

The Law and Legal Principles

Traditionally, homeowners associations are corporations not for profit. The state's corporate law will prohibit distribution of any part of the corporate income to individual members, directors or officers of the homeowners association. The law does not allow reasonable salaries to be paid to officers, directors and employees if the association's articles of incorporation or by-laws permit. Under some circumstances, the association may be organized under a special statute such as the condominium, cooperative or mobile home act in the state. The special housing statute controls over general corporate law when there are inconsistencies between the two parts of the statutes.

Application of the law and legal principles to the homeowners association and to the planned community arrangement is not unnecessarily complicated. Each officer and director should be aware of its general requirements and should be prepared to call for legal advice from the association's attorney when assistance is needed on a particular point. Each homeowners association should have a legal advisor knowledgeable in the affairs of the community and the law applicable to it. When the board of directors and officers of the association rely on the attorney's advice for guidance, they have met their fiduciary responsibility to the association and will be relieved from any personal liability from adverse consequences arising from their action based on the professional advice.

Documents

The Declaration of Covenants and Restrictions.

The declaration of covenants and restrictions is the document or set of documents that establishes the formal regulations for all of the property in the residential community. They restrict its use and govern the conduct and activity of its residents. The declaration of covenants and restriction is the foundation document for the planned and well-ordered residential housing concept. The Declaration establishes the basic rights and responsibilities for each owners, resident and guest. The restriction and covenants grant easements and use rights to owners and guests, they provide services and privileges to residents of the community and they set the standards for maintenance and upkeep of all the property.

The recorded declaration imposes a greater degree of control on the rights of individual owners and the use they may make of their home and property than would otherwise be allowed if the restrictions and the homeowners association did not exist. When the declaration of covenants and restrictions is recorded, a quasi-government is created among the property owners when they become members of the association. As a member and owner, each individual must abide by the policies of the association and the conditions imposed by the restrictions.

The Declaration of covenants and restriction outlines the financial obligations of each owner and the rights which each owners has to take part in the affairs of the community. The recorded declaration creates the homeowners association and generally the organizational document of the association, to select its leadership and to oversee its financial policies.

Articles of Incorporation.

The articles of incorporation or "corporate charter", is the document that formally establishes the entity responsible for the maintenance, management and operation of the community property and the community concept. The entity is the homeowners association. The articles of incorporation provide the framework for the association's organization, they define its membership and the voting rights of its members, and they create the officers and directors who will act on behalf of the organization. The charter establishes the association's responsibility to administer to the shared community facilities and to promote and preserve harmony and uniformity within the residential community.

The term “articles of incorporation” includes the original document creating the association and all amendments to it and any other documents which define the existing form, membership and responsibility for the association. For example, the definition also includes articles of consolidation or articles of merger if several associations have been combined into a single organization. The articles may establish a corporation for profit or a corporation not-for-profit, but in most circumstances, the not-for-profit status is the alternative selected by the original organizers of the association. The articles of incorporation become effective and the homeowners association may begin to operate when the charter has been filed with the appropriate state agency.

Bylaws of the Association.

The articles of incorporation of the association define its basic structure and its areas of responsibility. The bylaws establish the procedures for carrying out these responsibilities. They define the powers and the manner for exercising those powers for the board of directors and by each of the association’s officers. The bylaws create committees and describe how rules and regulations can be made and amended. Stated differently, the actual operation of the homeowners association is governed by the bylaws of the association.

Among the specifics found in the bylaws are the policies governing the use of proxies, the budget and finance procedures and the qualifications and eligibility requirements for the officers and directors. Agenda and notice requirement for both membership and directors meetings can be found in the bylaws as well as the dates for the annual and regular meetings. The bylaws may also set out the requirements for designating a voting representative when the property has multiple owners.

When the bylaws are adopted, there is a substantial amount of discretion available in the selection of alternatives to govern the procedures that will be followed by the association. Familiarity with the exact procedures is an important prerequisite to successful operation of the homeowners association.

Rules and Regulations.

The supplemental restrictions authorized by the governing documents and promulgated by the board of directors are traditionally referred to as the “rules and regulations”. The rules and regulations are similar to the restrictions and covenants contained in the recorded declaration, but they do not carry the same validity and enforceability unless they are also recorded as part of the community documents.

The rules and regulations promulgated by the board of directors and not actually recorded can best be described as supplemental to the covenants and restriction. These rules cannot contradict or act contrary to the provisions in the declaration or its recorded exhibits. The standard of reasonableness for rules and regulations made by the board of directors must be carefully applied to insure their enforceability. To be valid, the regulations must be within the scope of the board of directors’ authority as described in the association’s governing documents.

Policy Statements and Resolutions

Statements of policy and resolutions of procedure outline and clarify existing standards of conduct for association members, property owners and their guests. They also establish standard forms for providing warning notices for violation of covenants or rules, and as reminder correspondence to members who are late or delinquent in payment of assessments or management charges. Every community has some established policies and standard procedures for carrying out the regulatory functions of the homeowners association.

In many communities, “policy statements” and “resolutions of procedure” are not written or formally codified as part of the governing documents. To preserve consistencies in the community’s policies and practices these standard operating forms and procedures of the board

of directors should be reduced to writing. The formal statements of policy and resolutions of procedure are then readily available for examination by all members and will insure consistency in both practice and procedure from one board of directors to another.

Resolutions of procedure may provide for temporary assignments in the use of common property or they may include a procedure for reserving use of recreation room for hall. The range of subject to be covered by policy statements and resolutions of procedure covers all aspects of community living. When the board of directors and the association take the time to reduce these policies and procedures to a written format, it helps to insure that the procedures are tailored to the needs of the association and that they will be applied in a uniform, consistent manner for the benefit of all members of the association.