

## **Keeping Them Honest - Homeowners' Associations**

**May 4, 2014**

**Dear Dave:** I have been in my home for a few years now. The issue I have is in relation to the covenants and their lack of enforcement by our Community Association. In the covenants it is specific that homeowners may park 2 cars in the garage and 2 in the drive. Yet many park in the yard or designated visitor parking spots. Also, a few homeowners store boats, canoes, trailers and motor homes in their yard or driveway. By-laws state that they must store these types of items elsewhere.

My frustration is this. I, along with a number of other neighbors, have contacted the property manager for our homeowners association repeatedly, to express these concerns, but not much has been done. In short, our neighborhood is looking a bit ugly.

It's just one of those things that, had homeowners been held accountable, would not spin out of control like it has. I purchased my home with the expectation that the property manager would enforce the covenants and thus protect the investment I have in my home. What should I do?

**Answer:** Whilst your question is a legal matter, which should be addressed to an Attorney specializing in Real Estate, I can offer you some guidelines. Your question is not new. Many residents of Association-controlled neighborhoods have similar complaints. What are the rules? Why are they not enforced? How can an individual bring about enforcement?

If you belong to a Homeowners' Association of any kind, there are documents of incorporation to which you are entitled to have a copy. This 'Resale Certificate' or 'Public Offering Statement' (in the case of new construction) includes a Declaration of how the Association is structured and governed, By-laws, Rules and Regulations, and a host of other 'stuff'.

By virtue of your home (or condo) ownership you are a Member of that Association. Members control the enforcement of covenants and by-laws through their democratic participation in the management of the Association. I have many times advised people in your situation that, if enough members agree, you can change the management, force legal action against covenant-breakers, or even change covenants, by-laws and rules.

Many Homeowners' Associations don't follow through with enforcement because they don't want to offend people. You, however, purchased your property rightly believing that rules would be enforced. At the very least, prepare a Motion for the Annual General Meeting and solicit votes behind the scenes to pass the motion. After you check on the exact rules of your Association, the motion could simply be that the Property Manager be instructed to enforce the covenants/by-laws with the assistance, if needed, of an Attorney.

If you are thoroughly frustrated after this, retain your own Attorney and sue the Homeowners' Association for non-compliance with their own rules.

**Dear Dave:** My wife and I are looking at a 4 bedroom Hillside home with a private well. The well flow and water quality was tested and the well produces 6 gallons per minute. The water quality was all clear except for Arsenic readings which showed 5 parts per billion. Is this well okay for us?

**Answer:** Federal, State and Municipal regulations cover private wells and require these tests every time property with an onsite water system changes hands.

A well must be capable of producing 150 gallons per day, per bedroom. For the 4 bedroom home to which you refer, this means that 0.52 gallons per minute would have been an adequate flow rate. At 6 gpm you are in great shape.

Arsenic is a naturally occurring substance in the earth and not to be feared necessarily. Chronic exposure to Arsenic in drinking water can certainly cause health problems, so the Environmental Protection Agency (EPA) has set standards that the Municipality observes.

Until a few years ago, Arsenic readings were not required by the MOA at all, but now it is mandatory. The EPA, in an ultra-conservative step, recently lowered the maximum acceptable Arsenic standard from 50 ppb to 10 ppb. You need have absolutely no concern about a 5 ppb reading.

**Dear Dave:** If I have 5 days to review a Resale Certificate for the Condominium which I am purchasing, is that 5 calendar days or 5 business days? My Realtor says that the Statute is not specific.

**Answer:** Good question. The Uniform Common Interest Ownership Act, which covers condominiums, provides 5 days for a homebuyer to decide whether they wish to proceed with the purchase or rescind their contract, after review of all the HOA information in the Resale Certificate, without penalty.

Your Realtor is correct that this Statute does not state what kind of days those are. However, in Alaska Statute #1.10.080 guidance is provided on how time is to be computed for this and many other Statutes that simply state a number of days for an act to be performed.

The short answer is 5 calendar days, unless the 5th day is a Saturday, Sunday or Holiday. Then your time will expire on the first business day after that.

**Correction:** Conventional financing for an Owner/Occupier Condo borrower (primary residence or second home) does NOT currently require a 75% owner/occupier ratio, in fact 0% according to Residential Mortgage (it doesn't matter how many rentals), and 51% for an Investor (Non-owner/ occupier). However, these rules are fluid.

