

What are my association's "governing documents", and why should I care?

By Kelly G. Richardson, Esq.

When one thinks of governing documents, a community association member or real estate professional normally thinks only of "CC&Rs", (Covenants, Conditions and Restrictions). Mention CC&Rs, and a dreary picture of forty pages (or more) of legalese comes to mind. However, a community association's governing documents are far more than simply CC&Rs, and CC&Rs are far more than simply legal boilerplate.

What are governing documents?

Under the Davis-Stirling Act, "governing documents" include the articles of incorporation, CC&Rs, bylaws, and operating rules. Moreover, the subdivision map or condominium plan, the document creating the common interest development, also should best be considered a governing document. Each of the governing documents has a distinct purpose and function, and so is important for different reasons. None should be ignored, and any homeowner in a common interest development should have a copy of each.

The subdivision map or condominium plan

In a planned development, the subdivision map breaks up the land into "lots", while in a condominium, the condominium plan normally breaks up the land or airspace into "units" (older condominium projects were often also established with a subdivision map). Both these documents are recorded with the county recorder, and therefore are public documents fairly easily retrieved with the help of a title company. It is the map or plan which defines what is "common area" or "exclusive use common area" as well as the "separate interest" (i.e., the lot or unit). This can be very important in resolving questions such as "is my balcony part of the unit or is it exclusive use common area?" Because these documents establish a real estate interest, they cannot be amended without agreement of all those who share an interest in the development (including lenders) -- so as a practical matter, consider them non-amendable.

Articles of incorporation

The articles of incorporation is a document which establishes the legal "person" of the community association. This document is filed with the state, and so is also public. It can be retrieved by making a request to the California Secretary of State. The articles will state the legal name of the association, and should recite that the association is a non-profit mutual benefit corporation formed to manage a common interest development. The articles can be amended, but it is rarely necessary to do so.

CC&Rs

The declaration of covenants, conditions and restrictions ("CC&Rs"), are recorded, and therefore also is a public document. If your association does not have a recorded official copy of the CC&Rs, it can be retrieved with the assistance of a title company.

CC&Rs basically cover how the property is used, and how it will be taken care of. CC&Rs essentially are a long contract binding all owners in the project. This is true even if you do not receive a copy when you buy your home in a common interest development. So, when you buy into a project, the law assumes you have read (and understood) and agreed to those forty-plus pages. [This fact alone may cause you to put this article down and go look at your CC&Rs, but stay with me for a few paragraphs more].

CC&Rs can very much affect how you live in your association. There usually will be a section called “Use Restrictions” listing a number of prohibited activities or uses. Those restrictions can range from limits on pets to parking restrictions or even rental restrictions. In a multi-story condominium building, they may even state what type of flooring surface is permitted. CC&Rs will also usually indicate what the association will maintain or repair, as opposed to the maintenance or repair responsibilities of the individual member.

CC&Rs are amendable, subject to a vote requirement as stated in that document. That vote requirement is usually high, and can be difficult to achieve. Sometimes an association will successfully amend CC&Rs but fail to record the amendment on the entire project, or will inadvertently omit amendments when it provides copies of the original CC&Rs.

Although some sections of the CC&Rs are standard language not affecting your everyday life, read through the entire document to see what sections do affect you.

Bylaws

Bylaws should not address issues regarding the property, but should contain the association’s governance procedures and its most basic corporate operations. Annual meetings, voting procedures, role of officers, qualifications of directors and other such topics are normally found in the bylaws. Bylaws are not normally recorded, and technically are not public documents. If no official copy of the association’s bylaws can be found, there is no official place to retrieve a replacement copy. Bylaws can be amended by a vote of the membership, and usually require less votes than a CC&R amendment. However, bylaws, unlike CC&Rs, typically do not require updating to reflect major changes in the law.

Operating rules

At the bottom of the hierarchy are the association’s operating rules, sometimes known simply as “rules”, “house rules” or “regulations”. These are passed and amended by the board of directors, and do not require a membership vote. The rules must not conflict with state law or the other governing documents, and are not effective until distributed to the membership in written form. There are now special procedures in place to make sure members are notified in advance of proposed rules or rule changes. A board that fails to follow that procedure may wind up with an unenforceable rule.

Governing documents are important, and can give you much guidance regarding your life in a community association. If properly drafted, and carefully read, they can prevent disputes before they arise, through giving clear guidance to all concerning their rights and responsibilities in the association. Less disputes means less need for lawyers, which everyone (except we lawyers) would agree is a good thing!

Kelly G. Richardson, Esq., is Senior Partner in the law firm of Richardson & Harman, LLP, and is Past President of CAI-GLAC

-end-