

# Governing Documents Explained

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**Articles of Incorporation:** You don't need to take more than a passing glance at the articles of incorporation (the "Articles"). It is the formal document filed with the State of Arizona establishing the Association's name, address and the Arizona Statute which enables the Association to operate as a 'not for profit' corporation. It provides that the Declaration (CC&R) shall control in any conflict between these Articles and the Declaration. Any amendment to the Articles requires the affirmative vote of at least 60% of a quorum votes cast by the Association Members.

**CC&Rs:** The **Declaration of Covenants, Conditions and Restrictions (CC&Rs)** define the rights and responsibilities of owners as well as restrictions on the use of owner's property and common areas. The CC&Rs are recorded in the official records of Pinal County, Arizona. The CC&Rs are the "big Kahuna" of the governing documents. If there is anything in another governing document that conflicts with a provision of the CC&Rs, the CC&Rs win (and the conflicting provisions are considered invalid). All amendments to the CC&Rs require the affirmative vote of at least 60% of a quorum votes cast by the Association Members.

**By-Laws:** By-Laws, not to be confused with CC&Rs, describe the procedures and mechanics of the Resort's management and decision-making. They include [1] procedures and requirements for membership meetings [2] the election, lengths of term, meetings, powers and duties of Directors, [3] election and duties of officers [4] appointment of committees [4] record-keeping and reporting. CC&Rs take legal precedence over the By-Laws. The Bylaws may be amended 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 and homes and the behavior of residents and guests. Among them are rules on pets, parking, noise and use of the Resort's facilities. CC&Rs take legal precedence over the Rules & Regulations. The Rules & Regulations may be amended by the Board of Directors.

**Design Guidelines:** The guidelines defining architectural aspects of the Resort are adopted and enforced by the Board. These model guidelines for the various aspects of lot changes, additions and/or improvement are reasonably flexible and are intended to provide opportunities for creative, high quality development. All projects/changes must comply with these Guidelines, current building codes of the City of Apache Junction, State of Arizona and the Federal Government. Prior to commencement, lot projects/changes must have signed permits from the Architectural Review Committee (ARC). CC&Rs take legal precedence over the Design Guidelines. Design Guidelines may be amended by the Board of Directors.

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*"The best analogy I can give is that the declaration [CC&Rs] is the equivalent of the U.S. constitution. Bylaws are like laws passed by Congress, and that leaves the rules and regs [and the Resort's design guidelines]. In the federal government, we have all these administrative agencies, like the Food and Drug Administration, which make up rules and reg. 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 & Chalet PA in Hollywood, Florida, who advises community associations; copied from <https://www.hoaleader.com/public/HOA-Governing-Documents-Explained.cfm>)