

UNDERSTANDING THE GOVERNING DOCUMENTS OF A COMMUNITY ASSOCIATION

Michael Rome, JD
hoa-attorneys.com

It can be challenging to understand the documents governing your association. It is a little easier if you realize that the structure of a community association is modeled after our national government, meaning it is a representative form of democracy.

Declaration of Covenants. The Declaration of Covenants or Declaration of Condominium ("Declaration") is like the 'Constitution' of the association. This document is filed on the county deed records, and it automatically applies to any property purchased thereafter. The Declaration provides the basic authority for the association, including mandatory dues. It also contains general restrictions and requirements, commonly known as use restrictions. Some typical examples are building restrictions, landscaping requirements, leasing restrictions, and the process for approval of architectural modification. The Declaration is intentionally broad. More detailed regulations, rules and architectural guidelines are created by the Board, or in the case of architectural guidelines sometimes it is the Architectural Control Committee. Since the Declaration serves as the association's constitution, it usually takes at least a two-thirds vote of the membership to amend it.

Bylaws. The Bylaws are the procedural requirements that govern the owner/members and the Board. These contain provisions for voting, quorums, rules of order, powers of the Board, etc.. Additional procedural guidelines are contained in the Georgia Non-Profit Corporation Act. Just as we have procedures for how we vote in national elections, and parliamentary rules that have to be followed by the Congress, there are procedural rules for the association. Amendments to the Bylaws do not have to be filed on the deed records, unless the original bylaws were recorded with the Declaration of Covenants.

Regulations. Next are the regulations of the association. These are like the statutes and laws passed by the Congress without a vote of the citizens. Although regulations can be created by the Board, they must be reasonable. This means that they cannot be arbitrary, and relate to some legitimate purpose of the Association. Also, they must be 'constitutional.' In other words, they cannot exceed the authority of the Declaration of Covenants or the Bylaws. For instance, if the covenants prohibit chain link fences, the Board cannot pass a regulation stating that chain link fences will be allowed as long as they are green in color. Common examples of regulations are; design guidelines, collection policies, and pet rules. Amendments to regulations do not have to be filed on the deed records, unless they were recorded with the original Declaration of Covenants.

Rules. Sometimes the term 'rule' is used to include both rules and regulations, but strictly speaking rules are different from regulations. Whereas regulations have to do with use restrictions of the lots or units, rules apply to the common areas. The Board can pass rules regarding the common areas as long as they are reasonable and relate to some legitimate purpose of the Association. Similar to regulations, they must be 'constitutional.' In other words, they cannot exceed the authority of the Declaration of Covenants or the Bylaws. Typical examples are; pool rules, clubhouse rules, common area parking rules, retention pond restrictions, and front entrance rules regarding signs. Amendment to rules do not have to be filed on the deed records, unless they were recorded with the original Declaration of Covenants.

Here is a review of the governing documents:

Declaration of Covenants

The "Constitution" of the Association.

Filed on the Deed records.

Includes Use Restrictions for Lots or Units.

Can usually only be amended with a vote of the membership.

Bylaws

Govern Procedure; Such As Voting, Officer's Responsibilities, Etc.

(Also Important To Look At the Georgia Non-Profit Corporation Act.)

Amendments do not have to be recorded, unless original bylaws were recorded.

Look to the Bylaws themselves to see if amended by the membership or the Board.

Regulations

May be passed by the Board without a vote of the membership.

Regulations provide further details regarding the Use Restrictions in the Declaration.

Includes Architectural Guidelines, which are sometimes passed by the ACC or ARC.

May not contradict or overly expand upon the Declaration.

Amendments do not have to be recorded, unless originally recorded with Declaration.

Rules.

Rules apply to the common areas.

The Board can pass or amend rules regarding the common areas.

They cannot contradict or exceed the authority of the Declaration or the Bylaws.

Amendment to rules not have to be recorded, unless originally recorded with Declaration.