

Governing Documents Explained

Articles of Incorporation: You don't need to take more than a passing glance at the articles of incorporation (the "Articles"). They contain only basic information about the Association, such as its name and address. They are the formal documents filed with the State of Washington that allows the association to act as a not for profit corporation.

There are 13 articles in Coffee Creek's Articles of Incorporation. Article #1 establishes the name: "The name of the corporation shall be COFFEE CREEK CONDOMINIUM ASSOCIATION."

Declaration: The **Declaration** defines the rights and responsibilities of owners as well as restrictions on the use of owner's property and common areas. The Declaration is recorded in the official records of Pierce County, Washington.

The Declaration is the "big Kahuna" of the governing documents. If there is anything in another governing document that conflicts with a provision of the Declaration, the Declaration wins (and the conflicting provisions are considered invalid). Amendments to the Declaration require the affirmative vote of at least 67% of the owners (38 owners out of the 56).

Bylaws: Bylaws, not to be confused with Declaration, describe the procedures and mechanics of Association's management and decision-making. This includes officer and director positions and how they are filled, the way meeting, voting and notification are undertaken for owners' and board members' decisions and the methods of record-keeping and reporting. The Declaration takes precedence over the Bylaws in terms of legal importance. The Bylaws may be amended by the Association at the annual meeting or special meeting; or by the Board of Directors.

Rules & Regulations: The board of directors adopts rules and regulations to define desired behaviors and to set limits on allowable uses of the common elements, homes, and the behavior of residents and guests. Some typical examples of rules include pets, parking, noise and use of Coffee Creek's facilities. The Declaration takes precedence over rules in terms of legal importance. The Rules & Regulations may be amended by the Board of Directors.

APPENDIX D TO THE RULES requires each Owner/Resident to sign that "I acknowledge that I have received and read these ... Rules and Regulations.... I understand and agree to abide by them, and understand and accept the penalties stated within...."

"The best analogy I can give is that the declaration is the equivalent of the U.S. constitution. "Bylaws are like laws passed by Congress, and that leaves the rules and regulations. In the federal government, we have all these administrative agencies, like the Food and Drug Administration, which make up rules and regulations. That's the hierarchy of things. When you look at that hierarchy, rules are way down at the bottom, and any rule contrary to a bylaw or declaration is unenforceable, just like courts are all the time invalidating laws that are contrary to the U.S. Constitution."

(Statement by Jed L. Frankel, a partner at Eisinger, Brown, Lewis, Frankel & Chaiet PA in Hollywood, Florida, who advises community associations; copied from <https://www.hoaleader.com/public/HOA-Governing-Documents-Explained.cfm>)