

Section I

Operations

There are four basic characteristics of **common-interest communities**.

1. All owners are automatically members of a community association.
2. Governing documents create mutual obligations.
3. Mandatory fees (assessments) are generally levied against owners and are used for the operation of the association.
4. Owners share a property interest in the community.

In a standard housing development, a person has an interest that is separate from others in the development. This separate interest is usually the person's home. In a common-interest community, a person also has an interest that is separate from others in the community. This, too, is usually the individual's home. In a condominium, the separate interest is usually called a unit.

In a common-interest community, unlike a standard housing development, a person also shares an interest in a portion of the community with the other owners. This portion of the community is called the **common elements**. The common elements can include, among other things, the grounds, recreational facilities, common walls, roofs, and streets. According to Florida Section 718.104(4)(f), the shared interest may either be a percentage based on the square footage of the unit in uniform relationship to the total square footage of all other units or on an equal fractional basis. Most of the larger condominium associations calculate shared interest based on square footage.

The common elements in some condominium associations are divided into **general common elements** and **limited common elements**. Limited common elements are a portion of the common elements that is designated in the governing documents for the exclusive use of one or more, but fewer than all, of the owners. Examples of limited common elements include carports, patios, and balconies.

Legal Definitions of Condominium Associations

The legal definition of the following terms, along with numerous others, can be found in Chapter 718 of the Florida Statutes, also known as the Condominium Act. The terms may vary from state to state.

Condominium—The Condominium Act defines a condominium as the form of ownership of real property that is created pursuant to Chapter 718 and that is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements. In other words, an individual owns a separate interest in a space usually called a unit or an apartment, plus a shared interest in the common elements (also called common elements). The separate interest is usually contained within a building.

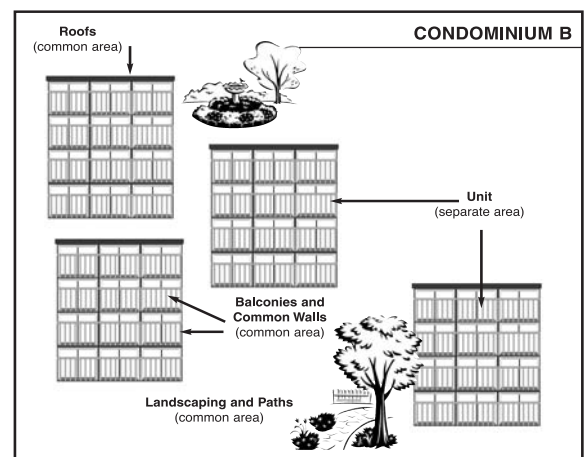
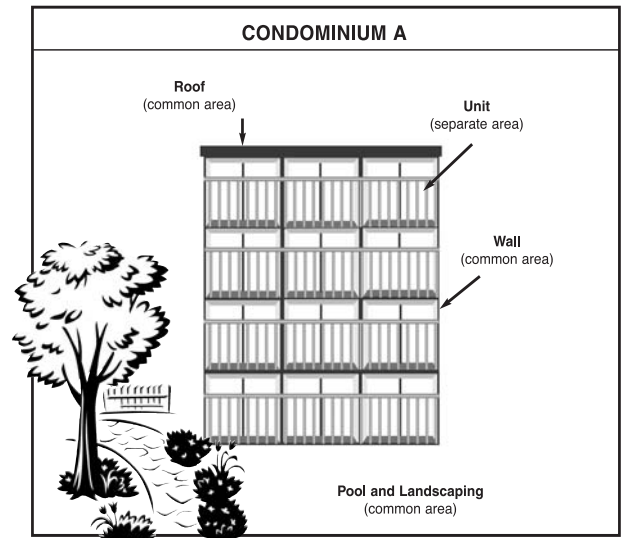
If the condominium association has attached units, the common elements may be similar to those in a cooperative. If the condominiums are detached, the common elements may be similar to those in a planned community. The Condominium Act defines common elements as the portions of the condominium property not included in the units.

The owner's fractional shared interest may be equal or based on another system, such as square footage. For example, if there are 100 condominium units, each owner may own 1/100 of the common elements or each owner may own a fractional share based on the size of his or her home.

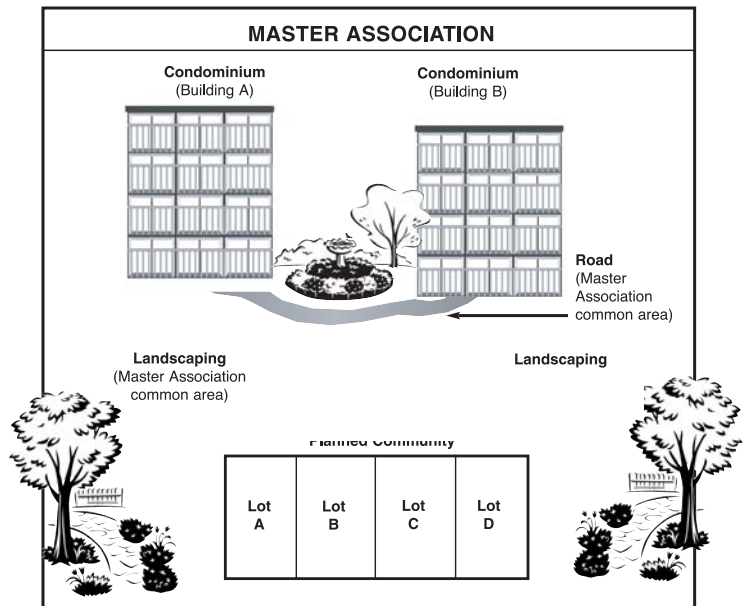
A condominium is distinguished from the other common-interest communities by the fact that the unit owners generally own the common elements as co-owners. The association, however, can always own property in its own name.

Master Associations—The various forms of community associations can be combined in one community. When they are combined, there is usually a master community association that serves as an umbrella association.

For example, a master community can consist of two condominium buildings and a planned community as in the diagram on page 3. Assume that John Smith owns a unit in condominium A. In a regular condominium, an owner usually just has two interests: an individual interest in a unit and a fractional shared interest in the common elements.



Because John lives in a master community, however, he owns three interests. He owns an individual interest in the unit and a fractional interest in the common elements in Condominium A shared with the other owners in Condominium A. In addition, because he is a member of the master association that owns master association common elements, John also shares an interest with all the members of the master association in the master association common elements.



Governing Documents

The governing documents create the legal foundation for a condominium association. These documents consist of the following:

- **A condominium plan**
- The **declaration**, which also contains the **Covenants, Conditions and Restrictions (CC&Rs)**
- **Articles of Incorporation** or **Articles of Association**
- **Bylaws**
- **Resolutions, rules and regulations**

The owner in a condominium association will receive additional documents. These documents, however, are not considered part of the governing documents. For example, in a condominium, the owner will receive a deed that conveys an interest in the property to the owner. An owner also may receive a public offering statement, which is a disclosure statement that provides information about the condominium association to a prospective buyer. While these documents have legal significance to the unit owner, they are not part of the governing documents.

Condominium Plan

Florida law determines whether a document called a condominium plan is required. Specifically, section 718.104(4)(e) of the Florida Statutes states, “The survey, graphic description, and plot plan may be in the form of exhibits consisting of building plans, floor plans, maps, surveys, or sketches.” Florida law, section 718.504, does require a “Prospectus” to be filed by the developer for each new condominium with more than 20 units. The Prospectus is a summary of the declaration of condominium. After the initial development and sale, the Prospectus is no longer required. Also, the Prospectus has no

enforceability or governance authority. It is intended as a reference and a disclosure document.

It is important for the developer to make a distinction between areas that are considered a separate unit and those that are owned in common or by an association. Owners must understand the rights and obligations they have regarding their property interests.

Declaration

The common scheme for the community is created by the declaration (or master deed) in a condominium development. This document contains the covenants or restrictions that regulate the owners' behavior. It binds all the owners in interlocking relationships, establishes association responsibilities, and defines owners' rights and obligations. Examples of covenants include those that create an obligation for the association to maintain common elements, restrictions prohibiting certain uses, age and pet restrictions, and restrictions relating to the transfer of association interests.

The law provides that the covenants in the declaration "run with the land," and are transferred to subsequent owners. In other words, all owners are legally bound to abide by the covenants.

Articles of Incorporation or Association

In Florida, a condominium association is not required to be incorporated if the association was in existence on January 1, 1977. All condominium associations developed subsequent to that date are required to be incorporated.

Those condominium associations that are incorporated have **Articles of Incorporation**. The Articles of Incorporation are generally much shorter than the declaration. They create the corporation and define its basic purposes and powers. Associations that are not incorporated may have Articles of Association.

Florida statute Section 718.11(1)(a) requires that condominium association's operation must be by an association that is for profit or not for profit. Section 718.104(4)(k) and (l) require the Articles of Incorporation and the bylaws be provided in the Declaration, but may be included as exhibits. Incorporation can limit the liability of individual owners, entitle the condominium association to exercise the powers of corporations, and make it easier for the association to deal with other parties.

Bylaws

The **bylaws** contain provisions concerning association operations. The bylaws are included as exhibits to the recorded declaration. Generally, provisions that define property interests are contained in the declaration. Provisions concerning an association's internal operating procedures are found in the bylaws. The bylaws address topics such as meetings, procedures for electing the board members and officers, and general duties of the board. The bylaws are usually easier to amend than the declaration. Florida statutes require that the method used to amend bylaws should be located within the bylaws and should be consistent with the provisions of the Condominium Act.

In accordance with the Condominium Act—Chapter 718.112(2)—the bylaws shall have the following provisions:

- Administration
- Quorum; voting requirements; proxies
- Board of administration meetings
- Unit owner meetings (annual meeting)
- Budget meeting (any meeting at which a proposed annual budget will be considered)
- Annual budget
- Assessments
- Amendments of bylaws
- Transfer fees
- Recall of board members
- Arbitration
- Certificate of compliance (to the applicable fire and life safety code)
- Common elements; limited power to convey

For specifics on each of these provisions, please refer to the Condominium Act.

Resolutions, Rules, and Regulations

Rules and regulations for condominium associations are often adopted by the board members through **resolutions**. A resolution is a motion that follows a set format and is formally adopted by the board. Resolutions must be consistent with the declaration, the bylaws, and Florida law.

There are four types of resolutions:

1. Policy resolutions
2. Administrative resolutions
3. Special resolutions
4. General resolutions

A complete discussion about resolutions is found in Section 5 on page 48.

In addition to the rules and regulations, a condominium association is required to produce a “Frequently Asked Questions and Answers” form that will be considered part of the official documents of the association. This form must be in accordance with a format approved by Florida’s Division of Florida Land Sales, Condominiums, and Mobile Homes.

Hierarchy of Governing Documents

On occasion, provisions in the declaration and bylaws cover the same topic. When this happens, a court will attempt to make the provisions in both documents valid by construing them together. For example, if the declaration states that a person must seek

the board's approval to own a pet and the rules allow two pets, a court is likely to construe the documents together and recognize both provisions as valid.

However, if the documents conflict, a court will give the greatest weight to the declaration, then the bylaws, and finally the rules and regulations.

If the Articles of Incorporation conflict with the bylaws or rules and regulations, the Articles of Incorporation generally will prevail, but the law varies among the states. Because the Articles of Incorporation are usually general and concise, it is unlikely that the declaration and articles will conflict. If they do, however, the board should seek legal counsel.

The above discussion assumes that the provisions in the governing documents comply with the law. If they do not, they are always invalid.

Laws Affecting the Creation of a Condominium Association

Provisions of the governing documents exist for several reasons. First, some exist because the developer believes the provisions will make it easier to market the condominium. Other provisions exist to comply with the law, the regulations of the Division of Florida Land Sales, Condominiums and Mobile Homes, and the requirements of the secondary mortgage market.

While all states have statutes that deal specifically with condominiums, some merely authorize their creation. Others, including Florida, control numerous aspects of condominium association operation. Florida is one of the most highly regulated states.

Provisions may exist in the governing documents in direct response to the requirements imposed by these statutes. For example, if the state law requires the association to maintain a particular type of insurance, the declaration may contain the same insurance requirement.

In addition to Florida statutes that deal specifically with condominium associations, there are also general statutes that apply to condominium associations. For example, the corporation statutes control incorporated associations. The bylaws may contain specific provisions, such as particular notice requirements for meetings, or proxy requirements that reflect the state corporate law. Statutes pertaining to workers' compensation and state taxes are other examples of general statutes that are also applicable to condominium associations.

Another source of legal precedence is case law. For example, even if a state does not have a statute providing that board members owe a fiduciary duty to the association, state case law may impose the duty. The developer may have inserted provisions in the governing documents to reflect applicable case law.

Local and federal law also can control the contents of the governing documents. For example, the local government may require the declaration to contain a provision requiring the owners to maintain their separate property. Also, the Federal Fair Housing Amendments Acts of 1988 requires the documents to contain certain provisions if the association is an age-restricted community.

The secondary mortgage market also may be the source of some of the provisions. For example, the Federal Housing Administration, the Veterans Administration, the Department of Housing and Urban Development, the Federal Home Loan Mortgage

Corporation, the Federal National Mortgage Association, and the Government National Mortgage Association impose a variety of requirements. If the developer wishes to comply with the various requirements of the agencies, he or she will insert provisions in the governing documents approved by these entitled pertaining to insurance, the distribution of financial statement and the amendment of the declaration.

Conclusion

The governing documents and local, state and federal law control the operation of common-interest communities. These documents form the legal foundation for the condominium association and determine what property interests, rights and obligations the unit owners have. It is, therefore, essential for condominium association leaders to be familiar with both the governing documents and the law.

Additional Resources

The Condominium Act (Chapter 718 of the Florida statutes) is available online at www.leg.state.fl.us/statutes

Conflicts of Interest (GAP 20). Tonia C. Sellers & Jay S. Lazega, Community Associations Institute, 1996.

Community Association Law: Cases and Material on Common Interest Communities. Wayne S. Hyatt, Esq. & Susan F. French, Carolina Academic Press, 1998.

Notes