

## Home Owners Association vs. Home Improvement Association

### Home Improvement Association

Hillsmere Shores has a Community Improvement Association that was formed on August 17, 1956 and is incorporated according to the laws of the State of Maryland. The Articles of Incorporation state "The purpose for which the Corporation is formed is: To organize and operate an association exclusively for civic purposes ... the Corporation shall have the following powers and purposes:

- (1) To promote, foster and maintain civic betterment, community improvement and social welfare and recreation in and for the community known as "Hillsmere Shores" in the Second Election District of Anne Arundel County, Maryland,
- (2) To make contracts, incur liabilities and borrow money for its corporate purposes secured or unsecured, and to pledge its assets as security.
- (3) To acquire and hold, buy and sell, and encumber and pledge real or personal property of any kind wheresoever situated.
- (4) To do all and singular such matters and things as may be necessary to carry out the purposes and objects of the Corporation, and to have and enjoy all the powers granted to the Corporation of this character by the laws of the State of Maryland consistent therewith.

.... The membership of the Corporation shall include all persons who have qualified for membership under the provisions of its By-Laws,"

On July 9, 1965, the developer, Hillsmere Estates, Inc., deeded the community properties to Hillsmere Shores Improvement Association, Incorporated documenting the deed transfer and the conditions of the transfer recorded in Anne Arundel County Book 1915, pages 286 to 293. The deed transfer also gives instruction and certain powers to HSIA. For example, on page 290, HSIA "... will enforce, administer, protect and defend the uses and purposes for which this grant is made ...and would do any and all things which may be calculated to improve and to further the improvement of said property hereby conveyed ...". "That nothing herein contained shall be construed as to prohibit" HSIA "from making such reasonable and proper charges, to be determined by the lot owners in Hillsmere Estates for the use of the property hereby conveyed..."

HSIA is a corporation governed by the its By-Laws which were approved by the member lot owners of Hillsmere Shores. As such, HSIA governs the community properties and works to enforce the Covenants of Hillsmere Shores and to fulfill the purposes for which HSIA was formed. HSIA does not have powers beyond what is stated in its By-Laws and Deeds. The Covenants of Hillsmere Shores do not have anything specifically to do with HSIA. However, the Covenants outline that "a committee of the owners shall approve the exterior plan and construction or any other alterations of any building and the position of the building on the lot..." That committee resides within HSIA. This is the basis for HSIA's requirements that lot owners obtain a building permit from HSIA for building projects affecting the exterior of their home. HSIA can also enforce the Covenants through the courts, just as any HS lot owner may do. Anne Arundel County does recognize Hillsmere Estates, aka Hillsmere Shores, as a Special Community Benefit District. The Community Benefit District was created by Anne Arundel County

and not by Hillsmere Estates, Inc., the developer. Payment of assessment cannot be enforced by the Hillsmere Shores Improvement Association, Inc. but is enforced by the County through procedures for collection of taxes. HSIA does not set the assessment, it does not collect the special assessment, and it can be removed by the County simply by appointing another non-profit, non-stock community association to administer the Special Community Benefit District. Thus the Special Community Benefit District does not make HSIA into a Homeowners Association and does not require HSIA to meet the requirement of such an entity.

### **Homeowners Association**

Homeowner Association is defined in Title 11B Sections 102-114 of the Real Property Article of the Annotated Code of Maryland. A homeowners association (incorporated or unincorporated) has the authority to enforce the provisions of a declaration. "Declaration" means an instrument recorded among the land records of the county that creates the authority for a homeowners association to impose on lots, or on the owners or occupant of lots, ... any mandatory fee in connection with the provision of services or otherwise for the benefit of some or all of the lots...

HSIA met this requirement when all of the streets in Hillsmere Shores were owned by the community. However, one legal opinion offered to the Board suggests that the right for HSIA to levy a mandatory fee ended when the County took over all of the streets in 1975. A homeowners association is also governed by its by-laws. However, it is given rights over the lots of the community through the lot deeds. If given the power by the lot owners, a homeowners association can levy fines on lot owners who violate community covenants. The homeowners association can place a lien on lots who fall behind on payments. A homeowners association can set standards for buildings and properties of lot owners (subject to approval by the membership).

### **Considerations**

- HSIA Board of Directors is less encumbered by the State rules applicable to HOA's
- HSIA meetings do not have to be open to all (dependent on the By-Laws of the Association)
- Because the breadth of powers is limited, issues needing to be addressed by HSIA are limited.
- Approved motions at a General Meeting are not binding on the Board (dependent on the By-laws of the Association)
- HSIA is less intrusive to lot owners than a HOA could be.
- HSIA has difficulty enforcing rules for the community properties.
- HSIA has difficulty enforcing standards for lot owners.

To change HSIA from its present form to a Home Owners Association (HOA), it would require approval by 100% of the lot owners of Hillsmere Shores and all lot deeds in Hillsmere Shores would have to be revised to embrace the powers given to the HOA.