



# **Homeowner's Associations**

## **Trends and Issues**

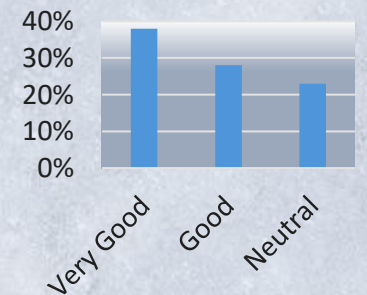
**Brad D. Wilkinson**



# Growth of HOA's in the U.S.

## LOVE 'EM OR HATE 'EM?

- HOA's are non-governmental, contractual entities and 100% voluntary
- HOA's are defined as community associations
  - *Group of people who manage and maintain their shared spaces and interest in a geographic area*
- 77.1 million Americans live in a community association
  - *38% rate their experience as 'very good', 28% as 'good', and 23% neutral*
- 369,000 associations exist in the United States
- 82% of new homes built are in a community association







# | WHY SO POPULAR?

Many Local Governments now *require* HOA's for development:

- Planned communities
- Shifts many responsibilities from government to private
- Frees up tax dollars and resources
- Aids in safety and crime prevention
- Amenities and Protection of Value



*Photo of Champlain Towers – June 24, 2021*

# REGULATION NATIONALLY

## HOA ISSUES CAUSE TRAGEDY

- Champlain Towers in Surfside Florida (Miami) - June 24, 2021
- 98 people died
- Degradation of concrete and deferred maintenance
- Settlement was over \$1 billion

## NEW LAWS

- May, 2024, Ron DeSantis signed a comprehensive community association bill into Florida law
- Requires inspections, reserve requirements, and remediations on buildings 3 stories or higher every 10 years
- Document transparency (*website published*)
- Financial Accountability (*criminal charges*)
- Parking Regulations (*no restrictions in permissible areas*)
- Contractor Selection (*no list allowed*)
- Provide governing documents to every resident
- Board Education (*requires CE*)



**Signed & Returned Bank Set Up form, where  
the HOA President was asked to execute**

Signature of Duly Authorized Association Officer:

Duly Authorized Association Officer  
Date: 5/5/23



# FIRE SALE IN FLORIDA



- INVENTORY INCREASE
- SALES/PRICE DECREASE

<u>Year</u>	<u>Units</u>
Pre - Covid	22,000
2023	45,000
2024	64,000
Post – Covid / Current	66,000

- Values are declining rapidly in 92% of Florida’s housing markets
  - Currently there are over 66,000 condos for sale in Florida
    - +/- 3,000 of those from Panama City to Perdido Key

# Regulation in Mississippi

- **MS Non-Profit Corporation Act (MCA §79-1-101)**
  - Association shall adopt bylaws
  - Conduct board and membership meetings
  - Quorum requirements
  - Proxy procedures
  - Directors and Officers
  - Record keeping and inspection of documents
  - Dissolution
- **MS Condominium Act (MCA §89-9-1)**
  - Definition of condominium (improvements have different owners)
  - Conveyance
  - Enforcement of a required Declaration of restrictions
  - Assessments and Liens (sale for failure to pay)





# Mississippi HOA Statutes

- MCA §79-11-751
  - Regulates HOA Management Companies
  - Requires separation of funds and HOA control
  - Detailed reporting by Management Team to HOA
  - Earned interest must go to the HOA
  - Transfers over \$10k (*must be approved by the Board*)
- MCA §79-11-753
  - Board must review financials prior to meetings
  - Allows zoom meetings
- MCA §79-11-755
  - One board member reviews meeting documents
- MCA §79-11-757
  - \$10k transfers require board approval
- MCA §79-11-759
  - Fidelity bond (*expensive*) (2021)
  - Board can waive this requirement (2022)
- MCA §79-11-761
  - No liability for banks for HOA losses
- MCA §89-1-69
  - Prohibits transfer fees to be paid to a developer or 3rd party
  - Fee may be paid to the HOA or Management Team if covenants require



# **Mississippi HOA Issues**



## **RENTALS**

### **PROBLEMS**

- Recent survey by CAI asked communities to rank the issues they have with rentals or investor-owned properties
- 73% said that tenants were not familiar with the governing documents, did not follow them, and failed to maintain the home

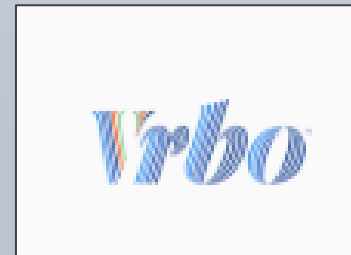
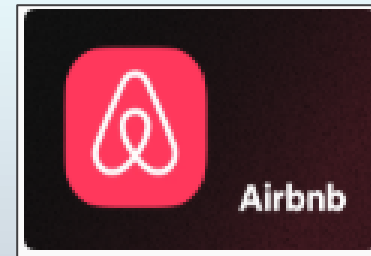
### **BENEFITS**

- In a down economy, rentals may serve a purpose
- Investors may be the only buyers of properties
- Occupancy of homes that would otherwise be vacant
- Avoid foreclosure



# Short-Term Rentals

- College Towns
- Beach Areas
- Recreational Venues
- Transient guest in & out
- Housing shortages







# **Kephart v. Northbay Property Owners Association**

***134 So. 3d 784 (Miss App. 2013)***

## **MISSISSIPPI CASES INVOLVING RENTAL RESTRICTIONS**

### **• CITY OF MADISON - 2013**

#### **▪ FACTS**

- Northbay in Madison started the whole rental prohibition movement in MS in 2013
  - HOA Board attempted to enact a policy on their own prohibiting rentals without a vote of the members
- The covenants (*which allowed rentals*) required a 75% vote to amend, and the By-laws required a 51% to amend
  - Kephart's rented their home and the HOA sued them

#### **▪ RULING**

- *Chancery Court*: Ruled in favor of the HOA holding the resolution valid and enforceable
- *Ct of Appeals*: Reversed and Rendered in favor of the Kephart's saying the Board had the power to enact rules and regulations which did not involve rights reserved to the landowners
- The right to amend the by-laws/covenants was reserved to the Members therefore the Board did not have the authority
- *Note*: Board should have had a vote of the membership to either amend the covenants (75%) or amend the by-laws (51%) and it would have worked.
  - Which is what they eventually did
    - Governing documents prevailed

# Lake Serene Property Owners Association v. Esplin

334 So. 3d 1139 (Miss 2022)

## FACTS

- Lake Serene is a beautiful neighborhood off 98 in Hattiesburg
- The covenants did not prohibit renting
- The covenants did limit use of property for “*residential purposes*” and not *business purposes*
- Esplin was renting his property on Airbnb and VRBO
- HOA Board passed a resolution prohibiting rentals for less than 180 days
- HOA then filed suit against Esplin for violating the resolution

## RULING

- *Chancery Court*: Ruled in favor of Esplin on all counts
- *Supremes*: Residential purposes is not defined in the covenants
- Court looked to AL, MO, FL, and TX and determined that Esplin’s use was in fact “*residential*”
- Also found that resolution was unauthorized as this right was vested to the landowners and as such required their vote
- *Note*: Proceed with caution! Unless the governing documents specifically prohibit a use, it is probably allowed (*relied on Northbay*)





# Buena Vista Lakes Maintenance Association v. Jones

*378 So. 3d 982, 2024 (Miss. App.)*

## FACTS

- Buena Vista Lakes is a neighborhood in DeSoto County with 399 homes
- Held a meeting to change the by-laws to prohibit leasing of homes
- By-Laws required 2/3 vote to amend
- Passed with 138 votes of the 206 present at the meeting
- Jones sued saying 2/3 vote obtained was not calculated correctly

## RULING

- *Chancery Court*: 2/3 vote was incorrectly tallied and required 2/3 of all votes eligible to be cast not just present
- Also found the by-laws ambiguous and invalid for public policy reasons
- *Ct of Appeals*: Remanded. By-laws state that “at all meetings of the members, 25% of the votes eligible to be cast shall constitute a quorum, and majority of the members present shall decide any questions at all meetings except on the question of: (3) *Amending by-laws, requires a two-thirds vote*”
- Court stated that the requirement of 2/3 of all vote eligible is simply not stated. Had the drafters intended that to be the requirement they would have stated such
- Court did not spend much time on the public policy argument citing its decision in *Wellsgate* where it found restrictions on short-term rentals had no public policy concerns
- *Lesson learned*: Governing documents will be strictly interpreted





# **HOW TO RESTRICT?**



## **1. Change Covenants**

- Typically requires a vote to change covenants or bylaws

## **2. Restricting Property**

- Not very popular

## **3. Rules and Regulations**

- Board may have rule-making authority
- Make rules such as review of lease, addendum, fee, minimum term
- Board approval to lease



# MISSISSIPPI HOA CURRENT ISSUES

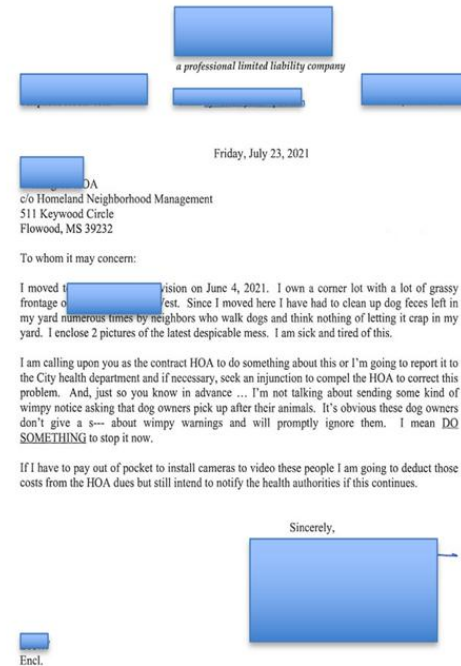
The 3 “P’s” of HOA Living

# Pets

- Barking
  - Public v Private Nuisance
  - Nuisance is offensive. Annoying, obstructive behavior
- Unleashed and dangerous dogs
- Poop



## A real letter and “Exhibit A” from a REAL lawyer





# Parking Regulations

- Public streets enforced by local authorities
- Covenants are contractual and may be more restrictive
- Covenants or rules disallow parking in the streets (time periods)
- Yard Parking
- Towing Regulations
- Reasonable and sufficient notice



# Pools



- Noise
- Unsupervised children being dropped off
- After-hours use
- Improper attire of adults
- Comprehensive posted set of pool rules is a necessity







# Honorable Mention

- Architectural Review (changes to property)
- Yard Maintenance
- Signs & Flags
- Garbage Cans
- Play Equipment
- Marijuana



# How to Address Violations

## FINES

- Board may have authority to levy fines for violations of covenants and rules
- Very effective tool
- Must be Reasonable
- Ultimate goal is to correct the problem

## INJUNCTIVE RELIEF

- Chancery Court (County/Circuit court)
- Both a Property matter and Contractual Matter
- TRO and Declaratory Judgments also available
- Typically, HOA will be entitled to their attorneys' fees if they prevail
- Expensive for everyone



# Collection and Liens

## Perfecting HOA liens for unpaid Assessments

- Most Covenants already establish a running lien on all lots for the payment of assessments.
  - *Griffin v. Tall Timbers Dev.*, 681 So.2d 546 (Miss 1996)
- Lot owners are required to pay assessments
  - *Perry v. Bridgetown Community Assn*, 486 So.2d 1230 (Miss 1986) “a landowner who willfully purchases property subject to the control of the association and derives benefits from membership in the association implies his consent to be charged assessments and dues common to all members.”
- Most Covenants also allow for the filing of a lien on a particular lot. Their authority is within the governing documents
  - *Effort Alexander v. Dale Wardlow and Buena Vista Lakes Maintenance Assn*, 910 So2d 1141 (Mss. Ct. App 2005) affirmed the filing of HOA liens on Alexanders property for failure to pay assessments
- Request Chancery clerk to file the lien upon the lot in the land records
- Miss. Code Ann. 79-11-193 and Breach of Contract gives the HOA authority to file suit for collections of unpaid assessments
- Once judgment is obtained, the HOA lien is made into a judgment lien and enrolled accordingly.
  - Judgment lien may be foreclosed upon as well as executions on other property.
- Note: *Rea v. Breakers Association* 674 So. 2<sup>nd</sup> 496 (Miss. 1996) 20% per month late fee was usurious and late fees on late fees are not reasonable

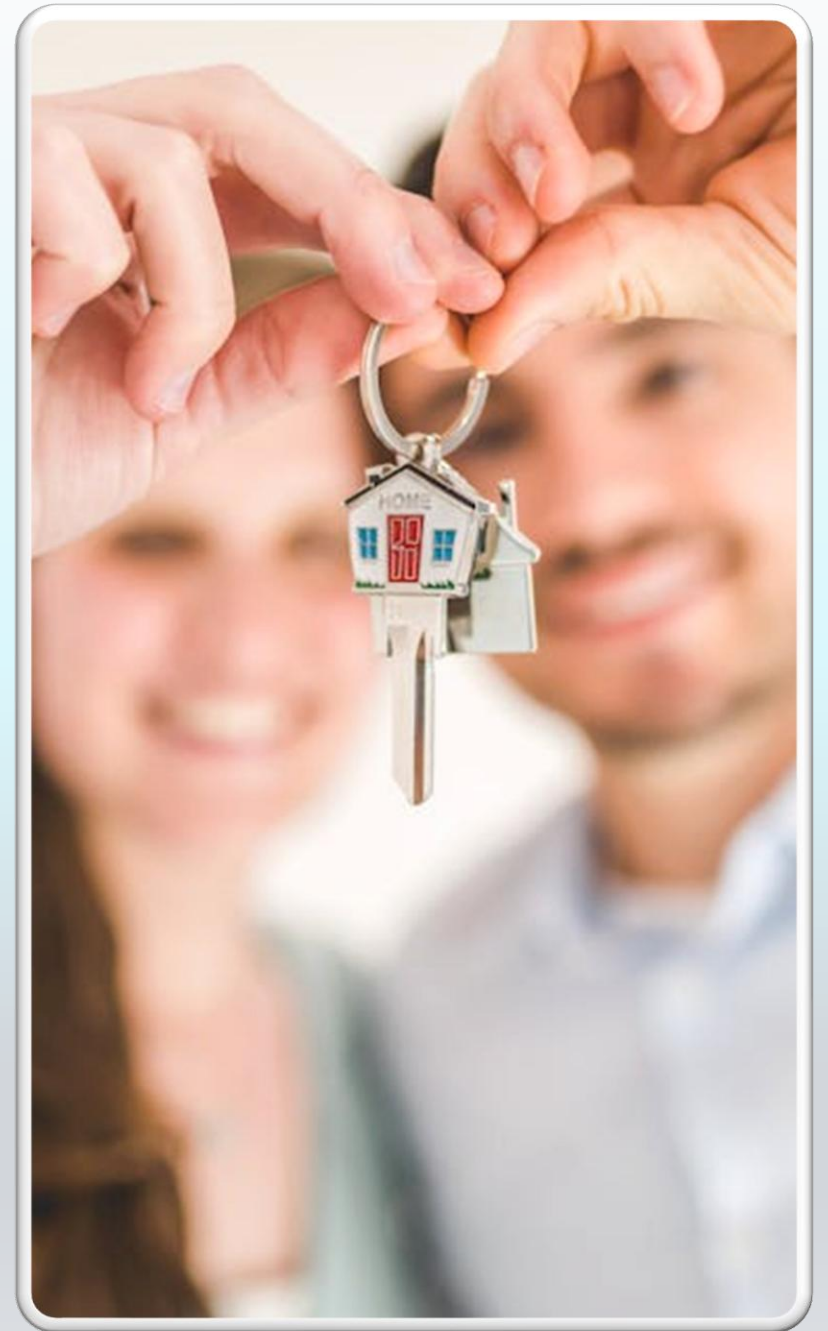
### Annual Delinquency Trend in MS HOAs (Assessment Fee Only)





# Closing HOA Properties

- No required database in Mississippi
  - *LTAMS has a voluntary database but limited and not updated*
- Contact Registered Agent, board member, or management company to obtain needed information
- Rely upon Sellers Representation or Affidavit
- Estoppel Letter from the HOA
  - *Best business practice*



# Estoppel Letter from the HOA

- Insurance product that you can rely upon
- Covers both assessments and covenant violations
- Gives you future assessments and contact information
- National trend toward use of these
- Fee associated with the letter

Closing Letter Homeowner's Association Homeland Neighborhood Management, LLC	
<b>Property Information:</b> 121 Or Madison, MS 39110-6559 Seller: Global Investments Buyer:	<b>Requestor:</b> _____, LLC  Estimated Closing Date: 02-07-2025
<b>General Information</b>	
This information is good through	3/4/2025
Is this account in collections?	Yes
<b>Comments: Lien Fee Notice</b>	
The regular assessment is paid through:	Date: 02-04-2025
The regular assessment is next due:	06/30/2024
What day of the month are regular assessments due?	07/01/2025
How many days after the due date is the regular assessment considered delinquent?	1st
The penalty for delinquent assessments is:	30
<b>Specific Fees Due To Devlin Springs Homeowner's Association</b>	
Assessment Data:	
Assessment - Homeowner ( Frequency: Semi-Annually )	
Are there any current special assessments or governing body approved special assessments, against units within the association? If yes, a comment is provided.	\$191.25
Owner's current balance due (you may total the owners balance due using the breakdown below):	No
	\$1,271.25
<b>General Association Information</b>	
Are there any violations against this unit?	No
Is the association or the developer (if the project has not been turned over to the homeowners association) involved in any current or pending litigation? If yes, a comment is required. (Do not include neighbor disputes or rights of quiet enjoyment, litigation where the claim amount is known and the insurance carrier will provide defense and coverage, or where the HOA is named as a plaintiff in a foreclosure action or to collect past due assessments).	No

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Page 1 of 5



# **TOP 10 THINGS TO REMEMBER WHEN DRAFTING COVENANTS**

10. Do not set the assessments, allow Board to determine as needed
9. Electronic voting (must be expressed power)
8. Board power to make rules on use of lots and impose fines
7. Always include a keep lot aesthetically pleasing provision
6. Ability to borrow money (don't make it difficult, banks do that already)
5. Number of Board members (keep it low, run out of volunteers)
4. Dates and notice of meetings (keep flexible)
3. Give Board ARC power because designs change.
2. Rental restrictions or prohibitions (be careful, be flexible)
1. Quorum (keep it low)





*Thank you!*

