Making peace with the taste police

A homeowners association can be a force for good -- or a power trip gone bad.

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By Sarah Max, for MONEY Magazine

NEW YORK (MONEY Magazine) - Leslie Toth is no troublemaker, although you might think otherwise when you hear about the dozen tickets she was issued by her Albuquerque homeowners association this year.

Toth is the perpetrator of such offenses as keeping a SpongeBob sprinkler in the front yard, leaving a Big Wheel on the porch and parking too close to the curb.

"Since we moved in, it's been violation after violation," says Toth, who lives with her family in a place called Towne Park. It's not as if she hasn't tried to follow the rules, Toth says -- it's just impossible to keep up with them all. "The covenants are like two dictionaries thick, and new rules are added without any warning."

For better or worse, homeowners associations are changing how we buy and sell property. More and more neighborhoods are being measured not just by their schools, amenities and old-fashioned curb appeal but also by the quality of their owners associations.

From gated communities to high-rise condos, there are now more than 270,000 "common-interest communities" in the United States, governing nearly 55 million people, reports the Community Associations Institute (CAI).

The numbers rise with every groundbreaking for a condo or planned community. "This is the predominant form of new housing," says Evan McKenzie, a political science professor at the University of Illinois at Chicago and the author of "Privatopia: Homeowners Associations and the Rise of Residential Private Government."

"What's happening is we're creating a new layer of government, much of it in the hands of inexperienced volunteer boards. Some of these places are run like banana republics."

In boom states like Arizona, California, Florida and Nevada, virtually all new development is within common-interest communities. Cash-strapped towns can't provide roads, water and other basics fast enough to keep pace with growth, so they pass the buck to developers, who profitably pack entire communities into their parcels, building private streets, parks, playgrounds, swimming pools, even golf courses.

Residents pay dues ranging from $100 a year to as much as thousands of dollars a month for common space and services, taking heart that those thick rule books will protect their home values from tacky neighbors who would hang holiday decorations all year.

Investors beware

Many people argue that tough rules can help protect their investment. "Rules help prevent neighborhood deterioration, without question," says Frank Rathbun of CAI. "That increases curb appeal and that increases home values."

That's assuming the rules are reasonable and enforced consistently. "I've yet to see any hard data supporting the theory that associations improve property values," says McKenzie.

Indeed, some home buyers steer clear of associations (hardly easy, given their prevalence) or at least avoid those with a history of disputes.

Investors with dreams of buying into a hot property and renting should be especially cautious, warns Virgil Rizzo, a retired physician and lawyer who was appointed the State of Florida's first condominium ombudsman last year.

"Many associations have dos and don'ts about rental property," he notes, "or are changing the rules after the fact."

That's just part of the story. "There is a huge risk of financial insolvency for associations coming down the pike," predicts McKenzie. As their roads and sewers and tennis courts need to be repaired or replaced, many will be staring slack-jawed into shallow reserve funds. They'll need to borrow (if their bylaws allow such a move) or hit homeowners with special assessments -- one-time charges that can run into many thousands of dollars -- to pay for these projects.

Kiss your rights good bye

When you buy into an owners association, you agree to live by its rules, which are written by the association's forefathers (a.k.a. the developers) and regulate everything from the color you paint your house to what you put in your windows. Board members -- elected by their neighbors -- enforce the rules with fines of $10 to more than $100 per offense.

Owners who protest by tearing up tickets or refusing to pay dues face stiffer punishment: Most associations have the right to put liens on property and even foreclose.

The rules can be tough to comply with. After Hurricane Katrina, the Majestic Oaks association in Ocala, Fla. sent residents letters reminding them that taking in other families would violate bylaws.

Condo owners in Naples, Fla. had to file a lawsuit this year before their association agreed to lift age restrictions and let grandkids visit for a week.

Folks who've never experienced association life often scratch their heads: Isn't this police-state stuff, you know, un-American?

"The big difference is these associations are private," explains Pia Trigiani, an attorney in McLean, Va. who represents many homeowners associations. As owners, they can impose rules that are more restrictive than municipal, state or federal law.

Even free speech rights aren't protected:Many associations prohibit residents from displaying political signs or flying the American flag.

Still Interested? What to Do

covenants, conditions and restrictions (often called CC&Rs), and at least two years of financial statements before you sign a contract, says Gail Anderson, administrator of the Nevada Real Estate Division, which has a staff dedicated solely to common-interest communities.

"Buyers," she says, "must pay as much attention to the association fine print as they do to the house itself."

Governing documents They outline how affairs should be run and include details on such things as frequency of meetings and protocol for elections. "One thing to watch for are different voting rights," cautions Jan Bergemann, a retired hotel owner in Deland, Fla. who helped start the homeowner-advocacy group Cyber Citizens for Justice after, yes, a dispute with his association. "In some places you pay dues but don't have the right to vote."

CC&Rs Here are your dos and don'ts, the rules you and your neighbors must live by. The longer the list of rules, the more guarded you may want to be. It's one thing to be told to trim your trees annually or not to park cars outside. "But watch out when they tell you your flowers can only be five inches high and you can only have five bushes in your front yard," says Bergemann. "They will interfere with everything you are doing."

Financial statements These hint at how well the association is managing its owners' money. You'll especially want to see a rock-solid reserve fund for future big-ticket repairs, says engineer and financial consultant Robert Nordlund of Association Reserves in Calabasas, Calif. Look in the annual financials for what's called a reserve study summary. It should tell you how much the association needs in its reserve fund, based on pending projects, and how much is actually in the bank. "That reserve account should be at least 70% funded," he says. "Otherwise, you can expect to be hit with some big special assessments down the road."

Lawsuits Is the association fighting with owners, tenants or vendors? Agents are required to disclose pending suits if they're aware of any—but only if you directly ask. Better yet, have an attorney search for lawsuits, or visit your county courthouse and tap into its records.

Board minutes Read at least the past two years' worth of board notes, if they're made available. Your goal is to look for lingering issues that never seem to get resolved. Then, duly armed, walk around and talk to your potential neighbors. "Even if they don't directly tell you much," says Bergemann, "you might hear between the lines that not all is good."

Why it's nice to be nice

Doing your due diligence can help you avoid hellish associations, but it's no guarantee of happily ever after. New neighbors arrive. New board members are elected. New rules are added. And added.

A year after Carlos Pineiro, his partner and their two dogs moved into a condo in Surfside, Fla., the board ruled that owners must carry their dogs when inside common areas or use the service elevator and a back door to come and go.

"This building," says Pineiro, "is marketed as 'pet friendly.' So then how can they make someone carry two squirming dogs that weigh 15 pounds each?"

If an association's board members seem out of control, you'll need to shift into political mode. First put yourself in their shoes. They're giving their time, after all, and the nighttime phone calls from cranky neighbors and the daily controversies that naturally swirl around group decisions can wear down the thickest-skinned person.

"I don't like being the one to have to tell people to trim the grass near their fence," says Scott Stoltzfus, president of an association near Fairfax, Va. "I really don't want to be the president, but no one else will do it."

Many owners don't even bother to attend annual meetings, let alone run for office.

In Albuquerque, Towne Park president Rip Harwood agrees on the thanklessness of the board volunteer's mission: "It's a catch-22 for us. We get criticism for enforcing the rules and criticism for not enforcing the rules."

Going to meetings and helping on committees can offer you a better shot of getting heard someday when you have a legitimate complaint. And when you do have a grievance, never withhold dues or ignore fines.

Take it straight to the board, in writing or at a meeting.

If the answer is still no, recruit neighbors to your cause, suggests Bergemann. "Odds are they're having some of the same problems as you."

You may not get your way, but you may gain some sway: Dog owner Pineiro ended up getting elected to his board last year. No change in the rule yet, he reports, "but we're working on it."

If all else fails, you may petition to replace an unyielding board. "He who hires fires," says attorney Trigiani. "Most governing documents specifically talk about how you can remove board members."

And some states are bolstering owners' rights.

Arizona has rolled out laws making it easier to remove association board members and prohibit proxy voting.

California has made it harder to foreclose on owners.

North Carolina just passed legislation that caps fines at $100 a day and requires boards to let residents speak at meetings.

All good things, says political scientist McKenzie, although, he adds, most disputes can be avoided by the simple act of getting to know your neighbors better. Not at association meetings or in court but the old-fashioned way, with picnics and social events -- assuming they're not prohibited. ■