

ACNA Meeting Minutes October 24, 2019

The meeting of the Allen County Neighborhood Association was held on October 24, 2019 at 6:30pm in the Omni Room in the Garden Level of the Citizen Square Building. The meeting was called to order by Joanne Bergman, Co-Coordinator. Thirty-five residents were in attendance, along with Nelson Peters, Allen County Commissioner.

Joanne explained that the ACNA meets four times a year and the October meeting is specific to legal questions for the attorney's present. She also mentioned that along with her, Kris Krishnan, Rob Grayless and Marvel Embery are the other Co- Coordinators. Tonight, Bob Cross was the greeter.

Joanne told the audience that the ACNA is made up of volunteers and that more are needed. A survey was passed around to the audience to see if those in attendance would be interested in helping out at future meetings. The survey had a list of ideas and areas where help is needed. The ACNA is holding the 2020 Planning Meeting on November 12 from 11:00 – 12:00 in the Commissioner's office on 4th floor of Citizen's Square and anyone interested in helping out is welcome to attend.

Erik and Janet Robertson were in attendance, from RSI Consultants. Joanne stated that they would be available after the meeting to answer any questions on reserve services for Condo associations.

Bob Eherenman and Joshua Neal, Attorneys

- Three main documents for governing associations:
- Articles of Incorporation – sets up association as a corporation with the Secretary of State
- By-Laws – the set of rules that governs the actions of the board
- Covenants – restrictive obligation on the property in the association
- Do you need a majority of residents to vote for changing the by-laws? By-laws are the rules for the board operation, not the entire association. They usually are not recorded. Generally, if the document has to be recorded, then a majority is needed and it also needs to be notarized. Covenants have to be recorded and do require the majority spelled out in them. If the amount is not specifically detailed, then a 100% approval is needed. Per State Statute, a majority vote of the board is required to change by-laws.
- Go to the Secretary of State website and search any association by name and you can see if they are incorporated.
- Can an architectural control board deviate from the covenants for “special” circumstances? No – they have to follow the covenants. Be careful with turnover on architectural control boards that the covenants have been followed and make sure decisions are well documented.
- What is the process for amending covenants if it is not spelled out? Does every signature need to be notarized? The signatures need to be notarized and Notarys have specific rules to follow so there isn't much discretion. Each signature can be notarized individually or with a signature page, but the notary must witness the signatures.

- Can you amend covenants to restrict Airbnb? How can you restrict short term rentals? Restricting the action of the rental isn't possible. The actions of the renter can be enforced by codes and covenants. Obnoxious behavior, trespassing, etc. would be enforceable. The standards to define obnoxious behavior have been set very high by the court system. Short term rentals most likely meet the definition of single-family residence.
- Does an association need a board if they are run by a property management company? Yes, the board needs to monitor the actions of the PMC.
- Can an amenity (tennis court) be converted to an open space without a 75% vote of the residents? Most likely, yes. Just changing the amenity from one type of common space to another should not require residential votes. The board should be within its rights to make the change. If you were amending it to sell the lot, you need a vote and would have to change the plat. Check the covenants to see if they state any process to remove the tennis court.
- Resident hasn't paid dues in six years. Been sued and lost in Small Claims Court three times, had liens filed but still refuse to pay. What next? Not much more can be done but if that resident lost a judgement, then if they try to file any supplemental documents, get a loan, sell the house, the judgement would have to be paid. Judgements last for ten years. You can turn it over to a collection agency but many charge a fee of up to 30%.
- Corporations can now represent themselves in Small Claims Court if the amount sued for is less than \$1500.
- A comment was made to "shame" the resident on a social media site if the site is for the association only. This was question by many in attendance, but both Bob and Josh saw no reason why you can't list the name of the resident who won't pay the dues. Don't be rude, , but you can post their name. Personal information of all sorts is available online, all the time. You will always have somebody who likes to play the system and often you just have to deal with it. Isn't there an expectation of privacy in this matter? Again, both Bob and Josh had no issues with posting. By going to the MyCase.com site, you can find all types of information like this and they are all public access.
- The question was asked if associations had success with posting this information and several stated that yes, they had great success. Peer pressure works.
- What is the process to file a lien? There is a simple form that needs to be filled out and filed. This must be notarized and filed with the Recorder. The Recorder usually notifies the resident of the lien being filed. To release a lien is also a simple one-page document. The cost to file is now \$25 per document.
- The Small Claim Court employees are very helpful when being dealt with.
- How long should you wait on past due payment before taking legal action? This is a business decision for the board – there is no set time. The same is said for turning over to a collection agency. They may take up to 30% of the claim, so you usually wait until the amount makes it worth it for both parties.
- If a tree or root encroaches your property, can you trim it? For trees, generally yes, you may. Generally, x anything above the ground that encroaches onto your property line can be trimmed. Roots are generally below ground so probably can't cut them. Try talking to the neighbor first. Case of telling them that they

- need to sign a letter stating that they will take responsibility if the branch damages your property usually gets a quick response! What about things growing through a fence? Yes, you can legally trim right up to your property line. You can't however, go in the neighbor's yard and trim it back.
- Streets were replaced when they only needed repair. Does the association have any say in street repair? If the streets have been made public streets, then the city has all rights. The only way the association has any say is if they are private streets.
 - What are the laws on non-functioning vehicles in driveways? This is a County issue. There are no specific rules in the County. In the City, there are City Codes. Check your covenants to see if there is anything in them. There may be zoning rules for it but generally it needs to be five or more vehicles.
 - Can you park a car in the driveway with no license plate? Yes.
 - Solar panels – can architectural control restrict them? The technology has greatly changed in recent years. Generally, courts will not enforce covenants against them if they are mounted on the residential roof. If you don't have a policy for them, one can be developed and put into your covenants.
 - Can the architectural control board be sued? Anyone can sue anyone, but as long as the board is following the rules of the covenants, has detailed records and is consistent, the board should be covered against suit.
 - What if there are not rules in the covenants for architectural control? Amend them!
 - Associations are non-profit – are they also tax exempt? No. There are different rules for taxes but generally, associations are not exempt entities.
 - Can covenants be changed to prevent rentals? This is very difficult, the wording is crucial and the courts generally favor the resident, not the association.
 - If past architectural control boards were not enforcing covenants, can a new board begin to enforce anything new? Yes, but consistency is an issue with the courts. Be very careful.
 - Association expires after fifty years as stated in the covenants. Can you amend the covenants to change this? This would require the 75% approval. Both Bob and Josh stated they have never seen a provision like this in any covenants.
 - In a condo addition, water pooling on the land around the units is causing issues. Does the resident own the surrounding area? Generally, no, they don't. Each one is different so you have to see what your specific one says.
 - A speaker at the last ACNA meeting stated that if an association is over 250 houses, a fast-track option for modifying covenants is possible.
 - Association has been dissolved since 1999. Can it be re-incorporated? If it is dissolved, it is dissolved. You would have to file as a new corporation with the same name if you can get the residents to approve.
 - Can political signs be governed by covenants? There is a State Statute for political signs and this supersedes covenants. There are set rules for them though.
 - Can a board be paid for serving? No.
 - Are flags allowed or restricted in common area? If it is just the general common area, then no. If it is a limited common area, then yes.

- Is a renter of a house in an association considered part of the association? The renter does not hold voting rights but they are governed by the rest of the covenants. The renter could possibly vote in a meeting if he or she was given a proxy by the owner.

The meeting was closed at 8:00pm. Joanne informed the group that the room was available until 8:30 if anyone wanted to discuss items amongst themselves. The next meeting is scheduled for January 23, 2020 at 6:30pm in the Omni Room in the Garden Level of the Citizen Square Building, 200 E. Berry St. The 2020 meeting dates are: January 23; April 23; July 23 and October 22.