



In The Know

the newsletter for association board members
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Documents, Statutes & Laws: Which Takes Priority?

Power to govern an Association is based on the authority granted by multiple sources. To make it a little confusing, just like the power the Federal Government has to override aspects of State laws, there is a hierarchy in the application of laws and documents to Associations. Take elections for example. If your documents do not provide a process for elections, you would then generally look to either the prevailing statute or in the case of an HOA where there are no statutes specifically, you would refer to the Not- or Non-Profit Corporate Act. The requirements imposed on Association actions apply in the order listed below. So, when several documents address the same issue, or there are conflicts between documents, the Declaration takes precedence over the Articles, the Articles takes priority over Bylaws.

Declaration (or Master Deed). Recording this document in the county where the community is located creates the covenants that bind the deed/title to the property. This document governs the property rights, covenants and restrictions.

Articles of Incorporation (or Charter). Articles of Incorporation is the official document that creates the corporation. Only a few states, generally applying to older communities, do not have this requirement. The Articles outlines the structure of the corpora-

tion and defines the powers of the Board of Directors. It is filed with the Secretary of State and is then recorded with the Declaration.

Bylaws. Bylaws relate to the administrative operation of the corporation. They are but a section in the entire document. Usually this document is also recorded with the Declaration. In the event an association does not have Bylaws; the authority would then fall to either the state statute or the Not-For-Profit Act governing corporations for issues of administrative guidance.

Rules and Regulations. Rules and Regulations are generally adopted by the association after its creation and then changed or updated as necessary. The Rules and Regulations may govern daily life addressing things like parking, quiet hours and amenity use. Rules and Regulations are likely to evolve over time and will change as the needs of the community change. Rules and Regulations cannot exceed the authority provided in the higher-level documents. For example, the Declaration may indicate that pets are permitted, so the rules cannot impose pet restrictions such as size, type, number unless this authority was provided in the Declaration. Another authority that often causes confusion is fines. Unless your Declaration or the Statute specifically provides for fining, a rule cannot cause it to be legally implemented.

The following laws would come into consideration ahead of your recorded documents:

Federal Law. Federal law supersedes any state laws or association documents which conflict with them. Examples would be the Fair Housing Act, U.S. Constitution and FCC Regulations.

State Law. Every state has a condominium act, referred to as a Condominium Act or a Horizontal Property Regime. There are 14 states that also have statutes specific to homeowners or community owner's associations. All associations are incorporated as a Not- or Non-profit. It does not mean that your Association cannot realize a profit at year-end; it simply means that unlike a for-profit corporation, you do not issue shares nor do you distribute profit to the members.

City/County Laws. The laws of the city and county where the community located will also apply. Some examples are:

- The city's or county's building code
- The city's or county's municipal codes and laws
- Local discrimination laws (different than protected classes)

