

# HOA Homefront

## WHAT ARE ASSOCIATION GOVERNING DOCUMENTS, AND WHY SHOULD I CARE?

By: Kelly G. Richardson

**W**hen one thinks of governing documents, one may think only of “CC&Rs,” (Covenants, Conditions and Restrictions). However, a community association’s governing documents are far more than simply CC&Rs.

### What are “Governing Documents”?

Under state law, “governing documents” include the articles of incorporation, CC&Rs, bylaws, and operating rules. The subdivision map or condominium plan should also best be considered a governing document. Each of these governing documents has a distinct purpose and function, and every owner in a common interest development should have a copy of each.

### Subdivision Map or Condominium Plan

The subdivision map or condominium plan breaks up the land into the separate interests which are sold to homeowners. These documents are recorded (i.e., filed) with the County Recorder, and therefore are public information fairly easily retrieved with the help of a title company. This defines the “common area” or “exclusive use common area” as well as the “separate interest” (i.e., the lot or unit). Because these documents establish a real estate interest, they cannot be amended without agreement of all those who share an interest in the development (including lenders) — so as a practical matter, consider them non-amendable.

### Articles of Incorporation

The Articles of Incorporation establish the legal “person” of the community association. This document is filed with the state, and so is also public. It can be retrieved by making a request to the California Secretary of State. The Articles will state the legal name of the association. The articles can be amended, but it is rarely necessary to do so.

### CC&Rs

The CC&Rs document is recorded, and therefore also is a public document. If your association does not have a recorded official copy of the CC&Rs, it can be retrieved with the assistance of a title company.

CC&Rs are a long contract automatically binding all owners, and the law holds all have read, understood, and agreed to its contents. [This may cause you to stop reading and go look at your CC&Rs, but read for a few paragraphs more.]

CC&Rs cover how the property is used, and how it will be taken care of, and very much affect how you live in your association. There usually will be a section called “Use Restrictions” listing a number of prohibited activities. Those restrictions can range from limits on pets to parking restrictions or even tenancy restrictions. In a multi-story condominium building, they may dictate what type of flooring surface is permitted. CC&Rs will also usually indicate what the association will maintain or repair, as opposed to the maintenance or repair responsibilities of the individual member.

CC&Rs are amendable, subject to a membership vote requirement as stated in that document. That vote requirement is usually high, and can be difficult to achieve.

### Bylaws

Bylaws usually should contain the association’s governance procedures and its most basic corporate operations, such as annual meetings, voting procedures, role of officers, and qualifications of directors. Bylaws are not normally recorded, so if no official copy can be found, there is no government source for retrieval of replacement copies. Bylaws can be amended by a vote of the membership, but unlike CC&Rs typically do not require updating to reflect major changes in the law.

### Operating Rule

At the bottom of the hierarchy are the association's operating rules, sometimes known simply as "rules," "house rules" or "regulations." These are passed and amended by the board of directors, and do not require a membership vote. However, the membership must be notified of most rule changes in advance of their adoption, and rules are not effective until distributed to the membership in written form.

These various documents are the building blocks of the common interest development. If properly drafted, and carefully read, they can prevent disputes before they arise, through giving clear guidance concerning rights and responsibilities. Less disputes means less need for lawyers, which everyone (except perhaps some lawyers) would agree is a good thing!

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Kelly G. Richardson, Esq. is the Managing Partner of Richardson & Harman PC, a California law firm known for its real estate and community association advice. Mr. Richardson is a popular lecturer for attorney groups, Southern California Associations of Realtors®, real estate brokerages and community association industry groups. He is general counsel for several Los Angeles area Associations of REALTORS®, and is a member of the C.A.R. Legal Affairs Forum.

Direct questions to Kelly at [KRichardson@RH4Law.com](mailto:KRichardson@RH4Law.com)