



# Governing Documents

Few people like fine print or red tape, but there are several important documents board members need to be familiar and comfortable with. Collectively, they're called governing documents. Depending on the type of association you live in, individual documents will differ. Each is a very useful tool that will provide specific guidance.

## **WHY ARE GOVERNING DOCUMENTS IMPORTANT?**

- They give boards the authority to govern by providing for the operation and regulation of the association.
- They provide guidance and protect boards.
- They protect association members by spelling out their rights and responsibilities.
- They are supported by local ordinances, state statutes, and federal regulations.

Governing documents will provide the structure within which the board can work effectively, they'll guide board decision making, and support association operations. Their greatest value, however, may lie in the protections they provide to board members.

Community association governing documents typically include several items in descending order of authority.

- Declaration or master deed, including Covenants, Conditions & Restrictions, or CC&Rs (in condominiums and planned communities)
- Proprietary lease, master lease, or occupancy agreement (in cooperatives)
- Articles of Incorporation
- Bylaws
- Rules and Regulations

### **THE DECLARATION**

The Declaration (or Master Deed) contains the CC&Rs that regulate resident behavior. They bind all the owners to the association, establish association responsibilities, and define owners' rights and obligations. (In cooperatives, this document is called the proprietary lease or occupancy agreement.)

### **ARTICLES OF INCORPORATION**

Articles of Incorporation initially create the corporation under state law and define the association's basic purposes and powers. They may specify such things as the number of directors, terms of office, and other specifics about how the board functions. (In some states, condominium and planned community associations are not legally required to incorporate, and these may have articles of association.)

### **BYLAWS**

Bylaws contain provisions concerning actual association operations, such as meetings, procedures for electing the board members and officers, and general duties of the board. Sometimes the bylaws cover the same topics as the declaration.

## RULES AND RESOLUTIONS

Boards adopt rules and regulations. They must be consistent with the declaration or proprietary lease, the bylaws, and state law. Rules are usually recorded at a board meeting in the form of a motion called a policy resolution. Making and enforcing rules are important responsibilities for boards that must be undertaken with care. See section 15 for more information.

In addition to policy resolutions, boards will also adopt administrative, special, and general resolutions. These resolutions specify how the association should operate. Board members should familiarize themselves with all association resolutions along with the other governing documents.

### The Four Types of Resolutions

1. **Policy resolutions** affect owners' rights and obligations.
2. **Administrative resolutions** address the internal operations of the community association.
3. **Special resolutions** record board decisions that apply a policy to an individual situation.
4. **General resolutions** record board decisions regarding routine events.

**TOOL 1.1–1.2:** See the Sample Resolutions at the end of this section.



### Cautions

*The distinction between areas that are owned separately and areas that are owned in common is the cause of much misunderstanding in community associations. It's important to understand the differences based on the information in the governing documents.*

*Association governing documents must not conflict with federal regulations, state statutes, or local ordinances. It's important to have your association governing documents reviewed by the association attorney to ensure that they do not conflict.*



## FOR MORE HELP

Available online at [www.caionline.org/bookstore.cfm](http://www.caionline.org/bookstore.cfm) or call (888) 224-4321 (M–F, 9–6:30 ET).

*Introduction to Community Association Management, Governance, and Services, Guide for Association Practitioners #1*, by Clifford J. Treese. (Community Associations Institute, 2002.)

*Condominium and Homeowner Association Practice: Community Association Law*, 3rd Ed., by Wayne S. Hyatt. (American Bar Association, 2000.)

To download a PDF of the entire Board Member Tool Kit, go to [www.caionline.org/toolkit](http://www.caionline.org/toolkit).

## Sample Policy Resolution

WHEREAS, Article \_\_\_\_\_ of the declaration of covenants, conditions, and restrictions of the \_\_\_\_\_ association creates an obligation for payment of assessments; and

WHEREAS, Article \_\_\_\_\_, Section \_\_\_\_\_ of the declaration charges the board with setting the annual general assessment rate sufficient to meet the obligations imposed by the declaration; and

WHEREAS, it is the intent of the board of directors to establish such an assessment rate for fiscal year \_\_\_\_\_;

Now, therefore, be it resolved that the annual general assessment for fiscal year \_\_\_\_\_ shall be fixed at \_\_\_\_\_ dollars (\$\_\_\_\_\_).

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ATTEST:

Date \_\_\_\_\_ President \_\_\_\_\_

Corporate Seal

## Sample Administrative Resolution

WHEREAS, Article VII, Section 1 (d) of the declaration of covenants and restrictions grants the board of governors powers “to exercise for the association all powers, duties, and authority vested in or delegated to the association herein or in the articles of incorporation or bylaws of the association and not reserved to the membership;” and

WHEREAS, Article VIII, Section 8 of said declaration establishes the remedy for default in payment of assessments, and

WHEREAS, there is a need to establish orderly procedures for the collection of assessments that remain unpaid past their due date since delinquent assessments post a serious financial and administrative burden on the association, and

WHEREAS, it is the intent of the board to establish steps for the collection of delinquent assessments;

Now, therefore, be it resolved that the procedures for collection of delinquent assessments be as follows:

1. Each monthly assessment is due and payable on the first day of each month and is delinquent on the fifth day of the month.
2. Delinquent accounts not paid by the tenth day of the month will be assessed a ten dollar (\$10) late charge.
3. In the case of payments that are delinquent for 30 days or more, owners will be sent a “Ten Day Notice of Lien.” If the amount that is delinquent plus late charges is not received in the 10 day notice period, a lien upon the delinquent unit will be filed as provided in said Article VIII, Section c. Such lien will include interest at 10 percent per annum, a \$50 administrative cost and reasonable attorney’s fees. A copy of the notice of lien will be sent to the unit owner and the holder of the first deed of trust of record.

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Date adopted: \_\_\_\_\_