

## HOA MANDATES OF HLURB

### A. Background:

In January 2000, Republic Act No. 8763 transferred to this Board the functions of the Home Guaranty Corporation with respect to homeowners associations.

1. What were the HOA mandates and powers of HGC that were transferred to HLURB?

#### 1.1 Under EO 535:

- a. To require submission of and register articles of incorporation of homeowners associations and issue certificates of incorporation/ registration, upon compliance by the registering associations with the duly promulgated rules and regulations thereon; and maintain a registry thereof;
- b. To regulate and supervise the activities and operations of all homeowners associations registered in accordance therewith;
- c. Exercise all the powers, authorities and responsibilities that are vested on the Securities and Exchange Commission under PD 902-A, with respect to homeowners association to wit:
  - c.1 Exercise original and exclusive jurisdiction to hear and decide cases involving --
    - (a) Devices or schemes employed by or any acts of the board of directors and officers amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or members of the association;
    - (b) Controversies arising out of intra-corporate relations, between and among members, between any or all of them and the association of which they are members; and between such association and the state insofar as it concerns their individual franchise or right to exist as such entity; and

- (c) Controversies in the election or appointments of directors, trustees, officers or managers of the association.

b.2 To exercise the following powers in appropriate cases:

- (a) To issue preliminary or permanent injunctions, whether prohibitory or mandatory.
- (b) To punish for contempt of the Board, both direct and indirect, in accordance with the Rules of Court.
- (c) To compel the officers of the association registered by it to call meetings members thereof under its supervision;
- (d) To pass upon the validity of the issuance and use of proxies for absent members;
- (e) To issue subpoena duces tecum and summon witnesses to appear in any proceedings of the Board Commission and in appropriate cases order search and seizure or cause the search and seizure of all documents, papers, files and records as well as books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it;
- (f) To impose fines and/or penalties for violations of laws, rules and regulations, orders, decisions and/or ruling being implemented by the Board;
- (g) To suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of associations, upon the grounds as provided by law.
- (h) To exercise such other powers as implied, necessary or incidental to carry out the express powers granted or to achieve the objectives and purposes of the law.

- 1.2 What resources were transferred by HGC to HLURB by virtue of the transfer of all the above functions and powers?

Aside from the corporate records of \_\_\_\_ registered homeowners associations and \_\_\_\_ records of ongoing cases in various stages of litigation, no manpower or any other resources was turned over by HGC to HLURB.

## **B. RA 9904**

Republic Act No. 9904, otherwise known as the Magna Carta for Homeowners and Homeowners Associations was passed on January \_\_ 2010 and took effect on March 30, 2010.

Under this law, in addition to the powers, authorities and responsibilities vested on the HLURB by **Republic Act No. 8763, Presidential Decree No. 902 - A**, Batas Pambansa Big. 68 and **Executive Order No. 535**, Series of 1981, as amended, it shall:

- (a) Regularly conduct free orientation for officers of homeowners' associations or deputize another competent agency to conduct the orientation;
- (b) Formulate and publish a Code of Ethics and Ethical Standards for board members detailing prohibited conflicts of interest;
- (c) Register all associations, federations, confederations or umbrella organizations of the associations;
- (d) Hear and decide inter - association and/or inter-association controversies and/or conflicts
- (e) Formulate the rules or manner of verification and validation of petitions for the removal of director(s) or trustee(s) of the association or dissolution of the board pursuant to Sections 13 and 14 of this Act. Relative thereto, it has the function to --
  - verify and validate petitions for removal of directors;
  - verify and validate petitions for dissolution of the board
  - designate an interim board subsequent to the dissolution of the previous board pending the election of new board members;
  - call and conduct election for the unexpired term.
- (f) Exercise the same powers over federations, confederations or umbrella organizations of the associations;

- (g) Formulate, in consultation with the representatives of associations, federations, confederations or umbrella organizations of the associations, standard nomenclatures to be used for the associations' books of accounts, and a standard articles of incorporation and bylaws for homeowners' association for reference purposes;
- (h) Formulate, in consultation with the representatives of associations, federations, confederations or umbrella organizations of the associations, the guidelines in regulating the kinds of contributions and fees that may be charged and/or collected by associations; and
- (k) Monitor compliance with Section 24 of the law mandating the review by the association of its bylaws within six months from the effectivity of the law.

**C. HLURB's Authority and Duty to Create Positions and Enlist Additional Personnel**

Cognizant of the HLURB's limited resources and shortage in manpower that could hardly cope with its present mandates over and its other functions, Section 21 of RA 9904 had authorized and directed HLURB, upon its discretion, to create positions and enlist additional personnel to carry out its mandates.

The following were considered in drawing up the organizational structure and determining the manpower requirement for the effective performance of the mandates of RA 9904:

1. The existing workload or the number of existing homeowners associations;
2. The potential workload or the number of existing residential subdivisions;
3. The number of personnel in the Regional Offices involved in HOA functions either exclusively or on top of other functions;
4. Additional mandates under RA 9904; and
5. The necessity for the creation of a separate division for HOA concerns instead of being integrated with the existing functional setup of the Real Estate Management Program or the Comprehensive and Use Planning and Zoning Assistance Program in order to focus on the special needs of the HOA clientele as mandated by the law.