Lesson 1:
Legal Basis for Community Associations
Legal Basis for Community Associations

Overview

Lesson 1 Learning Objectives

Lesson 1: Legal Basis for Community Associations
Session Overview

Learning Objectives

• Define a community association.
• Describe the purpose of a community association.
• Identify the types of community associations.
• Identify federal laws that affect community associations.
• Identify state statutes that affect community associations.
• Understand governing documents of community associations and their hierarchy of authority.

Capture your notes here.
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 the community association(s) he or she manages, 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 lesson 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
Defining a Community Association

Characteristics of a Community Association

- Mandatory membership
- Mutually binding documents
- Lien-based assessments

Capture your notes here.
What You Will Learn

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

- Definition of a community association
- 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
- Federal statutes for community associations
- 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)
- Proprietary lease or occupancy agreement
- Articles of incorporation
- Bylaws
- Resolutions
- Public offering statement

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

- Definition of a community association
- Purpose of a community association
- Types of residential community associations

Definition of a Community Association

A community association is a legal entity in which the owners enjoy the protection, enhancement, maintenance and preservation of 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 association governing documents bind the owner and the association to each other through mandated actions.** These “mutually binding documents” also create the automatic lien which provides for severe consequences if the owner fails to pay his or her assessments and other charges.
3. **Mandatory lien-based assessments (maintenance fees) are levied on each owner in order to operate and maintain the community association.**
Purpose of a Community Association

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A lien is a legal claim by one party (community association) on the property of another (delinquent owner) to obtain the payment of a debt or the satisfaction of an obligation. Placing a lien on an owner’s property protects the community association’s interests. It encourages payment of the debt. Among other consequences of a lien, the owner cannot sell or transfer the unit without settling the debt.

The recording of a lien against an owner’s unit must be authorized by your community association’s applicable statutes or governing documents. Most statutes enabling the establishment of a community association or governing documents require that assessment liens be subordinate to any mortgages or government claims—such as taxes or assessments—against an owner’s property. Subordinate means that these other claims would be satisfied before that of the association’s assessment lien.

In most states and governing documents, the recording of the declaration/CC&Rs/master deed constitutes an automatic, prior-recorded assessment lien against the unit owner’s interests. Some state statutes have authorized a “super lien” or community asset protection lien. It provides a specified (usually up to six-months) priority for the community over the lien of a first mortgage holder, which means that if the lender forecloses, it must pay the association up to the specified period of delinquent assessments owed by the foreclosed owner. When an association has an automatic lien, it may not be necessary to file the lien of record in order to pursue collection. However, having the association’s attorney manually file the lien provides public notice of the debt and is usually required before foreclosing on the home. Your attorney can handle the recording of any liens against the title to a unit in the land records. The form used varies by state.

**Purpose of a Community Association**

The primary purpose of a community association is to provide for the community, business, and governance 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.

As you work through this class, you will recognize that a community association combines the characteristics and activities of a local government, a business, and a community.
Types of Community Associations

Slide 14

Types of Community Associations

- Planned Community
- Condominium
- Cooperative

Slide 15

Types of Community Associations: Planned Community

Slide 16

Types of Community Associations: Condominium “A”
Types of 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 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.

The three basic types of residential community associations—planned communities, condominiums, and cooperatives—focus on ownership instead of architectural style. It is important not to define the types of community associations by appearance or the name of the association, as there’s always an exception.
Slide 17

Types of Community Associations: Condominium “B”

Slide 18

Types of Community Associations: Cooperative

Slide 19

Other Types of Communities

- **Master (Umbrella) Association** – More than one residential community association
- **Mixed-Use Development** – Mixture of residential and commercial and/or industrial use grouped together
- **“55 and Older” Communities** – Must have one person who is 55 years of age or older living in at least 80% of its occupied units
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. Their marketing slogan is often “live, work, play.”
- **“55 and Older” Communities** – Must have one person who is 55 years of age or older living in at least 80% of its occupied units.

One of the fastest growing segments of our society today is active adults. The National Association of Home Builders estimates that by 2014 there will be 85 million people who are 55 years of age or older. Official “55 and older communities” must have one person who is 55 years of age or older living in at least 80% of its occupied units. The community must be designated “55 and older” to qualify as this type of housing that legally prohibits children and limits occupancy to a certain age span. The designation process involves submitting applications and obtaining approval before any enforcement of the ages of residents commences. Approval from the Department of Housing and Urban Development (HUD) must be received before construction begins.

On the other hand, an “active adult” community may or may not be legally designated “55 and older.” When working with a developer on the creation of a community, a manager should make sure the developer understands the difference and obtains the appropriate approvals if he decides to pursue the “55 and over” designation. For the purpose of this course, however, we’ll use the terms interchangeably.

As we age, we look for a place to live that is located in an area that will allow us to be involved with our children and grandchildren but will also give us independence. In years past, retirement facilities were designed to provide safety and care. Today, the baby boomers, the most financially stable group in our society, are very concerned with health and fitness and are showing that getting older does not mean acting old. Many boomers continue to work during their retirement. According to the 2005 Merrill Lynch New Retirement Survey, 71% of the adults surveyed plan to work after what has been traditionally known as retirement age. These adults believe continuing to work and staying active contributes to their mental and physical well being.

Developers have observed these statistics and are building more active adult communities to cater to the lifestyles of these individuals. These communities allow residents to stay near their hometowns and families and develop new friendships and activities. These communities are springing up all over the country, not just in Florida and Arizona where they were previously predominately located.

While not all of these communities are associations, many are being built as condominiums and planned developments. They are not a separate type of association, just a variation on the usual styles. Onsite activities may include golf, hiking trails, restaurants, fitness centers, art and/or craft studios, salons, bridge, paddleball, dancing, support groups for singles, transportation, sporting activities, entertainment, and many more. These communities are service-oriented and focused on amenities.
Active adult communities require a much higher level of service than those of the traditional retirement communities. They provide services geared more toward personalized support and quicker responses. These services range from transportation to shopping and medical appointments to trips to entertainment venues and even multi-day excursions away from the community. Residents usually demand a quicker response than residents in traditional housing communities. At the same time, they are highly cost conscious and demand frugality and penny-pinching while providing many services and amenities.

Managers of active adult communities must be able to provide the specialized expertise far beyond that which is expected of a typical portfolio or onsite manager and may require additional training. Often, the management team is on site, and consists of a full staff ranging from the onsite manager and an activities director to the facilities maintenance personnel and support staff for all activities.

Every year the National Association of Home Builders sponsors an International Builders’ Show catering to active adult community developers. This trade show attracts more than 100,000 guests each year, and features many events and programs that are focused on the 50-plus housing industry. We in the association management industry must keep up with the growing trends of these active adult communities and this is an excellent venue in which to learn about best practices and new products and services.

Capture your notes here.
Introduction to Federal Laws

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 (FHA, Fannie Mae, Freddie Mac, etc.)
- Standards set by professional bodies—for example, auditing standards set by the American Institute of Certified Public Accountants (AICPA)

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 lesson, we will focus on the three types of legal sources that define the basic legal authority for the existence, activities, and actions of a community association—federal laws, state statutes and governing documents.
Introduction to Federal Laws, continued

Slide 21

Types of Federal Laws Applying to Community Associations

- Equal Employment Opportunity Commission (EEOC)
- Fair Debt Collection Practices Act (FDCPA)
- Fair Housing Act
- Fair Labor and Standards Act (FSLA)
- Family and Medical Leave Act (FMLA)
- Federal Communications Commission (FCC) / The Telecommunications Act of 1996
- Federal Insurance Contributions Act (FICA)
- Occupational Safety and Health Act (OSHA)
- Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA)
- U. S. Bankruptcy Code

IMPORTANT NOTE

Failure to comply with these laws may result in significant penalties against the association and your company, especially if the onsite staff is the management company’s employees.

Slide 22

Fair Housing Act

- “55 and Older” Communities
- Reasonable Accommodations/Modifications
- Maintenance
- Pets/Service Animals
- Disruptive Residents
Introduction to Federal Laws

Federal laws impact community associations. Many states have additional laws that may add another layer of compliance requirements. Be sure to check with your Human Resource representative and/or legal counsel to ensure that your association(s) fully comply with all federal, state and local mandates.

In this lesson, we will summarize the provisions most relevant to community association operations. Since laws are continually changed or tweaked, be sure to follow the link provided for the most updated information on each law. Failure to comply with these regulations may result in significant penalties against the association and your company, especially if the onsite staff is the management company’s employees.

Equal Employment Opportunity Commission (EEOC) (www.eeoc.gov)

The federal government prohibits discrimination against otherwise qualified people in hiring, promotion, dismissal, compensation, and working conditions based on specific personal characteristics including—

- Race and ethnicity
- Color
- National origin
- Age
- Gender
- Religion
- Pregnancy
- Disability

Fair Debt Collection Practices Act (FDCPA) (www.ftc.com)

The purpose of FDCPA is to protect debtors from unscrupulous debt collectors and to impose a consistent and fair method to collect debts. See Module 2 in this manual for more information on this Act.

Fair Labor and Standards Act (FSLA) (www.dol.gov)

FLSA dictates standards for the basic minimum wage and overtime pay. It affects most private and public employment. It requires employers to pay covered employees who are not otherwise exempt at least the federal minimum wage and overtime pay of one-and-one-half-times the regular rate of pay. Some states have higher basic minimum wage amounts. You should check with your HR representative or HR attorney to ensure that you comply with all requirements.

Family and Medical Leave Act (FMLA) (www.dol.gov)

Administered by the Wage and Hour Division of the Department of Labor, FMLA requires employers of 50 or more employees to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the birth or adoption of a child or for the serious illness of the employee or a spouse, child or parent.
Federal Insurance Contributions Act (FICA) (www.ssa.gov)

This act requires employers and employees to make matching contributions to Social Security. The employer must withhold the employee’s share of the tax from his or her wages or salary and pay it timely to the federal government. Big penalties await those companies that do not submit their employees’ withholding within the prescribed time! The Department of Labor also clarifies the difference between an employee and a contractor. As long as the management company controls when the worker is on site, what work the worker must do and when, and provides tools to perform the work, the association must treat the worker as an employee. See www.dol.gov for additional criteria and discussion on the employee vs. contractor issue.

Occupational Safety and Health Act (OSHA) (www.osha.gov)

OSHA’s mission is to “prevent injuries and protect the health of America’s workers by ensuring safe and healthful workplaces.” If your association has employees, it must comply with all OSHA requirements. When the association contracts with a company whose employees will be working on the property, the contract should contain a provision requiring the contractor to comply with all provisions of OSHA. Some OSHA requirements include:

- Specific working conditions
- Specialized training
- Safety equipment
- Posting of warnings related to products and work site conditions
- Reporting of accidents

If you don’t think and talk safety and health, your employees will not, either.

Soldiers’ and Sailors’ Civil Relief Act of 1940 (SSCRA)
http://www.defense.gov/specials/relief_act_revision/

Of particular interest to community associations, SSCRA impacts American forces on active duty by requiring the delay of all civil court actions, such as bankruptcy and foreclosure, until the service member returns from active duty. SSCRA also protects active service members’ dependents from being evicted if the rent does not exceed $1,200 per month by requiring the landlord to obtain a court order authorizing eviction.

U.S. Bankruptcy Code

The purpose of bankruptcy laws is to help honest people and businesses find a way to pay their debt or get a fresh start. Bankruptcy laws help people who can no longer pay their creditors start anew – by liquidating assets to pay their debts or by creating a repayment plan. Among many other corrections and revisions, and with the strong lobbying efforts of CAI staff and volunteers, the Bankruptcy Prevention and Consumer Protection Act passed in 2005 contained a small provision benefitting community associations. It clarified that associations have the authority to collect assessments that come due after the date the homeowner filed for bankruptcy.
Federal Communications Commission (FCC)
http://www.fcc.gov/mb/facts/otard.html
The Telecommunications Act of 1996

As charged by Congress, in 1996 the FCC adopted the Over-the-Air Reception Devices (“OTARD”) Rule concerning restrictions on viewers’ ability to view programming from direct broadcast satellites, wireless cable and television broadcast stations. It overrides a community association’s deed restriction that bans satellite dishes and antennae from property that is exclusively used, controlled or owned by the resident, including tenants.

The rule applies to video antennas including direct-to-home satellite dishes that are less than one meter (39.37") in diameter (or of any size in Alaska), TV antennas, and wireless cable antennas. The rule prohibits most restrictions that:

1) unreasonably delay or prevent installation, maintenance or use;
2) unreasonably increase the cost of installation, maintenance or use; or
3) make it impossible to receive an acceptable quality signal

The rule authorizes community associations to impose rules that do not affect the installation, maintenance or use of a satellite dish or antenna, such as preferred placement. It also permits community associations to prohibit satellite dishes and antennae from common areas such as exterior walls, limited common area balconies, patios and roofs and to ban installations that may affect residents’ safety and for historic preservation.

Fair Housing Act
http://www.hud.gov/offices/fheo/FHLaws/index.cfm

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) prohibits discrimination in the sale, rental, financing, insuring and other housing related services of dwellings based on race, color, religion, or national origin. The original law was broadened in 1974 to add gender. In 1988, Congress further amended the law to protect people with disabilities (handicap) and familial status. Children under the age of 18 and women who are pregnant are also protected under familial status. The Act also includes design and construction accessibility provisions for multifamily dwellings (4 units or more) with first occupancy on or after March 13, 1991.

Many states and local governments have adopted their own version of a Fair Housing Act that expands the protected classes to sexual orientation, age and sources of income, so every manager should be aware of all laws relating to discrimination in housing.
CAI’s policy on fair housing states that it “supports the right of all individuals to be free from illegal discrimination on the basis of race, creed, color, sex, national origin, familial status or handicap.” CAI says it will “progressively pursue fair and reasonable interpretations and administration of, or changes to, Fair Housing Acts and related legislation and regulations.”

Following is a brief summary of the significant provisions of the Act that impact community associations.

1. “55 and Older” Communities

“55 and older” communities must have one person who is 55 years of age or older living in at least 80% of its occupied units. The Act requires that the community advertise accordingly and publish and follow policies and procedures that demonstrate an intent to be housing for persons 55 and older (rather than just a marketing term “active adults”). If the community is established as a 55 and over community, it is not violating the Fair Housing Act by excluding children.

2. Reasonable Accommodations/Modifications

In 1988, the Fair Housing Act created a new class of protected individuals – those with disabilities. The Act’s intent was to allow those with disabilities to have an equal opportunity to use and enjoy their home. In many situations, that may mean that the community association must allow variances to rules, policies and services so that the person with the disability can use and enjoy his home and common facilities. Examples of such accommodations/modifications could be:

1) Reassigning an undeeded parking space so it is closer to the home of the resident with a disability
2) Authorizing a disabled resident to construct a ramp from the parking area to the sidewalk

There are three considerations when determining if a request for a reasonable accommodation is valid:

1) Is the individual’s disability covered under the Fair Housing Act? In general, the Act addresses both mental and physical disabilities which substantially limit a major life function.
2) Is the requested accommodation reasonable? The Act does not intend to impose an undue burden on the association or require major alterations to the unit.
3) Is the requested accommodation necessary for the individual to use or enjoy his/her home? There must be a connection between the requested accommodation and the resident’s disability. The requested accommodation must improve the resident’s quality of life of which the disability deprived him/her.
Who pays for the modification? Under the Fair Housing Act, the resident would pay for the modification if the housing provider desires. The association may require him/her to pay to remove the modification when s/he moves out of the community.

If the association offers public access (other than just to residents and their guests) to an amenity such as a golf course, retail stores or restaurants, then the American with Disabilities Act (ADA) would apply. The major difference between the Fair Housing Act and ADA is that, under ADA, the association would bear the cost of the accommodation, while under the Fair Housing Act the person with the disability would pay for the modifications.

3. Maintenance

Under the Fair Housing Act, a person with a disability could sue the association for failing to maintain physical components of the community needed by the resident. For example, a consistently inoperable elevator or sidewalks full of snow for an unreasonable length of time can impede a person with a disability related to mobility.

4. Pets/Service Animals

There’s no dispute that the Act requires community associations to approve the request of a person with a disability for a trained seeing-eye or signal dog when s/he can provide verification of their disability and need of the animal. Questions arise, however, when a resident in a community that prohibits pets requests approval for a companion pet to help him cope with a proclaimed but unproven mental disability. There is no distinction under the Act between those with physical disabilities and those with mental disabilities. Very often, the animals which assist these persons with their disabilities are called a variety of names including service, assistance, companion and therapeutic animals. In the end, if the person meets the definition of disability and can show a need for the animal, the animal should be allowed and not considered a pet. Many see these animals as auxiliary aids, much like a wheelchair.

If an owner submits a request for approval of a companion dog in an association that prohibits pets or limits their size, weight or type, the board should treat the request with care and due diligence. Grant a temporary waiver while verification of the disability and need of the animal is sought. If it is determined that the request is valid under the Fair Housing Act, with the involvement of legal counsel, develop a special resolution that details the specific circumstances under which the board approved the pet so that the pet ban or limitation is still applicable to all other residents.

5. Disruptive Residents

A person with a mental disability who behaves in a disruptive or threatening manner is still entitled to reasonable accommodations under the Fair Housing Act. Even if the resident presents a health or safety threat, the association may have to go to court for approval to have him/her removed from the community.
Potential Fair Housing Complaints

1. Associations may not discriminate against children with regard to recreational facilities unless it is a 55 and older community. That means you cannot designate one pool for children and one pool for adults, or limit times in which children may swim or use the tennis courts. Additionally, associations cannot prohibit babies under 3 or children wearing swim diapers from using the pool, or prohibit children from playing in the common area where adults are allowed to do so.

2. If a person claims to have a disability under the Fair Housing Act but does not appear to be disabled, do not dismiss his/her request for a reasonable accommodation/modification. Every request should be seriously considered and reviewed in a timely manner.

3. The Fair Housing Act makes it illegal to direct abusive, foul, threatening or intimidating language or behavior toward tenants, residents or potential home buyers because of their membership in a federally protected class. Board members must realize the potential impact of their words spoken in the heat of the moment, and always think before they speak in their role as a leader in their community.

4. One neighbor harasses another neighbor with racial and sexual epithets and threats of personal injury. The offended neighbor asks the association to intercede, but the board refuses, saying that disagreements between neighbors are not within the association’s realm of responsibility. On the contrary, in Reeves v. Carrollsburg Condominium Unit Owners Association, a Washington, DC, case, the appeals court ruled that the association’s failure to intervene created a “hostile housing environment” for the resident being harassed and threatened. The appeals court found that the association’s bylaws authorized the board to address illegal behavior but it failed to do so. However, similar situations have occurred in other jurisdictions in which the court found just the opposite – that the association was not responsible. This is an evolving issue with no clear, consistent direction from the courts. If a similar circumstance arises in an association you manage, contact the association’s legal counsel immediately for a written opinion on how to respond appropriately. However, in similar circumstances, other courts have uniformly agreed that the association is not responsible for the behavior of one resident towards another.

5. Many boards and managers believe it is okay to enforce deed restriction violations only when a resident complains about a situation or a neighbor’s behavior or action. Scott Carpenter, a CCAL (College of Community Association Lawyers) member in Tempe, Arizona, disagrees. “Do all of your enforcement off of routine, objective and scheduled site visits and not off of individual complaints because you don’t know another homeowner’s motivation”, says Carpenter. “That way, if someone says that he or she is being targeted for enforcement because of race, the board can respond with evidence of transparent, objective policies.”

6. In most situations, if authorized in the governing documents, a board may approve a resolution limiting the number of occupants per bedroom but cannot limit the number of children.
Implications for Community Associations

According to Richard S. Ekimoto, in *Journal of Community Association Law, Vol. 4, No. 2, 2001 “An Overview of Reasonable Accommodations Under the Federal Fair Housing Act,”* “It is vitally important for community associations to comply with the fair housing laws. Discrimination can have a devastating impact on disabled individuals. Moreover, violation of the Fair Housing Act can result in substantial penalties, damages, and attorneys’ fees. Community associations should take a balanced approach in their consideration of requests for accommodations. An association’s concern that a non-disabled individual is misusing reasonable accommodation to get preferential treatment should not outweigh its concern that disabled individuals be afforded equal enjoyment of their dwellings.”

“Sometimes it's more important to resolve a problem amicably than to stand firm, especially when the disagreement has the potential to escalate into a discrimination allegation.”

“Be open to finding a resolution that protects the association's interest and also addresses the individual complaint. You'll probably be better off in the long run.”

As written in the *Common Ground™, September/October 2009* article, “Discriminatory Behavior”, by Anna Stolley Persky, “The simple solution is to have lawyers look over all association rules. After all, it's easier to amend the rules than to go through a discrimination complaint battle, lawyers say. Even better, let the attorneys review proposed regulations before they are enacted.”

Capture your notes here.
State Statutes That Affect Community Associations

Slide 23

Types of State Statutes Applying to Community Associations

- **General State Statutes** – Applies to all types of associations, including community associations
- For example, regular corporate or not-for-profit corporate statutes

Slide 24

Types of State Statutes Applying to Community Associations, continued

- **Specific State Statutes** –
  - Applies only to one or more of the types of community associations
  - Takes precedence over any general statute and takes precedence over the association’s governing documents
- For example –
  - Provides for establishment and operation of condominiums as legal entities
  - Regulate development and sale of condominiums
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, all 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, while others go into great detail dictating what the condominium association must do and not do for its members, including the specific process for enforcing the governing documents.

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.

Capture your notes here.
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 CAI and/or 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

More than half of the states in this country have adopted some form of these statutes.
Governing Documents of Community Associations

Slide 26

Community Association Governing Documents

- **Purpose:** To provide for the legal structure and operation of a community association.
- **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.

Slide 27

General Hierarchy of Governing Documents for a Community Association

- Recorded map, plat or plan
- Declaration, CC&Rs, proprietary lease or occupancy agreement
- Articles of Incorporation
- Bylaws
- Board Resolutions
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, including the establishment of the automatic lien
- Set forth rules and restrictions for the:
  - Protection of both owners and the community
  - Enhancement of property values
  - Promotion of harmonious living

In this section of the lesson, 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 important to know because each document addresses different issues involved in operating a community association. However, on occasion, there may be conflicting information in these documents, so community managers must know which document prevails. For example, the declaration may state that there will be five board members, while the bylaws may call for seven board members. The document that is higher in the hierarchy would prevail.

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
- Articles of Incorporation (if incorporated)
- Bylaws
- Board resolutions – Board resolutions cannot conflict with documents above it in the hierarchy.

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. For example, if the declaration requires the imposition of a $5 late fee, the board cannot vote to raise the amount to $25. Only the owners can amend a clearly-stated provision in the governing documents other than the rules and regulations, unless otherwise provided in that document.
Governing Documents of Community Associations, continued

Slide 28

Recorded Map, Plat, or Plan

- Recorded before first parcel sold/title transferred
- Plat sets development’s boundaries

Slide 29

Declaration, CC&Rs, Proprietary Lease or Occupancy Agreement

- In community developments, deed restrictions are recorded in one document instead of the deed/title for each lot or unit
- Condominium = declaration/master deed
- Planned Community = declaration of covenants, conditions, and restrictions (CC&Rs)
- Cooperative = proprietary lease/occupancy agreement
Recorded Map, Plat, or Plan

Some form of map is an essential document for all three types of community associations. A map or plat or plan is recorded in the County or Parish (or similar jurisdiction) 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) and master deed requires comprehension of the rights of ownership. The terms CC&Rs, master deed 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—or do whatever else with it s/he wanted to.)

When people buy a parcel of real estate, the bundle of rights is defined or referred to 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 to create what is called the “chain of title.”

The provisions in the declaration 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 now or in the future.

Instead of inserting all of the same covenants and restrictions into each individual deed in a community association, the developer’s attorney draws up a declaration which he records in the County, Parish or other jurisdiction’s Recorder’s Office before any of the real estate is transferred to a new 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.

The Declaration, Master Deed or CC&Rs 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 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 or CC&Rs 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

Capture your notes here.
Articles of Incorporation

Incorporation may or may not be a legal requirement for a community association. It is essential for cooperatives because the corporation owns all the property. The cooperative comes into existence when its articles of incorporation are recorded or filed.

If a community association is incorporated, it is typically as a not-for-profit, or nonprofit, corporation. Stock usually is not issued for incorporated condominiums and planned communities, while stock may be issued to cooperative owners.

Condominium associations often are incorporated, depending upon the requirements of applicable state law and attorney preference. In some states, condominium associations do not have to be incorporated because they are protected by a state condominium statute.

A community association’s corporate structure is established when a developer’s attorney creates the association’s governing documents. The attorney may file 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 the number of board members and 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
- Grants the board of directors the same rights as all board members of incorporated entities under state statutes

Slide 30

Articles of Incorporation
- Brings corporation into existence
- Cooperatives must incorporate – why?
- Other types of communities may incorporate – varies by state
- Benefits of incorporating:
  - Limit liability of individual owners
  - Right granted all corporations
  - Easier to deal with utility companies, vendors, etc.
  - Grants the board the same rights as all board members of incorporated entities under state statutes

>>M-100 the essentials of community association management
Governing Documents of Community Associations, continued

Bylaws

Bylaws are formally adopted regulations for the administration and management of a community association. Sometimes bylaws are developed as part of the declaration although usually, they are a separate document. While bylaws should be included in the original set of governing documents prepared by the developer’s attorney, they are sometimes overlooked and must be created and adopted by the board after control of the association is turned over to the homeowners.

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 a very few associations, the association members elect the officers in addition to the board members.)
- 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 or directly pay for 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 usually 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.

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 the first prospective buyers in a new development. It is also mandated by state statute.
Slide 31

Bylaws

- **Bylaws**: Formal procedures for administration and management of the governing entity
- Examples:
  - Meeting procedures – including voting rights
  - Board powers and duties
  - Indemnification of officers and directors

Slide 32

Resolutions

- **Resolution** – A motion following a set format and formally adopted by the board.
- May enact rules and regulations or formalize other board decisions

Slide 33

Public Offering Statement

- **Public Offering Statement** – Provides association information to first prospective buyers
- Required by state statute
- *Not considered a governing document*
Class Exercise

Work Group Exercise

A new owner within the community calls you. She has received a delinquent assessment notice in the mail. She is angry. She did not know her home was in a community association and does not understand why “another governmental bureaucracy” is bothering her. As the manager, how would you respond?

Answer:
Summary

Key Terms:

- Articles of incorporation
- Bylaws
- CC&Rs (Covenants, Conditions, and Restrictions)
- Community association
- Condominium
- Cooperative
- Declaration
- Equal Employment Opportunity Commission (EEOC)
- Fair Debt Collection Practices Act (FDCPA)
- Fair Housing Act
- Fair Labor and Standards Act (FSLA)
- Family and Medical Leave Act (FMLA)
- Federal Communications Commission (FCC) Telecommunications Act of 1996
- Federal Insurance Contributions Act (FICA)
- Governing documents
- Indemnification
- Lien
- Master deed
- Master association
- Mixed use development
- Occupancy agreement
- Occupational Safety and Health Act (OSHA)
- Planned community
- Proprietary lease
- Public offering statement
- Resolution
- Soldiers’ and Sailors’ Civil Relief Act of 1940 (SSCRA)
- Statute
- Umbrella association
- U. S. Bankruptcy Code
- 55 and older community

Focus Questions

Use the following questions to help you identify and review the core concepts in this lesson. (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. Describe some of the federal laws that affect community associations.
6. Explain the difference between general, specific, and uniform state statutes and give an example of each.
7. What is the purpose of governing documents for a community association?
8. List the basic governing documents for a community association.
9. What is the purpose of a recorded map, plat, or plan in terms of the legal rights and obligations of owners and the community? How does this document affect a community association’s activities?
10. What purpose does a declaration, CC&Rs, or a master deed serve for a condominium, cooperative or planned community? How does this document affect a community association’s activities?
11. What is the purpose of a proprietary lease or occupancy agreement in a cooperative? How does this document affect a cooperative’s activities?
12. What is the purpose of articles of incorporation? What are the benefits to incorporating a community association?
13. What areas of community association activity do bylaws typically address?
Thought/Discussion Questions

Use the following questions to help you apply the information in this lesson 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 the maintenance of the unit?
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?
Lesson 1 Quiz

1. Each of the following are key characteristics of community associations EXCEPT:
   a. Mandatory lien-based economic charges or assessments are levied on each owner in order to operate and maintain the community association.
   b. Membership in the community association is mandatory and automatic for all owners.
   c. A requirement of community association ownership is attending board meetings.
   d. Certain documents bind all owners to be governed by the community association.

2. True or False. The primary purpose of a community association is to provide for the governance, business, and communal aspects of the association.

3. Each of the following are basic types of residential community associations EXCEPT:
   a. Planned community
   b. Townhouse
   c. Cooperative
   d. Condominium

4. A _______________ is a motion that follows a set format and is formally adopted by the board of directors.
   a. Governing Document
   b. Plat
   c. Public Offering Statement
   d. Resolution

5. True or false. The purpose of a community association’s governing documents is to provide for the legal structure and operation of the community.

6. True or false. According to the general hierarchy of authority for governing documents, the bylaws would control in a conflict with the recorded map, plat, or plan.

7. Complete the following sentence: A ____________ state statute is one that applies only to one or more types of community associations.
   a. general
   b. complex
   c. specific
   d. uniform

8. True or false. A proprietary lease or occupancy agreement in a cooperative defines the member or stockholder’s rights and obligations in relation to the living unit.
Summary

Lesson 1 Quiz, cont’d

9. Complete the following sentence: The __________ bring the cooperative into existence, define its basic purposes and powers, and indicate whether stock will be issued.
   a. recorded map, plat, or plan
   b. declaration, CC&Rs, or master deed
   c. proprietary lease or occupancy agreement
   d. articles of incorporation

10. True or False. The public offering statement is a governing document.

Capture your notes here.
Additional 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, Second Edition, by Wayne S. Hyatt and Susan F. French. An ideal introduction to this important area of the law. Community associations bear similarities to not-for-profit corporations, municipal governments, and trusts, but are different. Community association law draws from all these fields but reflects the unique character and needs of common interest communities. The book combines academic rigor and practical knowledge. Primary materials include important cases, statutes (including proposed revisions to UCIOA), the Restatement (Third) of Property, Servitudes, and references to literature on common interest communities. (Carolina Academic Press, 2008.)

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 An Attorney, (Guide for Association Practitioners, 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 Institute, 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.)


Developer Transition: How Community Associations Assume Independence, A Guide for Association Practitioners, by Amanda G. Hyatt Guides the reader through the transition process, methods and legal requirements. Covers how to draft documents, structure committees, develop leaders, and involve residents early. Includes a transition checklist. (Community Associations Institute, 2004.)