

The Purpose of HOA Covenants, Bylaws and Variances

The Declaration of Covenants and the HOA Bylaws are two of the most important documents governing daily operations in Georgia's community associations. However, these governing documents serve two very different purposes.

Covenants

The Declaration of Covenants regulates owners' use and maintenance of their property and establishes the obligation to pay assessments to fund the community. The declaration also assigns maintenance responsibilities for common areas and individual lots or units and controls what owners may do in the community, impacting the exterior appearance of their property. These types of use restrictions serve as the legal foundation for maintaining community standards, protecting property values, and ensuring neighborhood consistency. Because declarations are recorded in the county land records and bind title to each owner's property, they automatically transfer to new owners when properties are sold. Covenants carry significant legal weight through both administrative and judicial enforcement processes. The HOA membership as a whole has authority to amend the Covenants.

Bylaws

HOA Bylaws establish policies and procedures for the governing of an association. They set qualifications for the election of directors, their number and term of office, their powers and duties, the appointment of officers, when and how meetings are held, quorum and voting requirements, the appointment of committees, etc. Bylaws are not recorded by the County Clerk, nor are they filed with the Secretary of State. The Board of Directors has authority to amend the Bylaws.

Variances

While HOA Covenants maintain a consistent and cohesive aesthetic within a community, occasionally an Owner may request a variance, a formal request to deviate from the established rules or standards due to a significant hardship or needs that prevents them from fully complying with the Covenants. This might include accessibility needs, unique property conditions, or other circumstances outside the homeowner's control. In these cases, the variance can provide necessary flexibility without compromising the overall integrity of the community. Variances can sometimes be temporary until a specific condition can be resolved.

A variance has the potential to create a precedent, which is why it's critical for the HOA to handle these requests carefully. And while variances can provide flexibility, they also have the potential to undermine the community's appearance and the HOA's authority and should be viewed as a last resort and used sparingly to maintain harmony within the HOA.

The Variance Submission Process

- 1. Submit a Formal Request:** The homeowner begins by completing the Variance Request Form at the end of this document. The request should include a description of the proposed change, reasons for the request, and any supporting documents such as photos, plans, or medical documentation, if relevant.
- 2. Review by the ARC and HOA Board:** The ARC and HOA Board reviews the request, considering factors such as the impact on community aesthetics, potential precedent, and whether the requested change aligns with the intent of the community's guidelines.
- 3. Gathering Feedback from Interested Parties:** In some cases, the HOA may notify homeowners about the variance request to gauge community support or objections. This can provide valuable context for the board and help avoid conflicts later on.
- 4. Decision and Conditions:** The board decides whether to approve, deny, or approve the variance with specific conditions. Conditions might include limitations on the scope of the change or requirements to maintain certain aesthetic standards. The board's decision is considered final.

Fox Lake Homeowners Association

Variance Request Form

Owner Name: _____

Date: _____ Lot Number(s): _____

Covenant Article and Section relevant to the request: _____

Description of the proposed variance: _____

Attach supporting documents such as photos, plans, or medical documentation, if relevant.

Owner Signature

Submit form to ARC@FoxLakeGA.com