
or undivided interest subdivision. Note also that a “new” subdivision may result from the conversion of real property to any of these subdivision types. For example, it is common for rental apartments to be converted to condominiums. The developer of such conversions must comply with the same subdivision laws as developers of newly constructed subdivisions.

HOMEOWNERS ASSOCIATION

State law (the Davis-Stirling Common Interest Development Act) requires all CIDs to have a **homeowners association (HOA)**, which is a nonprofit corporation or unincorporated association created for the purpose of managing a CID. Most HOAs are organized as nonprofit corporations that exist to serve their members and are not charitable organizations. When a lot, unit, or parcel in a CID is transferred, membership in the association is automatically transferred with it. Membership in the association cannot be separated from the property ownership.

HOAs are formed by the developer of the CID, and the developer’s representatives are the initial board members. The developer controls the HOA for an extended period of time via preferential voting powers; however, DRE regulations require all HOAs to permit the election of at least one board member by the votes of the consumer-purchasers of the lots or units within the HOA, with such elections taking place no later than six months following the first conveyance of a lot or unit within the HOA.

HOA membership is automatic and cannot be separated from property ownership.

HOAs operate most successfully when members actively participate in HOA affairs and understand the governing documents. Prior to purchasing a home in a CID, the homebuyer should be familiar with the following features of the HOA that are critical to its operation.

Articles of Incorporation

Most HOAs are formed as nonprofit corporations. The **articles of incorporation** is the legal document filed with the Secretary of State that creates the legal corporation in the state of California. The

corporation is formed for the general purpose of maintaining the common areas on behalf of the membership and to enforce the governing documents of the HOA. The corporation has the power to enter into contracts, assume obligations, and levy dues and assessments on its members. The HOA must be governed through, or at the direction of, a board of directors that has broad authority to govern.

The articles of incorporation, bylaws, and CC&Rs are referred to as the governing documents of the HOA and describe the powers of the HOA and its members.

Bylaws

The **bylaws** are the rules for conduct of the internal affairs of corporations and organizations and are created at the time of the formation of the HOA. The bylaws also prescribe when and how meetings are held, quorum and voting requirements, and other matters essential to the basic operation of the HOA.

CC&Rs

The CC&Rs, short for **Covenants, Conditions, and Restrictions**, are private regulations of real property. A covenant is a promise to do or not to do something. A condition is a qualification of the grant of interest, i.e., the interest is being granted with the expectation that the condition will be met by the owner or the grant will be terminated. A restriction limits the free use of the property by the owner.

When subdivisions are developed, CC&Rs are placed on the property by the developer either voluntarily or in order to comply with government regulations. CC&Rs are often used by developers to enhance long-term values and to provide controls that go beyond the government's controls and powers. CC&Rs "run with the land." That is, the rights and obligations contained in them remain with the land, regardless of ownership, and pass from deed to deed as the land is transferred from one owner to another. When a homebuyer

The CC&Rs describe the rights and obligations of the property owners/HOA members and the HOA itself.

purchases a property subject to CC&Rs, the homebuyer is in effect agreeing to abide by them.

There need not be an HOA associated with the CC&Rs; however, enforcement of CC&Rs is easier with an HOA, which usually has the power to impose fines, suspend the offending member's rights in the association, and deny access to common area amenities. Absent an HOA, other homeowners would have to file a civil action in order to enforce the CC&Rs. The CC&Rs describe the rights and obligations of the property owners/HOA members and the association itself.

Board of Directors

All HOAs must be governed by a board of directors. The board's responsibilities are specified in the governing documents. The board is responsible for managing the affairs of the association on behalf of all its members in order to preserve, enhance, and protect the value of the CID. Board members must deal in good faith and exercise reasonable care in executing their duties. The primary responsibility of the board is to ensure that the association's assessments are collected, its bills are paid, it is operated efficiently, and violations of its rules are addressed. It is common for the board of directors to contract with a professional management company to run the day-to-day affairs of the association; nevertheless, the board is ultimately responsible for the management of the association.

Rules

CC&Rs are typically supplemented by **rules**, which further set forth the rules and regulations by which the members of the association are expected to live. The rules can be thought of as an extension of the CC&Rs, but are beyond the scope of the CC&R document. They are used to interpret and clarify the administration of the HOA. For example, the CC&Rs may set forth the purposes for which a clubhouse building may be used, but the rules would set forth the allowable hours of use, behavioral requirements while using the facility, etc. Another example would be that of design guidelines. The CC&Rs

typically will include a set of design guidelines or standards and the establishment of a design review committee, but the rules would further delineate the specific application process, the application submittal requirements, etc. Rules are adopted by the HOA board and are changeable by the HOA board, subject to the provisions of the governing documents.

Budget and Assessments

The HOA must be prepared to pay for costs related to the common area of the CID. These costs can be categorized as:

- **Fixed costs:** Taxes, insurance, and filing fees
- **Operating costs:** Utilities, goods and services, cleaning, and maintenance
- **Reserves:** Replacement and major maintenance of facilities such as painting, roofing, lighting, carpet, pool, furniture, and paving
- **Administration:** Legal, accounting, and management
- **Contingency:** Allowance for expenses exceeding budgeted amounts or shortfalls in revenues

Once these costs have been estimated, the total cost is allocated among all members as the regular assessment. The budget will be affected by the level of service the HOA is both required and willing to pay.

Regular assessments, or monthly dues, are the amounts collected from members on a regular basis to fund the day-to-day operations and the reserves of the association. The board of directors can increase the amount of the assessment by following certain mandated procedures, but it may not increase the regular assessment more than 20 percent per year, without the approval of the members.

If regular assessments collected are insufficient to pay the bills, the board of directors is allowed to levy a **special assessment**. Special assessments may also be levied to pay for extraordinary costs such as major repairs, replacements, or new construction of common area