

# IAR LEGAL HOTLINE



## HOAs

According to the Central Indiana chapter of the Community Management Institute, 840,000 Hoosiers reside in nearly 5,000 community associations throughout the state and the popularity of HOAs continues to grow. But, as the number of homeowners associations increases, so do the questions from your clients on the implications of HOA covenants and restrictions during the homebuying process. Sometimes, HOAs impose covenants/restrictions that may not match your clients' preferences, so allowing them to review these documents immediately may bypass some obstacles in the transaction thereafter. Below, we answer a couple frequently asked questions on homeowners associations. As always, the IAR Legal Department is here to help you navigate these potential legal issues and limit your risk if disagreements arise. If you have any further questions related to this topic, please feel free to reach out to the **IAR Legal Hotline** at **1-800-444-5472** if you are a managing broker or a designated agent, authorized to contact the Hotline.



**Q:** After reviewing the HOA covenants and restrictions provided by the seller, our buyer found that they conflicted with his planned use of the property and could not be waived. Our buyer does not wish to move forward with the transaction because of this. Can he terminate the agreement?

**A:** Yes. If the buyer does not accept the provisions in the homeowners association documents, and these provisions cannot be waived, the buyer can terminate the agreement within the agreed upon deadline and have their earnest money refunded immediately. Any irreconcilable provisions must be genuine and mandatory, and not used simply to unlawfully breach a contract by the buyer.

**Q:** Our buyer was delivered the HOA documents from the seller. However, after closing, buyer reviewed the covenants and found them incompatible with his intended use. He is threatening to sue us. Are we liable?

**A:** No. Within the IAR Purchase Agreement, the parties to the contract agree to release and hold harmless the brokers and their companies from any and all liability arising from or related to these documents. Also, it is the responsibility of the seller to deliver these documents, not the broker. Brokers should not deliver these documents via link to the title companies' web site which post HOA documents because sometimes the documents are not current.

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**Q:** Our buyer was delivered the HOA documents but wasn't provided any information regarding if there were assessments, the amount of any assessments, or the name/business address of any person who has a contract to provide management services on behalf of the HOA. Is this required

**A:** Yes. According to IC 32-21-5-8.5, the seller must provide to the purchaser no later than ten days before the sale of the property closes: 1) a disclosure that the property is in a community governed by a homeowners association; 2) a copy of the recorded governing documents; **AND** 3) a statement indicating whether there are assessments and the amount of any assessments; and 4) the following information about a board member, homeowners association agent or other person who has a contract with the homeowners association to provide any management services for the homeowners association: A) the name, B) the business or home address.

### Other Questions?

**Please remember that the IAR Legal Hotline is available to assist managing brokers and their designated agents.**

**1-800-444-5472 Monday – Friday | 9am – 5pm ET**

*Calls are answered in the order they are received and within 24 hours.*

**Reminder: IAR communications are intended for member use only.**

