



HOA Bylaws and Regulations

Everything you need to know

The structure with which an HOA functions, and the bylaws and regulations that each HOA is constructed around, are extremely important to residents and board members alike. However, finding your HOA's bylaws, understanding how they function and impact your HOA, and how ultimately they can be amended or changed if necessary, can sometimes be hard to comprehend without guidance.

Luckily, everything necessary to understanding what HOA bylaws are and how they actually work can be found in this comprehensive guide, so that no matter if you're governing or residing in an HOA, a lack of information won't be an obstacle in your way.

What are HOA Bylaws?

HOA bylaws are the specific rules designed to enforce how a respective HOA is run, usually on a day to day basis. Bylaws mostly revolve around operational issues, mainly pertaining to the board of directors of an HOA, and establish various rules and regulations that keep the structure of the HOA governing body in order.

Like any governing entity, corporation, or institution's bylaws, HOA bylaws:

articulate and regulate board members' powers
dictate how the operations of the board of directors affects residents
and establish the parameters for how board members and residents can interact with each other on a variety of issues

The purpose of bylaws is to provide communities with clear communication on how exactly the board members that preside over them are held accountable while in their positions.

How are HOA Bylaws Formed?

To fully understand the purpose of bylaws, however, it's also important to understand how they become established in the first place.

Once a community development is completed, the developer of that community officially formulates the HOA by composing an Articles of Incorporation and submitting those documents to their state's Secretary of State; these Articles of Incorporation officially establish that HOA as a nonprofit mutual-benefit corporation.

Subsequently, formulating these articles recognizes the newly established HOA legally. Once the legal status of an HOA is in place, establishing bylaws becomes one of the crucial steps in creating a fully-realized governing body for the community.

These rules mostly concern issues such as:

- board member powers, duties, and term limits
- meeting requirements for board members
- what might happen in the event of non-compliance of bylaws by either a board member or resident
- community finances

What is the Difference Between Bylaws and Covenants, Conditions, and Restrictions (CC&Rs)?

As mentioned before, the Articles of Incorporation establish more than just bylaws as governing documents; they also introduce some of the most important rules and regulations for residents formally known as Covenants, Conditions and Restrictions (CC&Rs).

CC&Rs are not only arguably the most important governing documents for an HOA, but the most extensive as well. They also contain the power to supersede almost any other governing provisions put in place by the HOA.

The function of these regulations is to establish and articulate the rights and responsibilities of the homeowners, as well as the specific rules that pertain to the land itself that the HOA is developed on. This is one of the key areas where CC&Rs differentiate from bylaws.

Whereas bylaws are primarily focused on the operational aspects of the HOA and how it functions, CC&Rs are much more focused on the rights provided to both the homeowners and the land itself, and how those rights coincide with each other.

One of the best ways to break down these distinctions is to provide examples that highlight why and how bylaws and CC&Rs differ from each other and what each of them primarily focuses on:

Bylaws:

- Board member term limits and election frequency
- HOA election requirements and location
- Officer duties and board powers

CC&Rs:

- Lot and property restrictions
- Insurance requirements for homeowners
- Rules and requirements regarding disputes between residents and the board
- Maintenance Requirements

Another key difference is the mandated pronouncement of CC&Rs and their requirement to be made public record, whereas bylaws are only included publicly if the HOA chooses to do so. This means that while bylaws are important intercommunal documents between residents and board members, CC&Rs typically expand that scope beyond just the community, and must adequately support the rights of the residents, the land, and the state all at the same time.

It is typically the job of the bylaws to support the voting and amending requirements needed to vote on regulations like CC&Rs if and when those delegations arise.

What Should Be Included in Your HOA's Bylaws?

The most helpful way to illustrate how an HOA should effectively structure its bylaws is to provide a detailed example of what exactly that document, in full, might look like and which bylaws are absolutely necessary.

1. Name and Purpose:

The very first bylaws, interestingly enough, are the ones in which the association states its:

- official name
- location
- the fiscal year in which it was established
- a statement of purpose regarding the proposed bylaws that will be enacted within the association
- the process with which the bylaws will supersede, or be superseded by, other regulations within the association
- The intent behind this bylaw isn't just to clarify the official details of the organization itself, but to make sure that the process by which the various regulations, such as the bylaws themselves, CC&Rs, and most importantly state law, will continuously be adhered to in a very precise order.

2. Membership Requirements:

After the official introduction and statement of intent of the bylaws, a subsequent and key component is to establish the parameters and restrictions regarding membership and residence within the HOA. This can include items like geographical and fiscal eligibility for becoming a member of the HOA, as well as the guidelines surrounding the membership's annual dues.

Here, the bylaws can establish:

- the process for becoming a member
- the annual cost of becoming, and staying, a member of the association
- the voting power that comes along with the membership

3. Member Meetings:

With voting power, comes the responsibility of each HOA member to vote for a variety of reasons when the board of directors calls for a meeting. Most documents including these bylaws establish an annual meeting, and the voting body requirements of the members needed to legitimize the voting process. This can include the percentage of association members in attendance, or the majority vote needed to enact or amend anything voted upon.

This bylaw is also beneficial for:

- establishing other voting processes such as special meetings outside of the annual meeting
- how members may utilize proxies to vote in their name
- the minimum member turnout for a meeting to consider quorum
- Although these are the main components necessary for this bylaw, some other inclusions here could be establishing the time and location for specific meetings, as well as documenting the means with which members will be notified about upcoming meetings.

This could be a section that includes a multitude of different items, yet as long as the bylaws are establishing the parameters with which meetings occur, with however it works best for the members of the community, that's what matters most.

4. The Powers/Duties of the Board of Directors

These are each important components to have because they specify both the powers and duties of the board members in relation to both state law and the members of the HOA. This section is also the introduction point for the board of directors, and establishing the board's existence before detailing what its purpose will be.

The powers section is usually reserved for explaining how the board members will remain in accordance with state law provisions, as well as detailing how and when their responsibilities as board members will be implemented to help run the HOA in every facet.

This can be a section that contains:

- how the board can implement penalties for CC&R and regulatory violations
- how and when the board can suspend a member's voting rights
- how the board might enforce its power on another board member if they don't uphold their individual responsibilities to the association.

The duties bylaw, on the other hand, revolve around the daily responsibilities of the HOA such as upholding maintenance and record-keeping policies, as well as how they plan to inform other association members of any lot inspections, assessments, or violations. Within this section, as well, can be the rules revolving around removal and resignations of board members in the event that they must occur, and how the voting structure works among the board members. A statement of the board's non-profit volunteership of their positions can also be stated in this section.

5. Board Member Meetings:

Although not always as crucial of a section, these bylaws help HOA members know what, when, and how their board of directors can meet, how many must be there to constitute a meeting, and what actions can or can't be taken during an official meeting of the board,

6. Officer Duties:

While establishing what the board of directors' duties are as a whole matters, establishing what each officer of the board is responsible for arguably matters even more.

Within this section, it is important to have a detailed rundown of every officer position, including president, vice president, treasurer, and secretary, as well as what each of their roles is to be.

This is also a good section to document how elections for the officers work, and when those elections typically occur.

7. Amendments:

The ability to alter bylaws is a necessary component to making sure your HOA's governance stays as fluid and up to date as possible, as the community evolves. With that, establishing the grounds for amendments to the bylaws, in the event that they either conflict with state law or the Articles of Incorporation, or if they are voted on by a majority of the HOA members to be altered, is of the utmost importance.

8. Non-Compliance With Bylaws

The last component is making sure the association has a documented plan for any violations of the bylaws, or if members are non-compliant with the rules in place. This is typically a place where the bylaws also establish how non-compliance is handled and what the penalty of a vote against a member in such a situation might entail.

Does an HOA Have to Have Bylaws?

The answer here is less about whether your HOA has to, and more of a question of whether your HOA should have a set of bylaws, and the answer is a resounding yes. The sheer act of legalizing the HOA as an organization should highlight the value of why putting together bylaws can't be overstated. Without them, an HOA can be prone to a structureless system without either the clear communications between board members and residents or the board member accountability necessary to create a well-organized community.

There is so little benefit to organizing an HOA without bylaws, especially in larger communities, that while not legally required, bylaws are essentially baked into any well-run HOA.

Can HOA Bylaws Be Changed?

Bylaws can absolutely be changed, but do require both specificity when requesting amendment, and popularity with the change itself.

The key to amending bylaws revolves around:

- A diligent process of locating the documents themselves so that one can be familiar with the specific wording in the text.
- Comprehending what the bylaws say in relation to what the proposed change or amendment might be.
- A well-rounded proposal that both meets the needs of the other residents and provides a solution to the flaw itself.
- Amending bylaws also requires a majority vote among residents, and one that is typically at least $\frac{2}{3}$ to $\frac{3}{4}$ majority votes in favor of the change. Therefore, change does require making sure whatever proposal you might have is cognizant of the other residents in your community as well.

Whether the case is to reduce or extend term limits of board members, or to amend membership requirements, changing bylaws means altering the entire operation of the HOA going forward. Being considerate and specific with your proposals will always yield better results.

Are HOA Bylaws Public Record?

HOA bylaws are not required to be public record, although they often are regardless. The reason behind that lack of requirement, compared to other HOA regulations such as CC&Rs which do have to be of public record with the county recorder's office, is due to the aforementioned differences between bylaws and CC&Rs.

Since bylaws focus on the operational aspects of the HOA, and because bylaws do not typically involve entities such as real estate in the text, it is not required by law for those bylaws to be documented publicly.

However, many HOA's do in fact record their bylaws publicly alongside the CC&Rs, in order to provide outside entities such as attorneys or land purchasers as much information as is readily available to eliminate any extra confusion on how the HOA fully operates. In either case, whether the HOA records its bylaws publicly or not, the important part is that the residents know where and how to access their community's bylaws if necessary, and how those records will be disclosed pertaining to state law.

Where Do I Find My HOA's Bylaws?

If your HOA's bylaws are made public record along with your HOA's CC&Rs, it's as simple as requesting their HOA's publicized documents through a state's Secretary of State's office and requesting that the entirety of the HOA's public records, or contacting their HOA directly for the recorded bylaws. Typically, the required information consists of your HOA's corporation name, its Tax ID number, or the Federal ID number assigned by your respective state's Secretary of State.

In the event that the bylaws have remained confidential, going straight to your board members and requesting the board's established bylaws is the best, and primary, option.

A third option would simply include locating the bylaws on your HOA's website or app if it has one to centralize all documents online in a secure system available to the homeowners.

Reaching out to a third party source like your management company can also be a valid option, seeing as how they would maintain all of your HOA's records.