§ 1.528–2 Organized and operated to provide for the acquisition, construction, management, maintenance and care of association property.

(a) Organized and operated—(1) Organized. To be treated as a homeowners association an organization must be organized and operated primarily for the purpose of carrying on one or more of the exempt functions of a homeowners association. For the purposes of section 528 and these regulations, the exempt functions of a homeowners association are the acquisition, construction, management, maintenance, and care of association property. In determining whether an organization is organized and operated primarily to carry on one or more exempt functions, all the facts and circumstances of each case shall be considered. For example, when an organization provides in its articles of organization that its sole purpose is to carry on one or more exempt functions, all the facts and circumstances of each case shall be considered. (The term articles of organization means the organization’s corporate charter, trust instruments, articles of association or other instrument by which it is created.)

(2) Operated. An organization will be treated as being operated for the purpose of carrying on one or more of the exempt functions of a homeowners association if it meets the provisions of §§1.528–5 and 1.528–4.

(b) Terms to be interpreted according to common meaning and usage. As used in section 528 and these regulations, the terms acquisition, construction, management, maintenance, and care are to be interpreted according to their common meaning and usage. For example, maintenance of association property
§ 1.528–4 Substantiality test.

(a) In general. In order for an organization to be considered a condominium management association or a residential real estate management association (and therefore in order for it to be considered a homeowners association), substantially all of its units, lots or buildings must be used by individuals for residences. For the purposes of applying paragraph (b) or (c) of this section, and organization which has attributes of both a condominium management association and a residential community health, safety and welfare. Such areas and facilities would normally include roadways, parklands, sidewalks, streetlights and firehouses. Property described in this paragraph will be considered association property regardless of whether it is owned by the organization itself, by its members as tenants in common or by a governmental unit and used for the benefit of the residents of such unit including the members of the organization.

(b) Property normally owned by a governmental unit. Association property also includes areas and facilities traditionally recognized and accepted as being of direct governmental concern in the exercise of the powers and duties entrusted to governments to regulate community health, safety and welfare. Such areas and facilities would normally include roadways, parklands, sidewalks, streetlights and firehouses. Property described in this paragraph will be considered association property regardless of whether it is owned by the organization itself, by its members as tenants in common or by a governmental unit and used for the benefit of the residents of such unit including the members of the organization.