

# THE FINE PRINT: WHY YOU SHOULD GET TO KNOW YOUR GOVERNING DOCUMENTS

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When we begin a relationship with an Association client, one of the first items we request is a copy of the Governing Documents. We sometimes refer to these documents as the ABC's, since they consist of the Association's Articles of Incorporation, Bylaws, and CC&Rs (Covenant, Conditions, and Restrictions).



Besides outlining association policies and procedures, these documents will usually assign responsibility for the maintenance of the Association's physical assets.

There are three general categories: **General Common Area**, **Exclusive Use Common Area**, and **Individual Owner** responsibilities. This description enables us as Reserve Study providers to get a clearer picture of what the Association is responsible for maintaining before arriving on the property and to perform the site inspection with greater efficiency.

While the Governing Documents may often seem like page after page of boring legalese, it is important for owners and Boardmembers especially to have a clear understanding of them, in order to help prevent unfortunate surprises resulting in major unplanned expenses.

### **General Common Area Responsibilities:** "It says we're responsible for what?"

I recently worked with a townhome association who found themselves in a crisis situation due to broad wording in their CC&Rs. As a number of long-life components began nearing the ends of their useful lives, the Association discovered that they were legally responsible for the replacement of ALL exterior components, including but not limited to garage doors, unit doors and windows, and unit HVAC systems.

Many of these items had always been assumed to be the responsibility of the individual unit owners, so no Reserve funding had been set aside. The result was that the Association found themselves dropping from a healthy reserve funding position to potentially teetering on the brink of bankruptcy. Thankfully, when the Association sought legal counsel, they were able to amend the Governing Documents and [prevent a severe cash flow crisis](#).

## Governing Documents: Disputed Responsibilities

[Choosing reserve components](#) for your Association's reserve study should be done in respect to the Governing Document's assignment responsibilities. The above is of course an extreme example; most Associations should not have to worry about a sudden onslaught of large and unexpected expenses.

The more common situations I have come across are Associations vaguely unsure of where the responsibility lies for a single component that does not necessarily need immediate replacement. Firsthand examples of include:

- A smaller townhouse association within a large master planned community is unsure of whether they or the master association are responsible for irrigation controllers
- An apartment style condominium complex is told that, rather than the utility company, the Association is responsible for the repair and replacement of the electrical panels
- A planned unit development and a city find that neither party believes they are responsible for the replacement of perimeter street light fixtures

These are all very different situations but can generally be resolved without any severe financial ramifications. However, if responsibility issues like this are left unresolved year after year, repair and replacement expenses can begin to pile up.

No matter how what type of property is being managed, seeking clarity and insight with the Governing Documents sooner, rather than later, will help the board to fulfill its fiduciary duty to ensure that there are sufficient funds for the timely repair of their common area assets, and avoid [special assessments](#).