

ACNA Meeting Minutes October 25, 2016

The fourth quarterly meeting of the Allen County Neighborhood Association was held on October 25, 2016 in the Omni Room on the Garden Level of the Citizen Square Building. It was called to order at 7:10pm by Dan McCrea, ACNA Leader. Thirty-six residents were in attendance.

Dan began by introducing Nelson Peters, Allen County Commissioner, who is the sponsor of the ACNA. Dan then asked those attending the meeting to state their name, association, board position (if applicable) and if they were a City or County group.

Bob Eherenman - Attorney

- Annual meeting dedicated to legal questions.
- Bob began the evening discussion on why there is a need to have associations. He stated that associations come to be after a plat is submitted to the Planning Department; the plat is approved and recorded. A set of Restrictive Covenants is then written – these covenants tell the association how to govern, collect dues and enforce action against them.
- Terminology: refresher and for those in attendance who are new to the ACNA:
- **Covenants:** Govern real estate. Associations need to file for non-profit status and then form a board. Covenants in Allen County can be found by going to the Records website, entering the association name and doing a search. All active covenants are listed on this site.
- **Articles of Incorporation:** The Article of Incorporation show how the association was formed. Residents can find out if they are incorporated by going to the Indiana Secretary of State website and searching by name. For a board to enforce covenants, they must be incorporated.
- **By-laws:** By-laws tell which officers are required, how they are elected and the rights and responsibility's of them.
- **Questions:**
- Association dues: how to collect delinquent dues? Bob stated that your covenants will explain the dues and how to collect. If non-payment is excessive, filing a suit in Small Claims Court is an option. What are the up-front costs associated with this? Bob stated that associations must have legal representation in Small Claims Court so legal fees will be charged. The cost for this varies greatly and you can try to negotiate with the attorney for a payment structure. There is also a filing fee with the court to file the suit (\$96 to file in person; \$101 to have it served). Many covenants also have a provision in them to allow the association to recover the legal costs assessed. When is payment received after a judgment? Bob stated this all depends on how solvent the resident is. A Proceeding Supplemental is held to find out the worth of the resident. A Bank Interrogatory may be sent too if the checking account info of the resident is known. This is important as once the bank is involved, payment will be enforced or the resident will have their account frozen. A judgment also will show up on a credit report and banks and lenders

- won't loan money to anyone who has an outstanding judgment. The judgment lasts for ten years. The final question was who collects the judgment? Bob stated that the association is responsible for forcing payment so it falls back on them anyway.
- Can associations charge a late fee? Bob stated that late fees are only allowed if the covenants spell them out. If late fees are not in the covenants, they can't legally be charged but you can still try to assess them if you want. The worst that can happen is they are not assessed. The dues payment is fully enforceable though.
 - What is the average legal fee for Small Claims Court? Bob said that this all depends on the lawyer. Filing in Small Claims Court may be very cost prohibitive for the association. A ballpark estimate for legal fees would be between \$500 - \$1000. Having a collection agency try to recover might be a better option. Dan interjected that his association had used this method and that they were charged 30% of the collection as the fee.
 - Liens: Bob informed the group that liens have changed recently per Statute and they are not a very good method to attempt to get payment. Liens are only good for three years now and you must sue for judgment before three years or the lien goes away. Most liens from associations fall down the ladder – that is, if there is a larger lien in place, such as on the mortgage, the higher amount will get the money first, usually taking all of the money. There is rarely anything left for the association to collect.
 - If a house is in foreclosure, doesn't the bank have to pay all of the liens? Again, anyone in junior to the judgment gets paid last and there is rarely any money left.
 - What can be done if a resident refuses to abide by the covenants? Bob stated the first and best option is to try the neighborly approach – talk to them about the issue and make sure they understand the rules. Also tell them that abiding by the covenants is in their own best interest to keep property values up. If the covenants allow, the right to vote can be removed if a resident does not abide with them. Lastly, you have to sue but what are you going to get with a suit? Rarely will the courts force action over fencing, streets, parking, etc.
 - Can associations charge an aggravation fee? Bob stated that is only allowed if it is spelled out in the covenants and he has never seen that before. Most residents want to be good neighbors and will comply.
 - Question on covenants versus by-laws? Bob reiterated that covenants govern the real estate and the by-laws govern the corporation. You can't dump covenants issues into the by-laws. Changing by-laws is much easier than covenants and some people think they can put covenants issues in there. They are not enforceable.
 - Covenants violations: if you are not able to enforce an issue with one resident on an issue, does that mean you can't force all residents to abide? Bob stated that most covenants have a non-waiver provision in them and that means failure to enforce one person does not provide for an excuse to others.
 - Do you need a lawyer to change your covenants? Bob informed the group that you do not have to have a lawyer but that covenants are a contract and that it is strongly recommended to have one make the changes. If you do it yourself and

there are mistakes, the changes will not be valid. Really not worth the risk unless the changes are minor.

- There is a waiver section in a covenants. Can a resident force the board to enforce the covenants? This all depends on what the waiver section spells out. If it is allowed, then yes, you can force the board to act. But at what cost and what action would you take against them? It would be better to get voted on the board and be the one in charge.
- Should associations have Errors and Omissions Coverage? Bob stated that yes, you should have it. This will protect those doing the board duties. He also said you should have a Fidelity Bond for those on the board who have authority to sign checks – this protects your money!
- Should residents contact Code Enforcement or send nasty letters? Bob said to be careful what actions you take. There are ramifications to your actions. Try to be a good neighbor first. That is always the best course of action.
- How can residents know what projects may be coming to their area? Bob told the group that you can contact the Department of Planning Services. They are the authorizing authority and will know if something was requested.
- If you sue in Small Claims Court, how long does it take to receive a judgment? Bob said if it is uncontested, usually less than 60 days.
- Does a property management group need a fidelity bond? Who pays that cost? Bob said most all will already have one and that the cost is generally in the fee charged.
- What if a yearly meeting is not held – what action can be taken? Bob said it really doesn't matter but the covenants are still enforceable. They do not go away if the meeting isn't held.
- What is the Statute of Limitations on past dues? Bob said that it can be up to ten years.
- Are there accounting firms to help with association books? Bob stated that the financials for the association are not usually very difficult and any accountant can probably assist you. You should not need to hire a firm to do your books.
- Are you required to have a budget? How much should you keep to keep in your account? Bob said that there is usually no requirement for a budget but he strongly recommends you have one. How much? That all depends. It is smart to have a rainy day fund. A member in attendance informed the group that their association actually lowered the dues and it came back to be an issue when costly road repairs came up. The board needs to be thinking of the future in regards to money.
- Covenants say they are only valid for 25 years. What happens after? Bob told the group that that isn't true – covenants last forever unless you legally dissolve them. The 25-year provision was inserted long ago and most new associations do not add the wording as it is not true.
- Can you install speed bumps in your association? Bob stated that most of the time, the roads are not owned by the association and that you would have to check with your city or county. As public streets, the city / county controls speeds, parking, speed bumps. This is not the association's responsibility.

- A resident said that they have issues with cars parking on both sides of the street. What action can be taken? Bob again said the streets are probably public and the association has no control over them. If the situation warrants, contact the local police or sheriff and they will look into it and possibly talk to the resident. Remember – be a good neighbor. Talk to them first.
- What if non-residential activity is being run out of a house? Can the association take action? Bob stated that covenants almost always state single-family residents and businesses can't be run out houses. But you have to define business. Working out of your own home is not considered running a business.
- If a buyer is not aware of past due dues, are they responsible for them? Bob said that no, they are not responsible if they were not aware. Most title companies contact the association pre-sale and find out if there are dues owed and add that to the closing costs.
- Are all board meetings open to all residents? Bob said that technically, the board meeting is only for the board but not allowing residents in isn't a very good idea.
- A question was asked about legislation requiring notification on third party documentation? Bob was not aware of any. Dan told the group that a previous presenter to the ACNA had discussed a possible bill in the legislature concerning third party documentation. Bob said he would look into it.
- What are the rules for the annual meeting? Bob said the by-laws will tell you what is required. Usually this is to approve the budget and vote for officers.
- Residents told that the pond in their association is owned by the residents around it. Is this true? Bob said you need to find your plat and that the plat will tell you exactly where the property lines are at. If the residents around the pond do own the pond, the rest of the association can't force them to do work to the pond. Check with the Recorder's office for your plat. It should be on file.

Open:

- Public Service Announcement – Mike Green informed the group that a past presenter to the ACNA, Janet Mitchell, is holding a seminar on mediation and how they work. The seminar is set for December 2nd from 10-12. Information can be found on the website.
- Mike also told the group that the ACNA was trying to line up a guest to discuss association bookkeeping. The ACNA is always looking for topics for future meetings – contact Dan or Mike with your suggestions.
- Handout: The When You Need it County Government pamphlet
- Go to: www.allencounty.us. Click on the Government tab / Community / ACNA. There you will find all handouts from the past meetings, meeting minutes and video recordings of the meetings. A lot of good information can be found here.

The meeting was closed at 8:25pm. The next meeting is scheduled for **January 24, 2017** at 7:00pm in the Omni Room on the Garden Level of the Citizen Square Building, 200 E. Berry St. **2017 meeting dates: January 25; April 25; July 25; October 24.**