

### 3--What is the Hierarchy of the Governing Documents and Statutes?

Statutes take priority over the Governing Documents, and the Declaration takes priority over Rules, policies and other decisions of the Board. When provisions in two documents conflict, then the provision with less priority will be invalid. We advise correcting any conflicts within your documents.

From most controlling to least controlling, the hierarchy is as follows:

1. *Federal laws.* Federal laws trump state laws and your Governing Documents. In conflicts, the federal law controls. Examples include regulation of satellite dishes and service or companion animals.
2. *State laws.* State laws trump your Governing Documents, so anything regulated by the State must be allowed. An example is installation of solar panels on homes.
3. *City or County ordinances and laws.* The building code adopted by the City is an example.
4. *Survey Maps and Plans or Plat Maps.* Survey Maps and Plans are usually recorded with or before the Declaration and are often equal to the Declaration in priority. They may contain obligations not in the Declaration.
5. *Condominium Declaration or CC&Rs.* The primary focus of these documents is to regulate the rights and obligations of an Owner as related to the property. Changes to these documents always require approval of the membership.
6. *The Articles of Incorporation.* These are typically filed with the Secretary of State when the Association is created by the developer but are often silent on anything except the

## CondoLaw's 2018 Handbook for Community Associations

name of the organization and the names of the directors. Many Associations are not incorporated until years after the community is created.

7. *Bylaws.* The Bylaws focus on how the community manages its affairs. Bylaws usually require amendment by a stated majority of the community, but sometimes can be amended by the Board of Directors alone. These are usually not recorded. They are typically created by the developer when the Association is initially formed.
8. *Rules and Regulations.* Rules and Regulations are typically prepared and distributed by the Board, without Owner approval. They may be amended at any time by the Board and should take effect upon distribution to the Owners. These are often created initially by the developer. They are distributed to all Owners so they have notice of the Rules.
9. *Policies.* Policies are typically used by the Board to be consistent in how they administer the affairs of the Association. Policies can relate to collections, fines and opportunities to be heard, reserves for major repairs, investments of reserves, etc. These are almost always adopted over time by the Board.
10. *Resolutions.* These are decisions by the Board and usually relate to one-time decisions, or issues that come up infrequently. These are documented in Board meeting minutes, or in a book of resolutions

It is important to ensure that lower priority documents are consistent with controlling laws and documents. If you want to make a change in how the community functions, look at what the change is, and which document must be amended. You cannot create Rules or Bylaws provisions that are inconsistent with the Declaration. If you do, the provision is invalid and unenforceable.<sup>1</sup>

If you know you have invalid provisions, we suggest correcting the mistake with another recorded document. If an inadequate vote invalidates the provision, you could revote to get the correct approval, then rerecord the document. If that is not possible,

## CondoLaw's 2018 Handbook for Community Associations

record a document that identifies the invalid provisions and strikes them from the document. We believe this can be done with an action of the Board alone, since the original vote was not enforceable, but remember that a single invalid provision in an amendment does not invalidate the entire amendment.<sup>2</sup>

Because it is so important that the documents reflect how your community actually operates, it is worth the effort to modify them to reflect those changes. In this way you can avoid the train wreck that occurs when you have an Owner who does not comply with the expectations of the community and an Association determined to enforce the community's standards (where the wrong documents support the Association's position).<sup>3</sup>

---

<sup>1</sup> *Shorewood West Condominium Ass'n v. Sadri*, 140 Wash.2d 47, 57 (2000). ("When the Association promulgated a restriction on leasing in a bylaw without first amending the condominium declaration, it did not act in accordance with the Horizontal Property Regimes Act. The bylaw is invalid and this court may not enforce it.")

<sup>2</sup> See, *Keller v. Sixty-01 Ass'n of Apartment Owners*. (Court permitted the board acting on its own to revoke an improperly passed amendment to the declaration.)

<sup>3</sup> See, *Sadri*, 140 Wash.2d 47 (Condominium Association was unable to prevent an owner from leasing their unit because the rental restriction was written into their bylaws rather than the declaration, as required by law.)