

NEW HOA STATUTORY PROVISIONS AND LIEN STATUTE MODIFICATIONS NOW LAW IN INDIANA

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House Bill [1071](#), effective July 1, 2009, contains two distinct parts:

- 1) The first part adds completely new statutory provisions for homeowners associations, and
- 2) The second makes a couple of changes to an already existing Indiana HOA lien statute that was enacted July 1, 2007 --- resulting in changes that are substantial.

New HOA Requirements

HB 1071 created new statutory provisions at Indiana Code 32-22.5 entitled Homeowners Associations. Until the adoption of this statute, there was little statutory guidance for a community association in Indiana unless it was a horizontal property regime (a true condominium). Up until this last legislative session, there had been some proposed legislation for Indiana homeowners associations, but they were never enacted. This time around, the legislation passed both the Indiana House and Senate and Governor Daniels signed it into law.

Application to Existing Homeowners Associations The first thing to address is the statute's application to previously established homeowners associations. Chapter 1 of the new statute states that the new provisions apply to a homeowners association established after June 30, 2009. It then states that it applies to an Indiana HOA established before July 1, 2009 if a majority of the members of the HOA elect to be governed by it, or if the number of members required by the HOA's governing documents require a different number of members and such number approves the changes. Thus, for a previously established HOA, the new laws DO NOT apply automatically.

1. For an HOA to adopt some or all of the new statutory provisions, one must look to its own Declaration of Covenants, By-Laws, and Articles of Incorporation to determine which provisions would need to be amended.
2. Then, one would have to look at the specific document's amendment procedures to ascertain what would be required to adopt any of the new statutory provisions.

Maintenance of Membership Roster The statute requires a newly created HOA to maintain a current roster of all members, as well as their mailing addresses and "legal descriptions." It is far from certain what the Legislature meant by "legal descriptions," and our

best guess is that it meant lot numbers. The statute also requires the HOA to maintain email addresses and fax numbers of those homeowners who have consented to receive notice by email or fax. This finally makes it clear that if a homeowner consents to receive HOA notices by email or fax, the HOA does not need to send a copy by regular mail. The statute then states that the mailing addresses and legal descriptions are to be made available to any member upon request so long as the purpose is related to the operation of the association and it is not used for personal reasons. Most HOA documents provide for this already.

Special Meetings Another part of the statute states that a Board of Directors must hold a special meeting of the homeowners if at least 10% of the members submit a written, signed petition asking for the same. This is redundant since the Indiana Nonprofit Corporations Act of 1991 already sets forth that mandatory special meeting procedure.

Annual Budget Another new requirement is that an HOA must prepare an annual budget that is given to or made available to all owners. At the same time, the association must include a written notice telling the owners whether the regular annual assessment would increase or decrease as a result of the proposed budget. It then requires that the budget be approved by a majority of the members who attend a meeting called for that purpose under the HOA's required quorum.

Special Assessments; Borrowing Money Although not titled as such, there is a new provision concerning special assessments of more than \$500 per year per lot. For such a special assessment to be valid, the board must hold at least two homeowner meetings and receive the approval of the owners of 2/3 of the total number of lots. The new statute also has new procedural requirements before an association can borrow money.

Grievance Resolution Procedures One of the most ambiguous provisions of the statute states, "The governing documents must include grievance resolution procedures that apply to all members of the homeowners association and the board." Presumably, the Legislature intended this as alternative way of resolving disputes that would be a prerequisite prior to any litigation filed in court. However, it is far from clear.

Suspension of Voting Rights Finally, the statute states that an HOA cannot suspend the voting rights of a delinquent owner unless the governing documents so provide and the assessments are delinquent for more than six months.

Liens & Delinquencies

The second part of HB 1071 amends Indiana Code [32-28-14](#) that is the statute that was enacted July 1, 2007. It applies to all homeowners associations that have mandatory assessments. It does NOT apply to communities that are horizontal property regimes. That statute contains eight different sections.

Background

Prior to this statute, there was always some uncertainty on whether a homeowners association could claim that a valid lien existed on a delinquent owner's property simply because of the language in the covenants, even if a specific lien was not filed with the county recorder for a particular owner's property. In 2007, that all changed. The statute clarified that an association could not claim a lien unless a notice of lien was actually filed with the county recorder.

Although the statute from 2007 is somewhat ambiguous (and remains so even after the 2009 amendments), the statute seemingly states that unless a lien is filed with the county recorder, a purchaser is not liable for any assessments that were delinquent as of the time of the conveyance. Formerly, there was an argument that because of the continuing lien language set forth in most covenants, a new purchaser was still subject to the association's lien even though there was no notice of lien recorded for that specific property. As of 2007, that changed.

The 2007 version of the lien statute stated that after a notice of lien was filed with the county recorder, it was only valid for one year. If an association did not initiate a lien foreclosure suit against the owner's property within that one year period, the lien expired. This is the section of the HOA lien statute that was just recently amended.

HB 1071 Creates Changes

HB 1071 increased the validity of a lien from one year to five years. In our opinion this is a substantial benefit for an HOA. However, HB 1071 also established a one year waiting period. That is, once an association files a lien with the county recorder, the association cannot initiate a lien foreclosure suit until one year has passed. We suspect that the legislators heard "horror stories" of a few Indiana associations aggressively pursuing lien foreclosures, even in cases where the owner owed relatively little money. It is also a reflection of the Legislature's desire to protect homeowners who are in difficult financial circumstances so that they have at least one year's worth of "breathing room."

The recently revised lien statute has nothing to do with a homeowners association's right to sue an owner in small claims court. The statute only pertains to the recording of liens and lien foreclosure suits. We often say that a lien foreclosure suit is the remedy of last resort, meaning that all other collection efforts have been unsuccessful. In our opinion, small claims court still remains as the preferred method of collecting delinquent assessments when litigation is necessary.

A homeowners association should seriously consider filing a lien with the county recorder whenever a "For Sale" sign appears on a delinquent owner's property. Otherwise, under the lien statute, the property may be sold with none of the delinquent amounts collected at the closing. Also, a recorded lien gives an association a stronger position if an owner files bankruptcy.

The above are only highlights of the statute. For a complete copy of the statute, go to <http://www.in.gov/legislative/ic/code/title32/ar25.5/>

Some parts of the new Indiana Code 32-22.5 make perfect sense and are already the standard practice of most Indiana HOAs. However, other provisions are ambiguous and raise more questions than answers. If you have compliance questions regarding this new law, please consult with your association's attorney or legal counsel familiar with homeowner association law.

