

## **Governing Documents: How to deal with conflicts between statutes and Governing Documents.**

If there is a conflict between an applicable statute and an Association's Governing Documents, the Association should (and must) follow the statute. Some statutes were adopted by the legislature after almost every community was created. Those statutes were meant to apply to communities that were created before the statutes were enacted.

The HOA Act from 1995 applies to all HOAs, regardless of their name, and regardless of the date the HOA was formed. Sections of the New Act, effective in 1990, have provisions that apply automatically to all Old Act condo Associations. Those provisions apply whether a condo Association's Declaration is amended to include them or not.<sup>1</sup>

If there is a conflict between an Association's rules and the Declaration or Bylaws, the Association should (and must) follow the Declaration or Bylaws. In the event that there is a conflict, Associations should change their rules to be consistent (with the Declaration and Bylaws). Rules that are not consistent with the Declaration cannot be enforced.

If there is a conflict between the Declaration and Bylaws, Associations must follow the Declaration.

If the statute says "as provided in the Declaration or Bylaws" but the Association's Declaration or Bylaws are silent, the Association cannot do the specified action. Associations can probably amend their Governing Documents to allow for the action.

If the statute says “except as provided by the Declarations or Bylaws” and the Association’s Governing Documents are silent, the Association must follow the statute. Associations can probably amend their Governing Documents to allow for the action.

If a statute says an Association must do something (like a CPA audit, resale certificate, or reserve study) and the Association’s Declaration is silent, the Association still must do the action.

If an Association’s Declaration says the Association can do something that is prohibited by statutes, the Association cannot do the action.

If there are conflicts within an Association’s Declaration, the document must be read in its entirety to determine what the Declaration allows or requires on the particular issue. Courts will look to the intent of the person who wrote the document to correct any conflicts. An Association’s Board can write rules to clarify intent and resolve any ambiguities, but the best course of action in the event of a conflict within the Declaration is to amend the document to eliminate the conflict. Examples:

1. One section clearly says that unit owners pay for limited common elements, and another section clearly says that maintenance and repair of limited common elements are a common expense.
2. One section says that the Association is not responsible for damage from water leaks, but another says that the Association must restore any damage to the property (which includes the units) as a common expense.

It is critical to avoid interpreting individual sentences or phrases to the exclusion of the rest of the document. Further, ambiguities and conclusions that do not make sense should not be read into the document. Examples:

1. Just because one section says that owners are responsible for the maintenance and repair of their unit does NOT mean that when insured events happen (fires, sudden water events) the Association does not have to file an insurance claim or restore the unit.
2. If a section says that owners pay for maintenance and repair of limited common areas, that does NOT mean that the owners repave their own parking stalls, or are responsible for the structure of the building around their decks. Look at the boundaries of the limited common area.
3. Just because there is an arbitration provision does not mean that the Board cannot enforce the Governing Documents with fines (following an opportunity to be heard), levy late fees, or find violations of the Governing Documents.

An Association's Declaration and Bylaws should reflect how the community wants the rights and obligations to be determined. If an Association wants its community to operate in a manner that is different from the documents, the Association should amend the documents. Either the conduct of the Board and owners should comply with the Association's Governing Documents as written, or the Governing Documents should be changed.

---

<sup>1</sup> Look to RCW 64.34.010 to know what sections apply.