

COMMUNITY ASSOCIATIONS AND THE PARLIAMENTARIAN

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“O BRAVE NEW WORLD that has such people in it!” These words from Shakespeare’s *The Tempest* aptly describe community associations. For parliamentarians, community associations represent a brave new world of opportunity. Statistics from the Community Association Institute (CAI) reveal that the number of community associations has ballooned from 500 in 1965 to more than 355,000 today.¹ Seventy-four million Americans live within community associations. Fifty percent of all new development in metropolitan areas is within community associations. Some 6,000–8,000 new community associations are created each year.

Although a tremendous opportunity for service, community associations are foreign to many parliamentarians. Parliamentarians venturing into this area must become familiar with the language of community associations, complex governing authorities, and some unique problems affecting community associations.

What Are Community Associations?

A “community association” is a residential development in which the owner is bound to membership in an organization by a set of governing documents that require adherence to a set of rules and, often, the payment of assessments. Membership in the community association is automatic upon purchase of a dwelling. Unlike other associations parliamentarians serve, community associations are not voluntary. Various terms are used to describe the types of community associations (and definitions vary by state). In a “condominium” a person owns an individual unit and is a tenant and common owner of the common elements. In a “planned community” a person owns an individual unit while a corporation holds title to the common areas. In a “cooperative” a corporation owns all units and common areas and a lease gives rights of occupancy in a unit. Other terms for particular community associations include

townhouses, detached single family residences, homeowners associations, and master associations. According to CAI the most popular architectural styles of community associations include townhouses (42%), detached single family residences (18%), and mid-high rise buildings (23%).

Governing Documents

Parliamentarians serving voluntary associations must typically focus on only the constitution (if applicable) and bylaws. The community association parliamentarian, however, must be aware of multiple governing documents as well as the potential for conflict between these documents. Governing documents for community associations include (1) statutes, (2) covenants, conditions, and restrictions, (3) articles of incorporation, (4) constitution and/or bylaws, and (5) parliamentary authority.

Statutes

Statutes may govern many procedural aspects of community associations, including notice and meeting requirements. Unfortunately, a parliamentarian can have a difficult time deciding which statutes apply, if any. Condominium acts have existed in many states for some years governing solely condominiums. However, condominium acts traditionally do not govern either homeowners associations or townhouses. As a result, other types of community associations have in the past incorporated and become subject to their state's non-profit corporation statutes.

A more recent development is the enactment of "planned community acts" to govern all community associations. These acts typically exclude condominiums if there is already a condominium act. In addition, such statutes do not govern community associations created before the adoption of the statutes in most cases (unless the community association chooses to be subject to the act).²

Statutes governing community associations often alter the standard procedures regarding quorum, voting, and proper meetings. Statutes often define a quorum as a specified percentage of members that may be as low as 10 percent of unit owners (the Uniform Planned

Community Act recommends a quorum of 20 percent for association meetings and 50 percent for board meetings).³ Statutes often provide that once a quorum is present at a meeting, the quorum remains throughout the meeting regardless of how many members leave.⁴ Some planned community acts provide that if a meeting is unable to convene due to a lack of quorum, any subsequent adjourned meeting will only require a quorum of one-half the original quorum.⁵

Statutes often include elaborate procedures for proxy voting and cumulative voting. These provisions may govern the community association even if the bylaws and other governing documents are silent as to voting.

Traditional meeting practices can also be modified by statute. Statutes often permit boards of directors to meet by telephone whether or not such language is included in the bylaws. Decisions by any means (including facsimile, e-mail, or calling each board member individually) may be valid by statute if later put in writing and signed by all board members.

Covenants, Conditions, and Restrictions (Declaration)

The Covenants, Conditions and Restrictions (CCR's) (sometimes referred to as the "Declaration") may be the most important document governing a community association. CCR's are created before the development of the community association and are recorded with other real estate documents in the same manner as a deed. The purpose of the CCR's is to establish rules for living within the association. Although CCR's vary by association, such restrictions may cover anything from forbidding pools and outbuildings to detailing appropriate paint colors and flowers. CCR's may also contain restrictions as to the board's size and method of election as well as meeting procedures.⁶

CCR's cannot be violated. After all, the CCR's are a legal and binding contract by anyone who chooses to purchase property within the planned community. Also, unlike statutes which often only provide minimum standards, CCR's are typically worded in terms of what "must" or "shall" be done. As a result, parliamentarians serving community associations must be aware of the contents of the CCR's. One community association elected six members of the board of

directors based on the language of the bylaws. Association leaders later realized that the CCR's only provided for five members and had to hold another election.

Owners in community associations are often not aware of the CCR's control over their lives. CAI surveys suggest that 13 percent of community association owners learn of the restrictions at closing. Even worse, 31 percent of community association owners learn of CCR provisions after moving into their unit. Another study found that 62 percent of those surveyed knew of someone who was unaware of the restrictions when they moved to the premises. Parliamentarians should also be aware of the difficulty in amending CCR's. Some CCR's require a 100 percent vote of all unit owners to amend (an almost impossible requirement). The Uniform Act recommends a floating vote requirement depending on the nature of the amendment. While an amendment that changes the boundaries or uses of a unit requires the unanimous consent of all unit owners, other types of amendment only require the consent of 67 percent of unit owners.⁷ Approximately one-third of community associations require a three-fourths vote of all unit owners to amend the CCR's.

Corporate Charter

The corporate charter (sometimes called "articles of incorporation" or "certificate of incorporation") contains the information needed for incorporating under the laws of that particular state. Because not all community associations incorporate, there may or may not be a corporate charter.

Robert's Rules of Order Newly Revised (12th Edition) states that, "The corporate charter supersedes all its other rules, none of which can legally contain anything in conflict with the charter" (*RONR 12th* § 2). However, the corporate charter in a community association is subsidiary to and cannot conflict with applicable statutes or the CCR's.

Constitution and/or Bylaws

The constitution and/or bylaws contain the basic rules relating to the community association as an organization. *RONR 12th* examines the composition and interpretation of

bylaws in detail.⁸ The bylaws cannot conflict with applicable statutes, the CCR's, or the corporate charter.

Parliamentary Authority

The parliamentary authority is the manual of parliamentary law adopted (often in the bylaws) by the community association as rules of order. Few state statutes mandate that a parliamentary manual be adopted.⁹ As a result, many community association bylaws do not provide for any parliamentary authority. In the event no parliamentary authority is prescribed in the bylaws, the association at a meeting may adopt a parliamentary authority for that meeting with previous notice and a two-thirds vote (or without notice a vote of a majority of the entire membership).¹⁰

These numerous governing authorities may conflict and lead to confusion in the context of community associations. For instance, the legal counsel in a recent homeowners' association election in Florida refused to tally write-in ballots in an annual election, changing the outcome of the election. All major parliamentary authorities permit write-in ballots, and bylaws rarely limit an election solely to nominated candidates. However, the attorney argued that state community association law permitted candidates to nominate themselves, so that all ballots with write-in candidates were disqualified.

Conflict in Community Associations

In addition to unusual governing documents, community associations present other unusual problems. Parliamentarians are often surprised at the level of conflict in community association meetings.

According to Michael Van Dyk in "Homeowner Associations: Wild West for Parliamentarians" (*National Parliamentarian*, Third Quarter, 1995), community association board meetings "can be a nightmare for any civilized, law-abiding citizen." Actual instances are given of cursing matches, fist fights, broken bones, and thrown furniture. Van Dyk describes a condominium owner who had a knife held to her throat. According to the *Florida Press Journal*

(March 6, 1999), a condominium owner allegedly shot and killed another owner at a condominium association meeting over a dispute concerning a garden hose.

The types of issues regulated by community associations can also contribute to disputes. Several lawsuits may be lurking behind any community association decision. One annual meeting I assisted had five lawyers attending in a formal capacity (two representing the association, two representing a dissident member, and one representing the developer). Two video cameras and a court stenographer recorded the entire meeting.

Some authors suggest that ulterior motives may add to friction in the community association context. Van Dyk notes that many community association leaders have the highest motives and altruistic reasons for their service. However, he describes some leaders as “corrupt, arrogant mini-dictators, living off fat kickbacks from big maintenance contracts.” Van Dyk makes reference to a New York investigation in which eighty association managers and presidents were arrested for bribery, kickbacks, and extortion.

While conflict and emotions are not the primary focus of parliamentary procedure, such concerns could impact the conduct of community association meetings. A parliamentarian serving a community association should make every effort to determine in advance the potential impact of personalities and emotions upon an orderly meeting. In such a setting a working knowledge of the dynamics of conflict and techniques for managing conflict may also be desirable.

Conclusion

Without question, community associations could benefit from the assistance of skilled parliamentarians. Annual meetings and board meetings would be shorter and more efficient by an adherence to proper meeting procedures. More than one million volunteers serve on boards and committees of community associations in the United States. These volunteers represent potential members of parliamentary organizations and students at parliamentary workshops. However, parliamentarians must become better aware of the language, authorities, and problems of community associations if we are to succeed in this brave new world.

¹ All community association statistics are from the Community Associations Institute (CAI) Web site at www.caionline.org or the Foundation for Community Association Research at <https://foundation.caionline.org/publications/factbook/statistical-review>.

² See e.g., N.C.G.S. § 47F-1-102 (“Any planned community created prior to the effective date of this Chapter may elect to make the provisions of this Chapter applicable to it by amending its declaration to provide that this Chapter shall apply t that planned community.”)

³ Uniform Planned Community Act § 3-109.

⁴ Uniform Planned Community Act § 3-109.

⁵ See e.g., N.C.G.S. § 47F-1-110.

⁶ The Uniform Act provides that the “declaration may contain any other matters the declarant deems appropriate.” Uniform Planned Community Act § 2-105(b).

⁷ Uniform Planned Community Act § 2-117.

⁸ See *RONR 12th* § 2.

⁹ See e.g., California Code § 1363 which provides: “Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt.”

¹⁰ *RONR 12th* § 2 (p. 17).

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