



CHAPTER 1

LEGAL BASIS FOR COMMUNITY ASSOCIATIONS

KEY TERMS

Articles of incorporation, p. 13	Master association, p. 6
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
Community association, p. 4	Planned community, p. 5
Condominium, p. 6	Proprietary lease, p. 12
Cooperative, p. 6	Public offering statement, p. 15
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Governing documents, p. 9	Statute, p. 7
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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.)



CHAPTER 2

COMMUNITY MANAGEMENT

KEY TERMS

Ad hoc committee, p. 28	Management audit, p. 36
Association-employed manager, p. 30	Management contract, p. 31
Board liaison system, p. 28	Management plan, p. 35
Business judgment rule, p. 24	Mandatory committee, p. 27
Conflict of interest, p. 38	Professional ethics, p. 37
Employment agreement, p. 31	Standing committee, p. 27
Fiduciary duty, p. 24	Volunteer or self-management, p. 30
Management, p. 19	

Management is the process of “planning, organizing, leading, and controlling” an organization’s use of its resources in order to achieve its goals. (See George L. Morrisey’s *Management by Objectives and Results for Business and Industry*.)

The purpose of this chapter is to give the relatively new community association manager a clear understanding of his or her managerial role and responsibilities in relation to the roles and responsibilities of owners and volunteer leaders.

To accomplish this purpose, the chapter explains the:

- Legal basis for community association management
- Role and responsibilities of the:
 - Owners
 - Board of directors
 - Committees
 - Manager

What You Will Learn

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

- Legal basis for community management
- Role and responsibilities of owners
- Role and responsibilities of the board of directors
- Board’s fiduciary duty
- Courts’ “business judgment rule”

- Role and responsibilities of committees
- Role and responsibilities of a manager
- Manager's fiduciary duty
- Three management options and their comparative advantages and disadvantages
- Management contract and employment agreement
- Management plan
- Management evaluation
- Management ethics

LEGAL BASIS FOR COMMUNITY MANAGEMENT

The governance, business, and community activities of a community association that should be managed are defined by:

1. State statutes
2. Court decisions
3. Community association governing documents, including:
 - Declaration, CC&Rs, master deed, proprietary lease, or occupancy agreement
 - Articles of incorporation (if incorporated)
 - Bylaws
 - Rules and regulations

All three types of legal sources specify the:

- Authority or power of different parties in a community association
- Responsibilities or duties of the different parties

In this section of the chapter, we will examine some of the basic authority and responsibilities given to the community association itself by various legal sources. In turn, the authority and responsibilities are delegated to specific parties within the community association to carry out on its behalf.

The legal or governing documents typically empower and charge community associations to:

- Levy and collect assessments to fund operations
- Enter into contracts
- Maintain the common areas
- Enforce the restrictions in the governing documents
- Provide services to the members
- Employ a manager or contract for services with a management firm

- Create rules and regulations
- Enter into litigation
- Fund various replacement reserves
- Invest funds
- Employ professional advisors
- Comply with federal, state, and local government requirements, including filing tax returns
- Obtain insurance coverage
- Adopt and approve operating budgets
- Conduct periodic review or audit of community association financial records by independent professionals

Because the community operates as an association and/or corporation, its legal sources also specify procedures in such areas as:

- Elections
- Meetings
- Basic operations (for example—budget preparation, hiring of employees)
- Record maintenance
- Composition of the board and officers

INTRODUCTION TO ROLES AND RESPONSIBILITIES

In this section of the chapter, we will discuss the roles and responsibilities of a community association's:

- Owners
- Board of directors
- Committees

Role and Responsibilities of Owners

The basic authority in a community association lies with the owners. In order for the association to govern effectively, the owners elect a board of directors to act on their behalf. The governing documents delegate most of the association's decision-making powers to a board.

This leaves the owners with very few *direct* powers. Typically, they have only the *voting* power to:

- Elect and remove directors
- Amend any of the governing documents, except board resolutions
- Approve special assessments or capital improvements

Occasionally, owners will vote to approve the association's annual budget. Generally, other daily operating and policy decisions are left to the board.

As a result of the authority placed with the board, it may be necessary for you, as the manager, to educate and remind your owners of their role in the association. If they do not like a board decision, they should attend a board meeting or otherwise communicate their position to the board, although they usually do not have any authority to "veto" or "undo" the board's action. Under such conditions, their only remedy is to elect a new board to represent them at their annual meeting.

At the same time, the board has an obligation to establish communication and to listen to the owners' concerns as well as take those concerns into consideration in making its decisions.

Formal means for obtaining owner input include the:

- Resident/owner forum at board meetings
- Participation of owners on committees
- Annual membership meeting
- Newsletters and surveys
- Internet access/online surveys

Just as a board has the responsibility to encourage owner input via these means, owners have the responsibility to use these means to make their views known.

Owners have the responsibility to:

1. Read and comply with the governing documents of the community.
2. Maintain their property according to established standards.
3. Treat association leaders honestly and with respect.
4. Vote in community elections and on other issues.
5. Pay association assessments and charges on time.
6. Contact association leaders or managers, if necessary, to discuss financial obligations and alternate payment arrangements.
7. Request reconsideration of material decisions that personally affect them.

8. Provide current contact information to association leaders or managers to help ensure they receive information from the community.
9. Ensure that those who reside on their property (e.g., tenants, relatives, friends) adhere to all rules and regulations.

Owners have the right to:

1. A responsive and competent community association.
2. Honest, fair, and respectful treatment by community leaders and managers.
3. Participate in governing the community association by attending meetings, serving on committees, and standing for election.
4. Access appropriate association books and records.
5. Prudent expenditure of fees and other assessments.
6. Live in a community where the property is maintained according to established standards.
7. Fair treatment regarding financial and other association obligations, including the opportunity to discuss payment plans and options with the association before foreclosure is initiated.
8. Receive all documents that address rules and regulations governing the community association—if not prior to purchase and settlement by a real estate agent or attorney, then upon moving into the community.
9. Appeal to appropriate community leaders those decisions affecting non-routine financial responsibilities or property rights.

Role and Responsibilities of Board of Directors

As we said above, the board of directors is charged with the ultimate responsibility and authority for operating the community association on behalf of its owners.

The board's legal authority to act on the owners' behalf typically is found in:

- Specific state statutes establishing condominiums, cooperatives, or planned communities. These specific statutes may set broad guidelines within which a board may act *or* may list specific responsibilities that it must meet.

- General state statutes that provide for the general authority and responsibilities of all *corporate* boards of directors.
- Community association governing documents which give the board authority to act on the owners' behalf. Typically, this authority is found in the declaration, articles of incorporation, or bylaws.

A board of directors cannot delegate its responsibility to supervise implementation of its decisions. While the board can delegate authority, it can never delegate its responsibility.

Role

It is the role of a board to set the policies, standards, procedures, programs, and budgets for the community association. A board may implement its own decisions—or delegate implementation to a manager, committees, or an independent contractor.

A board has a fiduciary relationship to the community association. Its **fiduciary duty** requires directors to act in the best interests and for the benefit of the corporation, thus the community as a whole. This fiduciary duty has two components. The members are required to avoid conflicts of interest and acting out of self-interest. They are also required to act as reasonable people in managing the association's affairs. Although they may delegate some of their responsibilities to others, they cannot delegate their legal obligation to protect the asset that is the total community. It is the board that is ultimately responsible for the management of the association. The board can direct or empower the manager to take certain actions on behalf of the community association. However, the board is still responsible to the owners.

Through judicial decision, a substantial body of law has developed concerning the standards to which directors must conform while conducting a community association's affairs. Many courts apply the **business judgment rule** to a board's actions. That is, if a board has exercised reasonable business judgment in making a decision, the court will generally not consider the board negligent in its fiduciary duty. Nor will the court substitute its judgment for that of the board. However, the board must demonstrate how it has taken care in reaching a decision. It is up to the court to decide if the board has exercised reasonable business judgment.

Responsibilities

Legal sources typically assign a board of directors the responsibility to maintain, protect, preserve, and enhance the common areas and the unit values of the total community.

Areas of responsibility include:

- Care, maintenance, and enhancement of the physical property, common areas, and facilities
- Management of community finances and developing reserve funds
- Risk management, including obtaining insurance
- Establishment, enforcement, and interpretation of rules and regulations
- Human resources management of employees and volunteers
- Preservation and promotion of community harmony

The board of directors is also responsible for establishing and revising, whenever necessary, the community association's mission statement, short-range plans, and long-range plans. This helps to provide consistency between the passage of boards and bonds the community in a common goal.

Additionally, board members have the responsibility to:

1. Fulfill their fiduciary duties to the community and exercise discretion in a manner they reasonably believe to be in the best interests of the community.
2. Exercise sound business judgment and follow established management practices.
3. Balance the needs and obligations of the community as a whole with those of individual owners and non-owner residents.
4. Understand the association's governing documents and become educated with respect to applicable state and local laws, and to manage the community association accordingly.
5. Establish committees or use other methods to obtain input from owners and non-owner residents.
6. Conduct open, fair, and well-publicized elections.
7. Welcome and educate new members of the community—owners and non-owner residents alike.
8. Encourage input from residents on issues affecting them personally and the community as a whole.
9. Encourage events that foster neighborliness and a sense of community.

10. Conduct business in a transparent manner when feasible and appropriate.
11. Allow owners access to appropriate community records, when requested.
12. Collect all monies due from owners and non-owner residents.
13. Devise appropriate and reasonable arrangements, when needed and feasible, to facilitate the ability of individual residents to meet their financial obligations to the community.
14. Provide a process residents can use to appeal decisions affecting their non-routine financial responsibilities or property rights—where permitted by law and the association's governing documents.
15. Initiate foreclosure proceedings only as a measure of last resort.
16. Make covenants, conditions, and restrictions as understandable as possible, adding clarifying "lay" language or supplementary materials when drafting or revising the documents.
17. Provide complete and timely disclosure of personal and financial conflicts of interest related to actions of community leaders, e.g., officers, the board, and committees.

Rights

Board members have the right to:

1. Expect owners and non-owner residents to meet their financial obligations to the community.
2. Expect residents to know and comply with the rules and regulations of the community and to stay informed by reading materials provided by the association.
3. Respectful and honest treatment from residents.
4. Conduct meetings in a positive and constructive atmosphere.
5. Receive support and constructive input from owners and non-owner residents.
6. Personal privacy at home and during leisure time in the community.

7. Take advantage of educational opportunities (e.g. publications, training workshops) that are directly related to their responsibilities, and as approved by the association.

Role and Responsibilities of Committees

Usually a community association's bylaws—and sometimes its declaration—will:

- Name certain committees that are required
- Allow for the appointment of other committees that may be required from time to time

Role

Community association committees typically consist of owners appointed by the board of directors.

The role of these committees is to:

- Assist the board in meeting its responsibilities
- Broaden the community's input on decisions by serving as a:
 - Means of gathering owners' opinions and attitudes
 - Training ground for future leaders
 - Means of explaining board actions to the community
- Perform research and prepare recommendations for the board

The number and type of committees will depend on the size of the community and the complexity of its activities. The more activities a community is involved in, the more a board may need additional groups to collect information, develop recommendations, and carry out activities.

Responsibilities

A **mandatory committee** is one that is required by the governing documents. Mandatory committees typically are assigned responsibilities related to:

- Elections
- Nominations
- Architectural standards

If the bylaws do not name certain committees that the board has determined it needs, an administrative resolution should be used to create **standing committees**. These are ongoing committees that meet a basic community association need.

Examples of typical standing committees that are not mandated include:

- Budget/finance
- Grounds
- Social/welcome
- Newsletter
- Recreation, pool, or swim team
- Public relations
- Rules/dispute resolution

In addition, a board has the authority to appoint ad hoc committees to explore single issues. (For example—parking regulations, development of investment guidelines, or renovation of a common room.)

The purpose of an **ad hoc committee** is to take a charge from the board to deal with a one-time issue and make recommendations to the board within a specific time frame. The board should use a resolution to establish an ad hoc committee to clearly state the charge and expected outcome to the committee.

A board and its committees must communicate effectively with one another. For example, committees should prepare written reports with any recommendations in time for their reports to go out with a board packet (see page 74) prior to the board's meeting.

Some boards use a **board liaison system**. Directors are assigned to certain committees to oversee and report back to the board on activities. Associations that use the board liaison system occasionally have directors that need help distinguishing their oversight role from their role as a committee chairperson. The committee chairperson generally runs the committee while the director acts as a non-voting advisor and observer.

Guidelines for Successful Committees

Successful committees tend to operate within the following guidelines:

1. The committees serve at the pleasure and direction of the board in an *advisory* capacity.
2. Any committee with *independent* authority—such as an architectural guidelines committee—has an established appeals process to permit access to the board as the ultimate authority and decision body for the community.
3. The committees have specific job descriptions which outline their roles and responsibilities.

4. The committees keep minutes of their meetings and submit their recommendations to the board in written form to ensure that the recommendations are included in any report to the board.
5. The committees are given:
 - Meaningful tasks
 - Adequate authority to complete the tasks
 - Serious consideration of their recommendations
 - Public recognition for their performance
6. The committee meetings should be open to all members with date, time, and location published in accordance with notice provisions of the governing documents.

INTRODUCTION TO MANAGER'S ROLE AND RESPONSIBILITIES

This final section of the chapter discusses:

- Role and responsibilities of the manager
- Three management options and their comparative advantages and disadvantages
- Management contract and employment agreement
- Management plan
- Management evaluation
- Management ethics

Role and Responsibilities of the Manager

The role of a professional community association manager is to:

Provide information, training, and leadership on community association living to the board, committees, and the community at large; foster a sense of community awareness within the residents; develop a body of leadership through the committee structure; and provide the necessary administrative tools to the board to enable it to create lasting policies and make decisions in accordance with the communities' short-range plans, long-range plans, and mission statements.

In fulfilling the terms of his or her management contract and employment agreement, the professional community association manager is charged with assisting the board of directors' decision making process by means of providing information-gathering and fact-finding support; *implementing* the decisions of the board; and *administering* the services, programs, and operations of the community association *within the policies and guidelines set by the board*.

A manager's authority and responsibility are defined and limited by:

- Governing documents which define the authority of the board to enter into a contract. Some governing documents also require the board to retain a professional manager.
- The manager's management contract or employment agreement with the board. (See pages 31-32 for typical management contract and employment agreement provisions.)
- Actions of the board which delegate specific authority and duties to the manager (The board is ultimately the decision maker for the community association.)

Agency Relationship Between the Board and the Manager

The manager, as an agent, is required to represent the best interest of the community association (client). This is different from an independent contractor who is responsible for providing the services, but is generally not working as an extension of the community association, as is the case with a manager.

Three Forms of Management

There are three forms of community association management:

1. **Volunteer or self-management**—The community association is managed by the board itself or by committees under the direction of the board.
2. **Association-employed manager**—The manager is directly employed by the community.
3. **Management company**—The community association engages a management company to provide specific management services. The community manager and staff are employees of the management firm.

Each community association must decide for itself which form of management best meets its current needs. Occasionally, a community association may decide to combine more than one form of management. Following you will find a comparison of the advantages and disadvantages of each of the three forms—in terms of cost, continuity, and professionalism. As a manager, use this information to advise your board.

COMPARISON OF THE FORMS OF COMMUNITY MANAGEMENT			
	Volunteer/ Self Management	Association-Employed Manager	Management Company
Cost	No out-of-pocket management fees Requires investment of time and effort Unnecessary costs may be incurred through inexperience	Cost must be justified Additional costs may be incurred for temporary replacements due to absence, termination, or resignation	Cost must be justified Routine Management provided for what is typically a fixed price
Continuity	Difficult because of volunteer turnover and the fact that activity is discretionary for the volunteer	Continuity depends on individual hired	Can provide continuity because of the number of people at its disposal
Professionalism	Depends on the skills and experience of those who volunteer	Depends on the individual hired (may possess CMCA, AMS, LSM, or PCAM designation)	Can provide personnel, systems, and procedures (may possess CMCA, AMS, LSM, PCAM, or AAMC)

Management Contract and Employment Agreement

If a community association hires a manager or a management firm, there should be an agreement or contract to formalize the relationship. An **employment agreement** is used for an association-employed manager and a **management contract** is used for a management firm.

The agreement or contract should contain all of the basic components of a legal contract and:

- Specify the manager's authority and duties
- Establish a clear chain of command (For example—after a board makes a decision, the president must direct the manager to implement the decision before he or she can do so.)
- Provide for the manager's compensation and termination
- Be signed by authorized representatives of both parties—the community association and the "manager"

Managers employed by a management company with questions about their responsibilities to their associations under their individual management contracts should seek advice from their respective management company.

The following discussion describes the management contract and employment agreement in more detail.

Typical Management Contract Provisions

Here are some typical provisions to look for in a management contract:

1. **Contracting parties**—The contracting parties should be clearly defined. There should be a clause stating that both parties intend to enter into the contract.
2. **Chain of command or lines of authority**—The contract should provide for management to communicate with the community association primarily through one or more designated liaisons appointed by the board—for example, the board president.
3. **Responsibilities of management**—The contract should describe management’s authority, responsibilities, functions, and duties. It usually divides them into the following categories:
 - **Property maintenance** (see Chapter 9)—This involves responsibility for the common elements or areas and for any other property that the community association has an obligation to maintain in terms of:
 - Inspecting the property
 - Arranging for maintenance, repairs, and replacement
 - Responding to emergencies
 - Bidding and contracting for services (see Chapter 10)
 - **Administrative services**—This involves responsibility for such services as:
 - Maintaining the community association’s records
 - Preparing materials for and organizing and participating in meetings of the community association, the board, and any committees
 - Managing the community association’s employees and contractors (see Chapter 11)
 - Providing guidance and advice to the board and to the community association on policy issues
 - **Fiscal services**—This involves responsibility for such services as:
 - Preparation of the annual budget (see Chapter 5)

- Depositing association funds and developing effective assessment collection and accounts payable procedures (see Chapter 6)
 - Maintenance of the community association's fiscal records in accordance with recognized and acceptable procedures
 - Preparation of regularly scheduled financial statements and reports (see Chapter 7)
 - Risk management and insurance (see Chapter 8)
- **General support**—This involves responsibility for such services as:
 - Preparation of a periodic newsletter
 - Dealing with and assisting sellers and prospective buyers
 - Dispute resolution/rules enforcement (see Chapter 4)
4. **Insurance**—The contract should specify the minimum limits of various types of insurance to be carried by both the association and the management firm. (see Chapter 8)
 5. **Term of agreement**—The contract should specify the length of its initial term—generally one to five years. (Some governing documents limit the length of management company contracts.)
 6. **Termination**—Most contracts also have some type of termination provision. It allows either or both parties the right to terminate the contract at anytime, with or without cause, with a certain number of days' notice—typically 60 days.

The management firm needs to provide the association with enough time for a new management company to come in and perform the financial management functions—if the agreement were to be terminated.
 7. **Indemnification and hold harmless provision**—Most contracts include a provision indemnifying and holding harmless the management firm, with certain limitations. According to the definition in Chapter 1, to indemnify and hold harmless a management firm is to exempt it from responsibility for claims made against the association (with certain exceptions) and to agree to reimburse the management firm for damages or expenses it incurs as a result of such claims or third-party actions.
 8. **Compensation**—The management compensation, or the method of calculating it, must be specified in the contract or in a fee schedule attached to the contract.

The fee schedule should also include any additional charges, such as:

- Reimbursement for specific out-of-pocket expenses on behalf of the community association
- Charges for specific additional services provided to the community association

Employment Agreement

An employment agreement between an association-employed manager and the association typically includes:

- Terms of employment, including beginning and ending date
- Duties and services to be performed
- Compensation
- Notice and termination procedures
- Statement of association's obligation to provide appropriate facilities, equipment, and personnel to permit the efficient and orderly conduct of the association's business, management, operation, and administration
- Statement of exclusiveness of agreement provisions: This is a statement that the written agreement is the sole and entire agreement between the two parties with respect to its subject matter
- Statement that any waivers or modifications of the agreement must be in writing between each of the parties
- Applicable legal sources
- Confidentiality or nondisclosure of information: This is a statement to the effect that the employee will not disclose confidential or proprietary information belonging to the association
- Provision for notices to one another

Management Plan

A **management plan** is a statement of goals and objectives approved by the board. It includes the yearly cycle of tasks that management should perform on the community association's behalf. Whether you are a manager who is employed by your community or by a management company, you should have a management plan so you and your board are clear on what is expected of you.

In most instances, it will be up to you to propose a plan to your board for approval. Set your goals for the year in relation to your community association's budget.

Typically, a management plan includes tasks that address the community association's governance, business, and community aspects:

- **Rules enforcement** (for example—violations of the association documents or rules)
- **Property maintenance** (for example—inspections, repairs, preventive maintenance, bidding, scheduling replacements)
- **Services** (for example—grounds, trash or snow removal, security systems, opening the pool)
- **Communications** (for example—flyers, newsletters, Web sites)
- **Finances** (for example—budgets, collections, payables, financial reports)
- **Administration** (for example—prepare correspondence and meeting notices, conduct annual meetings and elections, maintain records and personnel files)
- **Asset protection** (for example—insurance, audits, security)
- **Policy development** (for example—assist board to award contracts, select professional assistance [such as attorney and accountant], and develop standard operating procedures)

The regular board meeting should periodically be used to monitor, adjust, and review the annual management plan.

Management Evaluation

It is necessary for a board to evaluate management performance, as well as to monitor it. Because interpersonal relationships are involved, it is important that objective criteria be used. The management plan and specific information from the management contract or employment agreement should establish this basic criteria.

Typical means are the:

- Owner/resident survey
- Management audit

A **management audit** consists of a review of:

- Governing documents and existing policies and procedures
- Current condition of the property
- Owner/resident satisfaction
- Fiscal operations

This review can be done by the board and manager together, or a third-party management consultant can be hired.

Here are some warning signs of a weak management situation:

- An increase in assessment delinquencies that is not due to a poor economy
- An increase, instead of a decrease, in the list of action items for management carried over from one board meeting to another (see pages 83-84)
- An increase in owner attendance at board meetings and in complaints about poor service
- An increase in the response time for maintenance of common elements or areas
- Contractor or employee performance becomes "sloppy" and employees become "defensive" when questioned
- Board members start resigning for "personal reasons"
- An unusually large number of owners volunteer to run for the board because they "have an ax to grind"
- An unusually high turnout at a general or annual meeting—which is not related to some other issue

Any one of these items by itself may or may not indicate a management failure. But don't let matters slide! When one of these situations develops, investigate it as soon as possible *and* as objectively as you can.

In addition, if the demands of the community association and the board of directors are unreasonable or exceed the manager's ability to perform the required services, it is the manager's responsibility to communicate this to the board before it creates a weak management situation.

Management Ethics

The term "ethics" refers to the specific choices to be made by an individual in his or her relationships with others. **Professional ethics** are the rules or standards that govern the conduct of members of a profession. The assumption is that the special expertise held by members of the profession holds them to a high standard of trust by others.

The manager of a community association has a professional duty to:

- Provide diligent and faithful service
- Make full written disclosure of any matter that presents a potential conflict of interest for him or her
- Use reasonable care, diligence, and skill
- Avoid acting in conflict with the interests of the community association
- Avoid attempting to make any secret profits when acting on the community's behalf (for example—arranging for a kickback for giving a contractor a community association contract)
- Disclose and account for anything of value he or she receives as a result of managing the community association (for example—a valuable gift from a contractor)
- Avoid delegating more authority than he or she has received from the board
- Avoid acting on behalf of the community association after being terminated by the board (for example—giving a contractor instructions on behalf of the community association after being terminated)

- Be mindful that the duty of loyalty and duty of confidentiality of client relationships continue to exist following termination by the association (for example—giving another company information or documents that are proprietary to the former association client after being terminated)
- Decline to perform services that you are not qualified to perform

The most common ethical problem faced by community association managers is a conflict of interest or the appearance of one. A **conflict of interest** is a situation where an individual's duty to one leads to the disregard of a duty to another. For example, a manager or management firm acquires an interest in a company that is eligible to do business with the community association—such as a landscape company.

For a real conflict of interest to exist, two questions must be answered with a "yes:"

1. Is the transaction which results in compensation to the management company or agent directly or indirectly related to management's relationship with the community association?

Continuing with the landscape company example, management happens to be tasked with or is responsible for maintaining landscaping in the community association's common areas.

2. Will management directly or indirectly receive some compensation from the community association, or a third party, other than the compensation described in the management contract?

An example of extra direct compensation would occur if the manager receives a share of the profit earned by the landscape company that does business with the community association.

An example of extra indirect compensation would occur if the manager receives a share of profit from a nursery which sells supplies to the landscape company that does business with the community association.

Be sure to take the following steps to avoid a conflict of interest or, most importantly, the appearance of one:

1. Make full and complete written disclosure of all relevant facts to your board *prior* to any dealings which may be in conflict for you.
2. Obtain specific authorization from the board in writing before proceeding with any action which may present a conflict of interest. This authorization should also be recorded in the minutes of a board meeting.
3. Even after full disclosure, avoid any actions which are—or may be perceived as—a conflict of interest. Individual owners may not be aware of all the facts and may view your actions as improper.

It is strongly recommended you review and consult the codes of ethics adhered to by manager members and member companies who have achieved specific designations (CMCA, AMS, LSM, PCAM, AAMC) offered by Community Associations Institute.

The Professional Community Association Manager (PCAM) code of ethics sets forth the general and technical standards for integrity and objectivity, professional courtesy, conflict of interest, use of client funds, and limitations of practice. All managers should follow this policy to ensure their duties to the client are met.

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.)

- 1a. What three types of legal sources specify management authority and responsibilities for community associations?
- b. List some specific types of management activities that community associations are empowered to engage in.
- 2a. Explain the relationship between the owners' authority and the board of directors' authority in a community association.
- b. List some means of obtaining owner input on community management.
- 3a. What legal sources typically define a community association board of directors' authority and responsibilities?
- b. What is the role of a community association board of directors?
- c. Who is responsible for supervising implementation of the board's decisions?
- d. List some areas of responsibility for a community association board of directors.
- 4a. What legal sources typically authorize the establishment of committees in a community association?
- b. What is the general role of a community association committee?
- c. List some guidelines for a successful community association committee.
- 5a. Describe the role of a community association manager.
- b. What sources typically define a manager's authority and duties?
- 6a. What are the three forms of community association management?
- b. Compare their advantages and disadvantages in terms of cost, continuity, and professionalism.
7. What are some basic elements in a management contract or employment agreement?
- 8a. List some of the different types of management tasks included in a management plan.
- b. What resource can be used to develop the plan's goals for the year?
9. List two means of evaluating management performance in a community association.

10. List some potential warning signs of a weak management situation.
11. Give some examples of the ethical behavior expected of a professional community association manager.
- 12a. What is necessary for a true conflict of interest to exist for the manager of a community association?
 - b. What are three steps to take to avoid either a conflict of interest or the appearance of one?

THOUGHT/DISCUSSION QUESTIONS

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

- 1a. Locate any sections of state statutes that apply to the management of your community association. (*Hint: Ask your community's attorney or your nearest Community Associations Institute chapter.*)
 - b. What management-related authority and responsibilities, if any, do they assign to:
 - Your community?
 - Its board of directors?
 - Its committees?
 - You as a manager?
- 2a. Review your community association's governing documents, including its resolutions.
 - b. What management-related authority and responsibilities, if any, do they assign to:
 - Your community?
 - Its board of directors?
 - Its committees?
 - You as a manager?
3. What steps does your community association take to encourage owner input into board decision-making?
- 4a. What mandatory committees must your community association have?
 - b. What other standing committees does it have—or should it have?
 - c. Can you identify any examples of ad hoc committees your community association has used recently?

- d. What steps does your community association take to insure effective communication between the board and committees?
- 5a. How do your community's committees measure up to the guidelines for successful committees on pages 28-29?
 - b. What recommendations can you make to your volunteer leaders to improve your community's committees?
6. What authority and duties, if any, are assigned to you as manager of your community association by:
 - Your community's governing documents, including its resolutions?
 - Your management contract or employment agreement?
 - Any other actions of the board of directors?
7. How do the provisions in your management contract or employment agreement compare to the lists of typical provisions in this chapter?
- 8a. Do you have a management plan?
 - b. If not, what steps can you take to develop one?
 - c. If so, how is it developed? What does it include?
 - d. After reading this chapter, are there ways you can improve your plan's development or content? What are they?
- 9a. What process does your community association use to evaluate your management performance?
 - b. Are there any ways the process can be improved?
 - c. Do you see any warning signs that suggest you need to improve your management efforts?
 - d. If so, what steps can you take to address any warning signs?
- 10a. Have you faced any conflict of interest with your role as a community association manager—or the appearance of conflict?
 - b. If so, how have you handled the situation?
 - c. After reading this chapter, would you handle the situation any differently?
 - d. Do you know anyone who has faced such a situation? How did he or she handle it?

RESOURCES

For further information on community association management, we suggest the following:

Choosing a Management Company (Guide for Association Practitioners Series, Report #8), Fifth Edition, by Michael E. Packard, PCAM. This report examines what to look for in a manager, including an eight-step selection process with supporting information and sample forms, and guidance on how to work with the manager. (Community Associations Press, 2002.)

Conflicts of Interest, (Guide for Association Practitioners Series, Report #20), Third Edition, edited by Tonia C. Sellers and Jay S. Lazega. This report provides standards for both boards and managers. It highlights areas of activity in which actual or potential conflict may arise and suggests actions to take when a conflict does arise. (Community Associations Press, 2003.)

Introduction to Community Association Management, Governance, & Services, (Guide for Association Practitioners Series, Report #1), by Clifford J. Treese, CIC, CPCU, ARM, CIRMS. Written for board members, this report provides an excellent overview of the various aspects of managing a community association. (Community Associations Press, 2002.)

Rights and Responsibilities for Better Communities: Principles for Homeowners and Community Leaders. This brochure establishes an ideal standard to which communities can aspire, a goal-based statement of principles designed to foster harmonious, vibrant, responsive, and competent community associations. For a free, easily photocopied, single-page version, visit www.caionline.org/rightsandresponsibilities.

Selecting an On-Site Manager, (Guide for Association Practitioners Series, Report #19), Second Edition, by Thomas Burgess, PCAM. Reviews how to recruit a new on-site manager and how to work successfully with the manager. Also guides the reader through the transition period. (Community Associations Institute, 1996.)

Self-Management: A Guide for the Small Community Association, Second Edition, Ellen Hirsch de Haan, ESQ., Editor. Addresses the unique role of the self-managing board, and presents significant information on financial management, insurance, meetings, communications, and taking over from the developer. Also includes an appendix containing model documents, sample forms, and helpful checklists. Provides information on governing documents, compliance with rules, working with professionals, maintenance, public policy, and important legal considerations like fair housing and fair debt collection. (Community Associations Press, 2001.)

Note taking



CHAPTER 3

RULE DEVELOPMENT AND ENFORCEMENT

KEY TERMS

Alternative dispute resolution, p. 56	Eviction, p. 59
Appeal, p. 55	Hearing, p. 55
Architectural guidelines, p. 46	Hearing notice, p. 55
Cease and desist letter, p. 55	Hierarchy of authority, p. 48
Decision, p. 55	Resolution, p. 51
Default hearing, p. 55	Rule, p. 46
Due process procedure, p. 54	Self help, p. 59

Community associations use rules and architectural guidelines to:

- Promote harmonious community living
- Maintain, preserve, enhance, and protect the property values and assets of the community

Careful rule making and enforcement are essential for community associations for several reasons:

1. There is the need to create a sense of fairness and equity among residents (owners and tenants).
2. In contemporary society, people are more likely to question and challenge authority.
3. In cases where rules have been poorly developed or enforced, the courts are ruling against community associations.

Authority to make and enforce rules rests with the board of directors in a community. But the manager is expected to:

- Give the board practical, technical, and administrative assistance in developing and enforcing rules
- Maintain records which can furnish legal support if board actions in adopting or enforcing rules are challenged

This chapter explains:

- Authority to make and enforce rules for a community association
- Development of rules
- Enforcement of rules

Whenever the term "rules" is used in this chapter, it refers to "rules and architectural guidelines."

What You Will Learn

After reading and reviewing this chapter, you should be able to explain and understand:

- What rules and architectural guidelines are
- Scope of rules and guidelines
- Relation of rules to the hierarchy of authority in community associations
- Sources of community association authority to make and enforce rules
- Criteria for a valid and enforceable rule
- Steps in developing a rule
- Benefits of using a resolution process to adopt rules
- Resolution format
- Development of architectural guidelines
- Use of a due process procedure to enforce rules
- Alternative dispute resolution
- Internal resources for enforcing rules
- External resources for enforcing rules
- Enforcement of architectural guidelines
- Architectural variance or change requests

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

- Definition of a rule and guideline
- Scope of rules and guidelines
- Typical areas of rule making
- Relation of rules to the hierarchy of authority in community associations
- Sources of authority to make and enforce rules

Definitions

Let's begin with some basic concepts:

A **rule** is a specific statement of required behavior whose violation carries a penalty (sometimes called a sanction).

An **architectural guideline** is a rule that applies to the appearance of an owner's lot or the exterior of his or her unit or improvements.

Scope of Rules and Guidelines

In a community association, rules and guidelines outline expected behavior, identify limitations, and govern the community in three areas.

These areas include:

1. The use of both common property and individual lots or units. Rules and guidelines are developed in this area to promote conformity and harmonious living.
2. Changes in the architecture, the construction, or the appearance of lots or units. Rules and guidelines are developed in this area in order to:
 - Establish and preserve a harmonious design for a community
 - Protect the value of the property
3. The behavior of residents (owners and tenants), guests, and other visitors. Rules are developed in this area because of the possible impact one person's behavior may have on another person.

Typical Areas of Rule Making

To give you an idea of the scope of rules and guidelines, here are some typical areas of rule making.

Community associations frequently develop *rules* that address:

Pets	Noise
Children	Garbage and trash
Parking	Use of common areas and facilities
Solicitation	Renting and leasing of units
Maintenance of units	

Community associations frequently develop *architectural guidelines* that address:

Fencing	Location of improvements upon lots
Decks and patios	Exterior materials
Exterior lighting	Color of exterior surfaces
Landscaping	Outdoor equipment, such as play sets
Doors	Roof protrusions, such as skylights
Window treatments	

Relation of Rules to Hierarchy of Authority

In a community association, rules are established by means of resolutions or other motions.

Here is where rules fit into the general hierarchy of authority for operating community associations (see page 10):

- Federal statutes, regulations, and court decisions
- State statutes, regulations, and court decisions
- Local county and city statutes, regulations, and court decisions
- Plats (and the restrictions and easements contained)
- Declaration, CC&Rs, master deed, proprietary lease, or occupancy agreement
- Articles of incorporation (if incorporated)
- Bylaws
- Board resolutions
- Rules and regulations*

**The rules and regulations must be consistent with the board resolutions, bylaws, articles of incorporation, and declaration.*

This **hierarchy of authority** means that rules and architectural guidelines may not contradict or be in conflict with the legal sources that take precedence over them. Although rules and architectural guidelines are lower in the hierarchy of authority for community associations, they may clarify and expand a community's governing documents—but may not conflict with the other governing documents.

Sources of Authority to Make and Enforce Rules

Check all the legal documents in your community's hierarchy of authority to verify its authority to make and enforce rules.

The most important sources of a community's authority to make and enforce rules are:

1. **State statutes and court decisions**—Often statutes or case law empower the community association to make and enforce rules. Consult with legal counsel periodically to ensure rules are proper under current law.
2. **Governing documents**—Governing documents provide general powers, which consist of the broad authority to adopt and enforce rules in order to carry out the purpose of the community association. That purpose is to preserve, maintain, and enhance the community's property.

Governing documents also provide specific powers—the authority to adopt and enforce rules in specific areas. Governing documents may be silent as to the ability to adopt rules, however, general corporate power should provide this right. Please check your state statute for this authority.

Final authority to adopt and enforce rules rests with a board of directors—unless the governing documents specify otherwise. A board may delegate the task of drafting or enforcing rules to standing or ad hoc committees or to other sources—when the governing documents allow. The board should include the owners in the formation of rules. The use of town meetings or focus groups to review proposed rules may be helpful.

Normally, a board will receive limited input from owners for a proposed rule. But what it does not receive may be very important. Owners may offer a view of the proposed rule that the rule-makers did not consider. And owners are assured that the board is open to their input.

INTRODUCTION TO DEVELOPMENT OF RULES

In this section, we will discuss the:

- Criteria for a valid and enforceable rule
- Steps in developing rules
- Benefits of using a resolution process to adopt rules
- Resolution format
- Development of architectural guidelines

Criteria for a Valid and Enforceable Rule

In general, the courts recognize the following list as characteristics of a valid rule. Furthermore, people are more likely to accept and cooperate with rules with these characteristics.

Encourage your community association to use the following criteria when developing or reviewing its rules:

- The rule must not violate a fundamental constitutional right.
- The rule must be consistent with applicable federal, state, and local statutes and the community's governing documents.
- The rule must reasonably relate to the operation and purpose of the community.

- The rule must be reasonable—a reasonable rule is one that is just, sensible, and not excessive.
- The rule must be fair. It must not create a separate class or group of people. (For example—a rule that treats resident owners and nonresident owners differently.)
- The rule must be capable of uniform enforcement.
- The rule must be uniformly enforced—this means there must be no selective enforcement or exceptions.
- The rule must be necessary. Do not make rules which are not necessary.

When in doubt about the legality of a rule, consult an attorney. It is always a good idea to have your community's attorney review the wording of all rules and regulations—as proposed and as adopted—to ensure that they are legally sound and to ensure conflict avoidance with other governing documents and the law.

Steps in Developing Rules

Use the following steps to develop rules for your common interest community:

1. **Determine the need for a rule in the specific area.** Answer the question, "Why?" Then check to be sure that your community association's existing rules and governing documents are inadequate to address the issue.
2. **Consider both the immediate impact of such a rule and its long-term implications.** How is the rule likely to be received? Will a solution to a current problem create future ones for the community?
3. **Identify the source(s) of your community's authority to make a rule in the specific area involved.**
4. **Define the scope of the rule.** Specify "who" and "what" will be covered by the rule. The "what" of a rule includes:
 - Required steps, procedures, acts, or prohibitions a person is expected to follow
 - Enforcement procedures
 - Penalties for violations
 - Due process procedures (see page 54)

It is a general rule of law that if something is omitted from a list of items, it was intentionally omitted. An acceptable solution is to use language such as, "...to

include, but not to be limited to..." It is important to keep the language of a rule simple and the rule itself flexible.

5. **Apply an "enforceability test."** Check to be sure the proposed rule has the eight characteristics of a valid and enforceable rule listed on pages 49–50.
6. **Give notice of any *proposed* rule.** Build consensus and support for the rule before it is adopted in order to gain acceptance and compliance. For example, make owners aware that the board is considering a particular rule. Invite written comments. Schedule a hearing on a proposed rule if it is a major matter.
7. **Act promptly on a proposed rule.** Once a proposed rule has been published and input received, the board should act on it at its next regularly scheduled meeting. The board's options are to either approve or reject the proposed rule—as it is, or as amended. Failure to act will cause the board and the rule to lose credibility.
8. **Give notice of an *adopted* rule.** Actual notice of an adopted rule is necessary if people are to voluntarily obey it. Send a notice to the owner's last known address in the community's records. Send a notice to the unit or lot address, too, in case the occupant is a non-owner. Use a first-class mailing, either with a billing notice or separately, to maximize the likelihood of people receiving the notice and reading it. Publish the rule in the community newsletter, and/or post it in the common area, if any. Provide copies of the revised rules to local real estate professionals and to all new owners and residents. Whatever notice you give, use a positive "tone of voice." Avoid sounding demanding or condescending.

Benefits of Using a Resolution Process to Adopt Rules

As we said in Chapter 1, a **resolution** is a motion that follows a set format and is formally adopted. (See pages 14-15 for an explanation of the different types of resolutions and the use of a Book of Resolutions.)

There are several benefits to using the resolution process to adopt rules as opposed to using the simpler process of making motions.

The resolution process:

- Provides a thorough, deliberate approach to making rules
- Provides for consistency in making and wording rules
- Provides a formal record of all rules made

As a result, the process:

- Protects owners from arbitrary board actions
- Protects the community from charges that could result in inoperable rules

Resolution Format

A resolution contains four sections:

1. **Authority**—This section cites the primary source(s) of a board's authority to make a rule on the topic. Possible sources include statutes, declaration, articles of incorporation, and bylaws.

For example:

WHEREAS, the board of directors of _____ Homeowners Association, Inc. is empowered to govern the affairs of the homeowners association pursuant to Article IX of the bylaws...

2. **Purpose**—This section states why a rule is being adopted.

For example:

WHEREAS, there is a need to adopt specific rules on parking...

3. **Scope and Intent**—This section states:
 - Who will be affected
 - For what period of time
 - The reach or range and extent of the rule

For example:

WHEREAS, it is the intent that this rule shall be applicable to all owners, tenants, guests, invitees, or any others who have vehicles entering upon the common areas and this resolution shall remain in effect until otherwise rescinded, modified, or amended by a majority of the board of directors...

4. **Specifications**—This section states clearly and completely what those bound by the rule will be expected to do.

For example:

NOW, THEREFORE, BE IT RESOLVED THAT the following rules on parking are hereby adopted by the board of directors:

Revised Article IV, Section D of the parking rules will read:

Parking spaces which are not marked reserved shall be available on a "first-come-first-served" basis for visitors, guests, second cars, etc. Continuous parking of an undriven vehicle in one or more unreserved spaces for more than fourteen (14) consecutive days is prohibited unless prior arrangements have been made with the community manager. Vehicles in violation of this rule will be considered "stored" vehicles and the owner of the unit responsible for this vehicle will be subject to sanctions as imposed by the board of directors.

Development of Architectural Guidelines

Development of architectural guidelines should begin with a review of the governing documents to determine in what areas the board can allow a change. Usually a community association's declaration, CC&Rs, or master deed provides for architectural changes.

It is in the community's best interests for a board to establish *written* architectural guidelines for two reasons:

1. Written guidelines indicate to owners what types of changes will be allowed under normal circumstances.
2. Written guidelines are a way to avoid claims of arbitrary or selective treatment of owners.

Follow the steps for developing rules on pages 50–51 when developing architectural guidelines.

It is in the *board's* best interests to establish an architectural guidelines committee. A committee can concentrate its effort and attention on this major task alone. It can also act as a buffer between the requesting owner and the board.

INTRODUCTION TO ENFORCEMENT OF RULES

In this section of the chapter, we will discuss:

- Use of a due process procedure to enforce rules
- Alternative dispute resolution
- Internal resources for enforcing rules
- External resources for enforcing rules
- Enforcement of architectural guidelines
- Architectural variance or change requests

As a new manager, remember that your board has the authority to enforce rules. It may delegate to a committee the responsibility to review situations and make recommendations. Your responsibility as a manager is to provide administrative support to the rule enforcement process.

From time to time, managers may have a board that expects them to do all rule enforcement. As a community manager, you must help your leaders to understand and accept your respective role as administrative support to the enforcement process.

Use of a Due Process Procedure to Enforce Rules

A **due process procedure** is a formal process designed to protect the rights of all parties involved.

There are several benefits to using a due process procedure to enforce community association rules:

- All alleged rule violations are handled in the same manner
- Use of a due process procedure is recognized by the courts as an indication of legally valid rule enforcement
- The vast majority of rule violations can be resolved with this procedure—thus avoiding going to court
- The opportunity to be heard in a non-threatening fact-finding forum is often enough to result in a person voluntarily obeying a rule
- Such a procedure provides an opportunity to explore alternative means to resolve a violation

The basic steps in a community association due process procedure for handling alleged rule violations are:

1. Issue a “*cease and desist*” letter which contains:
 - Notice of the alleged violation
 - The action required to end the alleged violation
 - A specific time within which the alleged violation must be corrected
 - The penalty (sanction) which may be imposed after a hearing if the alleged violation does not end within the stated time
2. Issue a *hearing notice* if the alleged violation does not end within the stated time. This is a written notice to an alleged violator that a hearing will be held to consider his or her alleged violation.
3. Hold the scheduled *hearing* if the alleged violation does not end within the stated time. This is a fact-finding session. It is an inquiry into the allegations and an investigation of them. It is also just that, a hearing; it is not a time to engage in additional conflict but to hear the view of the person accused of a violation.
4. Hold a *default hearing* in the absence of an alleged violator. A default hearing is one held when the alleged violator fails to appear.
5. Issue a *decision* after a hearing is held. The hearing panel determines the facts; whether or not a rule has been violated; the penalty to be imposed, if any; and the enforcement date of the penalty, if any. The hearing panel then issues this information in the form of a decision. A hearing panel may find an alleged violator to have committed a violation or not—or decide that not enough clear evidence was submitted to allow the panel to reach a clear decision.

No decision is ever given during a hearing. This is to avoid the claim that the hearing panel was predisposed to a particular point of view. The hearing panel should issue its written decision within thirty (30) days. If the board of directors is the hearing panel, its decision should be adopted as a special resolution.
6. Allow for an *appeal* of a decision. An appeal is a request for a review of a case by a higher authority—if permitted by the governing documents or statute. (For example—if the hearing panel is a committee, the board of directors acts as the higher authority. If the board of directors is the hearing panel, the

alleged rule violator must appeal to an authority outside the community association—for example, alternative dispute resolution. [See below.]

If applicable legal sources allow, some community associations shorten the due process procedure by combining the “cease and desist” letter with imposition of a penalty and a statement of the alleged violator’s right to a hearing to waive (dismiss) the penalty. If the alleged violator does not request a hearing within the stated time, the party is expected to accept the penalty. If the party does not fulfill the penalty, then a hearing is scheduled.

It is also important to check the governing documents carefully, as many recent documents specify a “due process” procedure, which would be controlling. In addition, check your state statutes to determine whether deliberations can be held in private or must remain open, and if there are regulations regarding the issuance of the findings of the panel.

On the next two pages you will find a sample resolution for a rules enforcement procedure. It is an example of a due process procedure.

Alternative Dispute Resolution

A number of community associations are turning to alternative dispute resolution as a means of encouraging people to comply with rules and guidelines. **Alternative dispute resolution** (ADR) is a relatively new term for a process that has been around a long time. It involves submitting a dispute to a trained, uninvolved third party for assistance with resolution. The third party’s decision may be nonbonding or the third party may merely act as a facilitator in the case of a mediator. However, this approach can be a more efficient and effective way to resolve a dispute than other means.

An alleged rule violator might consider ADR if the party is dissatisfied with the community association’s decision or appeal verdict. A community association might propose ADR when confronted with a difficult rule enforcement situation or the possibility of prolonged litigation. In many jurisdictions, ADR is either required or encouraged before filing suit or during suit—but before trial.

Internal Resources for Enforcing Rules

There are a number of internal resources a community can use to encourage an owner or tenant to conform to community association rules.

Suspension of owner’s voting rights: While this may be the mildest action possible, a community association should still use it as a resource in encouraging rule violators to conform to association rules.

SAMPLE RESOLUTION: Rules Enforcement Procedure

WHEREAS the condominium has a declaration, bylaws, and rules and regulations, and,

WHEREAS Articles _____ and _____ of the bylaws of the condominium empower the board of directors to enforce the declaration, bylaws, and the rules and regulations, and,

WHEREAS the _____ Condominium Act specifies (Section ___) how to enforce the declaration, bylaws, and rules and regulations,

NOW, THEREFORE, BE IT RESOLVED THAT the condominium will enforce said declaration, bylaws, and rules and regulations with the following procedure:

- A. In order to begin the rules enforcement process, an owner must state in writing to the board of directors any rule violation he or she wishes to complain about.
 - 1. The person making the complaint must be identified in the letter.
 - 2. The person making the complaint will be called to testify at all hearings.
 - 3. Committees, as well as groups of owners or residents, may also bring complaints.

- B. Upon receipt of an alleged rule violation letter stating the date and approximate time of the alleged violation, a letter will be sent to the alleged violator, stating the alleged violation and a time period during which the alleged violation may be abated without further sanction (not less than 10 days).
 - 1. A copy of this letter will be sent to the person originating the complaint.
 - 2. If the alleged violation persists past the 10 day grace period, a second letter must be sent by a complaining owner (not necessarily the first owner who complained) alleging that the violation exists.

SAMPLE RESOLUTION: Rules Enforcement Procedure, *continued*

- C. After the receipt of two letters of complaint within the prescribed period, a hearing will be held.
 - 1. A hearing notice will be sent to the alleged violator stating: the nature of the alleged violation; the action requested to cure the alleged violation; the time and place of a hearing; an invitation to attend the hearing and produce any statement, evidence or witnesses on his or her behalf; a statement that a sanction may be imposed; and the maximum amount of any sanction.
 - 2. An invitation will also be sent to the person or persons originating the complaint, inviting them to the hearing in order to produce evidence to substantiate their complaint.
- D. The board will hear testimony from both sides at the hearing and then excuse both parties and render a decision.
- E. Should a fine be imposed on the alleged violator, standard collection action may be pursued which may take the form of court action for damages, collected as provided by law. It is also possible that standard collection action may include the filing of a lien on the unit for nonpayment of the fine and, ultimately, foreclosure, if necessary.
- F. In the case of non-owner-occupied properties, all residents and owners will be provided copies of all correspondence.

APPROVED:

Date: _____

President: _____

Secretary: _____

Suspension of the use of recreational facilities and common areas: If your community association uses this resource to encourage someone to conform to association rules, only privileges related to the violation should be suspended. (For example—suspend pool privileges—not parking privileges—for a pool violation.)

Fines: Be sure your community has the authority to impose fines, as well as to collect them. If a “per day” fine is imposed, the violation must be personally witnessed each day the fine is imposed.

Fines must bear a reasonable relation to the violation involved. Some states have legislated the maximum fines allowable. The courts will not allow a community to continue to fine until the amount owed becomes unreasonable. A community association must pursue other means of resolving an issue.

Eviction: Eviction is the process of physically removing someone from a property. This process involves the local court system and the use of an attorney. Do not even consider this alternative without consulting your community’s attorney. Many jurisdictions do not permit eviction as a remedy for violations.

Self help: Self help means the community association takes action to correct the violation itself. Again, do not even consider this potentially dangerous alternative without consulting your community’s attorney.

Before your community considers using any of the *internal resources* for enforcing rules, be sure to verify that either a statute or a governing document gives it the authority to take such an action.

External Resources for Enforcing Rules

Community associations can also draw on resources within the broader community to help them enforce association rules. Local government agencies and municipal services can be great resources for enforcing rules. However, you must ask for help and take the time to build working relationships with each of the following parties.

Local Health Department: Your local health department can be asked to enforce the local health code. For example, possible areas of violation include:

- Number of occupants in a unit
- Internal use of a unit or storage on a lot

Local Zoning Department: This local agency can assist with enforcement of such rules as:

- Fence or shed regulations
- Setback restrictions
- Restrictions on commercial use of dwellings
- Removal of vehicles, boats, and trailers from lots or common areas
- Other matters involving common areas and lots

Local Police Department: In some jurisdictions, the police will enforce traffic regulations or tow violators of the community's parking rules. In others, notice must be given to the police before *the community* has a vehicle towed.

As a general rule of thumb, it is a good idea to develop a good working relationship with your local police department before you need its help.

Local Fire Department: Your local fire department will help with enforcement of fire lanes and the removal of hazardous materials.

Local Building/Housing/Property Standards Department: These terms refer to the local government office that issues building permits. This department may be able to help you if a unit is in violation of an existing building, plumbing, fire, or electrical code. However, the office may require the approval of a community's board of directors before it will issue a permit.

You also should note that this office's responsibilities can overlap with those of local zoning and health departments.

Local Animal Shelter or Animal Control Officer: This agency is a good source of information on types of pets and weight classifications when your community association is defining rules for pets. You also can request that this agency patrol your community for animals in violation of its pet rules.

While local government agencies and municipal services can be great resources for enforcing rules, utilizing such entities can have repercussions for the community. Before you call or write, you should think through what enforcement of a code could involve. You should be prepared for all possibilities (e.g. shutting down a building, etc.). In addition, in certain situations, government agencies may be reluctant to enter private property—so their assistance can be limited.

Enforcement of Architectural Guidelines

A community's enforcement of architectural guidelines can be upheld in a court of law. The keys to successful enforcement of architectural guidelines are the same as the keys to successful enforcement of other rules. (See the criteria for a valid and enforceable rule on pages 49-50.)

A manager should advise a board of any violations of architectural guidelines as soon as they are discovered—for example, during inspection of the property. The board should also refrain from turning a blind eye towards violations. They should report any known violations to the manager in a timely manner. If unapproved architectural changes are permitted to exist, the association may be hindered if it later tries to enforce the rule that was violated.

One resource for successfully enforcing architectural guidelines is an established process for handling architectural variance or change requests. On the following pages, you will find a sample architectural variance request form and a sample form for responding to variance requests.

Although our sample does not, some architectural variance request forms include a "neighbor awareness" section. It requires the applicant for a variance to obtain the signatures of two neighbors—indicating that they have been informed of the pending changes. The signatures indicate only awareness of the request, *not* approval of the variance.

You, as the manager, or your community association's architectural guidelines committee should always inspect any variance made to ensure that it conforms to what was approved.

SAMPLE: Architectural Variance Request Form

Submission of Plans to Architectural Guidelines Committee (AGC)

Mail To: AGC Chairman
(address)

Name _____

Address _____

City/State/Zip _____

Phone(s) H: _____ W: _____

Date Submitted _____ Date Received by AGC _____

In accordance with the _____ covenants, easements, charges, and liens ("declaration") and the association's rules and regulations, I request your consent to make the following changes, alterations, renovations, additions and/or removals to my unit:

[Please attach a detailed (to scale) drawing or blueprint of your plan(s) and a copy of your community plat in duplicate.]

Is this an amendment to a previous request? _____

If yes, approximate date of previous request: _____

I understand that under the declaration and the rules and regulations, the committee will act on this request and provide me with a written response of their decision. I further understand and agree to the following provisions:

1. No work or commitment of work will be made by me until I have received written approval from the association.
2. All work will be done at my expense and all future upkeep will remain at my expense.
3. All work will be done expeditiously once commenced and will be done in a good workman-like manner by myself or a contractor.

SAMPLE: Architectural Variance Request Form, *continued*

4. All work will be performed at a time and in a manner to minimize interference and inconvenience to other unit owners.
5. I assume all liability and will be responsible for all damage and/or injury which may result from performance of this work.
6. I will be responsible for the conduct of all persons, agents, contractors, and employees who are connected with this work.
7. I will be responsible for complying with, and will comply with, all applicable federal, state, and local laws, codes, regulations, and requirements in connection with this work, and I will obtain any necessary governmental permits and approvals for the work. I understand and agree that the _____, its board of directors, its agent and the committee have no responsibility with respect to such compliance and that the board of directors' or its designated committee's approval of this request shall not be understood as the making of any representation or warranty that the plans, specifications, or work comply with any law, code, regulation, or governmental requirement.
8. I understand that a decision by the committee is not final and that the board of directors may reverse or modify a decision by the committee upon the written application of any owner made to the board of directors within ten (10) days after the committee makes its decision.
9. The contractor is: _____
10. If approved within twenty-one (21) days, the work would start on or about _____ and would be completed by _____.
11. Any work not started on or before _____ is not approved and later construction must be subject to resubmital to the committee.

Signature: _____

SAMPLE: Form for Responding to Variance Requests

Action Taken by Architectural Guidelines Committee (AGC)

Date of action: _____

_____ Approved as requested

_____ Approved with the following exceptions:

_____ Disapproved based on the following:

Chairman, AGC

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. What are some reasons for establishing community rules and architectural guidelines?
2. Give some reasons why careful rule making and enforcement are essential for community associations.
3. What are a manager's responsibilities in the rule making and enforcement process?
4. Describe the scope of rules and guidelines for a community association.
5. List some areas commonly addressed by community association rules.
6. List some areas commonly addressed by community association architectural guidelines.
- 7a. Where do rules fit in the hierarchy of authority in community association law?
b. What is their relationship to the governing documents?
8. What are the two most important sources of a community's authority to make and enforce rules?
9. Name and explain the eight criteria for a valid and enforceable rule or architectural guideline.
10. Name and explain the eight steps in developing a rule or architectural guideline.
11. Name some of the benefits of using a resolution process to adopt rules for a community association.
12. Explain the four parts of a resolution.
13. Give some reasons for putting architectural guidelines in writing.

14. How does establishing an architectural guidelines committee benefit a board of directors?
15. What are the benefits of using a due process procedure to enforce rules?
16. Define the six steps in a due process procedure for handling alleged violations of community association rules or guidelines.
17. Name and define some internal resources a community association can use to enforce its rules and guidelines.
18. Name and define some external resources a community association can use to enforce its rules and guidelines.
19. What can a community association do to increase the likelihood of a court of law upholding its enforcement of its architectural guidelines?

THOUGHT/DISCUSSION QUESTIONS

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

1. Review the legal documents in your community's hierarchy of authority. What authority—general and specific—do they give your community association to make and enforce rules and guidelines?
- 2a. Does your community association keep its rules in a Book of Resolutions or something similar?
- b. If so, what areas of rule making has your community association addressed?
- c. If so, what areas of architectural guidelines has it addressed?
- d. If not, how can you arrange to consolidate all the community association's rules and guidelines in a central place?
- 3a. What process does your community association use to develop rules and guidelines?
- b. Does it have any checklist or criteria for determining whether the rule or guideline it is developing is valid and enforceable?
- c. Are there any changes you can propose in either "a" or "b" for your community association?
- d. If your community uses the resolution process to develop rules, is it following the standard resolution format?

- 4a. Does your community association have written architectural guidelines?
 - b. Does it have an architectural guidelines committee?
 - c. If your community association lacks one or both, what reasons can you use to persuade your board that they are needed?
- 5a. Is your community association's rule enforcement process a due process procedure?
 - b. What aspects of the procedure led to your answer?
- 6a. Has your community association ever used alternative dispute resolution?
 - b. What can you find out about the experience?
7. Find out which internal resources for enforcing rules your community association has used. (*Hint: Examine past resolutions and minutes of board meetings. Ask people who would know.*)
- 8a. Does your community association have an established relationship with any of the agencies described in this chapter as external resources for enforcing your association's rules?
 - b. Has it used any of these resources to enforce its rules?
 - c. Which of these agencies have you established a relationship with?
9. Does your community association have a process and forms for handling architectural variance or change requests?

RESOURCES

For further information on rule development and enforcement, we suggest the following:

Alternative Dispute Resolution & Consensus Building for Community Associations, (Guide for Association Practitioners Series, Report #26), Second Edition, by Mary Avgerinos. Provides associations with an alternative to the traditional justice system and has been embraced by attorneys and judges alike. Covers the key ADR techniques such as negotiation, mediation, and arbitration. Provides samples of many useful letters, documents, and agreements. (Community Associations Institute, 1997.)

Architectural Control—Design Review, (Guide for Association Practitioners Series, Report #2), Fourth Edition, by Byron R. Hanke and Richard S. Ekimoto. Explains how to organize a system that works, including developing a manual on design objectives, standards and practices, and review procedures. (Community Associations Institute, 1998.)

Be Reasonable! by Kenneth M. Budd. A compendium of expert opinions from over 30 leading community association attorneys, managers, and directors. Provides effective strategies for drafting and enacting reasonable rules, identifying unreasonable rules and restrictions, working with owners, and reasonable enforcement procedures. (Community Associations Institute, 1998.)

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.)

Conflicts of Interest, (Guide for Association Practitioners Series, Report #20), Third Edition, edited by Tonia C. Sellers and Jay S. Lazega. This report provides standards for both boards and managers. It highlights areas of activity in which actual or potential conflict may arise and suggests actions to take when a conflict does arise. (Community Associations Press, 2003.)

Drafting Association Rules, (Guide for Association Practitioners Series, Report #7), Fourth Edition, by Gurdon H. Buck. Presents a step-by-step process for drafting rules to which community association residents will adhere. (Community Associations Press, 2002.)

Pet Policies: How to Draft and Enforce Rules That Sit, Stay, and Heel (Guide for Association Practitioners Series, Report #28), by Debra H. Lewin. Offers practical suggestions, helpful alternatives, and lots of new information on societal changes that impact your association's approach to pets. (Community Associations Press, 2001.)

Reinventing the Rules: A Step-By-Step Guide for Being Reasonable, by Lucia Anna Trigiani, ESQ. Describes in detail the challenge that must be met in order to put our communities first by looking at rules from a new perspective. (Community Associations Press, 2002.)



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