purposes of this section. For example, property owned by an organization for the purpose of leasing it to groups consisting primarily of nonmembers to be used as a meeting place or a retreat will not be considered association property.

(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.

(c) Privately owned property. Association property may also include property owned privately by members of the organization. However, to be so included the condition of such property must affect the overall appearance or structure of the residential units which make up the organization. Such property may include the exterior walls and roofs of privately owned residences as well as the lawn and shrubbery on privately owned land and any other privately owned property the appearance of which may directly affect the appearance of the entire organization. However, privately owned property will not be considered association property unless:

1. There is a covenant or similar requirement relating to exterior appearance or maintenance that applies on the same basis to all such property (or to a reasonable classification of such property);

2. There is a pro rata mandatory assessment (at least once a year) on all members of the association for maintaining such property; and

3. Membership in the organization is a condition of ownership of such property.

[T.D. 7692, 45 FR 26321, Apr. 18, 1980]
purposes even if under such zoning lots may be used for parking spaces, swimming pools, tennis courts, schools, fire stations, libraries, churches and other similar purposes which are auxiliary to residential use. However, commercial shopping areas (and their auxiliary parking areas) are not lots zoned for residential purposes.

(d) Exception. Notwithstanding any other provision of this section, a unit, or building will not be considered used for residential purposes, if for more than one-half the days in the association’s taxable year, such unit, or building is occupied by a person or series of persons, each of whom so occupies such unit, or building for less than 30 days.


§ 1.528–6 Expenditure test.

(a) In general. An organization cannot qualify as a homeowners association under section 528 for a taxable year unless 90 percent or more of its gross income for such taxable year is exempt function income as defined in §1.528–9. The determination of whether an organization meets the provisions of this section shall be made after the close of the organization’s taxable year.

[T.D. 7692, 45 FR 26322, Apr. 18, 1980]

§ 1.528–5 Source of income test.

An organization cannot qualify as a homeowners association under section 528 for a taxable year unless 60 percent or more of its gross income for such taxable year is exempt function income as defined in §1.528–9. The determination of whether an organization meets the provisions of this section shall be made after the close of the organization’s taxable year.

[T.D. 7692, 45 FR 26322, Apr. 18, 1980]