



Governing Documents

Few people like fine print or red tape, but there are several important documents board members need to be familiar and comfortable with. Collectively, they're called governing documents. Depending on the type of association you live in, individual documents will differ. Each is a very useful tool that will provide specific guidance and requirements to which the association must adhere.

WHY ARE GOVERNING DOCUMENTS IMPORTANT?

- They give boards the authority to govern by providing for the operation and regulation of the association.
- They provide guidance and protect boards.
- They protect association members by spelling out their rights and responsibilities.
- They are supported by local ordinances, state statutes, and federal regulations.

Governing documents will provide the structure within which the board can work effectively, they'll guide board decision making, and support association operations.

Their greatest value, however, lies in the fact that they are agreed to by all owners when they purchase a home in the association. The governing documents create an objective and consistent framework establishing uniform rights, responsibilities and expectations thereby providing a positive common interest community experience for all.

Community association governing documents typically include several items in descending order of authority.

- Declaration or master deed, including Covenants, Conditions & Restrictions, or CC&Rs (in condominiums and planned communities)
- Proprietary lease, master lease, or occupancy agreement (in cooperatives)
- Articles of Incorporation
- Bylaws
- Rules and Regulations

THE DECLARATION

The Declaration (or Master Deed) contains the CC&Rs that regulate resident behavior. They bind all the owners to the association, establish association responsibilities, and define owners' rights and obligations. (In cooperatives, this document is called the proprietary lease or occupancy agreement.)

ARTICLES OF INCORPORATION

Articles of Incorporation initially create the corporation under state law and define the association's basic purposes and powers. They may specify such things as the number of directors, terms of office, and other specifics about how the board functions. (In some states, condominium and planned community associations are not legally required to incorporate. If you live in one of these states you probably have articles of association.)

BYLAWS

Bylaws contain provisions concerning actual association operations, such as meetings, procedures for electing the board members and officers, and general duties of the board. Sometimes the bylaws cover the same topics as the declaration.

RULES AND RESOLUTIONS

Boards adopt rules and regulations. They must be consistent with the declaration or proprietary lease, the bylaws, and state law. Rules are usually recorded at a board meeting in the form of a motion called a policy resolution. Making and enforcing rules are important responsibilities for boards that must be undertaken with care. See section 15 for more information.

In addition to policy resolutions, boards will also adopt administrative, special, and general resolutions. These resolutions specify how the association should operate. Board members should familiarize themselves with all association resolutions along with the other governing documents.

The Four Types of Resolutions

1. **Policy resolutions** affect owners' rights and obligations.
2. **Administrative resolutions** address the internal operations of the community association.
3. **Special resolutions** record board decisions that apply a policy to an individual situation.
4. **General resolutions** record board decisions regarding routine events.

TOOL 1.1-1.2: See the Sample Resolutions at the end of this section.

Cautions

The distinction between areas that are owned separately and areas that are owned in common is the cause of much misunderstanding in community associations. It's important to understand the differences based on the information in the governing documents.

Association governing documents must not conflict with federal regulations, state statutes, or local ordinances. It's important to have your association governing documents reviewed by the association attorney to ensure that they do not conflict.