

Governing Documents of the Community Association

A common interest development is created whenever a separate interest (that which the owner uniquely owns), is coupled with an interest in the common area or membership in an association, is conveyed, provided all of the following are recorded: (a) a declaration, (b) a condominium plan, if any, and (c) a final map or parcel map, if required. In other words, the developer may have set everything up, but until the first close of escrow of a unit, a CID has not been established. Transfer of title from the Declarant to an owner must occur.

The Governing Documents

Governing Documents for associations include:

- Declaration (CC&Rs)
- Articles of Incorporation or Articles of Association
- Bylaws
- Operating Rules
- Other Documents (as applicable)

Declaration

A "Declaration" is a document meeting the requirements of Civil Code § 4250. This document is sometimes also referred to as the "Declaration of Covenants, Conditions, and Restrictions" or the "CC&Rs."

A declaration, recorded on or after January 1, 1986, must contain:

a legal description of the CID (Common Interest Development); a statement as to which of the four types of CIDs, or combination thereof, is being created; the name of the association; the restrictions on use and enjoyment, which are intended to be enforceable, equitable servitudes.

The CC&Rs are restrictions on the use of the real property. It is also a public document (recorded in the county of the CID) that creates a binding contract between the owners and the association. The CC&Rs establish a contract between the association and the owner.

CC&Rs are considered equitable servitudes. This is a condition or restriction adopted for the good of many, such as architectural control intended to preserve the original design scheme and property values.

All owners of separate interests in a CID benefit from and are bound by the covenants and restrictions in the declaration, which shall be enforceable, equitable servitudes unless unreasonable. The servitudes (CC&Rs) may be enforced by either the separate interest owner or the association, or both.

In simple terms, the declaration sets out conditions that every owner must live by for the

common good. If the owner can prove that those conditions are against public policy or are not reasonable, they cannot be enforced, but usually, the rest of the declaration can be enforced.

Declarant: The declarant is the person(s) who signed the Declaration. The declarant is also referred to as the builder or developer of the common interest development (CID).

Articles of Incorporation or Article of Association

The Articles of Incorporation or Association (for an unincorporated association) state the purpose for which the CID is being formed. This document is filed with the Secretary of State, and it creates the corporate entity or unincorporated association. The initial date of the association's fiscal year-end is also established by the date the articles are filed. Many associations will amend their fiscal year filing period to reflect a calendar year-end.

Bylaws

This governing document sets forth the governance rules and defines the powers of the board of directors, officers, meeting requirements, election requirements, meeting of members and special meetings.

Rules & Regulations

For a rule to be valid, it must be reasonable, enforceable, in writing, and lawful. Rules & Regulations tend to supplement the CC&Rs and Bylaws to clarify or specify general restrictions. They are as enforceable as the CC&Rs and other governing documents and must be in writing; the adoption authority must be in the governing documents or conferred by law and must not be inconsistent with governing documents or law.

Rules are not recorded; however, discipline may be imposed on the separate interest owner for violations of it. Because of the constant changes to community association laws, good business practice is to have the association's governing documents reviewed and updated annually by an attorney who specializes in community association law.

Other Documents

Other documents that could be part of the governing documents are:

1. Declaration of Annexation, which is also called the Supplementary CC&Rs (used in phased developments)
2. Condominium plan (if applicable)
3. Tract maps (if applicable)
4. Other covenants running with the land, or conditional development permits
5. HUD regulatory agreements and deeds

6. Easements

7. Policies and board resolutions, if any

Hierarchy of Governance

These other documents mentioned above augment the declaration (CC&Rs) in various ways. The hierarchy of authority of governing documents is an important concept. But, before considering hierarchy, it must be understood that there are different purposes served by the different documents.

Within each of these purposes, the hierarchy of authority is outlined in Civil Code § 4205 and is as follows:

- (a) To the extent of any inconsistency between the governing documents and the law, the law controls.
- (b) To the extent of any inconsistency between the articles of incorporation and the declaration, the declaration controls.
- (c) To the extent of any inconsistency between the bylaws and the articles of incorporation or declaration, the articles of incorporation or declaration control.
- (d) To the extent of any inconsistency between the operating rules and the bylaws, articles of incorporation, or declaration, the bylaws, articles of incorporation, or declaration control.

Although the Articles and the Declaration serve different purposes, it is imperative to eliminate any conflicts between the Articles and the Declaration by amending one or both.

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