

Are HOA's Racist?

Provided by the Colorado HOA Forum www.coloradohoaforum.com

Homeowners Associations (HOA) can be great places to live offering an array of amenities, eye-appeal and improved home values. The flip side is that home buyers give up something (property rights) in exchange for these benefits. Throughout Colorado it is becoming increasingly difficult for buyers to acquire a home that is not under HOA governance. HOAs are the fastest growing segment of the State's real estate market with upwards of 55%+ of homeowners living in Colorado's 9,000+ HOAs in over 750,000+ units. It is imperative that the HOA housing market be open to all and comply with Federal and State Housing laws precluding homeownership based on race.

There have been allegations and media reports about HOAs being racist (mostly involving discrimination against Blacks and Hispanics). Of course prejudicial practices can also involve barriers to others such as those of Jewish faith or Muslims. Prejudicial practices can also extend to imposing fines on homeowners based on race. What evidence exists of these contended practices is sketchy at best and very difficult to prove. Bias in HOA governance is further difficult to pursue by the homeowner as there is no affordable and accessible venue to litigate such disputes other than our costly and litigious court system that most can't afford. HOAs are mostly self-governed, closed communities and in Colorado they lack oversight or enforcement authority from any State Agency. Also, courts are reluctant to impose injunctive relief on HOA Board decisions making fair enforcement of HOA covenants, controls and restrictions difficult to attain.

Homeowner's associations exploded in popularity in the 1960s as suburban development was booming. Some HOAs used racist deeds

and covenants to bar Black buyers from purchasing homes and these clauses continue in some HOAs (although illegal). Today, HOAs are majority white and Asian. Black homeowners say they experience targeted discrimination and harassment from their HOA Board mostly related to covenant enforcement. A recent example of contended discrimination is the display of Black Lives Matter (BLM) flags that can result in a fine with other messages on flags permitted with impunity. Same with Gay Pride flags. Our research on court cases in this matter found no evidence of discrimination in enforcing flag policies in HOAs. There were cases that involved flying BLM and Gay Pride flags in which the homeowners were directed to take the flags down. Turns out the HOA had a NO FLAG restriction. The flip-side of this is selective enforcement allowing one messaging flag up and the other disallowed which may not be a racial issue but one of how an HOA Board enforces their own restrictions.

While the federal Fair Housing Act was passed in 1968, prohibiting racial discrimination in the sale and rental of homes, HOAs might still find ways to exclude or discriminate against Black homeowners. Reports indicate HOAs are less racially diverse. The outright reasons for this may be related to the higher cost of HOA homes and additional financial responsibilities imposed on residents via monthly assessments pushing many minority groups of moderate and lower incomes out of the HOA market. Then there are the media stories about targeting minority homeowners with fines and fees and/or other harassment that can make HOA living less sought after by this population. HOAs can make it harder for certain homeowners by requiring minimum credit scores from prospective buyers, sometimes much higher than what is required to secure a mortgage and use this to exclude buyers. HOAs can also ask for in-person interviews and use background checks to keep buyers out, denying potential homebuyers for petty offences. We couldn't find one study with substantive and/or factual allegations to support that racial discrimination in

HOAs was widespread or characteristic of these communities. Most cases and media reports we found were based on opinion and allegations. More research is warranted on this situation.

Deed restrictions and covenants from yester-year still randomly exist and must be removed. To our knowledge, HOAs over the past decades simply don't have racially based restrictions.

There is also the contention that minorities are the victim of neighbor harassment and intimidation. No doubt some of this exists but most likely no more than in society in general and not because one lives in an HOA community.

If one feels discriminated against based on race the complaint process will not be easy but costly and complicated and mostly out of reach. Federal or State Agencies can be of help but getting their involvement with the local governance of an HOA is highly difficult. Legislators also seem to be reluctant to take on these issues and refer homeowners to government agencies making filing any complaint more complicated and time consuming. Taking an HOA to court over this issue is simply too costly for the average homeowner as it matches the homeowner's limited resources against the unlimited financial and legal resources of the HOA. Colorado has no oversight of the HOA industry or HOA Boards thus holding abusive acts by persons or business entities is at best difficult. Colorado does have a State HOA Office that has no investigative authority. Local Civil Rights organizations can be contacted for help but their caseloads and resources are limited. Like any HOA complaint there is little available to the homeowner for help in resolving any violation of State or local laws or an HOA's governing documents. Discrimination of any sort by an HOA may simply go by the wayside with no one Agency exercising authority to investigate.

An option available to homeowners outside of the court system, is to remove those on the Board who may be linked to discriminatory practices. This can be completed through your annual elections or through a special meeting via a petition of homeowners to remove one or more Board members.

HOA governance and the management companies hired by HOAs are very familiar with and want to avoid any hint of discriminatory policies. They want to avoid costly court challenges. Note, since most HOA management companies oversee the operations of the HOA and as such are aware of any racial complaints they attempt to resolve such issues as they might become legally complicit and liable for such practices. We found no evidence of property management companies being involved in racial discrimination.

In summary, our findings with recent court cases and media outlets found no overt or illegal activities on the part of HOAs that would indicate they practice racial discrimination. Our organization does receive comments on this issue but most are based on the homeowner's interaction with neighbors and the HOA Board that can't be documented from written correspondence or are a result of the content of the HOA's governing documents. It is not difficult to believe that racial discrimination exists in HOA communities but might be no more or less than that in society and communities at large and not the result of the people or governance in an HOA. Also, like all cases of racial discrimination the victim will have difficulty in pursuing their case due to financial and resource constraints and thus drop their case before emptying their bank account from lawyer fees. Racial discrimination at times is a very subtle event/practice and difficult to prove but should not be brushed aside lightly. Any HOA homeowner or home buyer experiencing racial issues should at a minimum apprise the HOA Board and management company. If a pattern of discrimination continues this type of documentation can be

important in pursuing corrective action. A review of HOA governing documents is also advised to eliminate any verbiage that can be used to discriminate. We feel the missing link in pursuing racial discrimination in HOAs is to provide homeowners with an assessable and affordable out of court dispute resolution process within a state entity such as the Colorado State HOA Office. This can ensure a complaint is vetted, investigated and either a decision rendered or referral to the State Agency involved in discrimination issues.