

Your Association Structure

How an Association is Formed

A homeowner association or condominium association is a nonprofit corporation formed, usually, by a real estate developer for the purpose of marketing, managing, and selling homes/lots or units in a residential development. The governing documents of the association grants the developer special voting rights in the operation of the association, while allowing the developer to exit financial and legal responsibility of the association by transferring ownership of the association to the homeowners after selling off a predetermined number of homes/lots or units or exiting after a specific date in the future. Membership in the homeowners association or condominium association by a home buyer is generally a condition of the purchase; opting out of an association is generally not an option. Homeowner associations have become increasingly common in the United States and it is estimated that as of 2010 24.8 million American homes and 62 million residents come under the governance of an association.

The Governance of an Association

In North Carolina all associations fall under the governance of state statutes and under specific association governing documents. Single family homes and townhomes come under NC State Statute 47F. Condominium associations built after October 1, 1986 come under NC State Statute 47C and condominium associations built before October 1, 1986 come under NC State Statute 47A.

There are generally four specific association governing documents: (1) Declaration of Covenants, Conditions and Restrictions (CC&R), (2) Bylaws, (3) Articles of Incorporation, (4) Rules and Regulations.

To verify which state statute your association falls under can generally be determined by reviewing the first several pages of your specific association's Declaration of Covenants, Conditions and Restrictions. Your specific associations Declaration of Covenants, Conditions and Restrictions are on file at your county's register of deeds. Your specific associations Articles of Incorporation are on file with the North Carolina Secretary of State. Your association's Bylaws and Rules and Regulations are not required to be on file with a local or state agency. Bylaws many times will be filed as an appendix to your Declaration of Covenants, Conditions and Restrictions and could be on file at the register of deeds.

A rule of thumb is that the Declaration of Covenants, Conditions and Restrictions tell the association member what can and cannot be done within the association and who is responsible. A rule of thumb for the Bylaws is they outline how the association is to be operated.

Who Runs Your Association

If either under original developer control or direct membership control, a board of directors runs your association. The board of directors is elected at your association's annual meeting. Depending on your governing documents, board member terms can all be for one year terms or multiyear terms. Some homeowner associations hire and retain property management companies. The property management company works for your association at the direction of your board of directors.

For more specifics about the operation of your associations board of directors, the bylaws are the first place to review along with the declaration of covenants, conditions and restrictions. The bylaws will generally dictate board member duties and responsibilities and how to elect and remove board members.

Association Benefits

An association provides members with shared community benefits and increased property values by sharing common expenses such as landscaping, swimming pools, etc., and by enforcement of the declaration of covenants, conditions and restrictions to achieve a community representative of such values as established in the original governing documents. In doing so, an association inherently restricts the rights of the member for the common benefit of the entire membership of the association. For example, a member wishes to paint their home purple with pink trim; while the member wishing to do this may personally benefit from this particular color scheme, it could negatively impact the property values of other members of the association.

Association Funding

Generally speaking, each member of an association pays assessments that are used to maintain the common elements of an association (In certain instances original developers can be exempt from paying dues until certain phases of construction are completed). Some of these common elements can be landscaping, upkeep of association amenities, insurance for commonly owned elements, and operational expenses such as the management company.

Financial risk for Association Members

In North Carolina an association can foreclose on a member's home without a judicial procedure in order to collect regular and special assessments, or otherwise place an enforceable lien on the property which, upon the property's sale, allows the association to collect otherwise unpaid assessments. North Carolina requires a judicial hearing if the foreclosure is specifically for fines.

Association boards can generally levy special assessments upon the membership in addition to the regular assessment. This can be done in certain instances if the governing documents allow for a special assessment without membership approval or vote, however most governing documents require membership approval.