



## **#297 HOA Homefront – What Governing Documents Do (and Why You Should Care)**

By Kelly G. Richardson, Esq. CCAL

Associations typically have five different documents which very much affect association living and governance. In addition to CC&Rs, most associations have Articles of Incorporation, bylaws, operating rules and either a condominium plan or subdivision map. Unfortunately, most homeowners in common interest communities do not read these documents before they close escrow.

A corporation is created when articles of incorporation are filed with the state. In earlier years, articles of incorporation often contained significant limitations on association and board powers. However, all common interest development associations are not incorporated, and those will not have articles. Not all incorporated associations use their legal name. The bylaws will usually on the first page state the association's correct name and indicate whether it is a corporation. The Secretary of State can provide a duplicate copy of articles, and its web site will indicate if the corporation is still in good standing – visit <http://www.sos.ca.gov/>.

Bylaws, unlike articles of incorporation, are not filed with any public agency. Bylaws address governance topics such as the powers and limitations of the board, information on membership meetings, and board eligibility. Bylaws should not address the property, but how the corporation governs.

The subdivision map or condominium plan is the document by which a parcel of property is divided into lots or units for sale. It is filed with the County Recorder, and sometimes is attached to the CC&Rs as an exhibit. This document will describe what is common area and depicts or describes the boundaries of lots or units, and if the association has any easement areas or “greenbelts” over lots. Stock cooperatives and community apartments (also forms of common interest developments) will not have this document, since the form of ownership is different than in the planned development or condominium.

Declarations of covenants, conditions and restrictions are typically referred to as “CC&Rs.” Despite the document using a different name, as long as it is recorded on all the member properties, the document is a “declaration” under Civil Code 4250 for the purposes of the Davis-Stirling Common Interest Development Act. Declarations, or CC&Rs, are probably the most important and underappreciated of the governing documents. CC&Rs, once recorded on the property, are as much a binding contract on owners as their purchase agreements – even though the purchaser did not sign it and may not have reviewed it. Under Civil Code 5975, in lawsuits to enforce the governing documents, the winner has their attorney fees paid by the loser – so CC&Rs have more teeth than most owners realize.



Association rules are at the bottom of the governing document pecking order. The law calls them “operating rules” (Civil Code 4340). Per Civil Code 4205, rules give way to the bylaws, covenants, and articles of incorporation. While bylaws and covenants are amended by vote of the membership, rules are modified by board vote. Rules must be written. Boards must follow a specific statutory process when adopting, changing or revoking rules. That process is set forth in Civil Code 4360. Associations are required to have in place election rules, delinquency policies, architectural application policies, internal dispute resolution rules, and a schedule of fines.

Homeowners should have a complete set of their association governing documents and should read them sooner rather than later (unless you like surprises).

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