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**Understanding the Basics of
HOA Documents**

Presented for the City of Boulder
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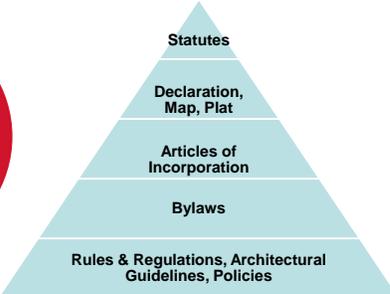
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**UNDERSTANDING
YOUR GOVERNING
DOCUMENTS**



Hierarchy of Authority






Declaration (Covenants, CC&Rs)

- “Runs with the land”
- Recorded with Clerk and Recorder
- Defines Ownership
- Creates Rights/Obligations
 - Maintenance/Insurance
 - Assessments
 - Use Restrictions
 - Architectural Provisions
 - General HOA & Owner Rights



Plat, Map

- Required
- Recorded with Clerk and Recorder
- Location of Lot / Unit & CE/LCE
- Easements and dedications
- Assists in determining:
 - Maintenance responsibility
 - Whether something is a Limited Common Element



Articles of Incorporation

- Birth certificate of association
- Basic purposes and powers
- Initial board and size
- Filed with Secretary of State
- Periodic report





Bylaws

- **Operational Provisions**
- **Meeting Requirements**
- **Voting Rights**
- **Election of Board**
- **General Board Powers & Duties**
- **Indemnification**



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Rules & Regulations

- **Typically adopted by Board**
- **Behavior / Penalties**
- **Clarification of ambiguous terms**
– Board has right to interpret
- **Clarify but cannot contradict Declaration, Bylaws, Articles**



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Architectural Guidelines

- **Architectural review, receipt and response procedures**
- **Design specifications and criteria**
- **Cannot contradict Declaration, Bylaws, Articles**
- **Adopted by Board? ARC?**



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Policies & Procedures

- Typically adopted by Board
- Required Governance Policies:

Adoption, Collection, Conflict of Interest, Conduct of Meetings, Enforcement & Fine, Inspection of Records, Investment, Alternative Dispute Resolution (“ADR”), Reserve Study

- Cannot contradict Declaration, Bylaws, Articles



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Statutes - CCIOA

- Colorado Common Interest Ownership Act
 - CRS 38-33.3-101, et seq.
 - (PRE) Created before July 1, 1992: Only some provisions of Act apply (38-33.3-117)
 - (POST) On or after July 1992: Full Act applies



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Statutes – Nonprofit Code

- Colorado Revised Nonprofit Act
 - CRS 7-121-101, et seq.
- Applies to Colorado nonprofit corporations
- CCIOA trumps
- Operational Provisions



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AMENDING YOUR GOVERNING DOCUMENTS



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Why amend?

- Contrary to law
- Limitations / No flexibility
- Inconsistent provisions
- Ambiguity
- Undesirable provisions
- Gaps / Silent
- Obsolete



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Why amend?

- Directors can be misled as to their duties & responsibilities
- Members may be misled as to their duties & responsibilities
- Outdated documents could lead to liability



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Signs You Should Consider Amending

- One or more of your documents is more than 10 years old
- You have consulted an attorney more than 3 times in last year for interpretation
- Consistently fail to meet or enforce document requirements



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When You Might Not Want to Amend

- Rule or resolution will suffice
- Driven by personal agenda
- Little to no support other than Board
- Cost



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Provisions Contrary to Law

- Declaration
 - Flags, Political signs
 - Energy Provisions
 - Satellite Dishes
 - Xeriscape/Use of Turf Grass
 - Owner Amendment Requirement
 - Budget Ratification



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Provisions Contrary to Law

- **Bylaws**
 - Notice provisions
 - Special Meeting petition requirement
 - Board can remove directors
 - Ballots: Secret ballots/Neutral 3rd party must count
 - Amendment provisions
 - Inspection of records



Provisions That Limit HOA Rights

- **Declaration**
 - Caps: Assessments, late fees, interest
 - No supplemental assessments
 - No right to pledge assessments
 - Notice by certified/registered mail
 - Limitation on enforcement rights



Provisions That Limit HOA Rights

- **Bylaws**
 - Annual meeting
 - Quorum
 - Board action without meeting
 - No right to use proxies for Board Meetings
 - Indemnification not sufficient





General Amendment Considerations

- Document specific
- Different processes for obtaining approval
- Rewrite vs. limited amendment



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Amending the Declaration

- Owner approval
 - No less than a majority, no more than 67%
 - Exceptions
- Process for owner approval
 - Vote at meeting
 - Vote by mail
 - Written consent



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Amending Declaration (Cont.)

- Mortgagee Approval 38-33.3-217(1)(b)
 - Send notice of amendment, by certified mail, to each mortgagee
 - Attach copy of proposed amendment
 - Post in county newspaper 2 times at least week apart
 - If no objection in 60 days, deemed a yes



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Amending Declaration (Cont.)

- Court Petition Process: 38-33.3-217(7)
 - What do you need?
 - 2 notices of amendment
 - 1 meeting
 - ½ of the required owner approval under Declaration



Amending Declaration (Cont.)

- Court Petition Process
 - What does court need?
 - Petition
 - No change to allocated interests
 - No termination of Association
 - No more than 1/3 objection by owners or mortgagees
 - No Declarant objection



Amending Bylaws & Articles

- Bylaws
 - Document Specific
 - If Pre-CCIOA, Board can amend unilaterally except for quorum
 - If Post-CCIOA, Board can amend unilaterally except for: quorum, terms & qualifications of directors, powers & duties of Board





Amending Bylaws & Articles (Cont'd)

- Bylaws
 - Exception: Bylaw expressly prohibiting Board from amending
 - Cannot use court petition process
- Articles
 - Document specific
 - If silent, majority of quorum of Members
 - Cannot use court petition process



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Amending Rules, Guidelines, Policies & Procedures

- Board amends unilaterally
 - Exceptions:
 - Document Specific for Guidelines
 - Rare, but some require Owner approval
- Stricter scrutiny by court
- Follow policy on adoption of Rules and Regs, policies and procedures



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Best Practices for Getting Approval

- Make wish list; brainstorm with community
- Form document amendment committee
- Obtain owner input
 - Post docs on website
 - Hold informational meetings
- Make it easy for them to vote



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QUESTIONS?
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