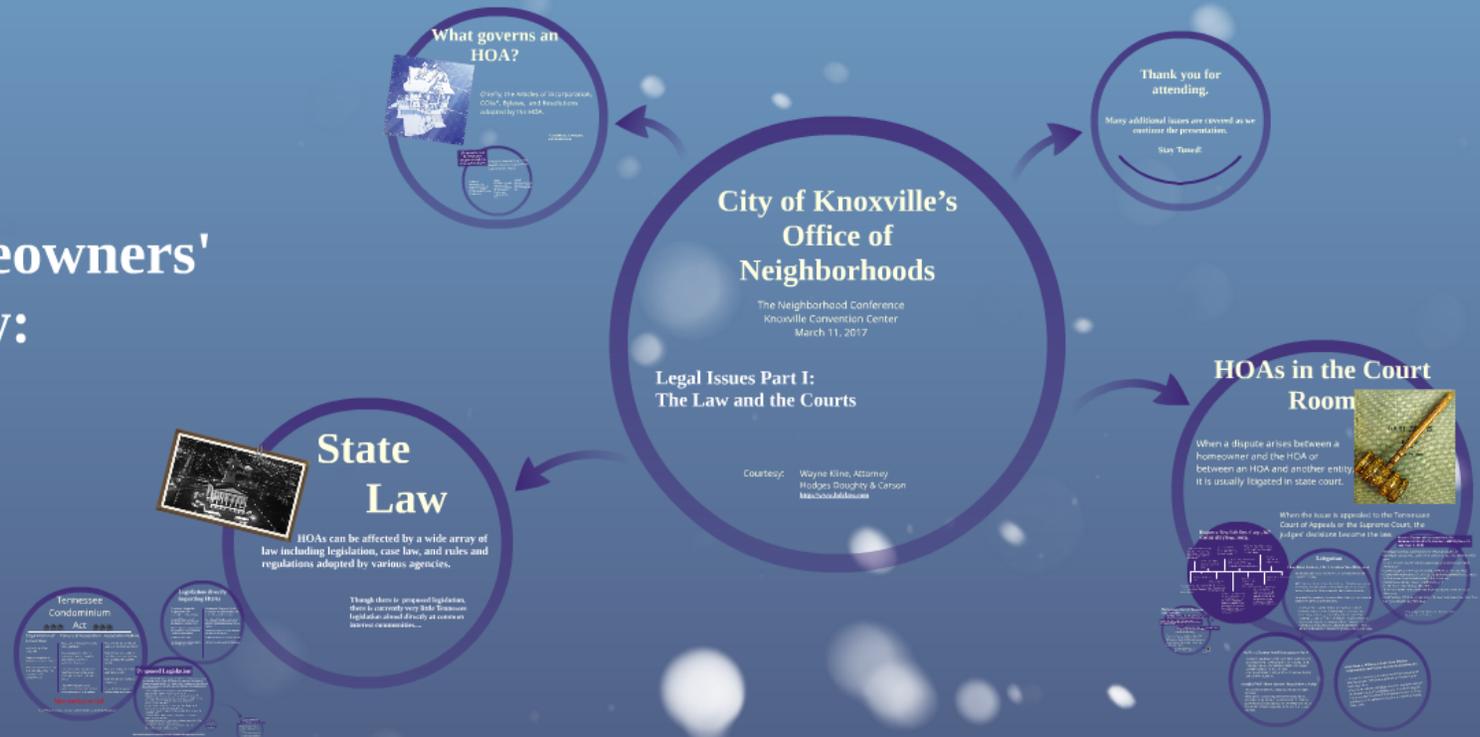


# Tennessee Homeowners' Association Law:

A collection of federal, state, and local laws that govern the rights, responsibilities, and duties of people involved in HOAs.



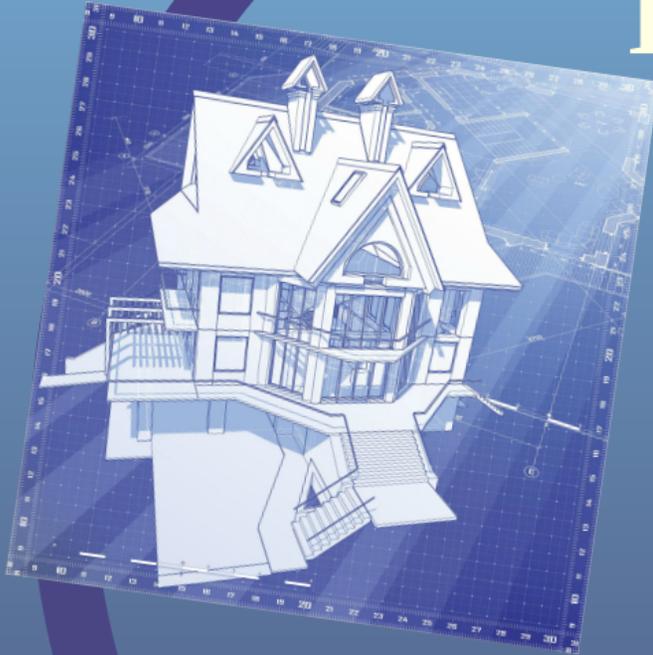
# City of Knoxville's Office of Neighborhoods

The Neighborhood Conference  
Knoxville Convention Center  
March 11, 2017

## 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, 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...

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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.



## 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."

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

Requirements on filing.

(the same as a federal 501(c)(3) -exempt organization.

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.

## Legislation

...ed. The State and Local Government Tennessee Advisory Commission on their study. A number of other bills had the following recommendations on

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

# Legislation directly impacting HOAs

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

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# Tennessee Condominium



## 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 proposed. A sub-committee sent the bill to the Intergovernmental Relations for review. The bill has been proposed and the committee will report back on January 29, 2015:

- Require adequate insurance and require giving homeowners the right to sue.
- Transfer control of common areas to the homeowners and require developers abandon responsibility for infrastructure in new PUDs.
- Any prohibition on banning dogs, time, place, and method of collection.
- Keep determination of whether a local level.
- HOA foreclosure ability should be limited to amount of fines and time.
- Cause local governments to

**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

#### 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 statutes that should be prepared in certain areas.

There is an indication that Tennessee has considered adopting these model rules for a few years now.

<http://www.uniformlaws.org/draftcomlaw>  
Tennessee Uniform Common Interest Owners Bill of Rights

**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**

<https://legiscan.com/TN/text/HB0610/id/1116521/Tennessee-2015-HB0610-Draft.pdf>

## **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/uciobora\\_final\\_08.pdf](http://www.uniformlaws.org/shared/docs/common%20interest%20owners%20bill%20of%20rights/uciobora_final_08.pdf)**

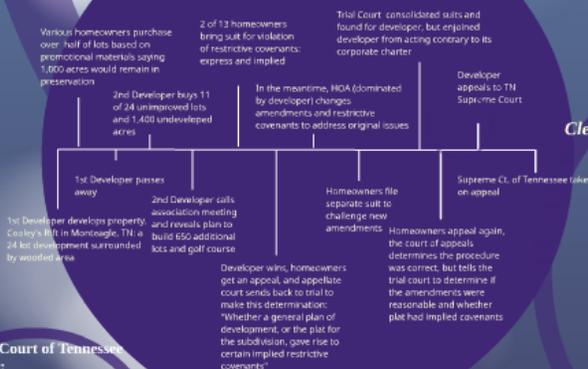
# HOAs in the Court Room

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.

## Hughes v. New Life Dev. Corp., 387 S.W.3d 453 (Tenn. 2012).



**The Supreme Court of Tennessee held, *inter alia*:**

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

Therefore, amendments made by an HOA supersede any are not subject to a reasonable-dominant standard (but are subject to an arbitrary and capricious standard).

There was no basis for legal restrictive covenants arising from the plot because of the failed preservation zone (RFPB).

**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

## Travis v. Trustees of Lakewood Park, No. M200901935COAR3CV, 2010 WL 3488522 (Tenn. Ct. App. Sept. 3, 2010)

- 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
- In the meantime, County sells all lots
- 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

## 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 finds 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.

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

# Court of judges'

## Hughes v. New Life Dev. Corp., 387 S.W.3d 453 (Tenn. 2012).

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

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

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

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

Developer appeals to TN Supreme Court

1st Developer passes away

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

Homeowners file separate suit to challenge new amendments

Supreme Ct. of Tennessee takes on appeal

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

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"

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

Developer requires

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

Amendments made by an HOA supermajority are not reasonableness standard but are subject to an arbitrary

# 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.

\*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. W2001-00054-COA-R3-CV, 2002 WL 1417064 (Tenn.Ct.App. June 25, 2002)*

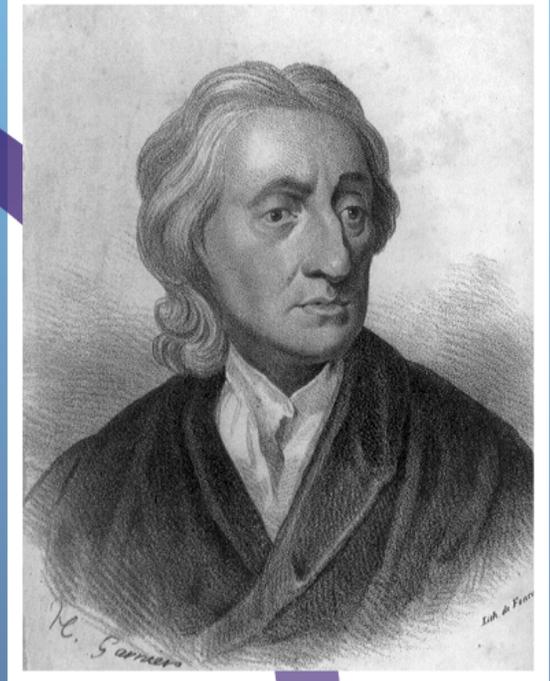
"Qualifying" language concerning reasonableness



"We acknowledge that a homeowner's Lock-out exchange of personal rights for the advantage afforded by private residential covenants does not equate to a wholly protected and immune-of-the-majority's decision. However, because of the respect Tennessee law affords private contracting parties, we are inclined to reject the court's conclusion that the effect of a restrictive covenant associated with parties freely chosen to enter."

*Hughes v. New Life Dev. Corp.*, 2015 WL 431, 436 (Tenn. 2/11/15)

# "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."

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(Tenn. 2012)

the law.

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### ***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!**