



best practices

REPORT #2

Governance

best practices

REPORT # 2

Governance

*Published by
the Foundation for Community Association Research*

Acknowledgements

Panel Members

B.G. Campbell, CMCA, AMS, PCAM
W. Stephen Castle, CMCA, AMS, PCAM
Douglas Christison, PCAM
Sandra Denton, CMCA, PCAM
Robert Figeira, PCAM

Jean G. Georges
T. Peter Kristian, CMCA, PCAM
Jerry Levin
Marc D. Markel, Esq.
Joan Owen, CMCA, PCAM

Copyright and Use Permission

© 2014 by Foundation for Community Association Research.
6402 Arlington Blvd., Suite 500
Falls Church, VA 22042

Readers are encouraged to download and reproduce the Best Practices Reports for community association managers, board members, individual homeowners, and community association-related industry professionals without permission of the Foundation for Community Association Research provided the following terms are met: this document must be reproduced in its entirety including the use permission statement, and this document may not be added to, modified, amended, or otherwise altered from the original as presented here. Readers and users agree not to sell copies of this document or otherwise seek compensation for its distribution.

"This document is designed to provide accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal or expert advice is required, the services of a competent professional should be sought."—From a Declaration of Principles, jointly adopted by a Committee of the American Bar Association and a Committee of Publishers.

ISBN 978-0-941301-64-0

best practices

Community Associations Institute (CAI) and the Foundation for Community Association Research are dedicated to conducting research and acting as a clearinghouse for information on innovations and best practices in community association creation and management.

What are Best Practices?

The Foundation for Community Association Research is proud to offer function-specific Best Practices Reports in the community association industry. The Foundation has developed best practices in select topic areas using a variety of sources, including, but not limited to, recommendations from industry experts and various industry-related publications. The outcomes of the Best Practices project include:

- documented criteria for function-specific best practices;
- case studies of community associations that have demonstrated success; and
- the development of a showcase on community excellence.

The benefits of benchmarking and developing best practices include: improving quality; setting high performance targets; helping to overcome the disbelief that stretched goals are possible; strengthening cost positions; developing innovative approaches to operating and managing practices; accelerating culture change by making an organization look outward rather than focusing inward; and bringing accountability to the organization because it is an ongoing process for measuring performance and ensuring improvement relative to the leaders in the field.

The Foundation's entire catalog Best Practices Reports is available at www.cairf.org as a free download and for sale in CAI's bookstore.

SECTION ONE

Governance and Resident Involvement

It is CAI's purpose to foster vibrant, responsive, competent community associations that promote harmony, a sense of community and responsible leadership. Common characteristics of such community associations include good communication, trust in the management and board of directors, continuing education of board members and homeowners, and uniform, flexible and reasonable enforcement of governing documents. Inclusiveness—the involvement of as many residents of the community as possible—is a critical element in fostering a sense of community.

Looking for a way to assess the governance-related operations of your community association? Minimally, a quality community association should comply with all of the following statements.

- There is a functioning board that meets regularly and that is carrying out its duties and responsibilities as prescribed by applicable laws and governing documents.
- The board has disclosed to the owners the association information that is required by law and the governing documents.
- The association's legal documents, resolutions, books and records are kept in a location that is open to inspection by owners on reasonable notice during regular business hours.
- Owners may attend board meetings, except when the board meets in executive session.
- The board provides for due process (the opportunity to be heard) for owners in association-related matters and the board encourages the use of alternative dispute resolution in appropriate matters.
- The board conducts, and produces minutes of, an annual owners meeting as required by the governing documents.
- Election procedures conform to the governing documents and applicable law, with information regarding the process available to all owners.
- A system is in place to respond to owners' requests for association maintenance and for other association-related matters.
- A system is in place for property inspections and monitoring to ensure proper maintenance and appearance, both current and preventive.
- The board communicates with the owners periodically to provide information concerning the association and to get feedback from the owners.
- There exists a mechanism and procedure for assuring residents' obligations to adhere to the governing documents, and a confidential and safe forum for the resolution of disputes.
- Management is licensed, certified or holds appropriate credentials evidencing its competence to manage the community.

- Appropriate insurance—such as commercial general liability, property damage, directors and officers liability, workers' compensation and fidelity insurance—is maintained by the association as required by the governing documents and applicable law.
- A system is in place to administer property damage and personal injury claims.
- The board budgets for ongoing education of members of the board, particularly for newly elected or appointed members.

The Policy Governance Model

Developed by Dr. John Carver, the Policy Governance model defines the role of the board as this: **the board, on behalf of the owners, must see to it that the organization achieves the desirable while avoiding the unacceptable.** Period. This model of governance allows boards to feel comfortable about delegating the day-to-day operations to staff so they can focus on the bigger picture—longer term needs of the organization. Organizations nationwide have embraced this model with great success. Because it is universally applicable, it works for organizations that are new or mature, large or small, profit or nonprofit and troubled or successful. One example of Policy Governance in action can be seen in First Colony Community Services Association (FCCSA).

First Colony Community Services Association (FCCSA)

FCCSA is a 19-year old master community of 8,428 single family homes, 697 townhomes and condominiums, 3 apartment complexes and various non-residential properties in Sugar Land, Texas. It has a seven member board of directors and is managed by Sandra K. Denton, CMCA®, PCAM®.

In June 2000, FCCSA adopted the Policy Governance model. While the community has not had a full year (at time of this publication) to evaluate its effectiveness, they have seen positive results at the staff and board level. For the first time, the board is spending most of its meetings discussing and planning for the future, versus dealing with operational matters and bemoaning the lack of planning time. Through Policy Governance, the board seeks out members (residential and commercial) in a more proactive way to be involved in decision making relating to ownership issues. Staff then involves the members in developing plans to achieve those decisions.

In Policy Governance, the FCCSA board believes it has found a superior model of governance which improves the way the association functions and, more importantly, elevates the involvement of the volunteers and members in planning for the future. The board of directors focuses most of their energy on the ends to be achieved by the association, while the staff works on the means to achieve the prescribed ends. At each monthly board meeting, the board spends the majority of its time establishing Ends policies. Ends policies answer the question "What results, for which people, at what cost?" To formulate an Ends policy on a specific topic takes approximately four meetings. The board process includes the following four steps:

1. Philosophy-Environmental Scan & Partnership Discussion

The staff provides the board with a background paper that includes an overview of the topic and a list of invited guest expert speakers and relevant partners in the

community. Neighborhood representatives are mailed a copy of background paper. At the meeting, staff presents background material to the board and the board hears the invited speakers, both experts and partners. Neighborhood representatives are encouraged to discuss the topic with neighbors and be prepared to share feedback with the board at the next meeting.

2. Member/Public Comment—Board of Directors Dialogue—Draft Consensus

The board of directors allows time for member/public input. Announcements are included in the newsletter and on the website. Following this, the board of directors discusses what good, for which people, at what cost. Then, if appropriate, staff presents the budget impact.

3. Review Documentation & Draft Ends Statement

The staff assists the board in reviewing previous discussions, public comment, background paper, etc. Staff also presents to the board a budget analysis (5-year forecast), if appropriate. The board of directors then drafts the Ends statement.

4. Adoption of Ends Statement

The board reviews the final proposed language and adopts the Ends statement, which will be communicated to the membership.

The board then repeats the process with the next issue. Ends development is only one part of the Policy Governance model. Besides the ends to be achieved by the association, board policy will cover three other areas—Executive Limitations, Board-Staff Linkage, and Governance Process. More specifically, Ends prescribe what benefits will occur for which people at what cost; Executive Limitations describes the prudence and ethics boundaries on acceptable staff acts, practices and circumstances; Board-Staff Linkage describes the delegation and accountability linkage through the CEO; and, Governance Process clarifies the board's own job and rules, including how it connects to its ownership.

One very important facet of Policy Governance is that the board has a moral obligation to the ownership or membership of FCCSA. According to Dr. Carver, "... governance is a 'downward' extension of ownership, not an 'upward' extension of management." Therefore, linkage with the membership in as many ways as possible is extremely important for the board to be able to do its job as owner-representative. With Policy Governance, the board of directors, as well as staff, will be able to improve upon their ability to involve the membership in planning for the future.

Extending Policy Governance with a Book of Governance

For years, experienced association managers such as Doug Christison, PCAM, have helped community associations adopt their own book of governance. Also based on the ideas of John Carver, Ph.D., the book of governance establishes the board as a legislative body (the policy maker) and the manager as the executive. The function of the board of directors is to set policy. The function of the manager is to carry it out; thereby creating a more efficient community association.

The book of governance should contain the following: a vision statement, the association's mission and all policies. The vision statement should capture the meaning,

direction and values of the community association. The classic vision of a community is "To protect, maintain and enhance the value of the property." The association's mission is simply to fulfill the vision. The mission and vision are further defined by the association's policies, which make up the bulk of the book of governance. Many communities divide their policies into the following categories: general board policies, procedures, and board and management relationships.

Transition from Developer Control

The first opportunity that owners will have to become involved in their community association is during the process that the association transitions from developer control. This process contains various steps that include, but are not limited to, forming committees, educating homeowners about their role as board and/or committee member, and holding general elections. The following is an example of the process by which one developer successfully transitions its communities to homeowner control.

A Model for Developers

IDI Group Companies is a well-known developer in the Washington, DC metro area that has developed more than 12,000 primarily luxury high-rise condominium units. IDI Group Companies continually demonstrates best practices for developers, such as the right way to bring on a new community association, the right way to negotiate warranty claims and the right way to have people feel they are immediately a part of the community. Below is the basic model used by IDI Group Companies to transfer control from the developer to the association.

- Shortly after 25 percent of new owners in a building settle, a resident orientation is held and owners are encouraged to participate in the committee structure. The committees usually start out with terms of reference and other pertinent information found in a notebook given out to help them become familiar with the community association's structure, etc. Generally, IDI establishes five committees in the beginning—Activities, Budget & Finance, Building & Grounds and Communications & Rules. IDI oversees the Covenants Committee until the owners understand how the due process works.
- When the settlements are nearing 35 to 45 percent of the building, the developer holds an election to place at least two owners on the board. Based on experience, those who are elected are the owners who have been active in the committees, most often Chairs. This also prepares owners to accept responsibility for the building's management sooner than required by law.
- The developer establishes an Ad-Hoc Engineering Warranty Committee comprised of owners who have some engineering or related background to assist in selecting an independent engineering firm to evaluate the building for warranty purposes. Owners are given samples of specs as well as names of firms who are qualified to do this work. Once the engineer provides a report, it is sent to the developer for comment. The developer then meets with the committee and reviews what he is prepared to do and negotiates with the committee and usually the board. This has worked very well over the past 25 years. There has never been a lawsuit or argument about the developer not acting fairly. The owners have been genuinely happy and the only attorney fees involved were

the cost of the attorney to review the engineering report and final settlement papers. Generally, a reserve study is performed at the same time as the engineering study so that the owners are satisfied that the developer provided enough funds to leave the association in good standing.

- By the time it is legally required to place unit owners on the board (50 or 75 percent of settlements), many of the unit owners have already been trained and educated on matters of budget, building structure and so forth. On the night of the election of the full unit owner board, the developer attends to welcome the new board and compliment them on their progress.

The first committee that starts working is the Activities/Welcoming Committee. This group plans the “Get to Know Your Neighbor” parties and attempts to get the residents involved in a social way that makes them feel a part of the community. Residents of the Washington, DC area may have noticed several recent articles in the Real Estate Section of *The Washington Post* that identified what people liked and disliked about their community. The positive comments focused on how people immediately welcomed them into the community and asked them to join the activities. The negative comments consisted of people saying how their neighbors watched them move in but never came over to offer a handshake or a hello. Proper welcoming of all owners is a best practice that will set the tone from the very beginning.

Five IDI-developed properties have won the National Community Association of the Year Award: The Rotonda, Porto Vecchio, Montebello, Belvedere, and ParkFairfax. The lesson to be learned — if the structure is set up correctly in the beginning and properly maintained, it will last a lifetime.

Ways to Promote Resident Involvement

- **Add youth members**—By formal resolution, the Radisson Community Association added youth members to each of its standing committees as a way to involve and empower youth. The person assigned to the board of directors would be a senior member of the youth groups and would not have a vote, but would shadow the board. All others were assigned competitively, as we do with other volunteers, and were voting members of the committee to which they were assigned. This could have been a technical problem since association membership begins at 18 and most of these youth were 15 and up. The board position attracted some attention but no one stuck with it and the position never became institutionalized. The youth regularly attended four of the six standing committees, but have only made an impact and stayed with the Recreation Committee. Those youth that participated and then went off to do other things stated that they had a much greater appreciation for community governance and shared the “we care” message with other youth in the community. The board will recruit new youth members every two years, as the children grow up and out of the community. The resolution, as approved by the Radisson Community Association—a 2,000-home community in Baldwinsville, New York—follows:

WHEREAS the Radisson Community was founded on the principal of individual and group participation in cultural, educational, and recreational programs, and
 WHEREAS the Community’s youth, aged 12–18, represent a significant population, and

WHEREAS the Long Range Planning Committee reports a growing interest among Association members to promote and develop the civic involvement of youth and the delivery of youth-oriented programs, now therefore be it

RESOLVED that commencing January 2000, one or more youth, age 12–18, will be nominated, selected and appointed to positions of “youth representative” on each standing committee, and further

RESOLVED that the Recreation Committee shall establish a sub-committee team to plan and execute youth programs, and further

RESOLVED that two youths, age 15–18, will be nominated, selected and appointed as non-voting youth participants on the Board of Directors.

APPROVED this 25th day of October 1999.

- **Publish a resident handbook**—The Village Cooperative Homes, Inc. in Ann Arbor, Michigan publishes a resident handbook. The handbook includes the following: a new co-owner information sheet, emergency key information sheet, a proxy, the association’s key policy, a welcome letter from the board president, a letter from the association’s managing agent, helpful area telephone numbers, board member information, and residency rules.
- **Develop a community discount card**—The Village Cooperative Homes, Inc. also negotiates discount with local merchants—a dry cleaner, bakery, and bookstore—for its residents who use the Village Cooperative Discount Card.
- **Send postcard updates**—Community associations frequently use newsletters, flyers and signs to promote community events. Some associations also use postcards as a reminder of upcoming events or to collect feedback. Postcards are both effective and relatively inexpensive as they can be printed for less than photocopying flyers and require less postage to mail. The board of the Woodwinds Council of Co-owners wanted their neighbors’ input on a proposed landscaping project. So, the directors of the Reston, Virginia association enclosed a self-addressed, stamped postcard in the newsletter. Nearly 15 percent of the 144-unit garden condominium and town-home community responded. The feedback was so valuable that the association now distributes the postcards up to three times a year.
- **Hold one-on-one meetings with residents**—A couple years ago, the Society Hill Towers in Philadelphia, Pennsylvania, noticed a need for improved communication between board members, management and residents of the three-building, 690-unit condominium community. Although the board held open meetings, the setting provided an uncomfortable atmosphere for residents to express their views. In response, the board members made themselves available for regular one-on-one chats with residents. More specifically, four times a year, board members designate an evening to meet with residents, who are assured that at least two to three members of the seven-person board will attend. The meetings are publicized for weeks in advance through as many means as possible. The community’s response to the program has been extremely positive. Board members and residents alike agree that the meetings are a valuable source of information and contribute to the quality of the community.

- **Utilize group calling services**—Keeping in touch isn't always easy for a board of directors. So when the local phone company offered residential voice mail—which includes group calling services—the board of the Seneca Park Homeowners Association in Gaithersburg, Maryland decided to try it. The service allows each director to call a voice mail system and leave a message, which is then sent to every member of the board. When a board member has left a message, the other directors hear several beeps when they pick up their phone receivers. Consequently, the board can keep each other informed with only one call. Group calling turned out to be more than a great time saver. The board members agree that the service drastically increased the efficiency of board communications. It saved them from calling special meetings, helped them make faster decisions and allowed them to respond more quickly to resident inquiries. The expense—25 cents per person per call—was minimal. Community associations should contact their local phone company to see if it offers similar services.
- **Send thank you notes**—Homeowners get bombarded with lots of mail regarding the association—special notices, payment books and meeting agendas—sometimes it seems like they're being bombarded with requests and demands. One Maryland manager suggests adding something else to that list—thank you notes. It's a simple way for board members to let homeowners know that their contributions are appreciated. Whether it's for assisting with an official program or just doing a neighborly favor, a thank you note might make the difference between a resident resenting the board and becoming a consistent volunteer.
- **Utilize your newsletter**—Newsletters are a great way to inform residents about community activities, keep them abreast of financial and other managerial decisions, and increase revenue for your association by selling ads to local merchants. It's also a way to show residents how their fees and assessments are being used. Wailea Community Association in Maui, Hawaii put an interesting spin on one of the editions of their newsletter—they did a photo spread of the maintenance and community improvements occurring in the community. This gives owners an opportunity to see how association funds are being used. And, it's great for owners that just skim the articles—you can't miss the pictures!
- **Use friendly terminology**—Would you rather live in a complex or a property? A unit or a home? A Virginia manager suggests that community association boards consider changing their terminology to make residents feel more at home. Here are some other suggestions—use words like pool and tennis court rather than saying amenities; say resident rather than tenant or occupant; or call a work order a service request. But, before making any of these changes, be sure to check with your association's governing documents, local laws and state statutes to determine if they require you to use specific terminology.

Case Studies of Governance and Resident Involvement

case study #1

Braewood Heritage

Size:	Gated community of 400 attached homes
Location:	Las Vegas, Nevada
Board Size:	Nine (9)

Common grounds include three swimming pools, three tennis courts, and an additional tennis court that has been turned into a sports court for the use of the children in the community so that they need not play in the streets. Braewood Heritage employs a certified manager, who has an excellent relationship with the board and the homeowners. Residents have respect for her, as she is open with them and concerned with their issues. She also serves as a liaison with the residents for anyone who might need errands run, a ride to an appointment or lawn care due to illness.

The association's board of directors meets monthly. Newsletters are also sent monthly with the minutes from board meetings, agendas for the next meeting, and a calendar of events. There are usually 10 to 20 homeowners in attendance at the board meetings. The board always allows a period of time at the beginning of the meeting for the residents' input.

Annual homeowners' meetings are well attended. There has never been a problem with quorum. The meetings run smoothly because there has been continual communication and openness with the residents. The homeowners also appreciate the fact that the board takes seriously its duty to "protect, maintain and enhance" the values of the properties. The CAI Nevada Chapter's Homeowner Council holds educational seminars on the premises to help educate homeowners and board members. Residents and board members from other associations are always welcome.

Kay Dwyer admits the CC&R's are complex, mostly due to Nevada's legislated requirements. However, their attorney is helpful in sorting out these issues. Should there be a need for changes in the CC&R's, the board holds two workshops for the homeowners prior to any voting. The last time there was a vote on an issue, it passed overwhelmingly on the first ballot. There are few infractions of the CC&R's and Rules and Regulations—mostly parking and barking dogs. There had previously been problems with scooters, but now they are to be used within a designated area. CC&R's and Rules and Regulations are uniformly enforced. A committee determines the rules and regulations, which were reviewed and re-written in 1998. If there is a resident who seems to be in conflict or confrontational, that resident is invited to give input and assistance with that particular issue. This generally resolves the confrontation.

Although it can be difficult to get residents to serve on committees, when there is a necessity and volunteers are requested, there is not a problem. For example, an ad-hoc committee was formed consisting of about six homeowners and two board members to develop a five-year plan for the association. Among other things, the committee hopes to expand the clubhouse and build a larger office for the manager. As for social events,

the owners held a parade on the Fourth of July and a home tour at Christmas time so that residents could see renovations done by other homeowners. Both were a great success. The residents form their own social groups for crafts, cards, swimming and such.

case study #2

Northgate Homeowners Association

Size	101 single-family homes
Location:	Las Vegas, Nevada
Board Size:	Three (3)

This community is run by a certified manager who brings knowledge, professionalism, experience, leadership and an objective opinion to the association. Governance is efficient and acceptable to the residents because the board and manager are proactive in resolving issues before they become problems. Both board and manager are fair and respectful to the homeowners, listening to their issues and requesting that homeowners assist with providing solutions to any problems that may arise. The board of directors meets every two months, with approximately ten homeowners at every meeting. There is usually membership input for approximately thirty minutes of every meeting.

Prior to annual homeowners' meetings, secret written ballots are mailed. The quorum was lowered to twenty (20%) percent, and there has been no problem with achieving quorum since. Annual meetings run smoothly and there are typically guest speakers from the city or county, refreshments are served and there is a raffle drawing for gift certificates.

CC&R's are being updated, as the present CC&R's are lengthy and in some sections poorly written. There are few infractions, mostly minor in nature. Rules and regulations are common sense rules and guidelines, such as when trash should go out, lawn maintenance responsibilities and so forth. Reviewed annually, the rules and regulations were developed by a membership committee and sent to all homeowners for review. They were then modified based upon homeowner input, and finally approved by the board of directors.

Developer transition issues still remain. Consequently, the manager continues to work for a smooth transition with the board and homeowners by showing there are common goals of developing a beautiful community backed by an efficiently run association. Board members are encouraged to make themselves available to the educational opportunities sponsored by the CAI Nevada Chapter. In addition, a three-hour seminar on "how to be a board member" is provided by an outside source. Homeowners are also encouraged make themselves available for CAI educational opportunities and information is regularly mailed to the homeowners regarding changes in Nevada's Common Interest Community statute, the ombudsman's office, etc.

Three social events are planned each year—two garage sales and the annual meeting. There are no formal programs in place for assisting residents, but lawn care in the event of illness, for instance, is available. Every two months there is some form of communication with the homeowners. There is a bulletin board on the gate on which

residents may post their needs, wants and issues. Approximately 20 percent of the community is involved with committees or the board of directors, their involvement being motivated by the desire for a good community.

case study #3

Third Creek Homeowners Association

Size:	151 condominiums
Location:	Incline Village in northern Nevada
Board Size:	Seven (7)

Third Creek is an established association whose board of directors meets every other month, or six times per year, in addition to an organizational meeting following the annual meeting to elect officers. There are usually four to ten units represented at the board meetings. The board allows comments from the owners throughout the meeting. Informational letters with board meeting notices are sent to the residents six to eight times a year. Owners who cannot attend meetings call the manager to express their opinions on association issues. Owners also will communicate with other owners prior to a vote on a big issue. Many board members attend CAI functions and work at staying current with community association issues. The manager also mails educational updates to all board members about four times a year.

Voting for board members is done by secret ballot, as required by Nevada's Common Interest Community statute. Voting on other issues is by written ballot, which is included on the proxy mailed to all owners. Owners can also vote in person at the annual meeting. There is no problem with quorum except for the budget ratification meeting, which is held in late November for the sole purpose of ratifying the budget. Most owners feel no need to attend this meeting because by this time their questions regarding the budget have been answered. Annual meetings run smoothly because of good communication prior to the meeting regarding the issues, detailed preparation and anticipation of problems that may arise during the meeting. In addition, a good facilitator runs the meeting.

For the most part, the CC&R's are simple with a select few that require interpretation. Amendments are needed to remove developer language and to make them more easily understood. There are few infractions of the governing documents, with most owners making corrections when violations are brought to their attention. Rules and regulations are quite rigid, but the board is very flexible with enforcement, using a common sense approach to violations. Rules and regulations are reviewed about every two years with input from the membership. The manager handles 95 percent of the problems that arise with members. Where procedures to not address a situation or the owner is not satisfied with the manager's decision, the issues are turned over to the board for direction and resolution. The manager talks with the board president at least weekly and with the other board members at least monthly.

Third Creek development began in 1982, but because several developers went bankrupt, the developer transition did not occur until 1994. The project was built in seven phases under four developers and five different builders. The association is currently in construction defect litigation with two developers and two general contractors. Although this association has faced several difficult issues in the past year, the board has been open, honest and communicative with the residents, explaining the various issues. As a result, the board has had the support and cooperation of the residents in the resolution of some of these issues. The residents and the board are working together in negotiations on other issues, which will avoid litigation. Community spirit has been enhanced through these joint efforts.

case study #4

Tapatio II

Size:	73 condominiums
Location:	Henderson, Nevada
Board Size:	Three (3)

In 2000, there was a smooth transition from the developer, with items of concern being taken care of to the board's satisfaction. Most board members are CAI members and attend CAI's seminars for educational purposes. The board of directors meets bi-monthly, with homeowners in attendance given the opportunity to speak. The board is fair, taking all facts into consideration before making a decision. The board has a high visibility, is easily accessible and works hard to make sure the rules are followed while taking into consideration the particular situations of the residents. There is good communication between the board, the owners, and the manager. The manager follows the board's directions, monitors violations and attends all meetings.

Annual homeowners' meetings are held in compliance with Nevada's Common Interest Community statute, as are voting procedures, and there has never been a problem with quorum. Annual meetings run smoothly due to strong organization and a president who keeps to the agenda. CC&R's have also been revised to comply with Nevada's Common Interest Community statute and are very user friendly. There are few violations. Rules and regulations are flexible and considerate of individual situations. These are reviewed annually with membership input.

Tapatio II has several social events throughout the year including potlucks, poolside get-togethers and a Christmas decoration contest. A newsletter is produced by the secretary of the homeowners' association and is published bi-monthly. Residents tend to get involved because Tapatio II is a small community and everyone knows their neighbors. Most of the residents feel connected. There is community spirit and a desire to continue to make the community a good place to live.

case study #5

Green Valley Ranch Association

Size:	Master association of 3,907 apartments, town homes and single-family homes. There are 32 sub-associations, of which sixteen are gated communities.
Location:	Henderson, Nevada
Board Size:	Seven (7)

Now under owner control, Green Valley Ranch Community Association's board of directors meets monthly, with approximately 20 to 30 members attending. Members are given an hour in which to speak prior to the board's discussions. Elections for the annual homeowners' meetings are by proxy and secret ballot. Annual meetings run smoothly because of thorough planning, calling and communications. Members of the board of directors are provided training, including updates on new laws and the community.

A monthly delegate meeting is held to help facilitate communications between the board and homeowners. In addition, the board has adopted committee charters with a board member meeting with each committee to provide help and direction. The Legal Committee meets on a monthly basis with the developer and its general counsel to discuss transition issues and to assure communication between the developer and the association.

Governance in this community is efficient and acceptable to homeowners because of constant communication via the Web site, newsletter, special notices and social events. The newsletter is mailed to all residents every other month and has gone from four pages to twelve pages because of the residents' appreciation for communication within the community.

The board of directors realized that building a real community was a key priority in helping to weather the transition from the developer, which was underway in 2000. Social events for residents helped to resolve issues related to the transition. These social events included a summer "open house" at which owners could have their questions answered by individuals or committees in a social setting. Tables with information about the committees were set-up. The Henderson Police Department, association management company and landscape contractor also had tables. T-shirts with the Green Valley Ranch logo were displayed and sold at-cost to residents. A fall "hoe down" was held in a local park within the community. Local merchants and residents who own businesses in the community were also involved. There have been other social events as well, including special socials for children. All of the events have been extremely well attended.

President's breakfasts are held quarterly to invite city of Henderson officials, board of directors, the developer's representatives, delegates and presidents of the sub-associations for the purpose of working together to resolve issues facing the community. The board created a Political Action/City Liaison Committee for the purpose of working with the city of Henderson on issues facing Green Valley Ranch. This has been so successful that the city is involving the board in several other areas where community input is needed. Residents volunteer readily for the board and committees because they are dedicated to improving property values and building a sense of community.

SECTION TWO

Conflict Resolution

Community associations face an interesting challenge: they function very much like a government, including having the authority to enact and enforce “laws.” Yet some residents do not recognize this jurisdiction and simply feel no obligation to abide by the rules set down in the community’s governing documents, particularly the covenants, conditions, and restrictions (CC&Rs). Inevitably, conflict arises.

Resolving conflicts between residents and the association is a difficult and delicate task for boards of directors. Boards have an obligation to enforce the CC&Rs because that’s how they maintain the appearance and value of the community and ensure a high standard of livability for all residents. On the other hand, residents are neighbors and friends, and they are entitled to reasonable treatment.

Ways to Resolve Conflict

CAI recommends the following progression of steps to resolve conflict successfully when it does occur:

- Start with a casual conversation. Perhaps the resident is simply unaware of a particular rule or is in the process of correcting it already. Get some information, gauge the resident’s attitude, and offer to help.
- Send a friendly letter reminding the resident of the conversation. The letter should state the rule that has been violated, and it might explain why it’s important for all residents to observe the rules. Be positive, and again offer to help.
- Send a second letter. Be business-like and firm, and cite the specific section of the CC&Rs that has been violated. Give the resident a date when the problem must be corrected, and grant a reasonable amount of time. Explain what will happen if the problem isn’t resolved by the specified date. For example, the letter may state that the association will suspend privileges or impose financial penalties.
- Send official notification that the association is about to take action. Schedule a hearing when the resident may address the association. Be willing to negotiate a date and time that allows the resident to attend.
- Conduct a fair hearing and treat the resident with respect. Avoid a confrontational situation. Allow the resident to bring witnesses or counsel to the hearing, and let them know when they can expect a decision. The panel hearing the case may comprise members of the board or rules committee, the managing agent, or some combination of these. In some serious cases, association counsel may be invited to observe.
- After the hearing the board will decide how to proceed. There are numerous options, and the board should be willing to compromise on a solution that achieves the desired result. For example, the board may grant an extension of time to comply with the rule, suggest an alternative solution, suspend privileges, impose monetary penalties, or some combination of these.

- Allow the resident to appeal the decision. Be sure the body hearing the appeal is different than those who participated in the hearing or decided its outcome. For example, a panel of past board members might comprise an appeals committee—these individuals have a history in the community and knowledge of the governing documents, but they're removed from current governance and operations.
- Pursue alternative dispute resolution (ADR) options if the association and the resident cannot resolve their differences.

Alternative Dispute Resolution (ADR)

ADR is less costly and more productive than litigation. It is comprised of three phases: negotiation, mediation, and arbitration. In negotiation, the parties identify the issues, educate one another about their needs and interests, propose settlement options, and bargain over the final resolution. In mediation, a neutral mediator facilitates the negotiation between the association and resident to help them agree on a solution that is acceptable to each of them. In arbitration, a neutral arbitrator hears both sides of the case and renders a decision based on evidence and testimony. An arbitrator's decision is as legal and binding as a court decision; however, the process is much less formal and far less expensive.

Ways to Minimize Rules Violations

In addition, there are several actions the association can take to minimize rules violations, reduce conflict between residents and the community and to build consensus. For instance, the community association can:

- Educate residents about the rules—what they are, why they are important, why compliance maintains property values, and so on. Use every vehicle and opportunity to remind residents of the rules.
- Enforce rules consistently and even-handedly.
- Intervene as early as possible; don't allow the violation to continue or to become serious.
- Modify association governing documents or pass a resolution confirming the association's commitment to alternative dispute resolution.
- Establish a policy that outlines how the association will resolve conflicts. This policy may suggest timelines, hearing procedures, hearing panel composition, and support the association's commitment to alternative dispute resolution. Adhere to the policy and apply it in all situations.

Appendices 1–3 contain a sample dispute resolution policy, a provision for mediation, and a provision for the selection of a mediator for large communities to assist community associations with the modifications of governing documents.

Case Studies of Conflict Resolution

case study #1

Northgate Homeowners Association

Size:	101 single-family homes
Location:	Las Vegas, Nevada
Board Size:	Three (3)

Should there be a violation of a governing document, the goal of the community is to obtain reasonable compliance. The first step is a friendly letter to remind the homeowner that there has been a violation. If the issue is not resolved at this stage, a second letter is sent, and, if necessary, followed by a request for a hearing. The board and management handle the compliance issues, and feel the best way to mitigate a problem is to have the homeowner understand and agree with the solution.

Violations of governing documents are quite infrequent and so far all have been resolved within the community. Thus, formal ADR processes have not yet been necessary. Attorneys are used prudently when, for example, there is need for interpretation of the law or documents, or in a complex issue.

case study #2

Third Creek Homeowner's Association

Size:	151 condominiums
Location:	Incline Village in northern Nevada
Board Size:	Seven (7)

The board believes that all owners have the right to be heard. So far, the board and owners have worked out their problems in a mutually acceptable resolution in all disputes. Since disputes are infrequent, the association has never been involved in mediation or arbitration by outside parties. All disputes, other than the construction defect lawsuit, have been resolved within the community. Attorneys are generally used for such advice as, "Does the board's proposed resolution sound fair?" or "Is it legal?"

case study #3

Tapatio II

Size:	73 condominiums
Location:	Henderson, Nevada
Board Size:	Three (3)

The association's governing documents provide for hearings by the board of directors on any conflicts or violations that may arise. Every effort is made to come up with a win-win solution to each issue. Issues are infrequent and, so far, all have been resolved within the community. At this point, attorneys haven't played a role in any of these conflicts.

case study #4

Green Valley Ranch Community Association

Size:	Master association of 3,907 apartments, town homes and single-family homes. There are 32 sub-associations, of which 16 are gated communities.
Location:	Henderson, Nevada
Board Size:	Seven (7)

Governing documents provide for an enforcement policy and a compliance committee. The board attempts to conciliate any problems. While issues such as parking, signs and landscaping are frequent, ninety-nine percent of the violations are resolved within the community. Violations are referred to an attorney only when many attempts have been made without success to resolve the situation. Mediation through the Nevada Real Estate Division is the process that is used and there is usually a resolution through that process. So far, no issues have gone to arbitration or litigation.

case study #5

Heron's Cove Condominium

Size:	406 units
Location:	Montgomery Village, Maryland
Board Size:	Five (5)

The bylaws of Heron's Cove Condominiums give the board of directors authority to take action to enforce the obligations of the unit owners under both the bylaws and the association rules and regulations. In order for action to be considered on a reported grievance, a written statement must be submitted. The board of directors distributes a grievance form to assist residents with presenting their grievance to the board. On the grievance form, the board/management specifies that they are not required to respond to each complaint and that they reserve the right not to hear grievances that aren't within the scope of the board's jurisdiction. The grievance requires that residents fill in the following information:

- Contact information for self and the person(s) involved in the dispute
- The action that occurred that prompted the grievance
- Date/location of incident
- Pet name/description/owner (if applicable)
- Names/contact information of witnesses
- Additional comments

Board members hear appropriate cases and decide on a fair and reasonable solution. Thus far, the process has been very successful in preventing the escalation of conflicts.

A P P E N D I C E S

Appendix #1: Sample Dispute Resolution Policy

Any owner or occupant must give written notice to the board requesting a hearing with the board and must attend such hearing to discuss amicable resolution of any dispute before that owner or occupant files any lawsuit against the association, the board, any director, or any agent of the association. The owner or occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the board and to resolve the dispute in an amicable fashion, and shall give the board a reasonable opportunity to address the owner's or occupant's grievance before filing suit. Upon receiving a request for a hearing, the board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The board shall schedule this hearing for a date neither less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing by the person requesting the hearing.

Appendix #2: Sample Provision for Mediation

A. Dispute Resolution

No dispute between any of the following entities or individuals shall be commenced until the parties have submitted to non-binding mediation: Owners; Members; the Board of Directors; officers in the Association; or the Association.

Disputes between Owners that are not regulated by the Declaration shall not be subject to the dispute resolution process.

B. Outside Mediator

In a dispute between any of the above entities or individuals, the parties must voluntarily submit to the following mediation procedures before commencing any judicial or administrative proceeding. Each party will represent himself/herself individually or through an agent or representative, or may be represented by counsel. The dispute will be brought before a mutually selected mediator. Such mediator will either be an attorney-mediator skilled in community association law, a Professional Community Association Manager ("PCAM®") as certified by the Community Associations Institute, or a Certified Property Manager ("CPM®") as certified by the Institute of Real Estate Managers. In order to be eligible to mediate a dispute under this provision, a Mediator may not reside in _____, work for any of the parties, represent any of the parties, nor have any conflict of interest with any of the parties. The Board shall maintain a list of no less than five (5) potential mediators, but the parties will be in no way limited to their choice by this list. Costs for such mediator shall be shared equally by the parties. If the parties cannot mutually agree upon the selection of a mediator after reasonable efforts (not more than thirty (30) days), each party shall select their own mediator and a third will be appointed by the two selected mediators. If this selection method must be used, each party will pay the costs of their selected mediator and will share equally the costs of the third appointed mediator.

C. Mediation is Not a Waiver

By agreeing to use this Dispute Resolution process, the parties in no way waive their rights to extraordinary relief including, but not limited to, temporary restraining orders or temporary injunctions, if such relief is necessary to protect or preserve a party's legal rights before a mediation may be scheduled.

D. Assessment Collection and Lien Foreclosure

The provisions of this Declaration dealing with Alternate Dispute Resolution shall not apply to the collection of assessments and/or the foreclosure of the

Assessment Lien by the Association as set out in the Declaration.

E. Term

This Article XV, Alternative Dispute Resolution, shall be in full force and effect for an initial period of three (3) years from the date of execution of this Declaration. However, this Article shall remain in full force and effect unless, at the first open meeting of the Association after such initial period, a majority of the Board of Directors votes to terminate the provisions of this Article XV, Alternative Dispute Resolution.

**Appendix #3: Sample Provision for Selection of Mediator—
Large Community**

Section 1. Dispute Resolution. No dispute between any of the following entities or individuals shall be commenced until the parties have submitted to non-binding mediation: Owners; Members; the Board of Directors; officers in the Association; or the Association. Disputes between Owners that are not regulated by the Declaration shall not be subject to the dispute resolution process.

Section 2. Outside Mediator. In a dispute between any of the above entities or individuals, the parties must voluntarily submit to the following mediation procedures before commencing any judicial or administrative proceeding. Each party will represent himself/herself individually or through an agent or representative, or may be represented by counsel. The dispute will be brought before a mutually selected mediator. Such mediator will either be an attorney-mediator skilled in community association law, a Professional Community Association Manager (“PCAM®”) as certified by the Community Associations Institute, or a Certified Property Manager (“CPM®”) as certified by the Institute of Real Estate Managers. In order to be eligible to mediate a dispute under this provision, a Mediator may not reside in _____, work for any of the parties, represent any of the parties, nor have any conflict of interest with any of the parties. The Board shall maintain a list of no less than ten (10) potential mediators, but the parties will be in no way limited to their choice by this list. Costs for such mediator shall be shared equally by the parties. If the parties cannot mutually agree upon the selection of a mediator after reasonable efforts (not more than thirty (30) days), each party shall select their own mediator and a third will be appointed by the two selected mediators. If this selection method must be used, each party will pay the costs of their selected mediator and will share equally the costs of the third appointed mediator.

Section 3. Mediation is Not a Waiver. By agreeing to use this Dispute Resolution process, the parties in no way waive their rights to extraordinary relief including, but not limited to, temporary restraining orders or temporary injunctions, if such relief is necessary to protect or preserve a party’s legal rights before a mediation may be scheduled.

Section 4. Assessment Collection. The provisions of this Declaration dealing with Alternate Dispute Resolution shall not apply to the collection of assessments by the Association as set out in the Declaration.

Section 5. Term. This Article XV, Alternative Dispute Resolution, shall be in full force and effect for an initial period of three (3) years from the date of execution of this Declaration. However, this Article shall remain in full force and effect unless, at the first open meeting of the Association after such initial period, a majority of the Board of Directors votes to terminate the provisions of this Article XIV, Alternative Dispute Resolution.

Additional Resources

Books available from CAI

The Board President: Roles & Responsibilities in Community Associations, by Robert T. Dennistoun, 2005.

The Board Secretary: Roles & Responsibilities in Community Associations, by Anita Hagerty Schenk, PCAM, and P. Michael Nagle, ESQ., 2004.

The Board Treasurer: Roles & Responsibilities in Community Associations, by Howard A. Goldklang, 2006.

Building Community: Proven Strategies for Turning Homeowners into Neighbors, 2011.

Community Association Leadership: A Guide for Volunteers, 2010.

Decision Making in Communities: Why Groups of Smart People Sometimes Make Bad Decisions, by Jasmine Martirosian, 2001.

Everyday Governance: The Community Association's Guide to Flags, Rentals, Holiday Decorations, Hoops, and Other Headaches, 2006.

Expert Opinions for Community Association Managers & Boards for Community Association Managers & Boards, 2008.

From Good to Great: Principles for Community Association Success, 2009.

Homeowners Associations: A How To Guide for Leadership and Effective Participation, by John Paul Hanna & Grace Morioca, 1999.

How to Have Successful Meetings, 2012.

Managing & Governing: How Community Associations Function, by Clifford J. Treese, 2007.

True Stories of Survival & Triumph, 2006.

For more information or a CAI Press catalog, please call (888) 224-4321 (M-F, 9-6:30 ET) or visit www.caionline.org.

Best Practices Reports (*available at www.cairf.org*):

Community Harmony & Spirit

Community Security

Energy Efficiency

Financial Operations

Governance

Green Communities

Reserve Studies/Management

Strategic Planning

Transition

About the Foundation for Community Association Research

The Foundation provides authoritative research and analysis on community association trends, issues and operations. Our mission is to inspire successful and sustainable communities. We sponsor needs-driven research that informs and enlightens all community association stakeholders—community association residents, homeowner volunteer leaders, community managers and other professional service providers, legislators, regulators and the media. Our work is made possible by your tax-deductible contributions.

Your support is essential to our research. Visit www.caif.org or e-mail foundation@caionline.org.



About Community Associations Institute (CAI)

Community Associations Institute (CAI) is an international membership organization dedicated to building better communities. With more than 32,000 members, CAI works in partnership with 60 chapters, including a chapter in South Africa, as well as with housing leaders in a number of other countries, including Australia, Canada, the United Arab Emirates and the United Kingdom. CAI provides information, education and resources to the homeowner volunteers who govern communities and the professionals who support them.

CAI members include association board members and other homeowner leaders, community managers, association management firms and other professionals who provide products and services to associations. CAI serves community associations and homeowners by:

- Advancing excellence through seminars, workshops, conferences and education programs, most of which lead to professional designations for community managers and other industry professionals.
- Publishing the largest collection of resources available on community association management and governance, including website content, books, guides, *Common Ground*[™] magazine and specialized newsletters.
- Advocating on behalf of common-interest communities and industry professionals before legislatures, regulatory bodies and the courts.
- Conducting research and serving as an international clearinghouse for information, innovations and best practices in community association development, governance and management.

We believe homeowner and condominium associations should strive to exceed the expectations of their residents. We work toward this goal by identifying and meeting the evolving needs of the professionals and volunteers who serve associations, by being a trusted forum for the collaborative exchange of knowledge and information, and by helping our members learn, achieve and excel. Our mission is to inspire professionalism, effective leadership and responsible citizenship—ideals reflected in associations that are preferred places to call home. Visit www.caionline.org or call (888) 224-4321.





6402 Arlington Blvd., Suite 500
Falls Church, VA 22042
www.cairf.org

DEVELOPING FUNCTION-SPECIFIC BEST PRACTICES

in the community association industry has been a goal of Community Associations Institute and the Foundation for Community Association Research for several years. The Foundation has developed best practices in select topic areas using a variety of sources, including, but not limited to, recommendations from industry experts and various industry-related publications. The outcomes of the Best Practices project include:

- Documented criteria for function-specific best practices.
- Case studies of community associations that have demonstrated success in specific areas.
- A showcase on community excellence.



6402 Arlington Blvd., Suite 500
Falls Church, VA 22042
www.cairf.org