

Association, Know Thyself

Every association, every board, and every resident should have the goal of creating and maintaining a development with a high quality of living, a friendly, neighborly atmosphere, and stable or increasing property values. In order to accomplish this goal, it is essential to “know thyself.” To “know thyself” as an association, you must know and understand what type of development you live in and what laws and documents govern and bind your development, your association, and the owners within it.



The “Common Interest” Community. A “common interest” community is a community with common property that is privately owned, managed, and maintained. An association of the property owners in the community manages the common property with funds obtained by levying assessments against the

property. The common interest that defines a “common interest community” is typically tangible property (swimming pools, streets, parking areas, roofs, halls, etc.) but may consist simply of the right to enforce use restrictions and other covenants binding property in the community.

Form of Ownership. There are two main types of “common interest” communities - condominiums and PUDs (a third type, “cooperatives,” are rare in Utah and not discussed here). To understand what type of development you live in, you must understand the

nature of the ownership of the units and common elements. The type of community association that you live in (PUD or condo) is determined mostly by how the property within it is owned. In a PUD, each owner owns their lot, while the association entity holds title to the common area. In a condominium, the association does not own the common property, but rather each owner holds title to an undivided interest in common in the common property, as well as to his or her unit. In a PUD, you are said to “own the dirt” your home sits on, as well as the house itself. The “dirt” may simply consist of the footprint of your house or it may be much larger. In a condominium, you typically own “airspace” only, from the paint on the walls inward, the carpet on the floors upward, and the finished ceiling downward.

What Subjects Are Addressed by Which Utah Law?

Condominium Act (applies only to condos)	Community Association Act (applies only to non-condos)	Nonprofit Corporation Act (applies to <u>all</u> incorporated associations)
Articles of Incorporation	Articles of Incorporation	Articles of Incorporation
Assessments	Assessments	Assessments
Bylaws	Bylaws	Bylaws
CC&Rs (Declaration of)	CC&Rs (Declaration of)	
Collecting Assessments (including liens/foreclosure)	Collecting Assessments (including liens/foreclosure)	
		Committees
		Directors (number, qualifications, duties, authority, etc.)
Fines	Fines	
Insurance		Insurance
Leasing, Renting	Lease, Leasing (defined)	
Management Committee	Board of Directors	Board of Directors
		Meetings
		Members List
		Notice
		Officers
Records		Records
Rules	Rules	
Voting		Voting (proxies, ballots, etc.)

GOVERNING DOCUMENTS

Plat Map (recorded with county recorder)	→ is a visual representation of the property descriptions contained in the CC&Rs. It defines physical boundaries and distinguishes between units or lots and common elements and limited common elements.
Articles of Incorporation (filed with Utah Division of Corporations)	→ establish the association as a nonprofit corporation.
Declaration of CC&Rs (recorded with county recorder)	→ creates rights and obligations which are binding upon the association and future owners of property; contains the fundamental provisions dealing with ownership and property rights.
Bylaws (should be recorded in all associations, but <u>must</u> be recorded in a condominium)	→ set forth procedures for internal government and operation of the association.
Rules and Regulations (not recorded, board adopts, are equal in hierarchy to resolutions)	→ govern use of property, activities, and conduct; intended to fill holes purposely left in the CC&Rs and bylaws and often change over time as the community changes.
Board Resolutions (not recorded, board adopts, are equal in hierarchy to rules)	→ establish rules, policies, and procedures for internal governance and association activities; regulate operation and use of common area.

ments that are lower in the hierarchy (e.g., rules) are not enforceable if they conflict with higher level documents (e.g., CC&Rs). Documents are enforceable if they are consistent with the higher documents, and if they were adopted in compliance with the higher documents.

This hierarchy is illustrated by the subject of satellite dishes. They are governed by federal law, the FCC, and cannot be regulated by a board in a way that conflicts with FCC rulings. Another example is that your CC&Rs or bylaws cannot set out provisions for member voting that are prohibited by the Nonprofit Corporation Act. A final example is that you cannot adopt a rule that takes

It is essential that you understand what type of community you live in because the law that applies to a particular association is determined by what type of association it is (condo or PUD), and whether it is incorporated as a nonprofit corporation. It is also essential that you know whether your association is incorporated (and current in its status with the state). If your community is a condominium, then it is governed by the Utah Condominium Ownership Act. If you live in a PUD, then your association is governed by the Utah Community Association Act. Both condos and PUDs are governed by the Utah Nonprofit Corporation Act, if they are incorporated. In sum, two of these three Acts will most likely apply to you (but never all three), and will govern crucial aspects of the day-to-day governance and operation of your community. It is every board member's job to be aware of these laws and their burdens and benefits.

Every common interest community is also regulated by several layers of written documents. The documents are enforceable in a specific hierarchy. Docu-

away traditional property rights from owners when your CC&Rs do not provide warning or notice that such rights may be restricted, such as a rule prohibiting renting units when the CC&Rs are silent regarding renting of units. A rule that affects a substantive property right likely needs to be adopted through a CC&R amendment.

A well-run homeowners association can provide residents with increased property values, structured governance, and harmonious living. But, in order to do so, boards must have an understanding of the statutes and the legal documents that bind the association and its owners.

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