

# LAKE OF THE WOODS HOMEOWNERS ASSOCIATION

May 2026 Newsletter – Part 4 of 6

## Quick Review of Previous and Upcoming Newsletter Topics

We are now halfway through the newsletter series on the proposed amendments of the Declaration and Bylaws.

So far, we reviewed in **Part 1** how we came to the point where amending the 1984 documents became imperative and what the overall objective of the amendment process is.

In **Part 2**, we focused on the rewrite of the Bylaws to see what changes and improvements are in store if those amendments are approved. On May 2, that newsletter was supplemented with a link to an online article (and video presentation) on the importance to a non-profit organization of having in place a set of bylaws that are up to date and reflect the present needs of the membership.

In **Part 3**, the focus was on the Declaration. In that newsletter, we compared the 1984 version with the new and improved version reflected in the proposed amendment. Each of the current provisions was highlighted and compared with the new document's contents. We also explored new areas added to the mix to bring an outdated 40-year-old document into the 21st century.

In the next couple of weeks, we will take a look at why the new documents are such an improvement over the current ones (**Part 5**) and what would happen if members were to disapprove either the Amended and Restated Declaration or the Amended and Restated Bylaws, or both (**Part 6**).

In this **Part 4**, we will focus on compliance and enforcement issues in the new documents.

## Compliance With Agreed Standards is What a Planned Unit Development Is All About

Communities with homeowners' associations are not everybody's cup of tea. But for many property owners, living in a community where neighbors formally commit to each other to respect a shared vision for a well-maintained, groomed, and friendly neighborhood, an association-led community is something to cherish.

Each of us has heard visitors marvel at how everyone in Lake of the Woods keeps up their homes ... and how home designs are not "cookie-cutter" or "Plain Jane" by nature ... just how quiet it is in our environs, and how so pleasantly the homes nestled among natural features of the terrain fit together so well.

*None of that happens by accident ... it's a result of a combined effort of concerned and respectful property owners taking pride in their neighborhood with a little nudge from a Declaration that outlines the rules every property owner agrees to follow.*

## **Enforcement Capacity is an Essential Part of Holding Property Owners Accountable**

Our Association has a long history of *not* having to resort to taking action to reinforce the objects of our brand of a planned unit development organized under Chapter 5312 of the Ohio Revised Code.

But it would be imprudent to amend the Declaration without addressing enforcement issues. What happens if a property owner doesn't contribute to covering the costs of maintaining and improving "Common Elements"? Or if someone wants to treat his or her driveway as a storage ground for junk vehicles? Or if a neighbor's enjoyment of his or her property is impaired by the way a nearby parcel is used or allowed to deteriorate? Or if someone wants to clutter their front yard with commercial or political signs not limited in number or by size?

Think of enforcement as the way owners hold themselves (and their neighbors) accountable.

The "covenants" and "restrictions" in our current Declaration "encumber" each of our lots. Those conditions "run with the land," meaning that they are enforceable by any other neighbor through court action for breaching agreed standards.

A homeowners' association is like an insurance company in that sense ... where violations can be redressed in a concerted fashion by neighbors elected by us to be trustworthy guardians of our common interests, often without having to resort to court action. We all pay into a common fund not only to keep up the "Common Elements" of the subdivision, but also to create a fund that could be tapped, if necessary, to cause non-compliant members to live up to our common "covenants" and "restrictions." Under the new version of the Declaration, all Association expenses incurred to redress violations would be chargeable to the owner(s) not in compliance.

Your current trustees do not spend their weekends of other free time measuring mailboxes or trudging through backyards looking for rule violations to cite. Instead, their efforts are invested in thinking about how to make this the best residential community in Northern Summit County ... and reacting to (and heading off) disputes that can be expected from time to time when human beings with differing perspectives, expectations, and desires live relatively close to one another.

Enforcement rules offer a prescribed pathway for compliance and accountability. And that is precisely how your trustees approached the question of enforcement in designing the proposed amendments to the Declaration and Bylaws.

## **Transparency: The Key to the Trustees' Proposed Changes When It Comes to Enforcement**

Here is what your trustees learned from the Association's counsel as we delved into the details respecting compliance and enforcement issues.

Half of homeowners' associations avoid the enforcement issue in their documents all together and rely exclusively on what Chapter 5312 of the Ohio Revised Code allows without specifically calling any of those provisions to the attention of the association's members. In other words, they "spring" the enforcement process on their members when a problem arises. Until that point, their members are pretty much oblivious about the consequences of non-compliance and forcing a board to take them to court.

The other half of homeowners' associations lean toward *transparency*. In other words, they put all of the enforcement mechanisms in the organizational documents for homeowners to see. This way, members will not be surprised if the board has to take action to gain their cooperation. *Favoring transparency is the approach your trustees have opted to take.*

Some might claim that all of the enforcement provisions of the Amended and Restated Declaration are "new" or "expanded" or a part of a "power grab." But the reality is that your trustees simply have codified all that state law allows the management team of a homeowners' association to do to gain compliance and enforce rules ... only we've put it all in black and white for all to see and have specifically tailored those guidelines to fit the needs of our neighborhood.

What some naysayers likely will not point out is how much your trustees have done to reshape and fine-tune state law to serve the purposes of flexibility, due process, and protection of the rights of *all* members of our Association.

The Association's counsel strongly believes that a board that does not publish its enforcement policy (including disclosure of the option to levy fines) does not serve its community.

This amendment process has revealed to your trustees that there will be work to do, whether or not the Amended and Restated Declaration is approved. An enforcement policy will have to be announced *either* in the context of the protections afforded by the amendments your trustees have drafted *or* in the context of far-reaching and less considerate standards broadly crafted by the state legislature when enacting Chapter 5312.

In essence, then, members should take notice that your trustees have prioritized the process of amending the "constitution" of our Association and gaining member approval of those changes over the alternative of leaving it to a future board to head off to a retreat somewhere to come up with compliance and enforcement rules on their own along with a schedule of fines without bothering to ask for membership approval of any changes to the "covenants" and "restrictions" built into the organization's declaration that would be needed before doing so... and without worrying about the practical challenges the members would face in having to gather enough homeowners to a meeting, in person or by proxy, to vote the board out or undo such a board's privately developed rules and enforcement guidelines.

So, the "bottom line," then, is that compliance and enforcement policies are in the future. They either will be adopted by the members when they approve the currently proposed Amended and Restated Declaration or by the trustees themselves if the proposed amendments are defeated.

Your current trustees prefer that certain baseline standards would form the fundamental principles to be followed when it comes to developing, interpreting, and enforcing rules in the future. The alternative would be to allow a future board to adopt rules on its own without having to seek membership approval to modify or eliminate fundamental standards framed by the “covenants” and “restrictions.”

Your trustees are not all that convinced the opponents of the amendments have focused on this reality and what would be likely to follow if the 1984 version of the Declaration is not replaced.

### Due Process Considerations

With two lawyers on the Board of Trustees, you can well imagine how important the question of “due process” became in crafting the proposed amendments.

What is “due process” anyway in the context of a planned unit development in Ohio?

Think of the rules of the Association as being divided into two major categories.

*First*, there are the *substantive* guidelines, *i.e.*, the specific do’s and don’ts and the minimum standards by which we agree to use and maintain our homesites.

*Second*, there are the *procedural* guidelines for carrying those substantive rules into effect, such as the process for applying for and securing approval of additions or changes in the architectural features of one’s home, and for the way in which a violation of the rules is investigated and confirmed, and for following prescribed steps available to contest or submit to Association action to enforce the rules.

That second category falls under the general heading of “procedural” due process. Members can be assured that your trustees gave as much attention to *procedural* “due process” issues as was given to the *substantive* guidelines detailed in the proposed Amended and Restated Declaration.

### The Fallacy in the Fears Sown By Members Opposed to the Proposed Amendments

Your trustees know one thing for sure about what the opponents of the proposed amendments are suggesting ... they are deliberately trying to infer that the rules included in the rewritten documents will give new or enhanced powers to the Board to levy fines, pursue enforcement actions arbitrarily, and make up rules as the elected leaders of the Association go along.

*Nothing could be much farther from the truth!*

The truth is that the elected leaders of the Association already have extensive powers under Chapter 5312 to come up with rules and enforce them. What the opponents don’t want their neighbors to know is that those rules, as enacted by the state, can be limited, carved back, reshaped, and tailored to meet the individual needs of a particular community ... *but only if refinements to those rules first are adopted in an amended declaration and carried into effect with amended bylaws!*

That is exactly what your trustees are trying to accomplish for the entire community.

Instead of reserving for themselves the ability to enact new rules and enforce them without any member input, your trustees have listed the rules in an Amended and Restated Declaration that they then could not change or extinguish without the approval of a majority of the lot owners. That is a far better approach and more responsive to the interests of homeowners than our present organizational documents provide in the present circumstances.

The Board of Trustees urges you to review the anonymous contentions and allegations of naysayers carefully before jumping to any conclusions. Their aim is to create an *impression* that the present leadership of this Association is on some sort of power grab. *That is decidedly not the case!* All the work on compliance and enforcement issues instead has been focused on –

- (1) making the *substantive* rules clear, understandable, objective in scope, and not as susceptible to inconsistent interpretations or applications by future boards as they presently are or to changes being made without membership approval and
- (2) making the *procedural* rules –
  - ✓ less onerous than allowed under state law,
  - ✓ more flexible so as to offer a wider array of enforcement options,
  - ✓ more protective of individual rights when enforcement measures become necessary,
  - ✓ more fair to property owners who faithfully follow the rules and do not test the limits of the “covenants” and “restrictions” everyone agreed to accept when they took a deed to their home, and
  - ✓ easier to modify in the future than currently possible under the 1984 version of our documents.

In the end, the proposed Amended and Restated Declaration fills *gaps* in the existing document while spelling out *objective* standards for evaluating compliance and pursuing enforcement.

This is the true “top side” view of what the amended documents are all about. Members are asked to have faith that the trustees behind the process are looking out for *everyone’s* interests because they are property owners, too, and will have to abide by the same sets of rules.

### Why Do the Amendments Mention Foreclosure Options?

Our intention is to be transparent where the current Declaration and Code of Regulations fail in that area. All the amended and restated documents do is to call members’ attention to the

foreclosure power reserved to any homeowners' association under Section 5312.12 of the Ohio Revised Code.

But ... do you realize how so *unlikely* it would be that the Association ever would pursue the foreclosure option?

Because of the high upfront cost of commencing such an action (over \$2,000.00), the Association would have to be owed a great deal of money by the owner(s) of a lot. Litigation costs to foreclose a lien would run \$12,000.00 or more. And to justify that, a future board would have to take into account that the Association's lien likely would fall *behind* prior-filed tax, mortgage, and judgment liens. That means that there would have to be a great deal of equity in a home to allow the Association to realize value from a foreclosure, as our action would wind up benefiting everyone ahead of us in line.

So, when might the Association consider foreclosure of a lien? Suppose the owner(s) of a lot were to be away for an extended time when a tree destroys part of the dwelling and the Association steps up to cover the \$30,000.00 bill to keep the home from being sacrificed to the elements. Or the owner(s) die and the estate is not settled soon enough to protect the damaged home against the elements. Under these circumstances, the Association would want to perfect a lien to protect its interests in the event of a future sale. But foreclosure would become necessary only if that proves to be the only way for the Association to be repaid.

Foreclosure would *not* be something to consider for a routine, run-of-the-mill collection action against a delinquent member. The most that the Association would do in this regard would be to record a lien for the unpaid assessments and then wait for a sale to collect at closing.

So, those expressing concerns over foreclosure options in the amended documents are fearmongering. All the documents do is to take into account options already built into Section 5312.12 for all homeowners' associations in charge of planned unit developments. Exercising the foreclosure power, however, would be among the rarest of circumstances ever facing a future board.

### Highlights of Compliance and Enforcement Issues Addressed in the New Documents

Enforcement provisions are found in Articles VII, VIII, X, and XII of the proposed Amended and Restated Declaration. They essentially restate powers conferred on an Association by Chapter 5312 of the Ohio Revised Code and reshape them to fit our community's particular needs.

**Article VII** focuses on what happens if a homeowner fails to maintain the exterior of a parcel and the Association has to intercede to undertake the maintenance work. The baseline standard (**Section I**) requires maintenance reflecting "reasonable expectations or standards for safety, cleanliness, good repair, neatness, and attractiveness from neighboring Lot sight lines and from the street, in a sanitary condition, and in conformity with all laws, ordinances, and regulations" and keeping a dwelling and any adjacent Common Elements "free from debris, rubbish, rubble, and other unsafe or unsightly conditions," including keeping grass from getting more than five inches high and curbing the proliferation of weeds. Where a property owner fails to meet these standards, the Association may step in to restore elements of the parcel to "a state of good working

order, condition, and repair.” Before enforcement action is taken by the Board, 30 days’ written notice must be given (or five days’ written notice for excessive lawn height and/or proliferation of weeds) (Section 2), although the notice requirement can be suspended in the event of an “emergency condition [that] presents a clear and imminent danger to the health and safety of the community or Members or Occupants, or is an ongoing, continuing, or recurring situation.” The costs incurred by the Association in addressing such maintenance issues is chargeable to the property owner(s), can become the subject of an enforcement assessment, and can serve as the basis for an enforcement lien if the Association’s costs are not reimbursed (Section 2(d)). All of these remedies are contemplated by Chapter 5312.

Section 5 of Article VII and Section 3 of Article VIII deal in the main with the failure to remit assessments and other amounts that become due and payable to the Association. An “administrative late charge” and interest at the highest statutory rate that may be charged to an individual may be added to delinquent assessments. If a collection action must be prosecuted to recover delinquent assessments, the Association would be entitled to recover all costs of such an action, including reasonable attorney fees, incurred in successfully prosecuting the claim (Section 3) and all such amounts may be included in a certificate of lien added to the chain of title to the lot of the delinquent owner(s) (Section 4). All of these remedies are contemplated by Chapter 5312.

Section 6 of Article X focuses on rights to access and maintain property subject to easements granted to the Association. Some areas of our neighborhood are subject to easements granted to the Association, principally to allow the Association to service and maintain the “Common Elements.” This section of the proposed Amended and Restated Declaration not only reaffirms the right of the Association and each of its employees, agents, contractors, and nominees to enter and gain access to any lot subject to such easement rights and maintain, repair, restore, and/or service the land and/or any improvements, but also provides for reimbursement of the Association for any costs that may be incurred if an owner fails to cooperate in the exercise of such rights. The likelihood of this ever happening is remote, but this provision nonetheless has been included in the proposed Amended and Restated Declaration for the sake of transparency.

Article XII is the basic term for enforcement of covenants, restrictions, and rules of the Association. Generally speaking, this provision spells out what is already provided by Chapter 5312 of the Ohio Revised Code, including –

- Abatement, remediation, restoration, maintenance, and/or removal of anything that violates any provision of the Amended and Restated Declaration, Bylaws, or rules adopted by the Board of Directors (Section 1(a));
- Pursuit of legal proceedings to prevent, abate, or remedy any breach of the restrictions, covenants, or rules of the Association and/or any nuisance for which an owner or occupant is responsible (Section 1(b)); and
- Imposing a reasonable sanction and enforcement assessment, after notice and an opportunity to be heard, to secure compliance with the Amended and Restated Declaration, Bylaws, or rules of the Association and deter continued non-compliance (Sections 1(c) and 1(d)).

A non-compliant member's voting privileges may be suspended as part of the sanctions imposed. (Section 1(e) and Section 4), but the Association's counsel has informed the Board that even delinquent members may vote in elections for Board members and on any proposed amendment(s) of the Declaration and/or Bylaws. The Amended and Restated Bylaws affirm this.

Section 2 of Article XII focuses specifically on the process for levying enforcement assessments if ordered by the Board of Directors and for the reimbursement of all costs incurred by the Association to pursue such assessments made necessary by non-compliant action of an owner or occupant. Section 3 of Article XII extends this to reimbursement of the Association's costs incurred in curing any owner's breach of its obligations under the organizational documents or the Association's rules. This is designed to make sure compliant members do not wind up subsidizing or being burdened by the conduct of non-compliant members.

The Board of Trustees urge members to vote FOR the proposed amendments to both the Declaration and the Bylaws.

*For the Board of Trustees:*

Gary Himmel, President                      Dale Freygang, Vice President and Treasurer  
S. David Worhatch, Secretary