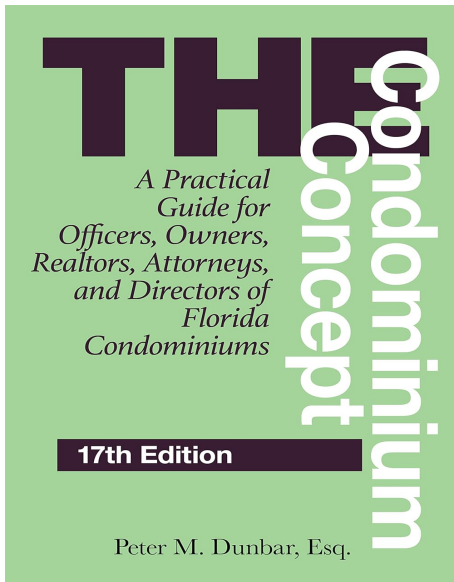


All Owners NEED to KNOW



Everyone living in CVE needs to understand the basics of Florida condominium living. This first chapter from “The Condominium Concept” by Peter M. Dunbar, Esq. helps explain the three distinct parts that make up a condominium. In Dunbar’s words: Condominiums are “creatures of statute.” The Florida Condominium

Act governs their creation and their ongoing activities. The Act also addresses the rights of unit owners and the responsibilities of those who govern the condominium on their behalf. Living in a condominium has many advantages. It also means giving up certain things. Here are just the basics of what all owners need to know.

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2 The Condominium Concept

1.1 History. The condominium form of ownership of real property has its earliest foundations during the Roman Empire. The term “condominium” is a derivative from the language of the time, meaning common ownership by two or more people. Reference can be found to condominiums through the Middle Ages, and the concept was first put into law in 1804 in the Napoleonic Code of France.¹ The condominium concept in Florida, however, is relatively new and began when the 1963 Legislature enacted Chapter 711, Florida Statutes (F.S.), providing the basic legal authority for the creation of condominiums.²

In 1974 and 1975, major revisions to the Condominium Act added significant consumer protections for individual unit owners and established comprehensive requirements for the operation and management of condominium communities by their associations. All of these changes were designed for the ultimate benefit and protection of the condominium unit owner. In 1976, Chapter 711, F.S., was renumbered as Chapter 718, F.S., which is now known and cited as the “Condominium Act” in Florida.³ Significant changes were added to the Condominium Act in both 1991 and 1992, and the Act now contains seven Parts. In subsequent years, including a series of major revisions relating to milestone inspections and structural integrity reserve studies in 2022 and 2023, modifications have been enacted that affect the operations in Florida’s condominium communities.

1.2 Condominium Concept. The condominium concept is a form of joint ownership of real property. It is distinguished from other types of joint or common ownership because of the three distinct parts that make up the condominium. The first part is the exclusive ownership of a single unit; the second part is joint ownership, as tenants-in-common with others, of the common areas; and the third part of the condominium is an agreement or scheme among owners for the management and administration of the total condominium property.⁴

In more formal terms, “condominium” means the form of ownership of real property that is created under the Condominium Act and is comprised of units owned individually by one or more persons together

1 Sterling Village Condominium, Inc. v. Breitenbach, 251 So.2d 685, 688 (Fla. 4th DCA 1971), citing 38 St. John’s L. Rev. 3; 15 Am. Jur. 2d, Condominiums, Etc., § 3; and Coke on Littleton, quoted in 39 Yale L.J. 621.

2 “In Florida, condominiums are creatures of statute and as such are subject to the control and regulation of the Legislature.” Century Village, Inc. v. Wellington Condominium Ass’n, 361 So.2d 128,133 (Fla. 1978).

3 § 718.101, F.S.

4 § 718.104, F.S.

with joint ownership of an undivided share in the common elements.⁵ Each of the three parts is essential to the condominium and a condominium cannot exist if all three elements are not present. The creation is formally accomplished when the parts are defined as required in the Condominium Act and a declaration of condominium is recorded with the Clerk of the Circuit Court in the county where the condominium property is located.⁶

1.3 Understanding the Parts. In general discussion the terms “condominium,” “condominium unit,” and “condominium association” are often used interchangeably. At times, however, to interchange one term with another can be not only confusing, but is inaccurate and inappropriate. A “condominium” is not the unit that is lived in, and it is not the entity which has a board of administration. “Condominium” refers to the entire grouping of all three parts together and includes the condominium unit, the common elements, and the condominium association. The “condominium association” is the governing entity for the community and each unit owner is a member of the association.⁷ The association is governed by a board of administration and the board is elected by the members.⁸

The unique interrelationship between the parts of a condominium distinguishes it from other similar forms of joint ownership, such as a cooperative or townhouses. A cooperative does not have a unit that is individually owned and the occupants only receive an exclusive right to occupy the apartment unit. Legal title to the property in a cooperative remains in the name of the cooperative association.⁹

In a townhouse-style development, residents own their home but there are no “common elements” jointly owned with others.¹⁰ The common property or “common area” is either titled to a homeowners’ association or is made available to residents through a long-term lease or by dedication on a recorded subdivision plat.¹¹ The condominium is a hybrid estate

5 § 718.103 (12), F.S. “...all provisions of a condominium declaration must conform to the Act, ‘and to the extent that they conflict therewith, the statute must prevail.’” *IconBrickell Condominium No. Three Ass’n Inc. v. New Media, LLC*, 310 3rd DCA 477, 480 (Fla. 3rd DCA 2020)

6 § 718.104 (2), F.S.

7 § 718.103 (3), F.S.

8 § 718.103 (5), F.S.

9 § 719.103 (13), F.S.

10 The declaration of restrictions for single-family lots does not create a condominium form of ownership. See *Raines v. Palm Beach Leisureville Community Ass’n, Inc.*, 413 So.2d 30, 32 (Fla. 1982) and *Department of Business Regulation, Div. of Land Sales v. Siegal*, 479 So.2d 112 (Fla. 1985).

11 § 720.301 (2), F.S.

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in property law; and only the condominium form of ownership has the “unit,” the “common elements,” and the “association” as separate and distinct pieces that combine to form the total “condominium.”¹²

1.4 Compromise and the Common Scheme. The benefits of condominium living are many. They include a sharing of maintenance responsibilities and the expenses for quality recreation facilities. They promote a concept of community stability and security and provide an organization with central responsibility for efficient and quality operation of the property.¹³

Along with the benefits of the condominium concept, however, there are also some compromises which must be made and each individual unit owner gives up a certain degree of freedom which otherwise might be enjoyed in a separate single family home. The common elements of the condominium are not owned by an individual unit owner and they are to be shared and enjoyed by all.¹⁴ (See 1.6).

The concessions and compromises of condominium living have been succinctly described by Florida’s Fourth District Court of Appeal in the following passage:

“Every man may justly consider his home his castle and himself as the king thereof; nonetheless his sovereign fiat to use his property as he pleases must yield, at least in degree, where ownership is in common or cooperation with others. The benefits of condominium living and ownership demand no less. The individual ought not be permitted to disrupt the integrity of the common scheme through his desire for change, however laudable that change might be.” *Sterling Village Condominium, Inc. v. Breitenbach*, 251 So. 2d 685, 688 (4th DCA, 1971.)

The overriding principle in the condominium concept is the promotion of the health, happiness, and peace of mind of the majority of unit owners. In accomplishing this goal, there will be some compromises of individual rights. It is the association and the board of administration which continually face the responsibility of maintaining the delicate balance between individual rights of unit owners and preserving the common scheme for the benefit of all the owners.¹⁵

¹² *Rogers & Ford Const. Corp. v. Carlandia Corp.*, 626 So.2d 1350, 1352 (Fla. 1993).

¹³ *Holiday Out in America at St. Lucie, Inc v. Bowes*, 285 So.2d 63, 65 (Fla. 4th DCA 1973).

¹⁴ § 718.103 (9) and § 718.108, F.S.

¹⁵ *Hidden Harbour Estates, Inc. v. Basso*, 393 So.2d 637, 640 (Fla. 4th DCA 1981).

1.5 Unit and the Unit Owner. The “unit” is that portion or part of the condominium property which is subject to exclusive ownership. The boundaries and the description of each unit must be specifically set forth in the declaration creating the condominium,¹⁶ and ownership of a unit entitles the owner to its exclusive use.¹⁷ Once the real property has been submitted to condominium status, all the individual units become separate parcels of real property.¹⁸

The use of the unit must be consistent with the regulations and restrictions in the declaration of condominium, and the association has an irrevocable right of access to each unit when it is necessary to maintain, repair, or replace a portion of the common elements or any portion of the unit to be maintained by the association pursuant to the declaration of condominium. The association also has the right of access to each unit when it is necessary to make emergency repairs in a unit to prevent further damage to common elements or to another unit.¹⁹

When an owner receives title to a condominium unit, the title also includes the ownership of an undivided share of the common elements that are assigned to the unit by the declaration. The unit, together with its undivided share in the common elements, is known as the “condominium parcel.”²⁰ A “unit owner” or “an owner of a unit” means the owner of a “condominium parcel,” and title includes ownership of both the unit and a portion of the common elements assigned to it.²¹

In order for property to be subject to exclusive ownership in a condominium, it must be created and identified as a unit and it must have an undivided portion of the common elements assigned to it. A room or area of the condominium property called a unit but not assigned a percentage of ownership in the common elements has been classified by the courts as common elements and its owner’s claim to exclusive ownership was disallowed.²²

16 § 718.103 (28), F.S.

17 § 718.106 (2)(c) and (3), F.S.

18 § 718.109, F.S. See *Hyde Park Condominium Ass’n v. Estero Island Real Estate, Inc.*, 486 So.2d 1 (Fla. 2d DCA 1986) and *Estancia Condominium Ass’n, Inc. v. Sunfield Homes, Inc.*, 619 So.2d 1008 (Fla. 2d DCA 1993) concerning “phantom units” and contrast with *RIS Investment Group, Inc. v. Department of Business and Professional Regulation Division of Florida Land Sales Condominiums and Mobile Homes*, 695 So. 2d 357 (Fla. 4th DCA 1997).

19 § 718.111 (5)(a) and § 718.106 (3), F.S.

20 § 718.103 (13), F.S.

21 § 718.103 (29), F.S.

22 *Daytona Development Corp. v. Berquist*, 308 So.2d 548, 550 (Fla. 2d DCA 1975); see also *Sauder v. Harbour Club Condominium No. Three, Inc.*, 346 So.2d 556 (Fla. 2d DCA 1977).

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1.6 Common Elements. The portion of the condominium property jointly owned by all of the owners is defined as “common elements” and it includes all of the condominium property that is not located within the defined boundaries of the individual units.²³ The property legally described in a declaration of condominium must be one of two kinds—it must be a “unit,” specifically described with a percentage of common element ownership assigned to it, or it will be common elements and jointly owned by all of the unit owners. No portion of the common elements is subject to exclusive ownership for so long as it remains a part of the condominium.²⁴

The common elements are, however, subject to exclusive use by a particular unit or units to the exclusion of others if the declaration of condominium permits it. Common elements set aside for exclusive use by the declaration are known as “limited common elements” and examples include balconies, patios, storage lockers, and assigned parking spaces.²⁵ Except for these limited common elements, all other portions of the common elements are for use by all of the unit owners, although an individual owner’s use must not hinder or encroach upon the lawful rights and use by other owners.²⁶

In addition to an assigned percentage of the common elements and the right to use them, each unit also has additional accessory rights or “appurtenances” which are inherent with the ownership of a condominium parcel. The appurtenances to a unit include the right to share in the common surplus (see 7.14) and the exclusive right to use the designated limited common elements.

Appurtenances include rights to use, and have access to, all of the easements and easement rights available to the condominium association. They also include various membership rights available to unit owners²⁷ and the use and benefit from all property owned directly by the association. All supplemental rights or privileges which accompany the ownership of the unit, including membership in the condominium association, are considered “appurtenances” to the unit.²⁸

23 § 718.103 (9), F.S.; Village of Doral Place Ass’n, Inc. v. RUA Real, Inc., 22 So.3d 627 (Fla. 3d DCA 2009).

24 Daytona Development Corp. v. Berquist, supra note 22 and Mayfair Engineering Co. v. Park, 318 So.2d 171, 173 (Fla. 4th DCA 1975).

25 § 718.103 (20), F.S.; Brown v. Rice, 716 So.2d 807, 808 (Fla. 5th DCA 1998).

26 § 718.106 (3), F.S.

27 Kesl, Inc. v. Racquet Club of Deer Creek II Condominium, Inc., 574 So.2d 251 (Fla. 4th DCA 1991) and Scott v. Sandestin Corp., 491 So.2d 334 (Fla. 1st DCA 1986).

28 § 718.106 (2), F.S.

1.7 Association. The third part of a condominium is the corporate entity which is responsible for the management and operation of the condominium property. It is referred to as the condominium association or simply as the “association.”²⁹ The board of administration (directors) is the governing body of the association, and the board is responsible for administration of the association.³⁰

Current provisions of Florida’s Condominium Act require that the association be either a corporation for-profit or a corporation not-for-profit. As a general rule, most condominium associations fall into the not-for-profit category. Prior to January 1, 1977, unincorporated associations were permitted and some can still be found operating in Florida.³¹ The association created by the articles of incorporation once established becomes the designated representative of the unit owners and is authorized to act on behalf of all members concerning matters of common interest.³² (See 2.8).

All unit owners are members of the association as an appurtenance to their ownership of a condominium parcel, but no owner may act for the association simply by virtue of being a member.³³ Through the board of administration it is the association’s responsibility to administer to the shared facilities of the condominium property, to promote harmony and uniformity within the condominium community, and to enforce the restrictive covenants contained in the declaration of condominium and other documents that regulate the condominium.

Unit owners in some condominiums may have a membership in more than one “association.” In addition to the corporation responsible for management of the condominium, other corporate entities may also be an “association” under the terms of the Act. These might include a master association or a recreation association, and such association is governed by the Condominium Act when (1) it operates or maintains real property in which unit owners have use rights, (2) where membership in the entity is composed exclusively of unit owners, and (3) where membership by unit owners is required by the condominium documents.³⁴

1.8 Association Property. Traditionally, the condominium association does not own or lease property as a part of the general scheme for the condominium. The association does, however, have the power to

29 § 718.103 (3), F.S.

30 § 718.103 (5), F.S.

31 §718.111 (1)(a), F.S.

32 *Tedeschi v. Surf Side Tower Condominium Ass’n, Inc.* 35 So.3d 915 (Fla. 2d DCA 2010).

33 § 718.111 (1)(c), F.S.

34 § 718.103 (3), F.S.

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acquire title to property and to otherwise hold or lease property for the use and benefit of its members.³⁵ When it does, the property is identified as “association property.” “Association property” includes all real and personal property which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.³⁶ Technically, the property owned by the association is not a common element, but it is an appurtenance to the units and is treated for all practical purposes as if it were a common element.

The association will occasionally acquire title to real property when a recreation lease is purchased or when property is added to the community by purchase or gift. All personal property such as lawn maintenance equipment, pool furniture, and similar types of personal property are considered “association property,” and should be titled accordingly. This will allow the property to be disposed of and replaced by the board of administration as time and wear necessitate. If the property is owned as common elements or is defined as common elements, it cannot be sold or disposed of without the unanimous approval of the owners.³⁷

1.9 Assessments. To fund the non-profit association’s operations and special needs, each unit owner is required to contribute a proportionate share of the total sum. The proportionate share required to fund the annual budget and general operations of the association is known simply as an “assessment.”³⁸ The funds required from a unit owner, other than the assessments required to fund the annual budget, are referred to as “special assessments.”³⁹

Collectively, the assessments and special assessments must be enough to cover the payment of all of the association’s capital obligations and operating expenses. A unit owner may not avoid the responsibility for assessments by waiving the use or enjoyment of all or part of the condominium property,⁴⁰ and an owner delinquent in assessment obligations is not eligible for membership on the board of directors.⁴¹ (See 4.7).

“Common expenses” include all of the expenses for the operation, maintenance, repair, and replacement of the common elements and association property; the costs of carrying out the powers and duties of

35 § 718.111 (7), F.S. and § 718.114, F.S.

36 § 718.103 (4), F.S.

37 § 718.110 (4), F.S.

38 § 718.103 (2), F.S.

39 § 718.103 (25), F.S.

40 § 718.116 (2), F.S.

41 § 718.112 (2)(d) 1. and § 718.112 (2)(n), F.S.

the association; and any other expenses defined as common expenses by the Condominium Act, the declaration of condominium, or the other documents creating the condominium.⁴² Expenses for services or items mandated to be installed on the condominium property by federal, state, or local government, such as fire safety equipment or water and sewer meters, are deemed to be a common expense. Common expenses may additionally include reasonable transportation services, in-house communication services, and security services if they were provided from the time that control of the board was transferred from the developer.⁴³ Common expenses may also include hurricane protections when their installation has been appropriately authorized.⁴⁴ (See 9.14).

The definition of common expense allows the board of administration wide latitude for its fundraising depending on the character and nature of the condominium community. However, the expenses are always subject to challenge if they do not conform to the condominium documents,⁴⁵ result from an abuse of the board's discretion, or when they are not within the proper business scope of the association.⁴⁶ (See 8.15).

1.10 Unity of the Parts. The parts of the condominium—the unit, the common elements, and the condominium association—create the unique character of the condominium, and they cannot be separated from one another for as long as the condominium exists. The undivided share in the common elements which is appurtenant to a unit passes automatically with a deed to the unit whether or not it is separately described.⁴⁷

The common elements cannot be separated from a unit, nor can they be separately conveyed or mortgaged except as a part of the unit.⁴⁸ Governmental agencies may not separately assess property taxes against the common elements and tax bills must be sent to individual unit owners with each owner paying a portion of the taxes for the common elements.⁴⁹

Membership in the condominium association is an appurtenance to unit ownership, and it is a right which cannot be denied to any unit

42 § 718.103 (10), F.S.; *Rothenberg v. Plymouth #5 Ass'n*, 511 So.2d 651 (Fla. 4th DCA 1987).

43 § 718.103 (10) and § 718.115 (1)(a), F.S.

44 § 718.115 (1)(e), F.S.

45 *Coral Way Condominium Investments, Inc. v. 21/22 Condominium Ass'n, Inc.*, 66 so.3d 1038, 1041 (Fla. 3d DCA 2011).

46 § 617.0830, F.S.; see also *B & J Holding Corporation v. Weiss*, 353 So.2d 141, 143 (Fla. 3d DCA 1978).

47 § 718.107 (1), F.S.

48 § 718.107 (2) and (3), F.S.

49 § 718.120 (1), F.S.; see also *Village of Doral Place Ass'n, Inc. v. RU4 Real, Inc.*, 22 So.2d 627, 629 (Fla. 3rd DCA 2009).

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owner.⁵⁰ Membership also places restrictions and mandatory financial obligations upon a unit owner that cannot be avoided by waiving use of the common elements.⁵¹ When title to a unit is transferred, membership in the condominium association is also transferred and vested in the new owner. Collectively all of the parts make up the condominium and to eliminate any one of the parts from the others destroys the condominium concept.

1.11 Democratic Sub-Society. The character of condominiums has emerged from its basic beginnings in 1963 to a sophisticated and well-ordered housing concept. The uniqueness of condominium living has resulted in a greater degree of control and limitation over the rights of individual unit owners and their use and occupancy of a condominium unit.⁵² The concept has also allowed for owners to share in benefits and recreational amenities which would not otherwise be available to them as a single family homeowner. The sub-society of condominium unit owners, while more restrictive on some individual rights, is also an open quasi-government which is run in almost a purely democratic fashion.⁵³

The assessments of the condominium association can be compared to the taxes of a city, and the ability of the board of administration and membership to develop and modify rules and regulations is similar to the ability of a municipality to pass and amend ordinances. The condominium association also possesses the authority to act as an enforcement body to fine its members and to enforce by court action the restrictions and regulations which govern the community.⁵⁴

Tempering the exercise of the association's authority is the right to democratically elect the board of administration and to recall any member of the board at any time when their performance is not satisfactory.⁵⁵ The condominium sub-society has the equivalent of a city charter in the form of its declaration of condominium. This foundation document spells out the mutual rights and obligations of the unit owners,⁵⁶ and it cannot be amended or changed to alter the rights and protections given to each unit owner unless an extraordinary majority vote is obtained or the affected

50 § 718.106 (2)(d), F.S.

51 § 718.116 (2), F.S.

52 *Sterling Village Condominium, Inc. v. Breitenbach*, supra note 1.

53 "Condominium unit owners comprise a little democratic sub-society of necessity more restrictive as it pertains to use of condominium property than may be existent outside the condominium organization." *Hidden Harbour Estates, Inc. v. Norman*, 309 So.2d 180, 182 (Fla. 4th DCA 1975).

54 § 718.303 (1) and (3), F.S.

55 § 718.112 (2)(j), F.S.

56 *Woodside Village Condominium Ass'n, Inc. v. Jahren*, 806 So.2d 452, 456 (Fla. 2002).

owner consents.⁵⁷ The basic property rights of the individual unit owner are protected by the community's governing documents and the owner's voice in the association affairs is assured by the Condominium Act.

1.12 Covenants Running with the Land. A covenant is a commitment, agreement, or contract which grants a right or imposes a liability. Each declaration of condominium is a contract and includes many such rights, liabilities, and commitments governing the use and occupancy of the condominium property. They are an accepted part of condominium living and are recognized by a specific provision in the law.⁵⁸ The restrictions and covenants contained in the declaration of condominium "run with the land" as permanent restrictions governing its use⁵⁹ and will remain effective until the condominium itself is terminated.⁶⁰

Covenants may range from the obligation to pay a portion of the common expenses to restrictions on the age of permanent residents and the number of people that may live in a particular condominium unit. In essence, all of the provisions of the declaration of condominium and its exhibits are considered covenants running with the land and are permanent restrictions affecting the property. The covenants impose limitations on the use of the property by requiring the performance of certain duties or by guaranteeing certain rights to owners of the property.⁶¹ Each unit owner in the condominium and the condominium association has the right to enforce these covenants running with the land against any other owner or the association when a violation of the covenants occurs. (See 13.1).

When covenants run with the land, a person who assumes ownership of a portion of the land also assumes ownership with the presumed knowledge of the covenants.⁶² In other words, each new unit owner is presumed to know and understand the content of the declaration of condominium and its exhibits. It is the responsibility of the board of administration to maintain copies of the condominium's documents for prospective purchasers and to ensure that this knowledge is actually in place as new unit owners join the condominium community.⁶³

57 § 718.110, F.S.

58 § 718.104 (5), F.S. "A declaration of condominium . . . operates as a contract among unit owners and the association..." *IconBrickell Condominium No. Three Ass'n Inc. v. New Media, LLC*, supra note 5.

59 *Woodside Village Condominium Ass'n, Inc. v. Jahren*, supra note 56.

60 § 718.104 (7), F.S.

61 *White Egret Condominium, Inc. v. Franklin*, 379 So.2d 346, 350 (Fla. 1979).

62 *Hidden Harbour Estates v. Norman*, supra note 53.

63 § 718.111 (12)(c), F.S.

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1.13 Prospectus. Knowledge of the condominium documents and the covenants and restrictions that govern both the rights and limitations of condominium living is the responsibility of every owner of a condominium parcel. The “prospectus,” or offering circular, is the introductory synopsis to the entire set of condominium documents governing the community.⁶⁴ The prospectus is initially prepared by the developer of the residential condominium at the beginning of the project and it must be distributed to each new purchaser of a condominium unit.⁶⁵

The prospectus sets forth in outline form a summary of all the restrictions, financial obligations, and liabilities of an owner in the condominium. It also sets forth the commitments and promises made by the developer and the responsibilities which must be kept and maintained by the condominium association.⁶⁶ The prospectus must be accompanied by a copy of the annual financial report, governance form, and a separate summary sheet entitled “Frequently Asked Questions and Answers” informing each owner about key provisions in the condominium documents relating to use restrictions, voting rights, individual financial responsibilities and other important matters. (See 7.16 and 12.5).

The Frequently Asked Questions and Answers sheet must be maintained and updated by the condominium association,⁶⁷ and under most circumstances, neither the prospectus nor the Frequently Asked Questions and Answers is recorded in the public records like the balance of the condominium documents.

1.14 Declaration of Condominium. In Florida, condominiums are established under the Condominium Act by recording a declaration of condominium in the public records of the county where the land is located.⁶⁸ The declaration of condominium is the document or the set of documents that actually creates the condominium and it operates as a contract among unit owners and the association.⁶⁹ It establishes the covenants and restrictions which will affect the property and govern the residents during the entire existence of the condominium.⁷⁰

64 § 718.504, F.S.

65 § 718.503 (1), F.S. Each purchaser may cancel the purchase agreement within fifteen (15) days after receipt of the prospectus or any material amendment to the prospectus. *BB Landmark, Inc. v. Haber*, 619 So.2d 448, 449 (Fla. 3d DCA 1993).

66 § 718.504 (1)-(27), F.S.

67 § 718.111 (12)(d), F.S.

68 § 718.104 (2), F.S.

69 *Cohn v. Grand Condominiums Ass’n, Inc.*; 62 So.3d 1120, 1121 (Fla. 2011).

70 *Woodside Village Condominium Ass’n, Inc. v. Jahren*, supra note 56; *Brickell Bay Club Condominium Ass’n, Inc. v. Hernstadt*, 512 So.2d 994, 996 (Fla. 3d DCA 1987).

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The declaration of condominium includes within its definition any amendments which may be made to it and all exhibits which are attached to the foundation document and incorporated into it by reference.⁷¹ The combined parts of the declaration of condominium create an elaborate set of covenants and restrictions and establish the basic rights and responsibilities for the residents and guests of the property. (See 1.12).

A valid declaration of condominium must contain or provide for the name of the condominium, the legal description of the condominium property, an identification of each unit by letter or number, and the percentage by which each unit will own the common elements and will share in the common expenses. The declaration must establish easements for ingress and egress to all units and to the common elements. It must contain a survey and plot plan giving a graphic description of the condominium property. Finally, the declaration must also include the articles of incorporation and the bylaws for the condominium association that are customarily incorporated as exhibits.⁷²

The declaration defines and identifies all of the parts of the condominium property and establishes the nature of the relationship which each has to the other. Following the recording of the declaration of condominium, a description of a condominium parcel by number or letter becomes the permanent, formal legal description for the property, and is a sufficient legal description for all purposes.⁷³ With the recording of the declaration, the real property loses its traditional ownership characteristics and it becomes a condominium.

1.15 Plot Plan and Survey. The plot plan and survey are traditionally found attached to the declaration of condominium as an exhibit, most often as Exhibit "A." This part of the declaration of condominium is also the most often overlooked. Yet, it is an essential requirement of the declaration,⁷⁴ and it is frequently a helpful problem-solving tool when questions of boundaries between units and common elements arise.⁷⁵ The plot plan and survey must show the boundaries for all units and it will visually identify each unit by number or letter.

71 § 718.104 (14), F.S.

72 § 718.104 (4), F.S.

73 § 718.109, F.S.

74 *Tranquil Harbour Development, LLC v. BBT, LLC, et al.*, 79 So.3d 84 (Fla. 1st DCA 2011).

75 The survey, graphic description, and plot plan must be in sufficient detail to identify all units and the common elements. *Ackerman v. Spring Lake of Broward, Inc.*, 260 So.2d 264, 266 (Fla. 4th DCA 1972).

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On many occasions parking space assignments, parking locations, and the identification of limited common elements will also be shown on the plot plan together with the actual boundaries of the condominium units. The Clerk of the Circuit Court may use a separate plat book for display of these condominium plot plans and surveys and the location for this separate book should not be overlooked. It usually contains a larger version of the plot plan and survey attached to the declaration, and the boundaries and dimensions will be clearer and easier to read and understand.

The plot plan and survey of the lands contained within the condominium must show all of the easements and must give a graphic description of all of the improvements on the condominium property. The plot plan, together with the written declaration of condominium, must be in sufficient detail to identify all of the common elements, each of the units, their respective locations, and their approximate dimensions.⁷⁶ A surveyor must certify that the plot plan and survey are an accurate representation of all of these improvements, including the drainage retention areas, walkways, driveways, parking areas, recreational improvements, and the other common elements.⁷⁷ Recording the surveyor's certificate of substantial completion of the improvements is a relevant event to complete the creation of the condominium.⁷⁸

1.16 Articles of Incorporation. The articles of incorporation, or corporate charter, is the document which establishes that part of a condominium responsible for the maintenance, management, and operation of the common elements and the condominium property.⁷⁹ The declaration of condominium must make provision for the articles of incorporation within its own text or as an exhibit. The articles themselves must define the membership rights of each unit and the voting rights which each unit owner has in the association's operation.⁸⁰

The term "articles of incorporation" includes the original document creating the association and all amendments to it and any other documents which define the existing form, membership, and responsibility of the association. For example, the definition also includes articles of consolidation or articles of merger if several condominium associations have

76 *Shores of Panama Club, LLC v. Shores of Panama Resort Community Ass'n, Inc.*, 204 So.3d 541 (Fla. 1st DCA 2016).

77 § 718.104 (4)(e), F.S.

78 *Tranquil Harbour Development, LLC v. BBT, LLC, et al.*, supra note 74.

79 § 718.103 (3) and § 718.111 (1), F.S.; see also *Juno By The Sea North Condominium Ass'n, Inc. v. Manfredonia*, 397 So.2d 297, 302 (Fla. 4th DCA 1980).

80 § 718.104 (4)(i) and (j), F.S.

been combined into a single organization.⁸¹ The articles of incorporation may permit the association to operate more than one condominium, either in their original form or by amendment, merger, or consolidation.⁸²

The articles of incorporation may establish a corporation for-profit or a corporation not-for-profit to operate the condominium. Under most circumstances, the articles of incorporation establish a corporation not-for-profit under Chapter 617 of the Florida Statutes to govern the condominium. A corporation not-for-profit is not tax exempt but it is a corporation where no part of the income may be distributed to the members, directors, or officers of the association.⁸³ (See 7.15).

The articles of incorporation for a corporation not-for-profit may contain all of the powers traditionally granted to profit-making corporations in Florida, except as restricted by the Condominium Act or by the articles of incorporation themselves. When there is a conflict between Chapter 617 of the Florida Statutes and the Condominium Act, the Condominium Act will prevail.⁸⁴ The articles of incorporation become effective, and the association may begin to operate when they are filed with the Division of Corporations of the Department of State.⁸⁵

1.17 Bylaws. The articles of incorporation of the association define its basic structure and its areas of responsibility. The bylaws are subordinate to the articles of incorporation; they set up the internal governance for the association; and they establish the procedures for carrying out the responsibilities of the association.⁸⁶ They define the powers and the manner for exercising those powers by the board of administration and by each of the association's officers. Stated differently, the operation of the association is governed by the bylaws of the association.⁸⁷ A copy of the actual bylaws must be attached to the declaration of condominium as an exhibit in order for a valid condominium to be created at the time of recording. Technical defects in the bylaws themselves, however, will not affect the validity of the condominium's creation.⁸⁸

When creating the bylaws, there is a substantial amount of discretion available to establish the specific procedures which the association will

81 § 617.01401 (1), F.S.

82 § 718.111 (1)(a), F.S.

83 § 617.01401 (5), F.S.

84 § 617.1703 (1), F.S.

85 § 617.0203 (1), F.S.

86 *Heron v. Destin West Beach & Bay Resort Condominium Ass'n, Inc.*, 94 So.3d 623, 629 (Fla. 1st DCA 2012).

87 § 718.112 (1)(a), F.S.

88 § 718.104 (4)(l), F.S.

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follow. There are some required provisions that the Condominium Act mandates for the bylaws and if they are not actually set forth in writing, the Condominium Act states that they shall be deemed to be included.⁸⁹ Among these requirements are restrictions on the use of proxies, the requirement that all board meetings be open to the members of the association, and the requirement that notice be posted for all board meetings.

The law requires procedures for the election of board members, adopting the budget, and a requirement that records of the association be open to unit owners. The bylaws must provide for at least three officers—a president, a secretary and a treasurer—and there must be a provision for alternative dispute resolutions involving unit owners and the association. (See 13.8). Because a portion of these mandatory requirements may not physically be within the bylaws, the board of administration and the association officers must be aware that portions of the bylaws may be found in the Condominium Act and not as a part of the bylaws actually attached to the declaration. The procedural rights established by the bylaws are for the benefit of association members, and nonmembers do not have standing to require that an association abide by its bylaws.⁹⁰

1.18 Rules and Regulations. The supplemental restrictions and procedures authorized by the bylaws and the Condominium Act promulgated by the board of administration are traditionally referred to as the “rules and regulations.” The bylaws of the association may provide for the authority to adopt the rules and regulations and may set out the procedures to follow when adopting them.⁹¹ The rules and regulations of the association are similar to the restrictions and covenants contained within the declaration of condominium, but they are not clothed with the strong presumption of validity and enforceability that accompany restrictions actually found in the declaration.⁹²

The rules and regulations promulgated by the board of administration are best described as supplemental to the covenants and restrictions in the declaration of condominium. These rules and regulations cannot contradict or contravene those in the declaration or its attached exhibits. The standard of reasonableness for rules and regulations of the board must be carefully applied to ensure enforceability.⁹³ The rules and

89 § 718.112 (2), F.S.

90 Backus v. Smith, 364 So. 2d 786, 787 (Fla. 1st DCA 1978)

91 § 718.112 (3)(a), F.S.; see also Neuman v. Grandview at Emerald Hills, Inc., 861 So.2d 494, 497 (Fla. 4th DCA 2003).

92 Woodside Village Condominium Ass’n, Inc. v. Jahren, supra note 56.

93 Hidden Harbour Estates, Inc. v. Norman, supra note 53.

regulations must also be within the scope of the board of administration's authority, as described in the bylaws or in the Condominium Act, to be valid. (See 13.25).

Some supplemental rules and regulations may be attached to the declaration of condominium as an exhibit at the time of recording, while others consist of unrecorded rules adopted by the board of administration. Under either circumstance, the rules and regulations are supplemental to the main covenants and restrictions governing the condominium.

1.19 Policy Statements and Resolutions of Procedure.

Statements of policy and resolutions of procedure outline and clarify existing standards of conduct for unit owners and their guests.⁹⁴ They also establish standard forms for providing warning notices to unit owners in violation of rules and as reminder correspondence to unit owners late or delinquent in maintenance payments.⁹⁵ Every condominium community has some established policies and standard procedures for carrying out the regulatory functions of the condominium association.

In many communities, "policy statements" and "resolutions of procedure" are not written or formally codified as a part of the governing documents. To preserve consistency in the community's policies and practices, the standard operating procedures of the board of administration should be reduced to writing. These formal statements of policy and resolutions of procedure are then readily available for examination by all unit owners and will ensure consistency in both practice and procedure from one board to another.

Resolutions of procedure may provide for temporary assignments in the use of common elements or may include a procedure for the use of a recreation room or a recreation hall. The range of subjects to be covered by policy statements and resolutions of procedure covers all aspects of condominium living. When the board of administration and the association take the time to reduce these policies and procedures to a written format, it helps to ensure that the procedures are tailored to the need of the individual association, and that they will be applied in a uniform, consistent manner for the benefit of all owners.

94 The board is empowered to implement the broad statements of general policy contained in the declaration of condominium to address day-to-day problems of operations. See *Beachwood Villas Condominium v. Poor*, 448 So.2d 1143, 1145 (Fla. 4th DCA 1984).

95 See *Chattel Shipping and Investments, Inc. v. Brickell Place Condominium Ass'n, Inc.*, 481 So.2d 29, 30 (Fla. 3d DCA 1985), holding that uniform policy created an enforceable standard in the condominium.

1.20 Priority and Consistency of Documents. Each of the documents which make up the declaration of condominium and support its operation and implementation are designed to interrelate and complement each other for the benefit of the community.⁹⁶ Each of these documents should be consistent with all of the others and should be interpreted to carry out the common scheme of the condominium.⁹⁷ When an apparent inconsistency is identified, the provisions of the two documents should be interpreted in such a way as to leave both provisions in effect and consistent with one another. When it is not possible to resolve an inconsistency between two different documents governing the condominium, then the provision in the highest-priority document must be followed.⁹⁸

The document with the highest priority in the community is the declaration of condominium itself and its provisions will prevail over inconsistent provisions in other documents.⁹⁹ In descending order, the articles of incorporation have the next highest priority after the declaration.¹⁰⁰ They are followed in descending order by the bylaws of the association,¹⁰¹ the rules and regulations attached to the recorded declaration of condominium, the rules and regulations promulgated by the board of directors, and finally, the policy statements and resolutions of procedure.¹⁰²

When inconsistency between the documents cannot be resolved by any reasonable interpretation between the apparent conflicting provisions, the provision in the document of the highest priority will prevail.¹⁰³ If the conflict arises in the same document between a provision specifically dealing with a particular subject and a provision only generally dealing with the subject, the specific provision is controlling.¹⁰⁴ When a provision in any of the documents is inconsistent with state, federal, or local laws, the inconsistency in the community documents will be invalidated in favor of the law.

96 "(T)he whole declaration must be considered and the general intent of the contract should prevail." *Raines v. Palm Beach Leisureville Community Ass'n*, supra note 10.

97 "When interpreting the meaning of these documents, every part of the instrument must be given effect." *Sweetwater Oaks Condominium Ass'n, Inc. v. Creative Concepts of Tampa, Inc.*, 432 So.2d 654, 656 (Fla. 2d DCA 1983).

98 *Sans Souci v. Division of Fla. Land Sales and Condominiums*, 421 So.2d 623 (Fla. 1st DCA 1982).

99 "The articles and bylaws must be consistent with the superior document, the Declaration." *S & T Anchorage, Inc. v. Lewis*, 575 So.2d 696, 698 (Fla. 3rd DCA 1991).

100 The bylaws may not be inconsistent with the articles of incorporation. See §617.0206, F.S.

101 *Heron v. Destin West Beach & Bay Resort Condominium Ass'n, Inc.*, supra note 86.

102 See *Woodside Village Condominium Ass'n, Inc. v. Jahren*, supra note 56, for discussion on categories of restrictions governing the use of condominium property.

103 *Koplowitz v. Imperial Towers Condominium, Inc.*, 478 So.2d 504 (Fla. 4th DCA 1985).

104 *Island Manor Apartments of Marco Island, Inc. v. Division of Florida Land Sales, Condominiums and Mobile Homes*, 515 So.2d 1327 (Fla. 2d DCA 1987).