than a manager. Don't give up, instead learn to do it right. Maybe take a CAI class or two. Visit [www.responsiblecommunities.com](http://www.responsiblecommunities.com).