

UNDERSTANDING THE GOVERNING DOCUMENTS OF A COMMUNITY ASSOCIATION

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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. 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 modifications.

Bylaws.

The Bylaws are the procedural rules that govern the 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 other procedures that have to be followed by the Congress, there are procedural rules for the association. The Bylaws do not have to be filed on the deed records.

Rules.

Next are the Rules of the association, which are like statutes and laws passed by the Congress. It usually does not take a vote of the membership to pass or amend rules. Rules are usually passed by the Board. Although rules 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 rule stating that chain link fences will be allowed as long as they are green in color. Common examples of Rules are; design standards, pool rules, collection policies, and pet rules. Rules do not have to be filed on the deed records.

Although Rules may be passed by the Board, an amendment to the Declaration of Covenants or Bylaws usually requires a vote of the membership. An amendment to the Declaration often requires a two-thirds majority of the owners.

Here is a review of the governing documents:

DECLARATION OF COVENANTS

The “Constitution” of the Association. Filed on the Deed records.

(Includes Use Restrictions)

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.)

Do not have to be recorded.

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

RULES

May Be Passed By the Board Without Vote of the Membership.

Rules include regulation of the common areas, and further details regarding the Use Restrictions contained in the Declaration. (Such as the ACC Guidelines.)

Rules May Not Contradict The Declaration.

Do not have to be recorded.