

The Paper Trail

Understanding Your Governing Documents

BY DANIELLE BRAFF



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Remember that thick stack of documents you received when you bought your condo or co-op? If you're like most people, they're probably sitting in a drawer or in the back of your filing cabinet, communing with the dust bunnies, largely forgotten.

While quarantining all those densely-worded legal papers with the rest of the documents and slips that came along with buying the new place is tempting, it's time to excavate them, shed the dust, and reacquaint yourself, because those files are the first and last word when it comes to how your building is governed. They map out the responsibilities and powers of the board, dictate how finances are to be handled, and codify the rules and regulations to which all residents must adhere.

Most people—even board members—don't read their building or HOA's governing documents unless they have a specific question to answer, and residents are notoriously unfamiliar with them. This ignorance is the basis for a lot of misunderstanding and

confusion between building administrators and their residents—and the first step to preventing those sorts of problems is to learn what exactly the documents are and why you and your building community need them.

Different Beasts

According to Jeremy A. Gibson, principal business attorney of the real estate law firm Jeremy A. Gibson & Associates with offices in Chicago and Deerfield, Illinois. It all starts with the difference between condos and co-ops. In a condominium (by far the more common of the two in the Chicagoland area), each unit owner actually owns their apartment; it's their real property.

So the documents that condo owners receive govern the common areas, such as the hallways, the elevators, the lobby, the parking facilities, and any other shared spaces throughout the building.

"When you buy a condominium, you will receive a declaration and bylaws," says Gibson. "The declaration will be recorded with the recorder of deeds, while the bylaws, which govern the op-

eration of the board, will typically stay within the building."

A co-op is completely different, Gibson says. Rather than owning real property, "In a co-op, you have an interest in the building, and while you have the right to occupy the space, you don't actually own the space. That's the principal difference."

Chicago and its surrounding communities only has a handful of co-ops—the rest of multifamily, non-rental housing units are condominiums—but if you happen to purchase one of the city's rare co-ops, instead of the declaration you'll receive what's known as a proprietary lease.

"The way a co-op works is that a cooperative corporation owns the land and all the apartments," says John C. Haas, a real estate lawyer in private practice in Mount Prospect, Illinois. "Each co-op shareholder owns stock in the company that owns the building and the land, and they're part owners of the co-op association."

The co-op association leases out each of the co-op apartments to the

people who will be living there—who happen to be the same people who own the shares of the co-op. Co-op shareholding feels a lot like outright ownership. You can will your unit to your heirs or designated beneficiaries, and you have the right to sell your apartment—as long as the building approves of the people purchasing it. But technically, says Haas, you're leasing it. The proprietary lease guarantees that the occupant of the apartment has the right to live in the apartment, but beyond that, the co-op board has a great deal of say in how the building is run and how units are managed.

Signed, Sealed, Delivered

Whether you buy a co-op or a condo, the building is required to give you all the relevant documents as soon as you buy the apartment—and you can also request to look over the papers before you decide to purchase.

In fact, says Angela Falzone, a property consultant with Association Advocates, Inc., a Chicago-based firm offering consultation, management and advocacy services for residential board members and homeowners, it's suggested that you and your real estate attorney look through all the documents before closing, so you can make sure your new home is a good investment, and doesn't come with any rules or policies that might be deal-breakers.

In addition to the declaration or proprietary lease and bylaws, those documents will include, but are not limited to: budgets, current financials, minutes of resident meetings within a certain time frame (generally two years), and the house rules and regulations for the building. In newly constructed condos, a property report is generally available for review as well.

"Understanding the rules and regulations of a condo building is so important," says Falzone, "as things may be included in rules that were not dictated in the declaration and bylaws, such as non-smoking areas, limits on noise, areas restricted for walking dogs and other pet rules."

People with very specific housing needs should take a very close look at those documents, adds Gibson—again, being on the lookout for potential deal-breakers.

For example, says Gibson, if you work out of your home or have a home-based

business, you'll want to make sure there's nothing that will restrict you from being able to run that business. The building may have rules limiting the number of deliveries you can receive, or the number of visitors that can come in and out on a daily basis, making working from home difficult or impossible in some professions.

If you're planning on renting out your apartment—or even a room in your apartment—the pros agree that the legal documents should outline the rules for this.

There are many buildings that don't allow rentals at all, so if you plan to take on a tenant/roommate, or sublet your unit for six months of the year, you need to make sure it's allowed before you make your purchase.

In the documents, you'll also be able to see the building's financial reserves. This is incredibly important, since low reserves could mean a special assessment in the near future should the roof need major repairs or the windows all be due for replacement.

Recent changes to FHA loan requirements also demand more disclosure and clarity when it comes to reserve funds—so the more information you have, the better your chances for meeting mortgage qualifications as well.

Keeping Current

While all these documents are very important and should be kept close track of, it's not the end of the world if yours got thrown out during your 2009 spring cleaning. You can always get replacement copies. The easiest way to obtain duplicates is to make a request in writing to your association management. You'll typically be charged a fee—usually no more than \$25 for the photocopying of the bylaws, says Brian E. Alexander, a real estate attorney and partner with Alexander & Associates in Chicago.

According to Falzone, if the documents are properly recorded, you can also get a copy of your condo declaration from your county recorder's office

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—Angela Falzone

using the name and address of the property. A recorded document of this nature is a restriction on the title of the unit, and the recorded number of the document will show up in a title search.

Like everything else, a building or HOA's documents should be revisited often, and altered as needed to keep up with the times and the demands of the residents. Some buildings and communities opt to disallow pets, but will allow existing pets to be grandfathered in under the new rule. A younger-trending

building may want to revisit its rules about quiet hours. A newly-installed or updated amenity—such as a pool, for example—will require new regulations governing its use and upkeep.

According to Falzone, if the board decides to change its bylaws, they're usually required—by the community's bylaws themselves—to take a vote during an official meeting. The meeting can be a regularly scheduled gathering such as an annual residents' meeting, or a special meeting created

expressly for the purpose of the vote. Residents are usually required be alerted via a letter, posting or e-mail about the meeting within a set number of days in advance, but typically, only the board members will actually vote on the change to the documents.

If the board decides to change its declaration, this is a more formal event, and they'll need to send a copy of the proposed amendment to all the residents, Falzone says, then hold a meeting to discuss and explain the changes, while soliciting approval from a majority of owners. It can be a very long process.

“Amendments can take months to complete,” says Falzone, “because owners reluctant to approve may need convincing, and politicking may be needed to get the amendment through. I have one that I've been working on for more than a year, and I still do not have the required signatures to get it passed and recorded.”

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ISBA

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large, but most representing different areas of the state. “All members can vote for a 3rd Vice President each year,” Anderson says. “This person moves through the chairs to become President in their fourth year in leadership.”

ISBA’s president rotates between Cook County and outside of Cook County. Any member of the Association can file nominating petitions to seek a leadership position. In addition to Hassakis as its current president, John G. Locallo is the president-elect and will take over soon. John E. Thies is 2nd vice president, Paula H. Holderman is 3rd vice president and John G. O’Brien is immediate past president.

The bar association counts among its honorary members, President Barack Obama, Michelle Obama, Hillary Clinton and author Harper Lee, whose depiction of Atticus Finch in *To Kill A Mockingbird* stands as an unparalleled example of legal integrity.

Past ISBA presidents have included Orville H. Browning, (1881) who was appointed **Rules & Regulations** of Stephen A. **un-**timely death, David Davis (1807) who was appointed as Justice of the United States Supreme Court by President Abraham Lincoln; Melville Fuller (1886), who served as Chief Justice of the United States from 1888 to 1910; Lyman Trumbull (1892), who served as U.S. Senator from Illinois during the Civil War and co-authored the 13th Amendment to the U.S. Constitution, abolishing slavery.

Looking Ahead

From June 16-18 this year, the Illinois bar will be holding its 135th annual meeting on the banks of Lake Geneva in Fontana, Wisconsin, and some big things are planned to be on the table.

“Our annual meeting is devoted to ‘changing the guard,’ presentation of awards to members and others who have served the Association and the public, and a meeting of our policy-making body, the assembly,” Anderson says. “Hot topics for the Assembly are difficult to predict, and can arise right up to the time of the meeting.”

The Illinois State Bar Association works on behalf of its members to fulfill its mission of providing resource and educational services to its members and the general public. With 30,000 members, it is the largest voluntary statewide organization of lawyers in Illinois. ■

Keith Loria is a freelance writer and frequent contributor to The Chicagoland Cooperator.

THE PAPER TRAIL

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If an incoming, newly-elected board discovers that their building’s governing documents are somehow incomplete, were poorly drawn-up to start with, or have been improperly altered or amended over the years, getting them up-to-date could still be a lengthy, expensive process.

“It’s not uncommon for this to happen,” says Alexander. “I’ve actually dealt with associations that never put together bylaws—they just operated informally.”

That’s a rare and risky move, however. Informal operations where nothing is set in stone or put in writing can lead to nasty legal battles, so most attorneys recommend creating legitimate, written bylaws so there’s no question about anything should problems arise.

If a community’s documents be are missing or inconsistent with state or federal laws, says Falzone, the Illinois Condominium Property Act will prevail. But it’s much easier simply to use the ICPA to help boards draw up their own bylaws that work for the state, the board, the building and all the residents.

Before it comes to that however, Haas recommends that condo boards hire the assistance of an experienced real estate attorney who understands the laws at the federal, state, and municipal level.

“These are extremely technical documents,” Haas says. “I’d never recommend that a condo or a co-op board try to amend their documents without the assistance of legal counsel. Find someone specializing in condo or co-op law.” ■

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WATCH YOUR MOUTH

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saying vicious things about the sitting board, we convinced the sitting board to rise above the mudslinging and felt it wasn’t necessary to hit back,” says Reich.

If you’re the one tempted to post something you think is true, think twice. “I can’t tell you how many times someone says to me they can prove something and they couldn’t,” says Dickler.

Even forwarding a damaging email that you received to third parties can get you in as much hot water as if you had written it yourself.

For example, a homeowner discovers a new message from a neighbor in her personal email inbox. The message’s subject is embarrassing, personal matter of another neighbor, which the homeowner finds humorous. She

forwards the message to a number of her contacts and posts the entry to her social media accounts (such as on her Facebook wall.)

“Although the homeowner only posted the item, making no independent comments of her own, she soon finds herself a defendant (along with the original author of the email) against a lawsuit for libel and defamation of character after the email’s subject matter proved to be false,” says Jonathan H.F. Crystal, executive vice president, Frank Crystal & Company in New York.

After the homeowner’s personal email and computer files were subpoenaed, she is eventually dismissed from the lawsuit but not before incurring over \$75,000 in legal fees and expenses. A very costly lesson, indeed.

So take Momma’s words to heart: Be careful what you say before you say it or you may regret it in the long run. ■

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KENOSHA, WISCONSIN

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Peanut Butter and Jam Concert Series and the Lincoln Park Live! music series. On the way to these outdoor festivals stop by the farmer’s market and pick up some of the local bounty.

Kenosha, and it’s surrounding areas are also an oasis for true shop-a-holics. Downtown Kenosha is a reminder of days past with many small independently owned stores lining the streets, easily accessible by the electric street car. The town of Pleasant Prairie, just to the east of Kenosha, is a bargain-hunters paradise and home to the Pleasant Prairie Prime Outlet Mall.

Housing

For those thinking about moving to Kenosha they will be delighted with the housing choices available. The Kenosha area is about as diverse as they come. From condominiums and townhouses to established homes; from existing units to new construction; from lakefront living to more secluded rural properties; a new Kenoshan will find just the right surroundings. The new HarborPark neighborhood offers waterfront condo living, offering spectacular views of Lake Michigan, with all the modern amenities expected. Others may choose a more classically urban setting and settle into one of the many urban neighborhoods which are close to transportation, shopping, schools and recreation. Others still may opt for the rural countryside, communities surrounding inland lakes, farmland, woodlands and plenty of room to roam.

The types of units and buildings range from the modest to the luxurious, and the neighborhoods reflect the diversity of the residents. Like everywhere else in the nation Kenosha was hit by the recent recession, but not as hard as other communities in the

Chicagoland area. Kenosha has certainly fared much better than Chicago or Milwaukee. While industry professionals are predicting declining prices approaching 10 percent or higher, for the upcoming year, in the Chicago and Milwaukee areas, in Kenosha however, housing prices are expected to decline less than 5 percent. These predictions seem to be on-target. A condo in the popular Harbor Place building located in the HarborPark neighborhood is presently selling for \$399,000. The price of this unit, three bedrooms with views of Lake Michigan, is atypical for the HarborPark neighborhood, the median price for a unit is at \$148,000, up 1.3 percent from last month. While a two bedroom condo, closer to Kenosha city center, is selling for around \$132,000 or about 12 percent below the median price.

Looking Ahead

Buyers and sellers are still extremely nervous, but real estate professionals are beginning to feel a bit more confident. Most brokers in the Kenosha area believe that the market has bottomed out and the number of sales will begin to increase. The relative affordability of homes, the proximity to Chicago, and the fact that businesses and industries continue to grow in Kenosha, will continue to draw in new residents which will keep Kenosha the little evergreen jewel that it is right in the middle of Chicago and Milwaukee. ■

PAYING IT FORWARD

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monetarily damaged in the long run, however. In almost all states and under nearly all declarations, the association can recover its attorney fees and costs for pursuing recovery of unpaid assessments.

The association may be short of money while it’s waiting for the delinquent owners to pay or the courts to make an action, but while it’s in a holding position, the association should also be tacking on late fees. The amount of late fees is something the association should have written into their declaration—but determining the appropriate number is difficult. The range of late fees charged from building to building and state to state is extreme, Dickler says.

Some older declarations that were written for Federal Housing Administration (FHA) and Veterans Administration (VA) loan approvals have as little as \$10 late charges. They can’t be legally changed because they were written into the governing documents. But other buildings charge as much as \$100 or more in order to make sure that the unit owners take their assessments seriously and pay on time. In addition to late fees, many buildings have the ability to charge interest on unpaid assessments, Dickler says.

In Illinois, interest on judgments is