

Don't forget! Disclose those HOA documents as part of your home sale

By Christine Bartsch



Richard B. Linderman

Community Association Practice Partner Richard B. Linderman discusses what material facts are in HOA documents that buyers need to know in an interview with *HomeLight* Reporter Christine Bartsch.

Deed filings, mortgage and finance reports, homeowner's insurance statements, repair records, and contractor receipts—the amount of paperwork required during the home sale process is staggering.

When you're buried under a mountain of 180 pages related to the deal, it's easy to neglect a stack that seems to hide on the periphery of the transaction: The Homeowners Association (HOA) documents.

But your failure to be transparent and forthcoming with the rules, regulations, and financial state of the HOA governing the block could hold up the process or come back to bite you. So, we chatted with an HOA lawyer with more than 15 years of experience and an agent who's negotiated 754 real estate deals to walk you through:

- A buyers' right to review the HOA's CCRs (Covenants, Codes, and Restrictions) and financial history before they close on a house
- How to handle outstanding HOA fees at closing
- Why you should have your HOA documentation professionally sourced and prepared

What kind of material facts are in the HOA docs that the buyers need to know?

Buying a home in a neighborhood with an HOA comes with a variety of benefits, and a few drawbacks that your buyers need to know about.

The new buyers need to be prepared to pay the monthly HOA dues and any pending assessments. They'll want to know what those dues cover.

For example, HOA dues at a condominium complex might include some form of homeowners' insurance, but this isn't typically true for a single-family home in an HOA neighborhood.

The new owners also need to know about the restrictions on what they can do to their new home (like the type of holiday decor they can display in the yard, or what color they can paint their house exterior) and which types of violations will result in fines.

These details are all included in the HOA disclosure documents, along with the HOA's financial reports.

"The HOA disclosure is a two-inch thick packet that

contains all the association rules, any amendments they've made, and the financial documents—those are probably the most important documents,” says Roxanne McCaslin-Curtis, a top-selling agent who's sold over 70% more properties in the Sacramento area than the average agent.

“The financial documents give you a look at the reserves they have, how much they're spending, and if there might be assessments. So, it's really important to go through and read those documents thoroughly and understand what you're getting into.”

These financial documents give the new buyers insight as to how well the HOA manages its finances. They also spell out who's in charge of the association, and how to get in touch with the property management company if there are any issues.

Why do HOA documents need to be disclosed?

The two most obvious answers to this question are pretty straightforward. HOA documents need to be disclosed because:

- 1) the new homeowners need to know the HOA's Covenants, Conditions, and Restrictions so they can abide by them.
- 2) the new homeowners need to know when, where and how much they need to pay per month in HOA fees.

The third reason is a little less obvious—and it's directly related to those important financial statements:

- 3) the new homeowners need to know if either you or the association are in any financial hot water.

Richard B. Linderman, partner in Ansell, Grimm Aaron's Community Association Practice Group, explains:

“The disclosure documents should include a copy of the association's declaration/master deed and answers to a set of standard questions. The questions usually cover issues relating to the association's financial status and whether the home has any outstanding debt to the association.”

HOAs are not all equal. Some run like well-oiled machines and are well-maintained. Others mispend funds, carry debt, and fail to manage the neighborhood or property as they should.

In either scenario, the HOA could increase monthly dues or authorize a special assessment to pay for pet projects or major repairs.

The financial documents in the HOA disclosures will show how often increased dues and special assessments have occurred in the past—as well as indicate how soon it'll happen again.

The disclosure documents will also indicate how often the association is allowed to increase dues or authorize assessments.



Your standing with the HOA will also be reported within the disclosures. If your home is not in compliance with the association's CCRs, the new homeowners need to know—especially if it's going to cost them down the line.

For example, let's say you've received notices and fines because the shed you put up in the backyard stands a few too many inches above the fence-line. The buyers need to know before they get fined, too.

The disclosure documents will also reveal if you haven't been paying your HOA dues—which may be bad news for the new owners.

What happens if I'm behind on HOA fees when I sell my home?

This is where things get tricky. The party responsible for paying this debt can depend on the legalese in the HOA documents, state laws, and other minutiae.

First and foremost, you need to understand that if you do owe money to your HOA, selling your house does not release you from that debt because it is your personal liability. But that doesn't mean your buyer is in the clear on that old debt.

“If the home has unpaid common assessments/mainte-

nance fees, the amount due will need to be paid at closing or the purchaser will become liable for that debt," explains Linderman. "Also, if the HOA has a lien against the home, the title insurer will require the debt to be paid and the liens discharged before the title policy will be issued."

What this boils down to is that in most cases, your home sale can't close until you make arrangements to pay off the debt out of your proceeds from the sale, or your buyer agrees to take on the debt.

If this isn't handled prior to closing, the HOA can still come after you for the debt. They may also have the option to issue an HOA lien or notice of foreclosure on the house—even after the new owners move in.

This is why the HOA disclosure documents notify the buyer (and the title company) that your home has outstanding debt owed to the HOA—because the new homeowner could potentially be liable for your old debt.

Who is responsible for obtaining the HOA disclosure documents and how much does it cost?

Given how much vital information is in those lengthy HOA disclosure documents, you won't be surprised to learn that the cost to obtain them isn't exactly cheap.

"A declaration usually is around 150–300 pages," says Linderman. "The normal cost for disclosure documents

in Pennsylvania and New Jersey generally ranges from \$200 to \$600. However, there are some situations where the disclosure documents can be significantly more expensive if there are unique situations justifying the increased cost."

So, who's on the hook to pay for those HOA disclosure documents? Typically, you, the seller. That's why some sellers look for ways to avoid the expense by obtaining the documents themselves from the HOA's website, or via a written request to the HOA.

This is doable, but not advisable.

There's a chance you could pull an incorrect, outdated, or incomplete version, which could land you in hot water. The safest route is to ask your real estate agent to

help you obtain the proper HOA disclosure documents.

"Every time we open up an escrow title, I let my sellers know that as soon as we go under contract, they're going to need to provide their credit card," says McCaslin-Curtis. "Because it's going to cost around \$500 for the title company to order the required HOA documents."



Selling a home that's part of an HOA increases the odds of complications during the home sale process—and sometimes those complications are big enough to tank the deal completely. The best way to avoid that type of setback is with current, professionally-prepared HOA disclosure documents.