

OUR GOVERNING DOCUMENTS

The governing documents of Apache Wells Homeowners Association, Inc. consist of the **Articles of Incorporation**, the **Covenants, Conditions and Restrictions (CC&R's)** a.k.a. the **Declaration of Restrictions**), the **Bylaws** and the **Rules**. These documents are listed in their order of importance relative to each other. If there is a conflict between the **CC&Rs** and **Bylaws**, the **CC&Rs** control. If there is a conflict between the **Bylaws** and the **Rules**, the **Bylaws** control.

ARTICLES OF INCORPORATION

The **Articles of Incorporation** are the primary rules governing the management of a corporation in the United States, and are filed with a state or other regulatory agency.

A corporation's **Articles of Incorporation** generally provide information such as:

- The **corporation's name**, which has to be unique from any other corporation.
- The name of **the person(s) organizing the corporation**.
- Whether the corporation is a **stock corporation or a non-stock corporation**.
- Whether the corporation's existence is **permanent or limited** for a specific period of time.
- In some cases, a corporation must state the **purposes for which it is formed**.
- If a non-stock corporation, whether it is for **profit or non-profit**.
- In the United States, if a corporation is to be organized as a non-profit, to be recognized as such by the **Internal Revenue Service**, such as for **eligibility for tax exemption**, certain specific wording must be included stating no part of the assets of the corporation are to benefit the members.
- If a stock corporation, the **number of shares** the corporation is authorized to issue, or the maximum amount in a specific currency of stock that may be issued, e.g. a maximum of \$25,000.
- The **number and names** of the corporation's initial **Board of Directors** (though this is optional in most cases).
- The **initial director(s) of the corporation** (in some cases the incorporator or the registered agent must be a director, if not, an attorney).
- The **location of the corporation's "registered office"** - the location at which legal papers can be served to the corporation if necessary. Some states further require the designation of a Registered Agent: a person to whom such papers could be delivered.

Most states permit a corporation to be formed by one person; in some cases (such as non-profit corporations) it may require three or five or more.

Articles of Incorporation vary widely from corporation to corporation, and from jurisdiction to jurisdiction, but generally do not go into great detail about a corporation's operations, which are spelled out in more detail in a company's By-Laws.

COVENANTS, CONDITIONS AND RESTRICTIONS

CC&Rs is a real estate acronym which stands for **Covenants, Conditions and Restrictions**. **CC&Rs** variously regulate the usages and aesthetics of a neighborhood or development to a greater or lesser degree. **CC&Rs** are also known as the **Declaration of Restrictions**.

CC&Rs are essentially adhesion contracts. That is, they work for the benefit of the developer who originates them and often work against the individual rights of the homeowner who buys into a planned community or what is called a **HomeOwners Association (HOA)**. To change the terms of this contract agreement typically requires a majority vote of two-thirds or more. Before buying a home controlled by **CC&Rs**, a buyer must sign a statement of acceptance of these conditions. It is important that the buyer read this contract agreement carefully before signing, although many do not.

The individual homeowner who violates any of the conditions may be fined. Failure to pay the fine could lead to forced sale of his home. Since 1996, homeowners in planned communities in Arizona have lost basic homestead exemption rights even though other independent owners in Arizona have a \$150,000 homestead exemption. Homeowner advocates are hopeful that the Arizona Legislature will soon vote to restore this right enjoyed by those living outside a planned community.

BYLAWS

Bylaws are the rules governing the internal management of an organization such as a homeowners association. **Bylaws cannot countermand governmental law**.

Bylaws vary widely from association to association, but generally cover topics such as how directors are elected, how meetings of directors are conducted, and what officers the organization will have and a description of their duties.

Bylaws can be amended by an association's Board of Directors or by individual members of the association. Generally there is a **bylaw** which provides a procedure for this process.

In parliamentary procedure, particularly **Robert's Rules of Order**, the **bylaws** are generally the supreme governing document of an organization, superseded only by the **Articles of Incorporation** and the **CC&Rs** (the **Declaration**). The **bylaws** contain the most fundamental principles and rules regarding the nature of the organization. It was once common practice for organizations to have two separate governing documents, a **constitution** and **bylaws**, but this has fallen out of favor because of the ease of use, increased clarity, and reduced chance of conflict inherent in a single, unified document. Unless otherwise provided by law, the organization does not formally exist until **bylaws** have been adopted.

RULES

Webster's Dictionary defines **a rule** as a guide or principle for governing action, the usual way of doing something or the exercise of authority or control. All organizations

need to have **rules** in order to operate smoothly and fairly. To not have rules would lead to chaos and anarchy. In a homeowners association there are rules governing the use of the community swimming pool, meeting rooms, the library, the doggie park, etc. **Rules** are generally written by the community leadership or committees appointed by them. **Rules** are often modified to make them more effective or discarded if they are not working.

In our Apache Wells community the stated goal of the **Architectural Control Rules and Policy** is to “carry out the ‘Architectural Theme’ of Apache Wells and enhance overall appearance and property values and promote harmony among neighbors”.

Rules must not conflict with the governing documents already listed and should be designed to enhance the operation of the community and the lives of its residents.

Save Apache Wells Committee