

“Is there an obligation to advise prospective purchasers of property in a planned community concerning the effect of the PCA on their private property rights? If so, who has this responsibility?”¹

In North Carolina, the Planned Community Act (PCA) establishes private neighborhood governments known as homeowner associations with many of the functions of a local municipality. An association has the capacity to rule over the lives of residents in many significant ways including the right to collect taxes, regulate activity, impose fines, collect interest, penalties, attorney’s fees and foreclose on an owner’s home.

A majority of the governing board of the association (three members of a five-member board, for example) has the legal authority to, among other things, **a) make and amend binding rules and regulations, b) enter into litigation, c) pass and amend budgets, d) hire and fire employees and contractors, e) enter into contracts and incur liabilities, f) acquire additional property and g) suspend privileges.**

The governing board is almost always made up of volunteers with varied experience and capabilities. Because the PCA requires specific procedures and guidelines to be followed, the services of a lawyer with expertise in the PCA are necessary essentially making the lawyer an influential de facto member of the governing board. The PCA allows association lawyers to charge fees without regard to any limitations. Legal fees are a common expense.

Examples of typical restrictions enforceable by a fine and lien include pet activity (dogs and cats), making unapproved exterior alterations, removing trees, flying a flag, renting your property and parking a vehicle outside the garage. Rules and regulations may be added by a majority vote of the governing board at any time.

The association is given the power to initiate, defend, and intervene in litigation. The power to litigate includes the power to assess for the cost of litigation as a common expense. If the governing body becomes a party to a lawsuit, every property owner may become an involuntary party to the lawsuit and be required to hire their own lawyer. It may be difficult to sell your home if the homeowner association is involved in litigation.

The PCA establishes private governments with legally enforceable taxing authority. There are no limitations on taxes for common expenses, fees, special assessments and specific assessments.

The governing board has the power to regulate the use, maintenance, repair, replacement, and modification of common elements. **It also has the legal authority to**

¹ Patrick K. Hetrick, Professor of Law, Norman Adrian Wiggins School of Law, Campbell University, in “Of Private Governments’ and the Regulation of Neighborhoods” published in January 1999.

make additional improvements and purchase additional property. Example: The purchase of a golf course contiguous to an existing residential community.

The PCA as passed by the General Assembly omits consumer protections recommended in the UPCA, a model law created as a guide for state lawmakers. For example, the PCA contains no requirement that a developer of a planned community make meaningful consumer disclosures in the declaration, in a public offering statement, or in any materials advertising and promoting the project. These omissions contribute to a fundamental shift in the balance of power from private property owners to private governments. The North Carolina Department of Justice Consumer Protection Division is unable to assist property owners if a dispute arises with the association governing board. A property owner's only option is to hire a lawyer.