



CHAPTER 1

LEGAL BASIS FOR COMMUNITY ASSOCIATIONS

KEY TERMS

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Book of resolutions, p. 15	Master deed, p. 11
Bylaws, p. 14	Mixed use development, p. 7
CC&Rs (Covenants, Conditions, and Restrictions), p. 11	Occupancy agreement, p. 12
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Community associations derive their basic legal authority for their existence, activities, and actions from state statutes (laws) and certain legal documents. In order to effectively manage a community association and inform and advise its owners, a manager must:

- Understand the legal nature of his or her community association, as well as the scope and limits of its authority.
- Recognize when to consult with the community's attorney concerning the interpretation of statutes and documents.

This chapter explains:

- What a community association is
- The state statutes that enable a community association to operate
- The legal documents that enable a community association to govern its member owners

What You Will Learn

After completing this chapter, you should be able to explain and understand the:

- Definition of a community association
- Alternative names for a community association and differences among types of community associations
- Purpose of a community association
- Three types of residential community associations
- Master or umbrella association and mixed use development
- Sources of legal obligations for a community association
- General, specific, and uniform state statutes for community associations
- Purpose of governing documents
- General hierarchy of authority for governing documents
- Recorded map, plat, or plan
- Declaration
- Covenants, Conditions, and Restrictions (CC&Rs)
- Master deed
- Proprietary lease or occupancy agreement
- Articles of incorporation
- Bylaws
- Resolutions

In this first section of the chapter, we will discuss the:

- Definition of a community association
- Alternative names for a community association
- Purpose of a community association
- Types of residential community associations

Definition of a Community Association

A **community association** is a group of owners who wish to provide a communal basis for preserving, maintaining, and enhancing their homes and property.

A community association has three defining characteristics:

1. **Membership in the community association is mandatory and automatic for all owners.** This is unlike other associations whose membership is voluntary.
2. **Certain documents bind all owners to be governed by the community association.** These documents require mutual obligations to be performed by the individual owner and the community. (See page 9 for a discussion of governing documents.)

3. **Mandatory lien-based economic charges or assessments are levied on each owner in order to operate and maintain the community association.** (See Chapter 6, *Collecting Assessments*.)

Alternative Names for a Community Association

You will see and hear community associations referred to by one of several names:

1. **Community Association:** This term is used by Community Associations Institute, publisher of this course manual and sponsor of this class, and by the Bureau of Condominiums of Florida.
2. **Common-Interest Community (CIC):** This term is used by the National Conference of Commissioners on Uniform State Laws. (See page 9 for a discussion of uniform laws or statutes)
3. **Common Interest Realty Association (CIRA):** This term is used by the American Institute of Certified Public Accountants (AICPA).
4. **Common Interest Development (CID):** This term is used by the California Department of Real Estate (DRE).

Purpose of a Community Association

The primary purpose of a community association is to provide for the governance, business, and communal aspects of the association. This is achieved by administering, maintaining, and enhancing a residential real estate development, and through the establishment of a system of property rights, binding covenants and restrictions, and rules and regulations. (See page 11 for an explanation of property rights, binding covenants, and restrictions.)

As you will recognize as you work through this class, a community association combines the characteristics and activities of a local government, a business, *and* a community.

Types of Residential Community Associations

There are three basic types of residential community associations:

1. **Planned Community**—The National Conference of Commissioners on Uniform State Laws uses the term “planned community” to refer to the most common type of community association.

In a planned community:

- An owner owns his or her lot and/or living unit
- The community owns any common areas, such as tennis courts and roads for the use and benefit of the lot owners

Other names for planned communities include—

- Homeowner Association (HOA)
- Owner Association
- Townhouse Association
- Property Owners Association (POA)
- Planned Unit Development (PUD)

2. Condominium—In a condominium, an individual owns:

- His or her living unit, and
- An undivided interest in the common elements of the community

Each owner owns a percentage of the common elements—which consist of everything *except* the living units, for example, a pool or lobby. The community association itself owns no real estate as an association.

3. Cooperative—In a cooperative, an individual:

- Owns stock or membership in the cooperative
- Holds a proprietary lease or occupancy agreement for his or her living unit

A **proprietary or master lease or occupancy agreement** defines the member or stockholder's rights and obligations in relation to the living unit. For most cooperatives, the community association owns all of the real estate as a not-for-profit corporation. However, there are a few cooperatives set up as for-profit entities.

Notice how an owner in a cooperative has two legal relationships—one as someone who shares in ownership of the corporation and one as someone who holds a lease for a living unit. Another name for a cooperative is a stock cooperative.

These three types of residential community associations can exist by themselves or they can be grouped in clusters called:

- **Master or Umbrella Associations—**A master or umbrella association consists of more than one residential community association.

- **Mixed Use Developments**—A mixed use development usually consists of a mixture of residential and commercial and/or industrial uses grouped together.

The three basic definitions of residential community associations focus on ownership instead of architectural style. It is important not to define the types of community associations by appearance, as there's always an exception.

Sources of Legal Obligations for a Community Association

A community association derives its legal obligations from several sources:

- Federal, state, and local statutes, regulations, and case law (court decisions)
- Legal documents unique to the community association that bind the association and its owners
- Lender requirements—for example, requirements set by secondary mortgage institutions (see page 99)
- Standards set by professional bodies—for example, auditing standards set by the American Institute of Certified Public Accountants (AICPA) (see Chapter 7)

We will discuss these various sources of legal obligations throughout the class as we consider different areas of community association management.

In the remainder of this chapter, we will focus on the two types of legal sources that define the basic legal authority for the existence, activities, and actions of a community association—state statutes and governing documents.

INTRODUCTION TO STATE STATUTES

Statutes are laws written and adopted by legislatures or administrative agencies. In this section, we will discuss three types of state statutes that apply to community associations:

- General state statutes
- Specific state statutes
- Uniform state statutes

General State Statutes

A general state statute is one that applies to community associations, *as well as* to other types of organizations.

The general state statutes that most often apply to community associations are the regular corporate or the not-for-profit corporate statutes. Most states have these types of laws. Community associations are eligible for incorporation unless they are specifically excluded by the statute itself.

Specific State Statutes

A specific state statute is one that applies *only* to one or more types of community associations. For example, most states have a condominium act which provides for the establishment and operation of condominiums as legal entities. These acts vary in terms of their complexity. The simplest ones just allow for the creation of condominiums.

The more complex laws may:

- Regulate the development and sale of condominiums
- Provide protection for purchasers, owners, or tenants
- Regulate the operation of condominiums (for example—open meeting requirements)

Not all states have statutes that provide for the establishment of planned communities or cooperatives. If you are managing one of these communities, check to find out if your state has a specific statute that applies to it.

A *specific* state statute for a certain type of community association takes precedence over any *general* statute that applies to the community association. Furthermore, a specific state statute takes precedence over a community association's governing documents unless it is written to allow for flexibility. For example, the statute might say, "...unless the documents provide otherwise."

Specific state statutes can also be amended over time. In addition, their provisions can be retroactive (apply to past activities), as well as prospective (apply to the future). As community managers, you should stay informed about any specific state statutes that apply to your type of community association—either on your own or through your community's attorney. Any community association that is incorporated must be careful to follow the statutory requirements under which it is incorporated.

Uniform State Statutes

The National Conference of Commissioners on Uniform State Laws has attempted to standardize specific state statutes that apply to community associations.

To date, the Conference has developed a:

- Uniform Condominium Act
- Uniform Planned Communities Act
- Model Real Estate Cooperative Act
- Uniform Common Interest Ownership Act

Almost one third of the states in this country have adopted some form of these statutes.

INTRODUCTION TO GOVERNING DOCUMENTS

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 community association and its owners
- Create a binding relationship between each owner and the community association
- Establish the mechanisms for governing and funding the community 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

In this section of the chapter, we will discuss the:

- General hierarchy of authority for governing documents
- Specific governing documents for community associations

General Hierarchy of Authority for Governing Documents

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:

- Recorded map, plat, or plan (to show the precise location of units, lots, and/or common area)
- Declaration, CC&Rs, master deed, proprietary lease, or occupancy agreement (Note that the master deed, proprietary lease, and occupancy agreement apply only to cooperatives.)
- Articles of incorporation (if incorporated)*
- Bylaws
- Board resolutions

** The bylaws and board resolutions must be consistent with the articles of incorporation. Generally, the declaration would control if there is a conflict with any of the other documents. Resolving such a conflict will depend on the specific facts and legal issues involved.*

Each of these documents is discussed in some detail in the pages that follow.

The higher a document's place in the hierarchy, the greater its legal weight in a court of law. Documents lower in the hierarchy cannot conflict with or change the terms of those above them. Whenever there is a conflict, the higher document will prevail.

Recorded Map, Plat, or Plan

Some form of map is an essential document for a condominium or a planned community. A map or 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 or plat or plan may help define an owner's or a community's title to property.

On an operational level, the map can help clarify:

- 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. The terms CC&Rs and declaration are sometimes used interchangeably.

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 of rights regarding the use of the property. (For example—right to lease the property, build on it, mortgage it, and occupy it.)

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 deeds should be 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 attach and 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.

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.

More than any other single document, the declaration brings the condominium or the planned community into existence because it spells out the essential elements of ownership. The condominium or planned community comes into existence when the declaration is filed in the office of the local recorder of deeds or registrar of titles. For condominiums, it is called the **declaration** (of condominium) 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—if any
- Creates interlocking relationships binding all the owners to one another and to the community 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 community association—although many of the specific administrative details are spelled out in the bylaws
- Provides the mechanism for financial support of the community association through assessments
- Provides for a transition of control of the community association from the developer to the owners

Proprietary Lease or Occupancy Agreement

As we said earlier, a **proprietary lease** or **occupancy agreement** in a cooperative defines the member or stockholder's rights and obligations in relation to the living unit. (In a cooperative, this document serves generally the same purpose as the declaration, CC&Rs, or master deed in other community associations.)

The proprietary lease or occupancy agreement:

- Identifies the premises that the stockholder is permitted to occupy exclusively
- Defines the term of the lease and the rent (sometimes called maintenance) that is payable by the stockholder
- Establishes the powers and obligations of the cooperative's board of directors, including assessment rights
- Defines the events which would result in the termination of the proprietary lease

Articles of Incorporation

Incorporation may or may not be a legal requirement for a community association. It is essential for cooperatives because they are based on the corporation concept. The articles of incorporation usually spell out the essential elements of ownership for a cooperative because it is a corporation. The cooperative comes into existence when its articles of incorporation are recorded or filed.

The governing bodies of planned communities are almost always set up as not-for-profit non-stock corporations. Condominium associations often are incorporated, depending upon the requirements of the applicable state law. In some cases, condominium associations do not have to be incorporated, 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:

- May help to limit the liability of individual owners for acts of the community association
- Entitles the community association to the rights granted to all corporations under state law—this could be useful in areas such as obtaining financing, obtaining insurance, or bringing suit against another party
- 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; qualification of directors
- Procedures for the board of directors to elect officers (In some associations, the association members elect the 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 and
- 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. (See pages 51–53 for an explanation of the resolution format and the benefits of using the resolution process to adopt rules for a community association.)

There are four types of resolutions for a common interest community:

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, and enforcement procedures.)
2. **Administrative Resolutions:** These are resolutions that address the internal operations of the community association. (For example—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.)
4. **General Resolutions:** These are resolutions which involve routine events. (For example—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.

If your community association doesn't already do so, consider creating a Book of Resolutions by dividing a three-ring binder into sections by type of resolution. Enter resolutions under their designated category in the order of their adoption. This system makes the use and updating of a Book of Resolutions as simple as possible.

If someone in your office is handy with computer software, you could create a chronological list of numbered resolutions with a topical index.

Note: A resolution cannot conflict with or override requirements in a statute or document higher in the hierarchy of governing documents.

Public Offering Statement

Because it is often accompanied by copies of the governing documents, some people think of the public offering statement itself as a governing document. However, this is a misconception; the public offering statement is *not* a governing document. Instead, it is simply a disclosure statement that provides information on the community association to prospective buyers. It is also mandated by state statute.

FOCUS QUESTIONS

Use the following questions to help you identify and review the core concepts in this chapter. (*Hint:* Once you look up the answer to a question, you may want to jot down the page number next to the question for future reference.)

1. Define a community association and its three key characteristics.
2. What is the purpose of a community association?
3. Define the three basic types of residential community associations in terms of ownership rights.
4. What sources create legal obligations for community associations?
5. Explain the difference between general, specific, and uniform state statutes and give an example of each.
6. What is the purpose of governing documents for a community association?
7. List the basic governing documents for a community association.
- 8a. What is the purpose of a recorded map, plat, or plan in terms of the legal rights and obligations of owners and the community?
 - b. How does this document affect a community association's activities?
- 9a. What purpose does a declaration, CC&Rs, or a master deed serve for a condominium or planned community?
 - b. How does this document affect a community association's activities?
- 10a. What is the purpose of a proprietary lease or occupancy agreement in a cooperative?
 - b. How does this document affect a cooperative's activities?
- 11a. What is the purpose of articles of incorporation?
 - b. What are the benefits to incorporating a community association?
12. What areas of community association activity do bylaws typically address?
13. Explain the four types of resolutions for a community association and give an example of each.

THOUGHT/DISCUSSION QUESTIONS

Use the following questions to help you apply the information in this chapter to your own situation.

1. Is your community association part of a master or umbrella association—or a mixed use development?
2. Find out which general state statutes apply to your community association. (*Hint: Ask your community's attorney.*)
3. Find out which specific state statutes apply to your community association, if any.
4. Find out whether your state uses any uniform statutes for community associations.
5. Look at a copy of any recorded map, plat, or plan for your community association. What can you learn from it?
6. Review your community's declaration, CC&Rs, or master deed, if it has one. What does it tell you about:
 - Ownership of different portions of the community association?
 - Owner-to-owner relationships and community-to-owner relationships?
 - Administration of the community?
 - The transition of control of your community association from the developer to the owners?
7. Review your community association's proprietary lease or occupancy agreement, if it is a cooperative. What does it tell you about member/stockholder and corporate rights and obligations?
8. Review your community association's articles of incorporation, if it is incorporated. What general topics do the articles address?
9. Review your community association's bylaws. What general topics do the bylaws address?
- 10a. Find out where your community association keeps its board resolutions.
 - b. How are they organized?
 - c. Can you find examples of each of the four types of resolutions a community association can adopt?

RESOURCES

For further information on the legal basis for community associations, we suggest the following:

Community Association Law: Cases and Materials on Common Interest Communities, by Wayne S. Hyatt, ESQ. and Susan F. French. Contains more than 300 legal cases illustrating concepts. Topics include types of common interest communities; creating common interest communities; association functions and powers; constitutional issues; association governance, financing, design standards and control; rule enforcement; amending governing documents; liability; and declarant control of board and transition. Fully indexed and copiously noted. (Carolina Academic Press, 1998.)

Community Association Law Reporter, Wayne S. Hyatt, ESQ., Editor. A monthly newsletter that reports on current laws and legal decisions affecting community associations. (Community Associations Institute.)

Community Association Legal Counsel: How to Select & Use Association Legal Counsel, (*Guide for Association Practitioners Series, Report #13*), Second Edition, by Thomas J. Hindman, ESQ. and Loura K. Sanchez, ESQ. Contains information on how to get the best out of your association attorney as well as what to consider when searching for a new one. Offers guidance for working out various fee structures and includes a five-part appendix consisting of a sample request for proposal, interview questions, evaluation criteria, billing statement, and more. (Community Associations Press, 2002.)

Condominium and Homeowner Association Practice: Community Association Law, Third Edition, by Wayne S. Hyatt, ESQ. Contains a comprehensive overview of the basics of community association ownership, including creating associations, governance, financing, design standards, enforcement, liability, and amending documents. Appendices contain a document drafting checklist, a sample table of contents for the declaration of a condominium association, and a sample table of contents for the bylaws of a condominium association. (American Law Institute-American Bar Association, 2000.)

The Homeowners Association Manual, Fourth Edition, by Peter M. Dunbar, ESQ. and Marc W. Dunbar, ESQ. A practical guide for the operation of homeowner associations. Useful for leaders and board members of single-family, townhome, condominium, mobile, and master-planned community associations. (Aras Publishing, 1999.)

Transition from Developer Control, (*Guide for Association Practitioners Series, Report #3*), Third Edition, by Amanda G. Hyatt. The transition from developer control is a critical phase in a community association's evolution. This report presents information on the various methods of transfer and the legal framework within which the transition takes place—including how to draft important legal documents. Contains an association transition checklist in the appendix. (Community Associations Institute, 1998.)