

Community Association Governing Documents

When a home is purchased in homeowner and condominium associations, they contractually agree to become part of an association with their fellow owners, all of whom are bound by the association's governing documents. Some of these documents are filed with the appropriate state or local government agency and can only be altered through a prescribed process.

The Plat, filed in the land records of the local court or agency, provides a line drawing that shows the location of buildings and units as well as common areas such as roads, parking lots and open spaces. The plat should not be confused with the site development plan (or site plan), which is a similar document showing the overall project and indicating approval by the local building authority.

The Declaration, commonly known as the Covenants, Conditions and Restrictions (CC&Rs), is a legal contract that binds homeowners to the association and the association to each of the homeowners. To a large extent, the CC&Rs identify units and common areas, define maintenance obligations of owners and the association and otherwise stipulate how the land can and cannot be used.

Articles of Incorporation, also known as charters, establish the association as a non-stock and not-for-profit corporation and give official life to the association as a legal entity. This is necessary because the association holds title to the land comprising the common area.

The Bylaws are operational guidelines, dealing with the organizational and administrative aspects of the community, such as elections, meetings and the composition of the association board.

The Rules and Regulations provide a detailed explanation of what is and isn't permitted in a community. These provisions are typically adopted by the association board, whose members are elected by their neighbors to govern in the best interests of the community as a whole.



Governing Documents

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The purpose of a community association's governing documents is to provide for the legal structure and operation of the community.

The documents:

- Define the rights and obligations of both the association and its owners
- Create a binding relationship between each owner and the association
- Establish the mechanisms for governing and funding the association's operations
- Set forth rules and standards for the:
 - Protection of both owners and the community
 - Enhancement of property values
 - Promotion of harmonious living

HIERARCHY OF AUTHORITY

The general hierarchy of authority for governing documents is a loose one because not all documents address all issues involved in operating a community association.

For operating a community association, the general hierarchy of authority among governing documents consists of:

1. Recorded map, plat, or plan
2. Declaration; covenants, conditions, & restrictions; master deed; proprietary lease; or occupancy agreement
3. Articles of incorporation (if incorporated)
4. Bylaws
5. Rules and regulations
6. Other resolutions

RECORDED MAP, PLAT, OR PLAN

Some form of map is an essential document for a condominium or a planned community. A map, plat, or plan is recorded in the County Recorder's office before any lots or units shown on it are sold. The purpose is to show the precise location of each lot or unit, as well as the common areas. The format and content will differ according to local requirements. A map, plat, or plan may help define an owner's or a community's title to property.

On an operational level, it helps determine:

- Who is responsible for maintaining a particular piece of property
- Whether a property improvement is properly located

Some states require cooperatives to submit a legal description of the land involved and an architectural drawing.

DECLARATION, CC&RS, OR MASTER DEED

An understanding of the declaration; covenants, conditions, & restrictions (CC&Rs); or master deed requires an understanding of the rights of ownership first. Under Anglo-American common law, the ownership of land has been characterized as a "bundle" of rights. In the absence of any restrictions, the landowner traditionally has the full bundle. For example, he or she possesses the right to lease the property, build on it, mortgage it, occupy it, etc.

When people buy a parcel of real estate, the bundle of rights is defined in the deed to the property, as it is in the previous deeds for the same parcel. All of them are recorded in the land records. These documents are sometimes called the "chain of title."

The provisions in deeds which define or limit the rights of ownership are often called deed covenants or deed restrictions. The legal community speaks of these covenants or restrictions as “running with the land.” That is, they apply to the land, no matter who owns it in the future.

Instead of inserting all of the same covenants and restrictions into each individual deed in a community development, the developer draws up a declaration of covenants, conditions, and restrictions—or something with a similar name. The developer records this declaration in the County Recorder’s office before any of the real estate is transferred to any other owner.

The provisions in deeds which define or limit the rights of ownership are often called deed covenants or deed restrictions.

This means that the declaration is in the chain of title for each piece of real estate. Its terms are binding on the real estate itself, as well as on its original and succeeding purchasers. As a result, the declaration defines the bundle of rights of each owner in the community association.

For condominiums, this document is called the **declaration** or the **master deed**. For planned communities, it is called the **declaration of covenants, conditions, and restrictions**—or **CC&Rs**.

The declaration, CC&Rs, or master deed generally:

- Defines the portions of the development owned by the individual owners and those owned by the community association
- Creates interlocking relationships binding all of the owners to one another and to the association for the purposes of maintaining, governing, and funding the development
- Establishes protective standards, restrictions, and obligations in areas ranging from architectural control to prohibitions on various activities in order to promote harmonious living
- Creates the administrative framework for the operation and management of the association—although many of the specific administrative details are spelled out in the bylaws
- Provides the mechanism for financial support of the association through assessments
- Provides for a transition of control of the association from the developer to the owners

ARTICLES OF INCORPORATION

Incorporation may or may not be a legal requirement for a community association. It is essential for cooperatives to be incorporated because they are based on the corporation concept. Planned communities are almost always set up as not-for-profit, non-stock corporations. Condominiums often are incorporated. However, they do not have to be because they exist under the authority of a state condominium statute.

A community association's corporate structure is established when a developer sets up the association. The developer files articles of incorporation—sometimes called a corporate charter—with the appropriate state corporation agency. Different states have different names for this agency.

The Articles of Incorporation:

- Bring the corporation into existence
- Define its basic purposes and powers
- Indicate whether stock will be issued
- Indicate whether there will be a board of directors—and if so, identify the initial board

There are a number of benefits to incorporating a community association.

Incorporation:

- Limits the liability of individual owners for acts of the community association
- May make it easier to deal with other parties, such as utility companies or vendors.

BYLAWS

Bylaws are formally adopted governing regulations for the administration and management of a community association. Planned communities, condominiums, and cooperatives all have bylaws. Sometimes bylaws are developed as part of the declaration. At other times, they are adopted as soon as a corporation is established.

Bylaws address such topics as:

- Requirements for membership in the community association
- Requirements for membership meetings
- Voting rights of member owners
- Procedures for electing the board of directors
- Procedures for the board of directors to elect officers
- General powers and duties of the board
- Provision for indemnification of officers and directors—except in cases of gross negligence or willful misconduct. To indemnify and hold harmless means:
 - To exempt an individual or entity from responsibility for claims made against the organization
 - To reimburse the individual or entity for damages or expenses incurred as a result of such claims

RESOLUTIONS

Rules and regulations for all three types of community associations are also established by means of board resolutions. A resolution is a motion that follows a set format and is formally adopted by the board of directors. Resolutions may enact rules and regulations or formalize other types of board decisions.

There are four types of resolutions for a community association:

- 1. Policy resolutions.** These are resolutions that affect owners' rights and obligations. For example, rules for the use of common areas and recreational facilities, architectural guidelines, enforcement procedures, etc.
- 2. Administrative resolutions.** These are resolutions that address the internal operations of the community association. Examples include operating procedures, collection procedures, and where board meetings will be held.
- 3. Special resolutions.** These are resolutions stating board decisions that apply a policy or rule to an individual situation. For example, a decision about an alleged rule violation or authorization of a lawsuit constitutes a special resolution.

4. General resolutions. These are resolutions which involve routine events.

Examples include adoption of the annual budget or approval of a contract.

The power of the board to enact rules and regulations is generally defined in the declaration and/or the bylaws. Sometimes, the board's right to enact rules is limited by the requirement that the members approve the rules.

Resolutions should be kept in a Book of Resolutions. This is an orderly, indexed record of the resolutions adopted by the board. In some communities, it includes the resolutions adopted by the architectural guidelines committee as approved by the board.



CAI RESOURCES

The Essentials of Community Association Volunteer Leadership, by Katharine Rosenberry, ESQ.

The Homeowner and the Community Association, by Community Associations Institute

COMMUNITY RULES AND REGULATIONS

Membership in community associations is mandatory. When you buy a house or unit in a community association, your real estate agent should provide you with a copy of the rules and regulations of the community and information on the association dues. It is an owner's responsibility to abide by the rules and regulations as set forth by the community association's governing documents.

PURPOSE OF RULES AND REGULATIONS

The fundamental purpose of community association rules is to provide a basis for protecting members' equity in the development and to provide the framework within which people can live in harmony in a group situation. Specific purposes of rules also include:

- Enforcing the community's CC&Rs, bylaws, and policies in a fair, diplomatic way
- Protecting, enhancing, and promoting the purposes of the association as stated in the legal documents
- Restricting and governing the use of the common areas and amenities
- Establishing architectural guidelines and controls for aesthetic value
- Establishing rules for the use of facilities by owners, guests, and tenants
- Amplifying, expanding, clarifying, and interpreting the broad restrictions in the association's governing documents
- Protecting and preserving the property and assets of the association and the owners

Most rules are merely expressions of unit owners being courteous and considerate of their neighbors, and respectful of their rights and investment in the community. For a purchaser, the rules establish the standards of life-style of that particular community. He or she should look elsewhere if this is not the standard that he or she wants and is willing to support, maintain, and enhance as an owner-member.

is terminated, the termination of this Declaration shall be evidenced by a termination agreement ("Termination Agreement"), or ratification thereof, executed by the requisite number of Owners. The Termination Agreement shall specify a date after which the Termination Agreement will be void unless recorded before such date. The Termination Agreement shall be recorded and the termination of this Declaration shall be effective upon such recording.

10.2 Amendment of Declaration by Declarant. Until such time as Declarant or a Participating Builder has conveyed any portion of the Common Interest Community to individual home buyers (as opposed to Participating Builders), any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination. Declarant reserves the right to unilaterally amend this Declaration in all circumstances permitted by the Act. Notwithstanding anything contained within this Declaration, and to the extent permitted by the Act, if Declarant determines that any amendments to this Declaration or any amendments to the Articles or Bylaws shall be necessary in order for existing or future mortgages, deeds of trust, or other security instruments to be acceptable to the Veteran's Administration, the FHA, the FNMA, or the FHLMC then Declarant shall have and hereby specifically reserves the right and power to make, execute and record any such amendments without obtaining approval of the Owners, Members or First Mortgagees (or any percentage thereof). Notwithstanding anything contained within this Declaration, during the period of Declarant control over the Master Association, amendments of documents previously approved by the FHA, must be subsequently approved by the FHA.

10.3 Amendment of Declaration by Members. Except as otherwise provided in this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment by Members holding at least seventy-five percent (75%) of the voting power of the Association entitled to vote. The approval of any such amendment or repeal shall be evidenced by a certification executed by the requisite number of Members. The amendment shall be effective upon the recordation of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Association setting forth the amendment in full and certifying that the amendment or repeal has been approved by the Members. Any amendment to the Declaration made hereunder shall be effective only when Recorded.

10.4 Amendment to Terminate Declaration. To the extent permitted by the Act, any amendment to this Declaration which would terminate the Declaration shall require, in addition to the requirements of Sections 10.2 and 10.3 above, the written consent of the City. The written consent of the City shall not unreasonably be withheld if, among other factors deemed relevant by the City, adequate assurances and provisions are made for ongoing long-term maintenance of the Common Area and Improvements thereon and water quality monitoring continues as set forth in the Arboretum Agreement. This provision requiring City consent to terminate this Declaration may not be amended without the advance written consent of the City.

10.5 Amendment of Articles and Bylaws. The Articles of Incorporation and Bylaws may be amended in accordance with the provisions set forth in such instruments or, in the absence of such provisions, in accordance with applicable provisions of the Colorado Nonprofit Corporation Act.

10.6 Special Rights of First Mortgagees. Any First Mortgagee (meaning a Mortgagee with first priority over other Mortgages) of a Mortgage encumbering any Lot in the Common Interest Community, upon filing a written request therefor with the Association, shall be entitled to (a) written notice from the Association of any default by the Mortgagor of such Lot in the performance of the Mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws, or the Rules

applicable provision of this Article that shall not have been invalidated.

9. MISCELLANEOUS.

9.1 **Amendment of Bylaws.** Subject to any approval or requirements of the FHA or VA or of First Mortgagees required under the Declaration, the Board of Directors shall have the power to alter, amend or repeal these Bylaws or any provision herein, or to adopt new Bylaws. Notwithstanding the foregoing, no alteration or amendment shall result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer. Further, the Members, at a meeting called for that purpose, shall also have the power to alter, amend or repeal these Bylaws or any provision herein, or to adopt new Bylaws. The Bylaws may contain any provision for the regulation or management of the affairs of the Association not inconsistent with law, the Declaration or the Articles of Incorporation, except that no amendment to Section 11 hereof or its subsections may be made without Declarant's prior written consent.

9.2 **Execution, Certification and Recording Amendments to Declaration.** The President, or the Vice President in the President's absence, and the Secretary of the Association shall prepare, execute, certify and record amendments to the Declaration on behalf of the Association.

9.3 **Compensation of Officers, Directors and Members.** No Director or Officer shall have the right to receive any compensation from the Association for serving as such Director except for reimbursement of expenses as may be approved by resolution of disinterested members of the Board of Directors.

9.4 **Books and Records.** The Association shall keep correct and complete books and records of account and shall keep, at its principal office in Colorado, a record of the names and addresses of its Members, including Declarant, and copies of the Declaration, the Articles of Incorporation and these Bylaws which may be purchased by any Member at reasonable cost. All books and records of the Association, including the Articles of Incorporation, Bylaws as amended and minutes of meetings of Members and Directors may be inspected by any Member, or his agent or attorney, and any First Mortgagee of a Member for any proper purpose. The right of inspection shall be subject to any reasonable rules adopted by the Board of Directors requiring advance notice of inspection, specifying hours and days of the week during which inspection will be permitted and establishing reasonable fees for any copies to be made or furnished.

9.5 **Annual Report.** The Board of Directors shall cause to be prepared and distributed to each Member and to each First Mortgagee who has filed a written request therefor, not later than 90 days after the close of each fiscal year of the Association, an annual report of the Association containing (a) an income statement reflecting income and expenditures of the Association for such fiscal year; (b) a balance sheet as of the end of such fiscal year; (c) a statement of changes in financial position for such fiscal year; and (d) a statement of the place of the principal office of the Association where the books and records of the Association, including a list of names and addresses

(k) Easements. The power to grant easements where necessary for utilities and other facilities over the Association Properties to serve the Community Area as set forth in the Declaration and to grant and convey such other easements as the Board of Directors deem prudent including, but not limited to, easements which benefit property located outside the Community Area.

(l) Rules and Regulations. The power to adopt such Rules and Regulations as the Board may deem necessary for the management of the Community Area. Such Rules and Regulations may concern, without limitation, use of the Association Properties, signs, parking restrictions; commence collection and disposal of refuse; minimum standards of property maintenance consistent with the Declaration and the standards adopted by the Design Review Committee; and any other matters within the jurisdiction of the Association as provided in the Declaration; provided, however, that such Rules and Regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles and these Bylaws.

(m) Annexations. The power to annex additional real property to the Community Area as more fully provided in the Declaration.

Any of the aforesaid duties may be delegated by the Board to any other Person(s) or to a Manager. To the extent it may be required by any statute, and if not required by statute then at the option of the Board, said Manager or other person who receives the delegation of duties relating to the collection, deposit, transfer or disbursement of Association funds shall: (1) maintain fidelity insurance or a bond in an amount not less than \$50,000 or such higher amount as the Board may require; and (2) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the Manager or other person(s) and maintain all reserve accounts separate from operational accounts of the Association. Further, the Manager, or a Public Accountant or Certified Public Accountant shall prepare and present to the Association an annual accounting for Association funds and a financial statement.

5.3 Qualifications of Directors. A Director may be any natural person and need not be an Owner of a Lot within the Community Area; provided, however, that upon the expiration of the Declarant's Control Period, at least a majority of the Directors shall be Owners, other than Declarant, or designated representatives of Owners other than Declarant. A Director may be reelected and there shall be no limit on the number of terms a Director may serve.

5.4 Number of Directors. The number of Directors of the Association shall be five. The number of Directors may be increased or decreased in accordance with these Bylaws provided that the number of Directors shall not be less than three and no decrease in number shall have the effect of shortening the term of any incumbent director.

5.5 Appointment, Election and Term of Office. Notwithstanding any other provision contained herein:

(a) Prior to the time Members, other than Declarant, own twenty-five percent (25



CC&Rs At A Glance

3.1 Maintenance of Common Interest Community

- You must maintain your lot and not allow it to fall into disrepair
- Kept and maintained in a clean, attractive, and slightly condition
- Upkeep is the responsibility of the owner

3.2 Property Use

- All lots use for private residential or commercial/retail purposes
- Single family residence only – definition of family very subjective
- In home businesses allowed if inside only – no evidence externally - no employees or customers on site
- No offense or noxious activities

3.4 No Noxious or Offensive Activity

3.5 No Annoying Sounds or Odors

3.6 No Hazardous Activities

- Unsafe
- Hazardous
- Fires contained only

3.7 No Unsightliness

- All unsightly condition, structure, facilities, equipment, objects, and conditions shall be enclosed within a structure
- Snow removal equipment out of view
- Trash containers out of view
- Garden and maintenance equipment out of view
- All except when in actual use

3.8 Holiday Decorations and Lights

- Removed and store no later than 30 days following the expiration of the holiday

3.9 Weeds

- Entire lot mowed to a maximum of 6"
- Lot kept free from brush

3.10 Buffer Zone

- Lots adjacent to the Arboretum – no structures unless approved

3.11 Garbage and Trash

- No refuse, garbage, trash, limber, grass, shrub, tree clippings, plant waste, compost, metal, bulk materials, scrap, or debris shall be kept, stored or allowed to accumulate unless in a covered container
- Trash containers may be placed outside at such time as necessary to permit removal

3.12 Animals

- No livestock, poultry or bees
- Reasonable number of dogs, cats, fish, birds or other domestic animals which are common household pets
- None for commercial purposes

3.13 No Temporary Structures

- No tents, shacks, temporary structures or buildings unless approved by the DRC

3.14 Landscaping Requirements

- All grass shrubs and trees kept and maintained in an attractive, healthy, live and growing condition

3.15 Antennas, Pipes, Utility Lines and Transmitters

- All shall be kept and maintained underground or within an enclosed structure
- All shall be approved by the DRC

3.16 Signs and Advertising

- No sign poster, billboard, advertising device in public view except
 - Approved by DRC
 - Security System
 - Legal process sign
 - Lot for sale or lease
 - Political sign if within legal timeframes

3.17 Restriction on Mining and Drilling

3.18 Maintenance of Drainage

3.19 Insurance Requirements

3.20 Compliance with Laws

3.21 Further Subdivision of Lots

3.22 Sewage and Disposal Systems

3.23 Water Systems

3.24 Restoration in the Event of Damage or Destruction

- Restoration of Lot and structure must be approved by DRC

3.25 Storage

- No building materials stored except temporality during continuous construction

3.26 Vehicle Repairs

- No maintenance, servicing or repairs of any type of vehicle, boat machine or device except within an enclosed garage

3.27 Storage of Gasoline and Explosives

3.28 Trailers, Campers and Junk Vehicles

- Cannot be parked or stored in, on or about the Lot or street except within an enclosed garage

3.29 Fences Prohibited

- Fences shall be approved by the DRC

3.30 Air Conditioning and Heating Equipment

- All units must be on the ground except for solar

3.31 No Overnight On-Street Parking

3.32 Basketball Hoops

- Free standing only
- Set perpendicular to the street
- Portable

3.33 Play Equipment

- Erected within a fenced screen area
- Approved by the DRC

3.34 Swimming Pools and Hot Tubs

- Shall be screened from view

3.35 Dog Houses/Runs

- Screened from view
- Compatible with materials used for other improvement such as house and fence

3.36 Participating Builders

3.37 Owner's Right to Lease

4.1 Approval of Improvements Required

- Approval required from the DRC for any exterior improvement to the property

The CC&Rs can be found in its entirety at www.trailmark.org

The Importance of Covenant Compliance

A common interest community is a collection of real estate lots that are subject to a declaration document known as Covenants, Conditions and Restrictions (CC&Rs). The lots are subject to the CC&Rs regardless of who owns the lot. When you closed on your home and signed the dotted line you as the owner agreed to abide by the declarations of that community.

The CC&Rs are the governing legal documents that set up the guidelines for the operations of the planned community as a non-profit corporation. The CC&R's were recorded by the County in which the property is located and are included in the title to your property.

The reason the Home Owners Association (HOA) has CC&Rs is to ensure proper order, harmony and running of the community. Without these basic tenets of organization, everyone living in the neighborhood would be free to do as they pleased, leading to many issues and problems related to property values, quality of life, safety, enjoyment of property, overall appearance and maintenance. Homeowners in part chose TrailMark for its appearance, attention to safety and continued maintenance of the community.

The TrailMark HOA does not have a full-time inspector on site. Inspections are random on purpose, and between inspections, a violation may occur. We ask that residents do their part in keeping the community neat and attractive by calling or emailing the compliance officer so they can place the concern on the list for inspection. Keep in mind that a violation of the CC&Rs is not considered an emergency and if you feel an issue is such, please call the Littleton Police Department for assistance.

The HOA hopes to gain VOLUNTARY compliance with residents and does not want to issue fines or demanding letters and notices. The homeowner's lack of action or communication will be the determining factor when pursuing further action. If your property is found to be in violation you may see the following process occur:

Issuance of a Courtesy Notice - Please don't take offense to this notice. The Courtesy Notice (CN) provides an opportunity to educate and inform residents that a violation has been identified and needs to be corrected. The notice includes contact information, and we encourage residents to ask questions, request extensions, if necessary or inform the inspector that the violation is being addressed. You may already be aware of the problem, but the inspector has to assume that the owner is not or the violation would not be present.

Issuance of a Warning Notice- A Warning Notice (WN) may be issued if the CN appears to have been ignored and the violation is noted during a second inspection. In some cases, a WN may be the first notice issued depending on the circumstances. If the timeframe provided cannot be met we encourage homeowners to contact the inspector after any notice is issued so the need for further action can be avoided. If the violation remains and you have not made contact with the inspector, the natural assumption will be that you are choosing to ignore the notice.

Further Notices - If the violation remains and no satisfactory communication toward resolution has occurred between the inspector and the resident the HOA can begin to issue fines. This, of course, is not the route the HOA wishes to take but the property owner's actions or lack thereof will put the HOA in a position where they have to take further action to fulfill their responsibilities to the Community.

Please keep in mind that there is a specific legal process that is followed and some of these violations take time to resolve. It is important to refrain from making assumptions that “nothing has been done”. You will probably be surprised to find that a lot has been done behind the scenes. If an issue appears to be unresolved, most of the time it is because the owner has failed to respond or has chosen to ignore the notices or in some cases has made approved arrangements for an extension. We encourage you to call Covenant Compliance and ask what the status is of a particular concern before you make assumptions. Specifics cannot be divulged, but we can tell you if a property has an open, active case.

Remember that you chose to live in a common interest community with CC&Rs. These restrictions and conditions benefit you in many ways. Having to put your trash containers away at night after pick-up seems silly but if everyone felt that way and left them out no one would like the cluttered look of the community. Removing your basketball hoop from the street or sidewalk may be inconvenient but if everyone placed them in the streets or on the sidewalks, the snow plows and street sweepers will not be effective and the sidewalks would be impassable for those with special needs, seniors, and young children. No one should be forced out into the street.

It is the responsibility of everyone in the community to follow the rules and set an example for others. Property values and appearance are important to everyone especially when your home is often your biggest investment and remember that most moved into the community because there are rules.



DORA

Department of Regulatory Agencies

The HOA Information & Resource Center

COVENANT & RULE ENFORCEMENT

One of the key features of a homeowners' association ("HOA") is that they are covenant-controlled communities. Covenants and rules provide a mechanism to ensure architectural conformity, aesthetic integrity, and uniform enforcement. Upon moving to an HOA, a homeowner agrees to be subject to the covenants and rules of an HOA. The buyer cannot negotiate the covenants with the seller and they are deemed to "run with the land" and automatically pass with the chain of title in a covenant-controlled community. Homeowners should also understand that they may be subject to the HOA's enforcement should they be non-compliant with the covenants or rules and regulations.

It is important to know and understand the covenants and rules and regulations that govern your HOA. Covenant and rule enforcement are some of the biggest sources of contention in HOAs. By knowing the covenants, rules and procedures of your association you can

help avoid problems that may be very costly or jeopardize your relationships with the members of your HOA.

By-Laws, Rules and Regulations

— BY-LAWS

ARTICLE I

What is the difference between a covenant and a rule? Restrictive covenants are deed provisions, which restrict the manner in which you can use your property and the appearance of your property. Covenants are broken up into architectural restrictions and use restrictions. Architectural restrictions generally require conformity in the appearance of the property, the material used to build, and may require approval for improvements additions. Use restrictions address the manner in which your property and the common areas can be used, addressing such things as parking, leasing, and pets. Restrictive covenants are contained in the Declaration (also referred to as the Declaration of Covenants; Covenants, Conditions, and Restrictions; or CCR's) and are drafted and recorded with the Country Clerk and Recorder at the time the HOA is created.

The board and its committees create the rules and regulations of the HOA. Rules govern how owners are to conduct

themselves on the common areas and on the use of their property, commonly addressing parking, use of HOA property and facilities, and pet issues such as leash and waste rules.

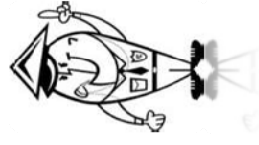
What happens if I violate a covenant or a rule? An HOA can enforce covenants in a court of law against the violator and can seek to enjoin violators through a temporary restraining order and injunction. In addition, the HOA may seek to have the property returned to the condition it was prior to the alleged violation. This can result in costly litigation and construction costs. An HOA can also record a Notice of Covenant Violation, which operates similar to a lien and gives potential purchasers notice that there is a covenant violation on the property and could hinder the sale of the property.

An HOA may also seek to enforce its rules and regulations through a hearings process. HOAs may levy fines to induce compliance and if the violator fails to pay, the association may place a lien on the property and ultimately sue the homeowner or foreclose on the property. The HOA's governing documents may also provide that if an owner is in violation of a covenant or rule their voting rights may be suspended or the HOA may be allowed to suspend the use of recreational facilities or other HOA amenities. If it is determined that an owner is in violation of the covenants, the HOA may be entitled to

attorneys' fees and costs in enforcing the restriction.

Can an HOA fine me without hearing my case? A homeowner has the opportunity to present their case before a fine can be levied. The Colorado Common Interest Ownership Act ("CCIOA") requires HOAs to adopt policies, procedures, and rules and regulations concerning enforcement of covenants and rules, including notice and hearing procedures. Fines may not be levied for a violation of rule unless an HOA has a policy for a fair and impartial fact finding process and provides the owner notice and opportunity to be heard before an impartial decision maker.

What happens if my neighbor is in violation of the covenants? How do I enforce the covenants against him? An owner may contact the HOA to let them know that a violation has occurred and the HOA can seek to compel enforcement of the covenant.



How do the owners change the covenants?

- ↳ Changing covenants requires the amendment of the HOA's declaration. Under CCIOA the declaration can be

amended only with the affirmative vote of between 50% and 67% of the votes of the HOA (the governing documents will set the percentage).

How do we change rules? The bylaws will address how rules are created and changed in an association. Usually rules are created and changed by the board or it's committees.

What happens if my HOA does not enforce the covenants? The board has a duty to enforce the covenants. Some governing documents allow for the board to exercise discretion in the enforcement of the covenants while others require consistent mandatory enforcement. If the HOA is not enforcing the covenants it may be breaching its corporate duties.

Can my HOA tow or boot my car? Provided there is a stipulation in the covenants or rules, a parking violation may give the HOA authority to tow or boot a car.



Things an owner should keep in mind about covenants and rules. Know the covenants of your HOA thoroughly. Know

if you need approval before making architectural changes. It may be very costly if an owner undertakes a project that is in violation of the covenants. For boards it is important to enforce its covenants and rules fairly and consistently. It is also important for boards to know their boundaries. Rules cannot violate state and federal laws, including fair housing rules, OTARD, and laws pertaining to discrimination. Senate Bills 100 and 89 address certain provisions that rules or covenants cannot conflict with, such as rules pertaining to flags, xeriscaping, energy efficient devices, and commercial vehicles.

Colorado Division of Real Estate
HOA Information & Resource Center
1560 Broadway - Suite 925 Denver,
CO 80202

3.11 Restrictions on Garbage and Trash. No refuse, garbage, trash, lumber, grass, shrub, tree clippings, plant waste, compost, metal, bulk materials, scrap, or debris of any kind shall be kept, stored, or allowed to accumulate on any Lot except within an enclosed structure or unless appropriately screened from view, provided that all household refuse shall be kept at all times in a covered container or otherwise protected from wind and wild animals (including without limitation bears, mountain lions, raccoons and other animals native to the area) which covered containers may be placed outside at such times as may be necessary to permit garbage or trash pick-up. Members shall be required to use the garbage removal service designated by and contracted with the Association and shall pay for such garbage removal through the monthly Common Assessments.

3.12 Animals. No animals, livestock, poultry or bees of any kind shall be raised, bred, kept or boarded on the Property, except that the Owner of each Lot may keep a reasonable number of dogs, cats, fish, birds or other domestic animals which are common household pets so long as such pet(s) is/are (i) not kept for any commercial purpose; (ii) kept confined or under restraint at all times and adequately protected from wild animals, including without limitation bears, mountain lions, rattlesnakes, and other animals native to the area; and (iii) not kept in such number or permitted to act in such manner as to create a nuisance. Notwithstanding anything to the contrary contained in the foregoing, the Board shall have, and is hereby granted, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that any Owner is otherwise in violation of this Section; and to take such action or actions as it deems necessary to correct any such violation. It is expressly understood that any Owner's right to keep household pets is coupled with a responsibility for such pets and accordingly, each Owner of a household pet is financially responsible and liable for any damage caused by such pet. By purchasing a Lot in the Common Interest Community, each Owner also acknowledges and accepts that the Common Interest Community is located in prime habitat for wildlife, and therefore shall be prohibited from feeding, watering or otherwise attracting to the Common Interest Community any of such wildlife excepting only birds.

3.13 No Temporary Structures. No tent, shack, temporary structure, or temporary building shall be placed upon any property within the Common Interest Community except with the prior written consent of the Design Review Committee.

3.14 Landscaping Requirement. At the time of, or as soon as reasonably possible following, the construction of Improvements on a Lot, but in any event no later than 6 months or one growing season after substantial completion of Improvements upon a Lot, such Lot shall be suitably landscaped as set forth in the Design Standards, as hereinafter defined. Owners are urged to utilize grass, shrubs and trees which encourage both the minimization of water consumption and the maintenance and the maximization of biological diversity. All such landscaping shall be subject to the approval of the Design Review Committee in accordance with the provisions of Article IV hereof. Thereafter all grass, shrubs and trees shall be kept and maintained in an attractive, healthy, live and growing condition. All dead or diseased grass areas, shrubs and trees shall be promptly removed and replaced with suitable replacement landscaping. Prior to completion of Improvements on a Lot or as soon thereafter as weather conditions will allow, Declarant shall install three trees, of a variety and size of Declarant's choosing, on that portion of the Lot which faces the Arboretum. Following such installation it shall be the Lot Owners responsibility to maintain and replace such trees as required by the Arboretum Agreement. Declarant and/or the Association may require that all Owners use biodegradable and environmentally sensitive lawn and garden fertilizers, pesticides and herbicides. Declarant and/or the Association may also adopt certain rules and regulations as may be deemed necessary and appropriate to implement and comply with the terms of the Arboretum Agreement.