



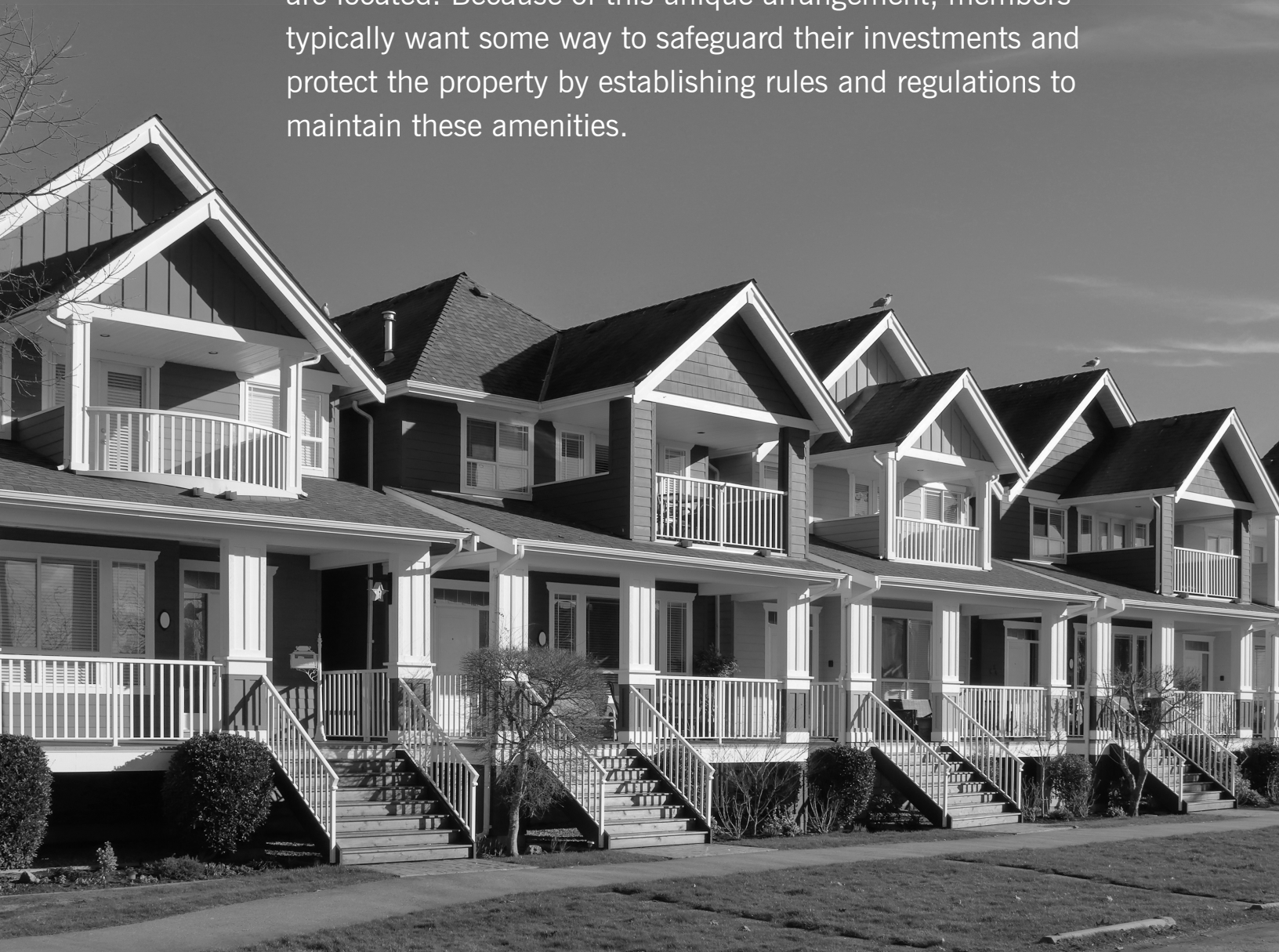
McGOWAN PROGRAM ADMINISTRATORS

A black and white photograph of a brick house entrance. The central feature is a dark, paneled door with a brass knocker and a silver handle. The door is flanked by white-framed glass panels. Above the door is a transom window. The house is made of brick, and there are flower boxes on either side of the door. A small set of concrete steps leads up to the door. The foreground is a brick-paved walkway.

Understanding Community Association Governing Documents

In the same way that cities create charters and countries draft constitutions, so too do community associations compose governing documents that outline the rules and regulations for residents and the board of directors. Whether it's a condominium, a planned urban development, or a homeowners' association, these governing documents establish a level playing field for each of its members and serves as a guidepost for resolving disputes and doling out any necessary punishments.

Residents who live in community associations own large portions of the property in kind, whether it's the pool area, gyms, the grounds, or even the actual edifice where condos are located. Because of this unique arrangement, members typically want some way to safeguard their investments and protect the property by establishing rules and regulations to maintain these amenities.



The role of the HOA

The developer will form a Condominium or Homeowners' Association before selling any units or property in a planned community or condominium. It's the role of the HOA to ensure that members adhere to the rules set forth in the governing documents. While this does place a great deal of authority in the hands of the association, the board members must also act according to the terms and conditions set forth in these documents as well, which ideally balances out the power structure.

According to Adams Stirling, a California-based law firm, there are typically four main portions of the governing documents: the Articles of Incorporation, a Declaration of Covenants, Conditions & Restrictions, Bylaws and the Rules & Regulations. However, these documents have a hierarchy, and some have more authority than others.

While all federal, state, and city laws trump the governing documents, government officials have been known to craft legislation with language that defers to HOAs. After any applicable laws, the CC&Rs are next in line in terms of governing hierarchy, followed by supplementary declarations, articles of incorporations or corporate charter, bylaws, rules and regulations and finally any general resolutions passed and approved by the association.

Articles of incorporation

These will identify and define the association, providing descriptions of the official name, address, purpose, and other foundational aspects. The developer will file these documents with the secretary of state for wherever the association is located. As noted by Nolo, some states do not require associations to be incorporated.

Buyers and owners typically do not review the articles before they are put in effect. Since the Articles act as the main component of the governing documents, any future discrepancies or disputes not covered by the bylines or CC&Rs, are resolved via the articles.

Declarations of CC&Rs

This section governs the member's property rights and obligations that all residents and the board must follow. As noted by Adams Stirling, these typically cover:

- Restrictions on how members may use the property
- Maintenance duties for members and the association
- Lender protection provisions
- Obligation to insure the property
- Lien/collection assessments
- Authority to enforce all CC&Rs
- Dispute resolution and attorneys' fees provisions

Although this portion of the governing documents is not considered an actual contract due the similar characteristics and functioning of these to a contract, many courts have ruled CC&Rs as such for limited purposes.



Bylaws

Just like the CC&Rs that govern what residents can and cannot do, the bylaws establish the rules of conduct and guidelines of the community association itself. These will vary from one association to the next, but will typically include:

- The powers, duties and election requirements for the directors
- The appointment of officers
- The specifications for holding meetings
- The description of the voting or quorum process

Rules and Regulations

While the CC&Rs will cover the most pressing and important aspects of the community association, such as property restrictions and maintenance duties, the board can also adopt more general rules and regulations. As noted by Nolo, these can cover a wider range of issues that may affect people in the community in other ways, such as not having broken cars in the streets, or setting a height limit for fences. Because these tend to address group concerns, the rules and regulations can create controversy for some residents who don't want to follow them.

Protecting the community's interests

Ensuring that the community interest has the protections in place to assist when the unexpected happens is so crucial, insuring the association is almost always written into the declarations. Brokers who partner with McGowan Program Administrators for Community Association Insurance gain a valuable resource in the "Power of the Pen."

HOA Insurance is fundamentally different than homeowner's insurance, which is why it's a good idea to have policies in both areas. While HOA insurance covers the community's common property, homeowner's insurance covers personal property like the structure of your home, your valuables, and your home's interior. All of these will not be covered by HOA insurance, so community associations should encourage their residents to purchase additional insurance.

With options available in umbrella, package, crime and directors & officers policies, McGowan creates one-of-a-kind insurance products specially tailored for all of the unique challenges facing community associations. These community association insurance packages cover many different types of properties and potential claims, including:

- Property damage from natural disasters
- Timeshares, condos, and townhouses
- Theft in all areas of the property, including computer fraud
- Equipment breakdown for association employees

With the variety of packages available for various HOAs, you will be sure to find one that fits your needs. In today's world of million-dollar judgments, it pays to expect the unexpected with McGowan.



For more information, contact:

Brian Mullahy

Community Association Umbrella Insurance

bmullahy@mcgowancompanies.com

P: 440.333.6300 x3619

Jeff Marsh

Community Association Package Insurance

jmarsh@mcgowanprograms.com

P: 410.461.8387 x5501

Joel Meskin

Community Association D&O Insurance

JMeskin@mcgowanprograms.com

P: 440.333.6300 x2240