



LEGAL UPDATE

AUGUST 2022, 22.08

A MONTHLY GUIDE TO WISCONSIN REAL ESTATE LAW & POLICY

The Regulation of Homeowners Associations

During the 2021-2022 legislative session, one of the WRA's priorities regarding homeowners associations (HOAs) was signed into law. 2021 Wis. Act 199 created a simple statutory structure for HOAs that allow residents living in or purchasing properties within an HOA to have access to the rules and regulations affecting the property.

What is an HOA?

An HOA is a subdivision organization that creates and enforces rules relating to properties within its control. Typically, when a property is purchased within an HOA, the property owner automatically becomes a member of the HOA and is often required to regularly pay fees.

HOAs have the ability to regulate the use of property and can have a great impact on the property owner's rights. Therefore, a buyer must understand any obligations, limitations or fees when considering purchasing a property in an HOA. The rules and regulations of HOAs are often included in covenants, conditions and restrictions (CC&Rs), subdivision covenants or deed restrictions.

Additionally, HOAs often can assess fees when rules are violated by those regulated by the rules.

A buyer is never required to write an offer on a property with an HOA, but when they agree to purchase a property within an HOA, they are agreeing to honor all the rules, regulations and fees associated with such ownership.

What are examples of HOA regulations?

HOA regulations can be innumerable, and since HOAs cannot undo the local zoning ordinances, HOA rules are more restrictive than the local zoning ordinance. Of course, while some HOAs regulate a great deal, others may choose to regulate very little.

The following are just some examples of HOA rules and regulations:

- Fence material
- Fence height
- The distance a fence may be from the property line
- The type of material that can be placed on a property, e.g., no vinyl, wood roof shingles
- The colors that the houses can be painted

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- The percentage of the front of the home that must include a certain type of stone or brick
- Specific type of mailbox
- The amount of time a vehicle can be parked outside of the garage
- The type of vehicles that can be in the driveway or in the street and for how long, e.g., no service vehicles, boats or trailers may be in the driveway or in the street for longer than three consecutive days
- The type of landscaping that may be placed, e.g., flower color; mulch color; type of shrubs, bushes or trees
- The types of accessory structures that may be placed in the yard, if any, and where they may be placed
- When holiday lights may be placed and turned on, when the lights must be removed and what color the lights may be
- When garage sales can occur
- Hours to snow throw, mow lawns or do yard work
- When trash and recycling can be placed at the curb, when they must be removed and where they must be stored (out of sight)
- A dress code for garage sales, yard work, mowing lawns and if permitted, washing cars

Aren't HOAs already regulated by condominium law?

No. Contrary to popular belief, HOA documents are not required to meet the same deadlines and obligations established by Wisconsin condominium law. Therefore, previously, HOAs were not required to provide specific statutory documents in a real estate transaction, meet the same deadlines for delivery of certain documents or afford purchasers of a property within an HOA certain rescission rights under the law if they didn't like what they learned as to the HOA rules and regulations.

The Fundamentals of Wisconsin's HOA Law

Since HOA rules and regulations should be readily available to those living in or purchasing a property within an HOA, the law makes the information more accessible.

Does the law regulate what HOAs can or cannot allow, or limit the assessments charged?

No. Wis. Stat. Chapter 710 does not restrict how HOAs can regulate property or limit the ability or amount of any special assessment or periodic association fees an HOA may charge.



REALTOR® Practice Tip

If it is unclear whether the HOA is regulated by Wis. Stat. Chapter 710, refer the parties to private legal counsel.

Basic HOA terms

- “Assessment” means a regular or special charge or fee for common expenses, or a charge, fee, or fine against a specific residential lot or residential lot owner, that an association is authorized to levy or impose under the covenants and restrictions for a residential planned community. Wis. Stat. § 710.18(a)
- “Association” means an entity that is created to manage or regulate, or to enforce covenants and restrictions for, a residential planned community and that consists of members, stockholders, or other owners substantially all of whom are owners of residential lots that are part of the residential planned community. “Association” does not include a condominium association, as defined in s. 703.02 (1m). Wis. Stat. § 710.18(b).
- “Covenants and restrictions” means a declaration, covenant, or other instrument, including any amendments to the declaration, covenant, or instrument, that describes a residential planned community and that does all of the following:
 - a. Provides for restrictions on or requirements for residential lots that are part of the residential planned community, such as restrictions or requirements regarding allowable structures; building setbacks; architectural standards; fence restrictions; or the use, occupancy, appearance, or maintenance of property.
 - b. Provides that the residential planned community is managed or regulated by an association or that an association enforces the instrument on behalf of the residential planned community.
 - c. Provides that the restrictions or requirements described under subd. 1. a. run with the land.
 2. “Covenants and restrictions” does not include a condominium declaration, as defined in § 703.02 (8). Wis. Stat. § 710.18(c).
- “Residential lot” means a parcel of residential real estate that is part of a residential planned community. “Residential lot” does not include an outlier. Wis. Stat. § 710.18(d).
- “Residential lot owner” means a person, or combination of persons, that holds legal title to a residential lot in a residential planned community or that has equitable ownership as a land contract vendee. Wis. Stat. § 710.18(3).

- “Residential planned community” means real estate that includes one or more residential lots and that is described in covenants and restrictions. Wis. Stat. § 710.18(f).

More transparent regulation

Wis. Stat. Chapter 710 provides more transparency to property owners and prospective buyers by requiring HOAs to:

- **Record covenants, conditions, and restrictions (CC&Rs) with the county Register of Deeds.** See Wis. Stat. §710.18(2)(a). By recording the CC&Rs with the county Register of Deeds, the information is both accessible to a consumer who requests the information and pulled during the title search.
- **Require posting CC&Rs on the HOA website.** As of January 1, 2023, if the HOA has a website the HOA must post the CC&Rs on the HOA website. See Wis. Stat. §710.18(2)(b).
- **Give notice to HOA members of upcoming meetings and decisions made.** Provide a 48-hour notice to HOA members of upcoming meetings and decisions made by the board. See Wis. Stat. 710.18 (4).

Unless the CC&Rs provide otherwise, the notice shall be provided by doing all the following:

- Providing written notice of the meeting to all residential lot owners.
- Sending notice of the meeting to the last-known electronic mail address for each residential lot owner.
- Sending notice of the meeting by first class mail to the last-known post office address for each residential lot owner.
- If the association posts information related to the residential planned community on an internet site or a mobile device application, posting notice of the meeting on the internet site.
- If the residential planned community has an improved area that is accessible to all residential lot owners, posting notice of the meeting in at least one such area.

Reasonable statutory framework for HOAs

A statutory framework was created to allow consumers to gain information by requiring HOAs to:

- **Register with the Department of Financial Institutions (DFI). See Wis. Stat. § 710.18(e).** Per the statute, an association shall file a notice as a new or existing association within a specific period or amended notice or a renewal notice no later than the deadline established by the DFI, See Wis. Stat. § 710.18(3). The DFI will prescribe the form. See Wis. Stat. § 182.07(c). The DFI will not house the CC&Rs. The DFI is required to have basic information set forth in the statute about the HOA.

The notice shall contain all of the following information:

1. The name and mailing address of the association and, if applicable, the name and mailing address of any management company for the association.
2. The name of the county and the city, village, or town in which the residential planned community is located.
3. The name, mailing address, and electronic mail address or daytime telephone number for an individual who is authorized to respond on behalf of the association to requests for

copies of the covenants and restrictions and other information and documentation related to the residential planned community.

4. If the association posts information related to the residential planned community on an Internet site, the address of the Internet site.
- **Create a searchable DFI database.** The DFI will have the HOA information in a searchable formation, including the name of the association, the location, a contact person and the HOA's internet site. See Wis. Stat. § 182.01(7)(a).
 - Cap document fees:
 - **Limits registration fee charged by DFI.** Creates a \$25 fee cap charged by the DFI to file registration forms. See Wis. Stat. § 182.01(7)(b).
 - **Limits the fee charged by the HOA for a payoff statement.** An HOA cannot charge for a payoff statement for the first two-month period and limits the fee to \$25 for each additional payoff statement required during that two-month period. However, a higher fee can be charged if the HOA holds a meeting to consider whether to establish a fee or set the amount, provides written notice of the meeting and adopts a written resolution at the meeting to establish the fee or set the amount. See Wis. Stat. § 710.18(7).
 - **Limits the HOA fee charged for the CC&Rs.** An HOA is limited to \$50 to deliver CC&Rs to the property owner, if not posted on the website. See Wis. Stat. § 710.18(5).
 - **Written notice required if the HOA intends to suspend rights.** If the CC&Rs authorize the HOA to suspend certain rights for failure to pay assessments or other amounts owed to the HOA, the HOA must provide written notice identifying that the HOA intends to suspend and the actions the property owner may take to avoid the suspension. See Wis. Stat. § 710.18(6).

Penalty for noncompliance

If an association fails to file a notice required under this subsection, the association may not do any of the following until the association files the required notice:

- Charge a late fee or other fine for any unpaid assessments owed by any residential lot owner.

- Charge a fee in connection with any transfer of ownership of a residential lot that the association would otherwise be authorized to charge under the covenants and restrictions for the residential planned community.

The acts of the association are void and unenforceable if the association acts in one or both ways as prohibited during the period of noncompliance. Therefore, if the association fails to provide the proper notice, any late fee, fine associate with any unpaid assessments and any fee in connection with the transfer of ownership will be void or unenforceable against the property owner. See Wis. Stat. § 710.18(f).



REALTOR® Practice Tip

Make sure the buyer reviews the HOA rules and regulations before writing the offer to purchase.



REALTOR® Practice Tip

The offer could be drafted to include a contingency — see language below — like the condominium disclosure documents — see lines 149-175 of the WB-14 Residential Condominium Offer to Purchase — allowing the buyer to review the subdivision covenants, conditions and restrictions within a certain amount of time and then have a right to rescind within a certain number of business days.

Seller agrees to provide Buyer with any homeowners' association restrictions, covenants, rules or other documents that limit or restrict ownership or use of the Property. Seller is required to provide Buyer with these materials within 10 days of acceptance of this Offer. Buyer may within 5 business days of receipt of the documents rescind this Offer by written notice delivered to Seller. If Buyer timely rescinds this Offer under this provision, Buyer is entitled to the return of any earnest money. 5 business days begin upon the earlier of (1) Buyer's Actual Receipt of the documents or (2) upon the deadline for Seller's delivery of the document.

Resources

- 2021 Wis. Act 199: <https://docs.legis.wisconsin.gov/2021/related/acts/199.pdf>.
- Wis. Stat. 710.18: <https://docs.legis.wisconsin.gov/statutes/statutes/710/18>.

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