

Know Where You Get Your Authority

The first place an association president should look for authority in guiding the association is state law. State laws regarding community associations are generally called one of the following: Condominium Act, Uniform Condominium Act, or Common Interest Ownership Act.

Following the model passing of the Uniform Common Interest Ownership Act (UCIOA), many states attempted to clarify the governance of all types of developments. In states where no law directly applies, associations should seek a clear understanding of the legal definitions and applicable law from an attorney or other associations.

A president's interpretation of the law depends upon the type of association he or she governs. For example, a condominium owner is entitled to two things, exclusive ownership of a specific unit for which he or she has title and an undivided percentage interest of ownership in the common areas.

But all associations have three similarities:

1. Mandatory membership is required of all owners
2. Governing documents bind all owners to a governing association
3. Economic assessments are levied against owners (1993 CAI *Factbook*)

Figure 1, page 10, lists some general definitions of common properties and associations.

Common Areas Defined

Each type of association development has common areas. The control and maintenance of these elements often creates confusion among board and association members. Amenities such as the community pool, exercise room,

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landscaped areas, and playgrounds are easily recognized examples of common areas. Some properties also have common areas consisting of pipes, hallways, and laundry rooms.

The association declarations and bylaws clearly spell out the definition of common areas. The common areas are owned by all association members with an equal and undivided interest. No individual has exclusive rights of ownership or use of the common areas. This is an important concept to remember since it does not change with the type or amount of use by residents. By clearly understanding the definition of common elements and the board's responsibilities to them, a president will be better equipped to address any problems or concerns associated with the common areas and their use.

The board president should also understand the term *limited common area*. Defined in the declarations, these areas are part of the common area of the association, but are reserved for the exclusive use of specific unit owners. Examples of limited common areas include balconies, decks, parking stalls, and storage lockers.

Declarations that define these areas should also state whether common area maintenance is the responsibility of the association or the owner. The association usually maintains limited common areas as well.

Required Reading and Documents to Know

The president should have a basic understanding of the law, the governing documents, contracts, and insurance policies of the association. By reading and understanding association documents, declarations, bylaws, and rules and regulations, the board president will learn what he or she needs to know regarding the organizational structure and functions of the association. In the course of leading the association, the president may need to refer to these documents for clarification.

Figure 1. Properties Defined

Condominium—A space referred to as a unit where the owner pays a mortgage directly to the lender. The owner holds title to his unit, but the association owns the common elements.

Planned Community—The term "planned community" defines all developments other than condominiums or cooperatives. Planned communities are also referred to as: homeowner associations, townhouse associations, property owners' associations, and planned unit developments. The homeowner pays a mortgage for the home or townhome directly to the lender. The owner holds title to the unit, but the association owns the common area.

Cooperative—Members or shareholders own stock in the corporation that owns the entire building, which include units and common area. Mortgage is paid by the association, and members have leasehold rights to their units.

Declarations, CC&Rs

The underlying documents of the community association, apart from state law, are the declarations, also referred to as Covenants, Conditions, and Restrictions (CC&Rs). Declarations are the constitutional law of the association.

Usually created with articles of incorporation that record the association as a legal entity with the secretary of state, the declarations define the limits and inclusions of ownership for the owners and the association. As a legal entity, the association is better prepared to pursue certain business needs, such as entering contracts, raising funds, filing liens, and collecting fees in a foreclosure.

The declarations contain:

- Definitions of the physical elements of the property
- The method for determining the share of interest in the common area for each unit owner
- A list of the responsibilities for the association and individual owners and permitted uses of common areas and individual units
- Responsibilities for care of the association and the common areas
- Restrictions on the use or enjoyment of individual lots/units in the association and common areas

Association declarations are usually written by the developer. If the developer uses similar declarations for different communities, however, the declarations may not receive a great deal of individual attention. In such cases, the declarations may contain information that is appropriate for one association but inappropriate for another.

In examining the documents, the president should make sure the property and the responsibilities associated with the property are described accurately. Review these distinguishing aspects early in the life of the association and after the transition from developer to owner control to ensure proper business conduct.

Bylaws

If declarations form the constitutional foundation of the association, *bylaws* define the laws and operating procedures of the association. Bylaws detail the framework for governing the association that is authorized in the declarations. They address the association's structure, the board, the officers, definition of a quorum, ability to enter into contracts, etc. Bylaws provide reliable guidance for board members at meetings.

Rules & Regulations

Rules and regulations are the operational and behavioral laws that apply directly to association residents. They clearly state acceptable and unacceptable conduct for all association members. Rules and regulations often generate conflict between the board and the residents since they may provide restrictions regarding noise, pets, use of the property or common areas, and assessment collection. Good rules serve the interests of the entire association, not those of an individual or group of individuals. Vaguely

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written rules lead to misunderstanding and confusion.

While residents tend to follow their own interpretations of the rules and regulations, the president and the board members must consistently adhere to and enforce the rules. Arbitrary enforcement of rules can result in confusion among association members. The rules must also allow

for "due process," which is just as important as rule enforcement.

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If there are loopholes in the rules and regulations, the board should consider modifying them. The president should talk with other associations, refer to CAI publications and seminars, or consult the association attorney when formulating new rules or modifying existing ones.

Amending Documents

It may be necessary to periodically revise association documents (e.g., declarations, the bylaws, or the rules and regulations).

Typically, each document requires a different course of action to initiate changes:

- The declarations are usually the most difficult to change because a high percentage of association members must approve the changes.
- Bylaws can be amended more easily than declarations, but may still require a high percentage of approving votes from the membership.
- Rules and regulations, under the control of the board, can be changed by a vote of the board. The board should, however, provide notice and written copies of the new rules to every homeowner before enactment.

While circumstances may lead the board to initiate changes in any of these three documents, the changes should be well-researched and infrequent to maintain consistent association operation.

Insurance

To understand the various types of insurance, appropriate amounts of coverage, and how to choose the best insurance agent, a president should read current policies and review contracts and association documents. Due to the changing nature of insurance and risk management, it is important to continually update information. The adequacy of the association's insurance can actually influence external funding sources, such as federal or secondary mortgage agencies, and affect property values.

Though most associations are classified as not-for-profit volunteer organizations, boards should not gain a false sense of security and buy the wrong type or amount of insurance protection. Remember that the board manages the investments and living arrangements of many people. This places their actions under the watchful eye of the legal system.

The president and the board members should know which coverages apply to the association and which coverages apply to individual unit owners. An association insurance policy protects individual owners only to the extent of their percentage interest in the association. It does not take the place of owners' needs for certain types of insurance.

The specific characteristics of each property determine the need for

specific types of insurance. Consider coverages that address these minimal areas:

- Coverages stipulated in the bylaws
- Property characteristics and typical risks associated with the type of property and services under association management
- Liability created by errors and omissions by actions of the board and officers
- Liability created by wrongful or dishonest acts of the board
- Coverage of the risks incurred by staff, workers compensation, and volunteers performing duties for the association.

Insurance issues are complex. The president should seek the advice of a practiced professional who can counsel and sell the association a policy. To make an informed selection, check out references from other associations. Accepting a low-cost quote just to save money is a risky venture. The provider should know the association's unique characteristics, the legal ownership of the units and the coverages, and how they relate to coverages of individual homeowners.

Insurance covers more than risk. It also guides business conduct and association activities. Board and owner actions affect the association's ability to apply for some, if not all, types of insurance. Therefore, the president should urge the owners and the board to act within the bounds of the insurance policies. Do not attempt to fall back on insurance to fix a careless mistake.

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