

Magna Carta for homeowners, homeowners' groups



On Firm Ground

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THE Philippine real-estate market remains on an upswing and "mass housing," for instance, remains to be included in the priority areas of investment. In view of the numerous subdivisions, villages and other housing projects that have been and are still being developed all over the country, basic community services and facilities will always be required in such projects but these cannot be provided entirely by the local government. Hence, these communities are encouraged to have homeowners' associations that will take care of providing and maintaining, among other services, security, street lighting, street cleaning, garbage collection and disposal.

Republic Act (RA) 9904, otherwise known as the "Magna Carta for Homeowners and Homeowners' Associations," was enacted into law in 2010 to promote the rights and the roles of homeowners and homeowners' associations.

RA 9904 gave the Housing and Land Use Regulatory Board (HLURB) the exclusive power to register homeowners' associations and to also hear and decide

intra-association and inter-association controversies. The HLURB also approved the implementing rules of RA 9904 in June 2011, but which according to HLURB sources, took effect some time in October 2011.

The rules provide, among other things, that it is mandatory for all homeowners' associations to register with the HLURB. It also provides that while associations previously registered with the Home Insurance Guaranty Corp. (HIGC) and the Securities and Exchange Commission (SEC) will be recognized, they have to register with the HLURB within one year from the effectivity of the implementing rules, or up to October 2012. It is imperative for associations to comply with this mandate to avoid these effects: (1) The association will lose the legal standing to sue before the HLURB but it can still be sued before the HLURB by its members and other interested parties. (2) The association's officers can be held personally liable for the obligations and liabilities incurred by the association. These effects should encourage the officers of existing homeowners' associations to comply with the mandate of RA 9904 and its implementing rules.

Considering the aforementioned requirement of the HLURB, an adjudicatory mechanism was established in case two or more associations were organized within the same village or subdivision and both applied for registration with the HLURB. Since only one association can be registered, the HLURB will decide which association will be officially recognized by checking which one first submitted its registration papers and complied with

all requirements, or that which registered earlier (either with the HIGC or the SEC), or in case one is registered with the SEC while the other is registered with the HLURB, the one which registered earlier will prevail and the registration of the other one will be revoked, provided that the earlier registrant timely complied with HLURB requirements.

It will be observed that the requirements for registration, the contents of the Articles of Association and Bylaws of homeowners' associations are very similar to those of corporations registered with the SEC pursuant to the Corporation Code. However, some marked differences include the following: (a) The vote of majority of the members of the association is required to amend the Articles of Association (instead of the two-thirds' vote requirement for ordinary corporations). (b) To register a homeowners' association, a list of members with their corresponding signatures must be submitted to the HLURB (while this is not required under the Corporation Code). (c) The term of board members of associations is limited to only two years (while the Corporation Code allows trustees of non-stock corporations to have a term of three years). (d) A director or trustee of an association may be removed through a verified petition signed by a majority of the members for any cause provided in the by-laws (instead of the two-thirds' vote required under the Corporation Code). (e) The association's board may be entirely dissolved by the vote of two-thirds of the association's members (while there is no equivalent provision under the Corporation Code). (f) The vote of majority of

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the members of the association is sufficient to approve its dissolution (instead of the two-thirds' vote required under the Corporation Code). (g) Proxies issued by association members cannot be for a period longer than three years (while the Corporation Code allows proxies to be valid for five years).

With respect to homeowners, RA 9904 and its implementing rules are very clear that a homeowner has the right to enjoy basic community services and facilities provided that he pays the necessary fees and charges. In effect, a homeowners' association is justified in depriving delinquent homeowners with certain services and with exercising the other rights of a member. Thus, while RA 9904 intends to promote the interest of homeowners, it also recognizes that homeowners have certain duties to the association that must be fulfilled for its preservation and to enable it to exercise its rights and powers.

Notably, RA 9904 gives homeowners the right to become a member but they cannot be compelled to join a homeowners' association, unless the same is required in a contract or in an annotation in the title. The implementing rules even expressly mention that membership in the homeowners' association is optional. This may have to be revisited considering that even a nonmember will certainly reap the benefits of services provided by the homeowners' association, such as security services and street lighting. It will be unfair if only members carry the costs of the services provided by homeowners'

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associations while benefits are reaped even by nonmembers. At the very least, a nonmember should be required to pay all his unpaid dues and charges once he decides to use or occupy his property.

It is interesting that the term "homeowner" has been extended by the HLURB to include a lessee of a member or homeowner under a lease contract that has a term of at least one year. Such lessee can exercise the rights of a member of the homeowners' association (i.e., to avail himself/herself of basic community services, to vote, and to participate in meetings) upon the issuance by the lot or housing unit owner of a written consent or authorization. Unless the owner revokes the written consent or authorization in writing, that owner is deemed to have waived his/her rights as a member of the association in favor of the lessee, except the right to inspect the books and records of the association. In effect, the lessee steps into the shoes of the member/homeowner for the duration of the lease.

RA 9904 is a welcome development for homeowners' associations. Sadly, however, RA 9904 does not apply to condominium corporations. While subdivision projects and condominium projects have their differences, condominium corporations do encounter problems similar to homeowners' associations, such as disputes between the board and

members, issues with regard to maintenance of common areas, collection of unpaid dues and assessments, and even disputes with developers. Condominium projects and condominium corporations are still primarily governed by the Condominium Act, which was enacted in 1966 and which needs to be studied and further amended to address recent developments affecting condominium buildings. For instance, since condominium plans and licenses to sell condominium units are approved by the HLURB, it may be more beneficial for interested parties (i.e., developers, unit owners, condominium corporations, lessors and lessees) if the HLURB will also exercise the same rights and duties that it has under RA 9904 in connection with condominium corporations.

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