



STATE LAWS

# Understand How Federal Laws Affect HOA Functions

## FEDERAL LAWS TO KNOW FOR HOAs

Homeowners associations are generally creatures of state law. State legislatures enact statutes authorizing HOA's within a state, and, for the most part, state laws and regulations govern how they operate. But that doesn't mean federal statutes don't have an impact.

In fact, quite a few federal laws directly affect HOA functions – regulating what an association can and cannot do and providing protections to both homeowners and the general public.

Violations of federal law have severe consequences, even when inadvertent. So, homeowners, board-members, and officers all need to be familiar with the federal laws that apply to HOA's.



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## Americans with Disabilities Act of 1990

The Americans with Disabilities Act of 1990 (ADA), found under 42 U.S.C § 12101, et. seq, though not as generally applicable as the FHA, the ADA impacts the operations of homeowners associations with common elements open to the general public.

The law was enacted in 1990 to prohibit discrimination against disabled persons in employment, transportation, public accommodations, communications, and access to government programs and services. For HOA's, "public accommodations" is the most relevant activity, though a large association may also be ADA-regulated as an employer.



and prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming.

Homeowners Associations cannot prohibit or adopt restrictions that: (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal.

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## The United States Bankruptcy Code

The bankruptcy code is immensely complicated, but, for homeowners associations, the important thing to know is that, if a member files bankruptcy, the association cannot take any actions to collect assessments subject to the bankruptcy case, including filing liens or civil complaints, while the case is pending or until the court issues an order lifting the “automatic stay.” 11 U.S.C. §362.

Violations of the automatic stay can result in penalties imposed by the bankruptcy court, including, at minimum, having to return money or release a lien.



# The Servicemembers Civil Relief Act

The Servicemembers Civil Relief Act (SCRA), 50 U.S.C. §§ 3901 through 4043. The SCRA is intended to protect members of the U.S. Army, Navy, Air Force, Coast Guard, and Marine Corps from collections actions and foreclosures during their time in service.

The law protects servicemembers on active duty, activated reservists, and members of the national guard active for more than 30 consecutive days. Unlike the FDCPA, the SCRA applies to all creditors, not just “debt collectors.”

[LEARN MORE ABOUT THE SCRA](#)

## Related Content

### [Simply Unenforceable: HOA Covenants and How They Can Go Too Far](#)

Notwithstanding the presumption of enforceability, there are plenty of reasons why an individual covenant or restriction might be unenforceable. The reasons most commonly cited by courts are: Procedurally flawed enactment; substantive invalidity; violation of rights of homeowners, or inconsistent, arbitrary, or capricious enforcement. Any one of these flaws can render a covenant effectively void. One flawed covenant won't necessarily invalidate the rest of a community's

### [Religious Freedom in Homeowners Associations](#)

Up until the 1968 passage of the Fair Housing Act (“FHA”), homeowners associations had a lot of leeway to interfere with religious practices or promote particular denominations. But now that the FHA is firmly entrenched in the national lexicon, there are significant limitations on the power an HOA has to restrict religion. The Fair Housing Act, 42 U.S.C. §3604(b), makes it unlawful for “housing providers” (including community associations) “[t]o discriminate against any person in the terms, conditions, or privileges of sale or



## What About the Children? HOA Age Restrictions and FHA Proscriptions

Restrictive covenants in homeowners' associations are not unusual—nearly every community has them. For homeowners, the restrictions are something of a trade-off. You accept a limitation on how you can use your property because, if everyone else in the community does, too, the neighborhood as a whole will be better off. 'If we all agree to keep our yards well-maintained and our houses painted nice-looking colors, we all benefit from a more attractive neighborhood with higher property values.' Courts view HOA restrictions along the same lines as any contract and presume the restrictions are enforceable unless there's a specific reason why the restriction should not be enforced.

## HOAs and Group Homes: The Challenge of Developing a Fair and Compliant Policy

Zoning ordinances and HOA covenants often disallow commercial uses of properties in residential areas. A group home that accepts payments for services provided at the home is almost certainly engaging in commercial activity. But, although the plain language of an ordinance or covenant might appear to prohibit such a group home, federal law forbids state and local governments or HOAs from impeding certain protected uses (more on that later). Importantly, there are different categories of group homes, and the laws protecting each home depend in large part on what kind of home is involved.

## Freedom in Associations: Exercising Free-Speech Rights in an HOA

Freedom of speech is perhaps the most cherished and most important protection provided by the United States Constitution. The delegates to the Constitutional Convention viewed citizens' right to speak their minds without fear of government retribution as so important that "freedom of speech" is enshrined in the very First Amendment of the Constitution. Indeed, many Convention delegates refused to ratify the Constitution absent an unqualified guaranty that the new government would be forbidden from "abridging the freedom of speech."

## Facts About Selective Enforcement By an HOA

As a member of a Homeowners' Association, you probably already know that your community's governing documents include covenants, rules, and restrictions about how you can (and cannot) use your property. If you break these rules, the association may fine you or force you to comply. If you find yourself at the receiving end of an HOA punishment, you'll need to know what your rights are. This article will help you understand "selective enforcement" and how it applies to your homeowners' association and the rules you have to follow.

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Refinance			How much do you want to borrow?		
15-Year Fixed	2.25%	2.42% APR	<input type="text" value="\$100,000"/>	<input type="text" value="\$125,000"/>	<input type="text"/>
30-Year Fixed	2.25%	2.46% APR	<input type="text" value="\$175,000"/>	<input type="text" value="\$200,000"/>	
5/1 ARM	3.00%	2.96% APR	<input type="text" value="\$250,000+"/>		
\$225,000 (30-yr fixed)	\$860/mo	2.46% APR			<input type="button" value="Calculate Pa"/>

## Fair Housing Act

The Fair Housing Act (FHA) prohibits discrimination in housing based upon race, color, religion, sex, familial status, and national origin. A subsequent amendment added disability to the “protected classes” enumerated in the FHA. 42 U.S.C. §3604.

Under the law, an HOA cannot take any adverse action affecting a person’s right to buy, rent, or enjoy the use of real estate based upon that individual’s membership in a protected class.

Obviously, exclusionary covenants preventing sales or leases to anyone within a protected class would violate the FHA, but the law also prohibits certain activities which might not seem so obvious on the surface.

[LEARN MORE ABOUT THE FHA](#)

## Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.*, regulates “debt collectors” who



The law requires certain notices to debtors, prohibits certain forms of communications, and generally bans harassment or abusive conduct by debt collectors toward consumers. 15 U.S.C. §1692b and c.

[LEARN MORE ABOUT FD CPA](#)



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## Freedom to Display the American Flag Act

The Freedom to Display the American Flag Act of 2005 is unique among our list of federal laws impacting HOA's in that it is expressly addressed to homeowners associations.

The law prohibits common interest communities from adopting or enforcing policies, or entering into agreements, "that would restrict or prevent a member of the association from displaying the flag of the United States on residential property within the association..."

[LEARN MORE ABOUT THE FLAG ACT](#)

## Over-the-Air Reception Devices Rule