

Governing Documents: Hierarchy of control

Associations are regulated by laws and Governing Documents that work together in a hierarchy. If lower level documents conflict with upper level documents, the upper level documents control. All Governing Documents must be consistent with both state and federal law. The order of control from highest to lowest is:

(1) Federal law

Federal laws supersede any state laws or Association documents which conflict with them. Examples of federal laws applicable to Associations are the Fair Housing Act,¹ the United States Constitution, and the FCC's regulations.² Placement of satellite dishes and placement of political campaign signs are also governed by federal law.

(2) State law

State laws supersede any Association documents (including the declaration) which conflict with them. State law governs the placement of solar panels on homes. Numerous state laws apply to Associations. In particular:

- A) The Washington State Constitution
- B) The Washington Horizontal Property Regimes Act (Old Act)³ applies to condominiums created before July 1, 1990. These are "Old Act" condo Associations.
- C) The Washington Condominium Act (New Act)⁴ applies to condominiums created on or after July 1, 1990; these are "New Act" condo Associations. Several of the WCA's provisions also apply to condominiums created before July 1, 1990⁵
- D) Most condo Associations are incorporated as nonprofit corporations under one of the Nonprofit Corporation Acts.

New Act condo Associations are required to be incorporated.⁶ If a provision of either of the Nonprofit Corporation Acts conflicts with the Condo Acts, the Condo Acts govern.⁷

- E) The Washington Homeowners' Association Act (HOA Act)⁸ applies to HOAs.

(3) City/County laws

The laws of the City and County where the community is located will also supersede any Association documents. Some examples include:

- A) The City's building code;
- B) In Seattle, the Seattle Energy Benchmarking and Reporting Program;⁹
- C) The City's rental inspection laws; and
- D) Local discrimination laws (which may have additional protected classes).

(4) Survey Maps and Plans or Plat Maps

Survey maps and plans are often recorded at the same time as the Declaration and/or CC&Rs, but the survey maps and plans are sometimes recorded earlier. The surveys and maps or Plat Maps may also contain obligations not found in the Declaration or CC&Rs. Some recorded obligations may predate the community's maps and plans by decades.

(5) Condominium Declaration or Recorded CC&Rs

These documents are created by the developer when the community is formed. Recording these documents with the County creates the condominium development (the Declaration) or the homeowners' Association (the CC&Rs).¹⁰ These documents govern property rights and obligations.

(6) Articles of Incorporation

The Articles of Incorporation are the official documents that create a corporation.¹¹ These are typically filed with the Secretary of

State when the Association is created by the developer, but they are often silent on most matters except the name of the organization, and the names of the directors. Many communities are not incorporated until years after their formation.

(7) Bylaws

Bylaws relate to the administrative operation and management of the Association.¹² These are typically not recorded, but are kept by the Association. They are usually created by the developer when the Association is initially formed.

(8) Rules & Regulations

Rules and regulations may be adopted by an Association after its creation and then amended as necessary. The rules and regulations may govern daily life, addressing things like parking, quiet hours, and fines for rule violations. These are often created by the developer, but they can be changed by the Board at any time. The rules and regulations must be distributed to all owners so they have notice of the rules, and can comply with them. The rules and regulations will likely evolve over time according to the needs of the community. They must not conflict with any higher level document, but may clarify them.

(9) Policies

Policies are usually used by the Board to be consistent in how it administers the affairs of the Association. The policies may or may not be distributed to all owners. 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 extended periods of time by the Board.

(10) Resolutions

Resolutions are decisions by the Board that are reflected in the minutes of the Board meetings. Resolutions typically relate to one-time decisions or issues that come up infrequently which require a decision from the Board.

¹ 42 USC §3601 *et seq.* The Fair Housing Act prohibits certain kinds of discrimination (such as that based on race, religion, or sex) in sales, rentals, and other transactions relating to real estate.

² For example, 47 CFR 1.4000 (satellite dishes). See chapter entitled: “Satellite dishes: May an Association restrict their installation or use?” for more information about this regulation.

³ RCW 64.32 *et seq.*

⁴ RCW 64.34 *et seq.*

⁵ RCW 64.34.010 (Applicability).

⁶ RCW 64.34.300 (Unit owners’ Association – Organization).

⁷ RCW 64.34.070 (Law applicable – General principles). There is no specific analogous provision applicable to Old Act condos.

⁸ RCW 64.38 *et seq.*

⁹ This is an ordinance relating to energy conservation requiring owners of multi-family buildings to measure and disclose energy performance. See Seattle Municipal Code 22.920 *et seq.*, or see <http://www.seattle.gov/environment/benchmarking.htm> for information.

¹⁰ RCW 64.34.200 (Creation of condominium); RCW 64.32.140 (Recording). To determine what a condominium Declaration must contain, See RCW 64.34.216 (Contents of declaration) for New Act condos, or RCW 64.32.090 (Contents of declaration) for Old Act condos. The person or entity who records the Declaration is called the Declarant.

¹¹ RCW 24.03.145 (Filing of articles of incorporation); RCW 24.03.150 (Effect of filing the articles of incorporation); RCW 24.06.025 (Articles of incorporation).

¹² RCW 64.34.208 (Declaration and bylaws – Construction and validity) (applicable to Old Act condo Associations) provides that the Declaration prevails over the Bylaws if they are inconsistent. RCW 24.03.070 (Bylaws) and RCW (24.06.095) (Bylaws) relate to Bylaws of nonprofit corporations. RCW 24.03.025 and RCW 24.06.025 provide that the Articles of Incorporation prevail over the Bylaws if they are inconsistent.