



# HOA GOVERNING DOCUMENTS: THE BASICS

A guide to understanding and updating the governing documents for your homeowners association.



Whether you are new to living in an HOA, have just become an HOA Board Member, or just want a refresher on your governing documents, HOA Governing Documents: The Basics is your resource for everything you need to know about governing docs and your community. In this guide, we'll explain:

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## CC&RS, RULES & REGULATIONS, AND BYLAWS EXPLAINED

Your homeowners association has three types of governing documents:

- Covenants, Conditions & Restrictions (called “CC&Rs”)
- Rules & Regulations
- Bylaws

Frequently, the function of these documents or the role the property management company plays in implementing them can be confusing.

### COVENANTS, CONDITIONS & RESTRICTIONS (CC&RS)

This is a legally binding document that is officially recorded and filed with your state. Your CC&Rs cover the rights and obligations of the homeowners association to its members and vice versa. CC&Rs often cover legal issues, such as:

- Property-use restrictions
- Clearly defined maintenance obligations for the HOA and individual members
- Mechanisms for rule enforcement and dispute resolution
- Lender protection provisions
- Assessment obligations
- Insurance obligations

Because this record is kept on file with the state, it can be difficult to amend and requires a vote by the membership to make any changes.

## **BYLAWS**

If CC&Rs cover the “what” of the HOA, the bylaws cover the “how.” Your community’s bylaws establish the structure of day-to-day governance of your homeowners association. This includes things like:

- Frequency of HOA board elections
- Process for nominating and electing new board members
- Number of members that serve at one time
- Length of board member service terms
- Meeting frequency and quorum requirements
- Duties and responsibilities of board members

Like CC&Rs, Bylaws are difficult to change, as they too require a vote by the membership to amend.

## **RULES & REGULATIONS**

Your community’s Rules & Regulations are a catch-all for the things that aren’t covered in the Bylaws or CC&Rs. These are often the rules that might need revising over time due to changes in the community. For example, an HOA might have a rule that states that no children are allowed in the community pool before noon. This rule would not be a part of the community’s CC&Rs because it might need to change seasonally, or as more children move into the community. Rules & Regulations can be changed by an HOA board vote with review by the members of the community.

## **EVERY RESTRICTION CAN BE CHANGED**

CC&Rs, Rules & Regulations, and Bylaws are usually determined when a developer incorporates the community. The developer will try to anticipate the type of community or commercial property space they are creating, but the needs of a community often aren’t fully clear until residents move in.

## **THE ROLE OF YOUR PROPERTY MANAGEMENT COMPANY**

Your residential or commercial property management company is an agent of your homeowners association corporation. Your property management company has no say in the development of your CC&Rs, Rules & Regulations or Bylaws; they simply act to implement the guidelines set forth by your board.

Your property management company will also provide advice and guidance as you develop your community’s guidelines to ensure that you adhere to state and local laws. They should provide practical advice to ensure your board is making the decisions that best protect and enhance your community.

Your management company and property manager can show you the risks and rewards of changing your CC&Rs, Rules & Regulations or Bylaws and provide a useful framework to develop your community in a way that serves residents today and long into the future.

## WHEN TO TURN TO YOUR CC&RS

When you purchase a home or condo within a community in a homeowners association, you sign a document requiring you to abide by all governing documents, including the regulations established in the CC&Rs. Your CC&Rs are legally binding. This means that they are in a carefully-crafted document that is designed to protect the association and its membership. The reasons you would reference your CC&Rs differ slightly depending on your role in the Association.

### WHEN THE HOA BOARD SHOULD TURN TO THE CC&RS

A community's CC&Rs are what assigns the Board its authority. This includes a detailed description of the rights and responsibilities of the Board and the members of the Association. It also covers the legal description of official property lines including common areas, individual lots, and where the community ends and city or county responsibility begins. A Board should consult their CC&Rs when addressing the following issues:

- Questions or disputes about common areas
- Questions about Association authority
- Questions about the Board's enforcement ability
- Questions about member vs. Board responsibility

If a Board acts outside of its authority as outlined in the community's CC&Rs during its delivery of community association management, the Board and Association open themselves to significant legal liability. If in doubt about the Board's authority to manage an issue, we always recommend checking with your community association management company and your Association's legal team before taking any action.

### WHEN A MEMBER SHOULD TURN TO THE CC&RS

Chances are if you, as member of the Association, have a question about the governance in the community, it will likely be answered by the community's Bylaws or its Rules & Regulations. However, there are two common times that the Association membership will consult the community's CC&Rs:

- When there is a question about Association vs. Member ownership or responsibility over property
- When a member wants to submit an architectural application to change their home and needs to know the guidelines they must follow

The community's CC&Rs will explicitly outline how to handle these issues. If you still have questions, contact your management company who can explain in further detail.

A community's CC&Rs are a useful reference tool. We encourage all Board members and homeowners to keep a copy of their CC&Rs handy to research topics and answer questions as they arise. Every Association member was issued a copy of their community's CC&Rs after the purchase of their home or condo. However, if you have misplaced your copy you can likely find a current PDF on your community's website or you can contact your community association management company, who will email or deliver a copy to you.



## BYLAWS AND RUNNING YOUR HOA

Since HOAs are non-profit corporations, they require the establishment of bylaws to define how the corporation is run. Understanding your community's bylaws can streamline your HOA operations and help your community remove outdated barriers that slow the process of change.

### **BYLAWS ESTABLISH QUALIFICATIONS AND DUTIES FOR THE BOARD MEMBERS**

Your community's bylaws define the number of directors who serve on the HOA board at any one time and specify the requirements for board eligibility. Some communities have strict guidelines that ensure that only current residents of the community may serve on the board, while others allow non-residents to play a role in managing the success of the HOA.

Bylaws also break down requirements into more specific detail, such as requiring that board members remain in good standing (meaning all dues payments are up to date) and outline the duties for which each board member is responsible. By drilling down into detail regarding qualifications and duties, your association helps vet qualified individuals and provides them with clearly-articulated responsibilities.

## **BYLAWS ALSO DEFINE ELECTION PROCESSES**

In addition to enumerating the number of seats on your board of directors, bylaws articulate the ins and outs of each election process, including special elections.

Some specifics include:

- Board member term lengths
- Quorum requirements
- Election cycles: staggering seat elections or opening all seats to election at once
- Detailed process to recall board member(s)

By defining how elections are managed, your HOA can conduct organized elections that proceed on a regular timetable.

## **BYLAWS OUTLINE THE STRUCTURE OF MEETINGS**

Bylaws list requirements for establishing quorum and detail the structure to which board meetings must adhere. Bylaws also establish the format of special meetings of the membership. Special meetings are conducted by the membership for specific functions that require the participation of HOA members, not just the board of the directors. Special meetings might involve topics like: voting to recall members of the board of directors, voting to change governing documents, general board elections, and addressing petitions of the membership (i.e. petitions that require a certain percentage of membership approval to pass.) Since members have no authority at board meetings, special meetings of the membership are where members take action. Bylaws outline the scope of these processes.

## **WHEN TO UPDATE BYLAWS**

Update your community's bylaws if you notice that outdated guidelines no longer align with needs of your HOA operations. Often, your bylaws outline a set of rules to update the bylaws themselves. Start there. If board member elections aren't happening frequently enough (or are too frequent), amend the election schedule. If your requirements for who can serve on the board are too strict or too relaxed, update bylaws to establish requirements for a board that best reflects your community.

Bylaws provide a clear framework that acts as a roadmap for the smooth functioning of your HOA's governance. As a board member or as a homeowner, your main goal should be to ensure that your bylaws support the success of your HOA, not impede progress. However, you should never rush into updating bylaws—or any other elements of your community's governing documents. Carefully consider the immediate and long-term ramifications of bylaw changes and take these issues into account before making any decisions.



## TIPS TO UPDATE RULES & REGULATIONS

Your community's Rules & Regulations are meant to be a flexible document that evolves over time, keeping pace with the needs and goals of your community. As such, Rules & Regulations are the easiest to amend. Here are the steps you should take to ensure that rule changes and updates proceed as smoothly and efficiently as possible.

### **BEFORE YOU BEGIN**

First, encourage every member of your board to read the Rules & Regulations. A thorough understanding of the document's content will help you be more efficient during the update process.

Next, become aware of the general groups or "buckets" of issues facing your community. Review comment cards, make a list of your most commonly-heard issues and review other sources of member feedback. Your community association management company can assist you in compiling relevant information to help your Board identify the most important areas to address. This evidence will also provide proof that you are addressing the needs of the community and not making arbitrary decisions, should any doubt from the Membership arise.



Determine whether your Board needs to amend a single rule (or two), or deploy a sweeping update your community's entire Rules & Regulations. If you see significant issues or changes facing the community, it makes more sense to update the entire document.

Finally, remember that your governing documents follow a strict, legally binding hierarchy. Keep in mind that any changes made to your Rules & Regulations cannot supersede the content in your CC&Rs, especially since your CC&Rs grant the authority to the Board to establish and amend the Rules & Regulations in the first place. If you are unsure or unclear if changes in your Rules & Regulations will conflict with your other governing documents, consult your attorney.

## COMPLETE REWRITES

Overhauling your entire Rules & Regulations document is a time-intensive undertaking that will likely overwhelm a single individual. Instead, assign a sub-committee to manage the process. Your sub-committee should be composed of individuals with keen attention to detail. We recommend either asking for volunteers from the membership (who may or may not be led by a Board member) or creating a sub-committee comprised of a minority of the Board.

**Note:** if your sub-committee reaches a quorum, meetings and actions taken by the sub-committee must be recorded, put on an agenda, etc. This is why your sub-committee should be a Board minority.

To begin the process, your sub-committee should review the Rules & Regulations document to identify areas in need of updates, then bring them to the Board. The Board will discuss the relevant items and draft updates. After the Board proposes changes, you must submit draft revisions to the Membership during a 30-day open comment period. Once you receive input and feedback from the Membership, your Board can advance to a vote.

## SINGLE RULE CHANGES

Individual rule changes are generally far less time-consuming. Instead of appointing a sub-committee, your attorney or community management company can assist in reviewing the document to identify the specific rule to amend. Your management company, attorney or an individual Board member might suggest updated language. As with full rewrites, the proposed changes must be communicated to the Membership for the 30-day comment period.

## **COMMUNICATE YOUR CHANGES TO YOUR MEMBERSHIP**

Not only are you legally required to solicit member input on proposed changes, doing so is an important step in maintaining transparency and establishing the context and purpose for changes. Your property management company can help develop a communications strategy to make sure that all Members are aware of their right to comment on the proposed changes. If the change is going to be controversial, we recommend you invite membership to speak directly to the Board at a town hall or open board meeting.

Once you have a redlined version or a completely revised document, you must send the updates to the Membership via First Class Mail. We recommend including a cover page that includes a short summary of changes as well as explaining the intent of the revisions. Also, it's always a good idea to post changes elsewhere throughout the process, including email blasts, notices on your website and social media updates. Your community management company can help.

Finally, once the homeowner comments have been registered and changes are made, a new copy of your Rules & Regulations must be mailed to every member for their records. Ask your management company to update the final document on your community's website.

## **HOW YOUR COMMUNITY MANAGEMENT COMPANY CAN HELP**

Your management company, Board and Membership are all partners with the same goal: to protect your community. Use your management company's background experience to your advantage by soliciting their input to discover what has worked for other similar communities. Your management company can also provide valuable input into the operational realities of rule enforcement. Your ultimate goal is to evaluate rule changes macroscopically. That is, you must look at how changes fit in with the needs, goals and daily use of your community. There are no set timetables or schedules in which to update your Rules & Regulations. Instead, keep your finger on the pulse of the community to make sure that the changes keep pace and propose updates accordingly.



## HOW TO REVISE YOUR COMMUNITY'S GOVERNING DOCUMENTS

Changing your community's governing documents is a hot topic with many homeowners associations right now, as they were often established when the community was built and are therefore out of touch with today's needs. Luckily, governing documents are not set in stone. They are designed to adapt to communities as they change over time.

If you are a member of your community's HOA management Board or if you are an interested homeowner looking to get more involved, here is your step-by-step guide to changing your community's governing documents effectively and efficiently.

### **DETERMINE WHICH DOCUMENTS REQUIRE AN UPDATE**

Communities have three main types of governing documents, CC&Rs (which outline the distinct obligations of owners and associations), Bylaws (which discuss the association's governance practices), and Rules and Regulations (which provides the community's operating rules).

There are two ways to update your community's governing documents:

- Review and comprehensively update the entire document at once
- Identify and update the sections that are relevant to the issue at hand.

Your first step is to determine which update is right for your community.

## **UNDERSTAND THE TECHNICAL REQUIREMENTS FOR UPDATES**

Each community's governing documents set forth parameters that outline the requirements for making changes. While the Rules and Regulations only require a vote of the Board and notice to the community, Bylaws and CC&Rs frequently have different requirements for making changes and require a vote of the membership. For some communities, changes require a supermajority of resident votes (67% or more), for others a simple 51% majority is fine. When you identify how difficult the change mechanisms will be, you get a sense of whether your updates are worth the time and effort required. If so, move on to the next step.

## **FORM A SMALL COMMITTEE TO DISCUSS NEW LANGUAGE, THEN MEET WITH A LAWYER**

Discuss what you are trying to accomplish in plain language, then work with an attorney to determine exactly what the language should be when implementing official changes. Remember, you are dealing with legal documents that are designed to protect the value of your investment by shielding your HOA from liability. Language matters to the courts and an attorney will help you craft the appropriate wording to make sure your HOA complies with local and state laws. Your homeowners association management company can help you understand the basic language requirements but only an attorney with homeowners association property management expertise can provide you with explicit guidelines for crafting the appropriate language.

## **SPREAD THE WORD**

Obtaining buy-in from residents is perhaps the most critical part of making changes to your governing documents. Ask for their opinions and take them into consideration as you draft amendments to your governing documents. Residents will need a clear understanding of why the community guidelines have changed. By clearly articulating the reasons behind the changes and outlining the positive impact on the community, you make homeowners feel included in the process and avoid unnecessary pushback. Your homeowners association management company can help you communicate advantages of the new changes by facilitating town hall meetings, including information in your community newsletter or on the website, and spreading the word door-to-door.

## TAKE IT TO A VOTE

Residents always vote on changes to bylaws and CC&Rs. If you have done your homework and put in the communication effort, residents will be able to make informed decisions to amend your community's governing documents for the better. Changes to community rules & regulations require only approval by the HOA management Board but Board members should take homeowners' opinions into careful account.

Governing documents should not be changed quickly for convenience or amended on a whim. All decisions regarding changes to your community's governing documents should come after careful consideration, thoughtful deliberation and including voices and opinions from the affected residents. Speak with your homeowners association management company to answer any additional questions about changing your community's governing documents or to discuss getting initiating the amendment process.

Have questions about your community's governing documents? Talk to the experts at Keystone Pacific Property Management today at (949) 833-2600.

## ABOUT KEYSTONE PACIFIC PROPERTY MANAGEMENT

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