

Why Governing Documents Matter

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Governing documents are critical for HOA communities and are literally the legal glue which holds the association together. Civil Code Section 4150 defines "governing documents" as articles of incorporation, CC&Rs, bylaws, and operating rules, but I think subdivision maps and condominium plans also should be regarded as governing documents. Each has a distinct purpose and function, and every HOA member should have copies.

Subdivision map; Condominium plan

This document breaks up land into separate pieces of land or airspace sold to homeowners in planned development ("lots") or condominium ("units") projects. This document is recorded (i.e. filed) with the County Recorder, is easily retrieved, and defines the "common area" as well as the "separate interest" (i.e., the lot or unit). Sometimes it also delineates exclusive use common areas or maintenance easement areas. It establishes the real estate interests owned, so any amendment requires agreement of 100% of association members and their mortgage holders, and consequently amendment is highly unlikely.

Articles of incorporation

Articles of Incorporation establish the legal "person" of the association. Filed with the Secretary of State, this document can be retrieved from that office. Older Articles sometimes contain important information about limits on the association or board's powers. The Articles list the association's legal name and can be amended by membership vote, although amending is rarely necessary. Check the association's corporate status at <https://businesssearch.sos.ca.gov>.

CC&Rs

The CC&Rs document is recorded (amendments also must be recorded), and therefore is also a public document. Associations often use unrecorded, unofficial copies, but official copies can be retrieved from the County Recorder.

CC&Rs are a long contract automatically binding all owners, and the law holds each to have read, understood, and agreed to its contents... regardless of whether the owner actually did so.

CC&Rs cover how the property is used, maintained and repaired, and very much affects living in that association. There usually will be a section called "Use Restrictions," listing a number of prohibited activities, although restrictions can also be located elsewhere in the document. Restrictions can range from pet limits to parking to rental restrictions. In multi-story

condominium buildings, they may (and hopefully do) prohibit certain flooring surfaces. CC&Rs will also usually address what the HOA maintains and repairs and what is homeowner responsibility.

CC&Rs are amendable through a vote of the membership. However, the stated percentage of votes required for amendments is usually high, making amendment more difficult.

Bylaws

Bylaws usually contain the association's governance procedures and cover basic corporate operations, such as annual meetings, board powers and limitations, voting procedures, role of officers, and director qualifications. Bylaws are not normally recorded, so there is no government source for replacement copies. Bylaws are amended by membership voting, but unlike CC&Rs typically do not require as much updating to reflect changes in the law.

Operating rules

At the bottom of the hierarchy are the association's operating rules, sometimes known simply as "rules", "house rules" or "regulations". These are adopted or amended by the board, and must be written. Members must be notified of most rule changes before adoption, and rules are not effective until distributed to the membership in written form.

If members carefully read their governing documents prior to taking ownership it would prevent so many surprises and misunderstandings and definitely improve their experience in the HOA.

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