

## **FREQUENTLY ASKED QUESTIONS**

### **What is a “common interest development”?**

The term “common interest development” (or “CID”) describes a real estate development where each owner holds a separate interest (title) in a property typically called a unit or lot, and shared interest to portions of the property typically called the common area. The most numerous forms of CIDs and the most common in California are the condominium and the planned development.

### **What are the governing documents?**

The term “governing documents” is used to describe the entire group of legally recognized documents, both recorded and unrecorded that create and controls a condominium project or planned development. The governing documents usually include a subdivision map and/or condominium plan, a Declaration of Covenants, Conditions and Restrictions (or "CC&Rs"), Articles of Incorporation (if the project is incorporated), Bylaws, and Rules.

### **What is the subdivision map and condominium plan?**

The terms “subdivision map” and “condominium plan”, describe types of drawings that illustrate how a property is divided into units or lots. These drawings show the exact location and boundaries of each unit or lot, and of the common area. Once recorded, the drawings become legally connected to each unit or lot within the property. In some condominium projects, a condominium plan is attached to the CC&Rs rather than recorded separately.

### **What is in the Declaration of Covenants, Conditions and Restrictions (sometimes called simply the “Declaration” or the “CC&Rs”)?**

CC&Rs describe the relationship in terms of rights and obligations of the homeowners association and of each owner. CC&Rs are recorded with the county recorder of the county where the property is located, and automatically bind anyone who becomes an owner of the property after the CC&Rs are recorded. CC&Rs are required for all condominiums and planned developments. They are prepared by the developer’s attorney, and recorded with the county at the time a condominium project or planned development is formed.

### **What is in the Articles of Incorporation and the Bylaws?**

The Articles of Incorporation or “Articles” are an association’s statement of incorporation as a nonprofit mutual benefit corporation.

The Bylaws describe how the association is organized and managed. Bylaws usually include the following:

- Numbers and selection methods for officers and directors;
- Notice, meeting and voting procedures for owner and board decisions; and
- Association record keeping and reporting requirements.

### **How do the HOA Rules relate to the other governing documents?**

The CC&Rs usually entitle the homeowners association to adopt Rules, and give the Rules the same binding power as the other governing documents. Most often, Rules provide usage restrictions relating to alterations, signage, waste disposal, parking, pets, and recreational facilities. Where the same topics are discussed in the CC&Rs, the Rules may add to or explain the CC&Rs but cannot conflict with them.

### **Who owns the common area?**

Ownership of the common area can be held by the homeowners association or by the owners in percentage shares as “tenants in common”. The decision is made by the developer at the time the governing documents are prepared, and is very difficult to change later.

### **Under what circumstances can the association refuse to allow an owner access to recreational facilities?**

A homeowners association may charge fees for the use of recreational facilities and refuse access without payment, provided the charge applies equally to all owners and is not specifically prohibited by the governing documents. The association may also temporarily remove an owner’s recreational facilities usage privileges as discipline for a violation of the governing documents. This type of discipline is permitted only if (i) the governing documents do not specifically prohibit it, (ii) the board has adopted the discipline policy in advance, (iii) notice of the policy has been provided to all of the owners in advance, and (iv) the violating owner is given notice of the violation and a board hearing before the recreational facilities usage privileges are removed.

### **Is there a government agency with authority over HOA activities?**

There is no governmental agency with authority to oversee homeowners associations. Association duties and standards must be enforced by owners through the court system or through some alternative dispute resolution process such as mediation or arbitration.

### **When the HOA needs to get legal advice in order to respond to an owner, can it charge the owner for attorney’s fees?**

A homeowner's association is not entitled to recover its attorney's fees from an owner unless it prevails in a court proceeding or arbitration involving the enforcement of the governing documents.

**Are owners entitled to attend board meetings?**

Owners are entitled to attend all board meetings except Emergency Board Meetings and executive sessions. The board is permitted to hold an executive session only to discuss litigation, contracts with non-owners, the formation of contracts with third parties, owner discipline, personnel matters, or to meet with an owner regarding the payment of assessments. Any gathering (including a conference telephone call) where a majority of directors discuss any item of business scheduled to be heard by the board is considered a director meeting, and triggers owner notice and attendance rights.

**Must owners be permitted to speak at board meetings? Can their speaking time be limited?**

Owners must be permitted to speak at all board meetings except executive sessions, but the board may establish a reasonable time limit for owner speeches.

**Can directors discuss and act upon matters not described on the agenda that is part of the meeting notice given to the owners in advance?**

Generally, directors may not discuss or take any action on any matters not listed in the agenda. There are some narrow exceptions to this rule that are listed in Civil Code §4930.

**Is the HOA required to perform regular inspections of the portions of the property it maintains?**

A homeowners association is required to regularly inspect the portions of the property it maintains as part of the reserve study process.

**Under what circumstances can HOA directors and officers be held liable for damages resulting from their service?**

The law provides that a volunteer director or officer cannot be held liable for damages resulting from his/her service to the association if he/she performs his/her duties (i) in good faith, (ii) in a manner which he/she believes to be in the best interests of the association, and (iii) with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use in similar circumstances. Directors are entitled to rely on information and opinions provided by the association's officers, committees, and hired experts. To provide additional liability protection to directors and officers, most governing documents state that the association will indemnify them absent gross negligence, intentional misconduct, or fraud. Most governing documents require the association to carry director and officer ("D&O") liability insurance for these costs, and such insurance is always a good idea. The law states that if the D&O insurance

meets statutory minimums, the director or officer cannot be held personally liable even if the damages exceed the insurance coverage.