

# The ABC's of Governing Documents

by Natalie R. Walz, Esq.

**T**he pages are many and the type is small. But knowing and understanding an association's governing documents provides individual unit owners with invaluable information regarding their own property rights and their rights within the association. This, in turn, promotes harmonious community living.

An association's governing documents provide the legal framework under which an association operates. Governing documents typically consist of (1) a declaration, (2) articles of incorporation, (3) bylaws, and (4) rules and regulations. These documents define the relationship between the association and the individual unit owners. They establish the system for governing and funding the association. They set forth rules and regulations for the protection of the association and the individual unit owners, as well as promote affable living.

In order to understand how an association's governing documents affect an individual's rights, it is necessary to have a basic understanding of property law rights. When an individual owns a parcel of property, the law typically refers to the owner as having a "bundle of rights." When the individual owner has no restrictions on his or her use of the property, the individual owner is said to have the full bundle of rights.

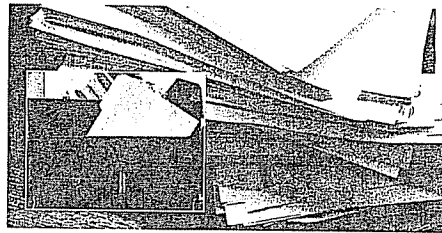
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Thank you!

## **Declaration**

An individual unit owner in an association, however, typically does not own the full bundle of rights to a parcel of property. In the case of property located within an association, the covenants and restrictions that affect an individual unit owner's bundle of rights are contained in the declaration. The declaration is typically filed on the property at the time the association is created and the covenants and restrictions therein "run with the property," meaning that subsequent owners (such as purchasing unit owners) purchase their property with those limitations included.



The declaration also typically provides the following: it identifies the portions of the development that are owned by individual owners and those owned collectively by the individual unit owners (often referred to as common areas); it binds the individual unit owners to the association and vice versa for purposes of maintaining, governing and funding the association; it sets forth the framework for the operation and management of the association; it establishes how the association will be transferred from the developer to the individual unit owners; and it provides the structure for funding the association through assessments.

## **Articles of Incorporation**

While the declaration provides important information regarding the structure of an association, the declaration does not actually create the association. Generally, an association is a non-profit corporation. If an association is a non-profit corporation, the association must be established according to state law governing the formation of corporations. This requires the filing of articles of incorporation with the appropriate state agency. The articles of incorporation set forth the basic terms

of the association's existence, such as the number and classes of shares and the purpose and powers of the association. Additionally, the articles of incorporation state whether a board of directors will govern the association, and, if so, names the initial board of directors. The number of directors, terms of office, and other specifics about how the board of directors functions may also be included in the articles of incorporation.

## **Bylaws**

Once an association is created, rules regarding how the association will function are needed so that the association is able to operate effectively. The bylaws are those rules or provisions adopted by the association for its internal governance. An association's bylaws typically address the requirements for membership in the association, the structure and function of membership meetings, procedures for electing board members and officers, the general duties of the board of directors, and the individual unit owners' voting rights. Oftentimes the declaration and bylaws cover the same topics.

Most association bylaws will also include an indemnification provision for the board of directors and officers, which is echoed in the statutes governing all non-profit corporations. The indemnification provision, in essence, shields the board of directors and officers from personal liability for those acts they take in performance of their duties for the association. The indemnification provision does not traditionally relieve the board of directors and officers from personal liability for those acts done with willful misconduct. An indemnification provision is generally included in the bylaws in order to alleviate any reluctance a member of an association would have in volunteering to be a member of the board of directors or an officer of an association.

## **Rules and Regulations**

Once an association has been created, and the board of directors has been elected, the association's board of directors

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## DOCUMENTS *continued from page 15*

generally also adopts rules, regulations and/or resolutions. The board of directors' authority to adopt such rules, regulations and resolutions is typically defined in the declaration and/or the bylaws. Often, resolutions that are passed by the board of directors are referred to as either policy, administrative, special or general resolutions.

Simply stated, the rules, regulations and resolutions set forth what is and is not permitted within an association. However, the rules, regulations and resolutions adopted by the board of directors need to be consistent with the association's other governing documents and state law. The rules, regulations and resolutions are typically passed by motion at board meetings and recorded in the board of directors meeting minutes.

Becoming a member of an association means that individual unit owners will generally not own the full bundle of rights that typically run with a parcel of property. However, all members of an association are generally subject to the same covenants and restrictions. A few sticks from the bundle are given up in exchange for the other benefits of association living. It is important for individual unit owners to understand their governing documents and how they interrelate to take full advantage of living within an association. ■

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