



# COMMUNITY BUILDER

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## The Basics of Association Governing Documents

The association's governing documents should guide each decision made by a board member. Sometimes, these documents can be intimidating, with unfamiliar terms and legalese. These documents take time to master and fully understand, and it may be necessary to read them several times and reference them frequently. There is often a need to review these documents and the many provisions within them with others, such as



the association's attorney, to come to a clear and accurate understanding. The following is a brief overview of each part of a standard set of governing documents for an association:

### **Declaration of Covenants, Conditions, and Restrictions (CC&Rs)**

The Declaration of Covenants (or simply "the Declaration"), generally referred to as the CC&Rs, is the legal document that lays out the guidelines for a planned community and is the foundational document for the association. Often referred to as 'covenants,' this document is legally binding and establishes the rules of the community, governing what an owner can and cannot do with respect to the property. These covenants, and any amendments thereto, are recorded in county records. Once recorded, a quasi-government is created among the property owners. Each owner must abide by the policies of the association and the conditions and restrictions imposed by them, and certain financial obligations. The Declaration also defines board and association responsibilities and the requirements to oversee community finances.

### **Articles of Incorporation (Articles)**

In most associations, the Articles establish the association's existence, generally as a not-for-profit corporation. This document formally establishes the entity (corporation) responsible for the community property's maintenance, management, and operation. The articles are usually brief and contain basic information about the entity.

## **Bylaws of the Association (Bylaws)**

The Bylaws establish the procedures for carrying out the day-to-day required responsibilities and typically define the powers of the Board of Directors and the duties of the officers on the Board. The Bylaws may define committees and how rules and regulations can be made and amended. Among the specifics found in the Bylaws are the policies governing the use of proxies, the budget and finance procedures, voting rights for membership, meeting frequency, the number of members who will sit on the Board, and the qualifications and eligibility requirements for the officers and directors. Notice requirements for membership and board meetings can also be found in the Bylaws.

## **Rules and Regulations, and Guidelines**

The association may establish rules and regulations if permitted in another section of the governing documents. Typically, the Declaration will include a provision that allows the Board to create them. The rules and regulations are developed to define the Declaration's restrictions more closely and concisely and establish processes and procedures to support the conditions. Examples of frequently created rules are hours of operation and the definition of authorized users for swimming pools, playgrounds, and other amenities. Rules and regulations may also set forth rules regarding the process for architectural changes and sometimes address items like the number of pets permitted, the use of recreational equipment, and much more. It is important to note that the rules and regulations may not contradict the covenants and, in some cases, may be more lenient than the Declaration's provisions but never more restrictive.

## **Supplementary Documents**

In some cases, a community may have additional documents that act to supplement the Declaration, Articles, and Bylaws. These include formal policies and procedures which are written to provide a complete and precise outline of the processes in place for some issues. Some examples of standard policies and procedures are assessment management, covenants enforcement, and fining procedures. Other examples of supplementary documents are the resolutions of the Board. Resolutions set forth the manner the Board intends to handle certain matters following the provisions of the governing documents. A resolution explains the process the Board took to arrive at a decision and creates a precedent for how the situation should be handled going forward.

## **The Hierarchy of Association Documents**

A hierarchy exists to set forth the order of law and documents and which takes precedence over another. Typically, that hierarchy functions in the following order: Federal Law > State Law > Declaration > Articles > Bylaws > Rules and Regulations > Policies. Note that this varies by state, and the Board should be sure to contact the association's counsel anytime there is a question about the association's governing documents.

For example, let's say the Board wants to create a rule that conflicts with federal law, such as disallowing all pets without considering disabled owners who have service animals. In the event of a dispute, federal law takes precedence. In situations like this, the Board may propose amendments to these documents to provide clarity and consistency. There may be issues where the Board is unclear on the intent of the documents or are entirely silent on an issue. In these cases, the Board should contact the association attorney. If the documents are ambiguous regarding the same topic, it is best practice to defer to the document hierarchy.

## Making Changes to Association Documents

It is common during the life of an association to need to make changes to the governing documents. Each governing document includes a defined procedure for making amendments. As outlined in the document itself, the process typically requires a vote of the members. Generally, changes to the Declaration will require a high level of owner approval. At the same time, modifications to rules are most often created and amended by the Board without the involvement of the members. If the Board is considering making amendments, the first step would be to consult the association's attorney to understand the process and costs involved.

To sum it up – board members should be familiar with the association's governing documents. A careful read of each of the documents will ensure understanding. Board members are the face of the community, and it is important that they be prepared to answer questions about their decisions and actions pertaining to the community restrictions, policies, and requirements provided by the governing documents. Whenever issues surface where the Board is unclear of the intent of the documents, the Board should not hesitate to involve the association's legal counsel.

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