

Association Creation Questions:

What is a “common interest development” or “CID”?

The term “common interest development” (or “CID”) describes a form of real estate where each owner holds exclusive rights to a portions of the property typically called a unit or lot, and shared rights to portions of the property typically called the common area.

What are the governing documents?

The term “governing documents” is used as a general reference to the entire group of legally recognized paperwork that creates and controls a condominium project or planned development. The governing documents typically 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”, as well as the less common terms “final map” and “parcel map”, 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. They are prepared by licensed land surveyors, reviewed by government agencies, and recorded with the city at the time a planned development is formed. Once recorded, the drawings become connected to every deed and mortgage on every unit or lot within the property. A copy of the map of Hidden Valley Association is available on our website.

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

CC&Rs describe the 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 vary widely in content and length, but usually cover the following topics:

- The boundaries of the common area and of each unit or lot;
- The owner usage restrictions, typically including occupancy limitations, pet regulations, and alteration controls;
- The maintenance responsibilities of the association and the individual owners;
- The allocation of association operating costs among the owners, and the mechanism for collecting owner payments;
- The insurance requirements for the association and each owner;
- The dispute resolution procedure; and
- The rights and protection of mortgage lenders. CC&Rs are required for all condominiums and planned developments. They are prepared by the developer’s attorney, reviewed by a government agency (unless the project has fewer than five units or lots), 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 usually short and often contain only the name of the homeowners association, the name of the association’s initial agent for the service of process (the person authorized to receive legal notices), and a statement that the association is a nonprofit mutual benefit corporation. Articles are prepared by the developer’s attorney, reviewed by a government agency and filed with the secretary of state. The Bylaws describe the mechanics of association decision making and management. 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.

Unlike Articles and CC&Rs, Bylaws are not recorded or filed with any government agency, and this makes them easier to change.

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

The CC&Rs usually empower the homeowners association to adopt Rules, and give the Rules the same binding power as the other governing documents. The Rules often provide usage restrictions relating to alterations, waste disposal, parking, and pets. 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. Association Rules are usually enacted after some of the units or lots have been sold and the owners have taken control of the association. They are not subject to any governmental review and do not need to be filed or recorded with any governmental agency.

Why are the governing documents binding?

The law provides that the use of real estate can be restricted when a document describing the restrictions is recorded with the county where the property is located. The restrictions “run with the land”, meaning they apply to each owner who acquires the property after the restrictions are recorded. The map or plan, and the CC&Rs, are different types of recorded restrictions which “run with the land”, and that is why they bind each owner of a unit or lot. The Articles, Bylaws, and Rules are not recorded, but derive their binding power from the recorded CC&Rs. With the Articles and Bylaws, this binding power arises because the CC&Rs makes each owner a member of the homeowners association, and the law makes each member of the association subject to the association’s Articles and Bylaws. With the Rules, the binding power arises because the CC&Rs specifically empower the association to enact additional binding restrictions.