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Xeriscaping can no longer be prohibited by homeowners associations

by Joe Lanane
 July 18, 2013

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HOAs here to stay

TO HOA OR NOT TO HOA?

"A lot of us don't like paying fees but do like what's being paid for. That's just like taxes. We don't like paying taxes, but we like the services."

PROS

- Helps maintain value and curb search when it comes to high HOA fees
- Provides amenities, including common areas, pools, and other desirable perks
- Offers the highest level of maintenance and services
- Some HOAs provide maintenance services for landscaping and lawn care
- All HOAs are subject to a range of state and federal laws, including the Fair Housing Act

CONS

- Must be member of property has no other association
- Level of cost of and maintenance
- Association can suspend and evict you for non-payment
- When HOA of property you own declines to qualify for HOA
- HOA associations do not need board of directors

TYPES OF HOA-OWNED ASSOCIATIONS

- HOA 1:** HOA 1 is a HOA that is created by the HOA board
- HOA 2:** HOA 2 is a HOA that is created by the HOA board
- HOA 3:** HOA 3 is a HOA that is created by the HOA board

Homeowners associations must approve all 'reasonable' requests

Texas homeowners can now xeriscape their properties without being legally scrutinized by their homeowners association.

The new law, first proposed by state Sen. Kirk Watson and state Rep. Dawnna Dukes, both Austin Democrats, prevents HOAs from prohibiting xeriscaping, the process of installing drought-resistant landscaping or other native, water-conserving natural turf.

The passed legislation likely will result in many HOAs creating uniform xeriscape standards for the first time. Associations can still require preliminary approval of any xeriscaping plans, but their control is limited and must be "reasonable," said Gregory S. Cagle, an Austin attorney and author of the book "Texas Homeowners Association Law."

HOAs have been in the Austin area for the past 25 years, Cagle said, and nearly every new residential development has its own association. In Cedar Park, Leander and far north Austin, there are at least 75 neighborhoods with associations, according to MLS real estate data. Cagle attempts to educate HOAs and property owners alike on their rights and responsibilities, which vary greatly by association.

"HOAs are pretty much here to stay," he said. "And in many ways, HOAs have become sort of the fourth level of government."

The law change was driven less by any specific case of injustice and more from persistent drought conditions, he said. And with more water restrictions expected to be enacted this year, Cagle said HOAs will also be forced to sacrifice.

"Keep in mind the HOA board members are homeowners who are under the same restrictions," he said.

Ahead of the law

The Avery Ranch HOA in Austin did not need to modify its standards in response to the new xeriscape law; its board members created a xeriscape policy in 2009 that already complies with new state standards.

In fact, its policy has been so popular that it has become the blueprint for other subdivision associations to follow, said Steve Roebuck, two-term president of the Avery Ranch HOA board of directors. The change in policy was prompted by residential requests, which now number three to five per week, he said.

Avery Ranch allows up to 75 percent of all front yard space to be xeriscaped. All non-turfed areas can contain decomposed granite, ground hardwood mulch, crushed limestone, flagstone or loose stone material for ground cover, according to the HOA standard. Artificial turf can still be prohibited under state law.

Other HOA landscape standards vary by neighborhood, said Randy Allen, CEO and principal of Goodwin Management Inc., which serves as third-party managers for Crystal Falls, Silverado Ranch and The Ranch at Brushy Creek, among many other Austin-area communities.

Crystal Falls, for example, encourages residents with larger lots and moderately sloped lawns and tree cover to consider xeriscape landscaping, while The Woods at Brushy Creek—another Goodwin-managed neighborhood—adopted the same 75 percent standard as Avery Ranch.

Allen said Goodwin is working on its own xeriscaping policy blueprint for other HOA boards to consider adopting before the state law goes into effect Sept. 1. The change is necessary as enforcement becomes difficult during drought conditions, he said.

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Leander Browz, 651 N. US 183, Ste. 100, Leander, opened June 1 within H-E-B Plus. The shop offers eyebrow threading, a natural, no-chemical alternative to waxing, as well as facials and eyelash extensions.

Jul 22, 2013 12:00:00 AM

Cedar Park / Leander Impacts

Now Open: Brooklyn Heights Pizzeria

After closing for a short time because of construction, an expanded Brooklyn Heights Pizzeria reopened June 6. The Avery Ranch eatery, located at 14900 Avery Ranch Blvd., Ste. C-700, Austin, offers pizza as well as sandwiches.

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Cedar Park / Leander Impacts

Now Open: 9Round Fitness

9Round Fitness, a kickboxing fitness center that offers 30-minute classes, opened its doors July 8.

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"You can't keep a green lawn—it's almost impossible," Allen said. "Granted, some people do, but I'm not so sure they're not cheating on the restrictions—either that or they have a whole lot of time to hand-water."

Value matters

Anywhere from 95 percent to 98 percent of all HOAs hire third-party management groups to enforce such policies.

"We're hired to police the very people who hire us," said Allen, a 30-year veteran of the industry.

Without xeriscape policies and other standards, there would be no way to ensure neighborhoods maintain their quality, he said.

"I can imagine what some of these communities would look like if there was no association involved," Allen said. "We actually manage some subdivisions that are fairly close to nonregulated, and you can see the night-and-day difference."

Market demand has also made HOAs more prevalent in recent years, Allen said, especially as many quality-of-life amenities once offered by municipalities dwindle. HOAs have made up the difference by providing more parks, pools and recreation areas created exclusively for HOA members, which pay dues—or assessments—for such perks.

Those assessments can get expensive but are often necessary, said Jim Gaines, research economist who specializes in housing markets and developments for the Real Estate Center at Texas A&M University.

"A lot of us don't like paying fees but do like what's being paid for," he said. "That's just like taxes. We don't like paying taxes, but we like the services."

Unfortunately, he said, many residents do not read the neighborhood guidelines before investing in a property. While most HOA restrictions are reasonable and successfully protect property values, Gaines said there are some policies that could blindside unsuspecting homeowners.

"When you start getting into the details, all of a sudden it starts to feel like HOAs want to control every trivial thing," said Gaines, a former president of his own HOA. "Those are extremes, so obviously they're not too common."

Because HOA covenants are regulated by civil law, police officers are not able to enforce such requirements, Leander Police Department Sgt. Luana Wilcox said, unless the violation also breaks city ordinance. For example, HOA restrictions on parked or stalled cars may not necessarily be consistent with city codes, she said.

Despite some well-publicized cases of alleged HOA injustice, such instances are rare, Cagle said. Ultimately, he said, homeowners associations are mostly composed of residents within the neighborhood, making it less than ideal for HOA boards to resort to the worst-case scenario.

"I never met an HOA board that wanted to foreclose on a property," Cagle said. "That's always the last resort, but HOAs are painted with this sort of villainous paintbrush."

Tags

Avery Ranch, Cedar Park, Cedar Park | Leander July 2013, Crystal Falls, Drought, HOA, homeowners associations, Joe Lanane, Landscaping, Leander, neighborhoods, Water, xeriscape

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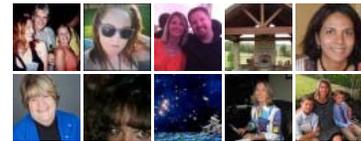
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HOAs here to stay

Most neighborhoods in Northwest Austin metro area controlled by associations

Neighborhoods under HOA jurisdiction make up the majority of the areas zoned residential. As a result, the new state law preventing HOAs from prohibiting xeriscaping enables more residents to convert their front lawns, if they are interested in doing so.

Xeriscaping no longer prohibited

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— Jim Gaines, research economist for The Retail Center at Texas A&M University



PROS

- ✓ Helps maintain and/or increase property values by maintaining high standards
- ✓ Provides amenities, including common areas, parks, pools and recreation fields
- ✓ Creates increased sense of community among residents
- ✓ New technologies helps residents better communicate with HOAs
- ✓ HOAs now subject to many of the same transparency laws as public government entities

CONS

- ✓ Must be member if property falls within jurisdiction
- ✓ Level of control and response times vary
- ✓ Architectural approval not uniform, can be subjective
- ✓ Minority of homeowners make decision for majority of HOA
- ✓ Fee assessments do not count toward income tax deductions

TYPES OF HOMEOWNERS ASSOCIATIONS

- **SELF-MANAGED:** HOA board members perform day-to-day duties
- **STAFFED:** HOA board hires full-time general manager to oversee operations
- **THIRD-PARTY:** Independent management company is hired by HOA board

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