

**The Charleston Area
Stormwater Pond Management Conference
March 22, 2012**

**Presentation Topic
“Community Obligations – Governing Documents”**

**John K. Reyelt, CHA, RRP, CMCA, AMS, PCAM
President/CEO**

Gold Crown Management, Inc. AAMC®

(843) 445-6007

www.gold-crown.com

- The primary purpose of a community association is to provide for the governance, business, and communal aspects of the association. This is achieved by administering, maintaining, and enhancing a residential real estate development, and through the establishment of a system of property rights, binding covenants and restrictions, and rules and regulations.

- Sources of legal obligations for the community association

Federal – Statutes

State – Statutes

Local – Statutes

Case Law

General Hierarchy of Authority for Governing Documents

The general hierarchy of authority for governing documents is a loose one because not all documents address all issues involved in operating a community association.

For operating a community association, the general hierarchy of authority among governing documents consist of:

- Recorded map, plat, or plan (to show the precise location of units, lots, and/or common area)
- Declaration, CC&R's, and Master Deed
- Articles of incorporation
- Bylaws
- Board resolutions

What do the governing documents do?

The purpose of a community association's governing documents is to provide for the legal structure and operation of the community.

The Documents:

- Define the rights and obligations of both the community association and its owners
- Create a binding relationship between each owner and the community association
- Establish the mechanisms for governing and funding the community association's operations
- Set forth rules and standards for the:
 - * Protection of both owners and the community
 - * Enhancement of property values
 - * Promotion of harmonious living

BOARD OF DIRECTORS

Fiduciary relation to the community association

Its fiduciary duty requires:

- * Directors to act in the best interests
- * For the benefit of the Corporation
 - * The community as a whole

Responsibilities

- * Maintain
- * Protect
- * Preserve
- * Enhance

The common areas and unit values of the total community

Specific areas of responsibility

- Care, maintenance and enhancement of the physical property, common areas and facilities
- Management of community finances and developing reserve funds
- Understand the association's governing documents and become educated to applicable state and local laws.

Role of the Professional Community Manager (PCAM):

“Provide information, training, and leadership on community association living to the board, committees, and the community at large, foster a sense of community awareness within the residents; develop a body of leadership through the committee structure; and provide the necessary administrative tools to the board to enable it to create lasting policies and make decisions in accordance with the communities’ short-range plans, long-range plans, and mission statements.”

Responsibilities of the PCAM:

In fulfilling the terms of his or her management contract and employment agreement, the professional community association manager is charged with assisting the board of directors' decision making process by means of providing information-gathering and fact-finding support; implementing the decisions of the board, and administering the services, programs, and operations of the community association within the policies and guidelines set by the board.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ABC DEVELOPMENT

WHEREAS, the Declarant desires to provide for the preservation of values and amenities in said neighborhood and for the **maintenance of the common property** and,

the Declarant has caused to be incorporated under the laws of the state of South Carolina a non-profit, non-stock corporation known as.....Property Owners' Association, Inc. (the "Association") for the purpose of exercising the functions aforesaid and which are hereinafter more fully set forth; and

ARTICLE I

DEFINITIONS

(e) **“Common Property”** shall mean and refer to those tracts of land with any improvements, buffers and easements thereon which are actually deeded, granted, or leased to the Association and designated in such deed or lease as “Common Property.”

(m) **“Master Plan”** shall mean and refer to the drawing that represents the conceptual land use plan for the future development ... THE DECLARANT SHALL NOT BE BOUND BY ANY DEVELOPMENT PLAN. USE OR RESTRICTION OF USE SHOWN ON ANY MASTER PLAN, AND MAY AT ANY TIME CHANGE OR REVISE SAID MASTER PLAN.

“Property” or **“Properties”** shall mean and refer to **all property which is subject to this Declaration** as described in Article II hereof and any additions thereto as are subjected to this Declaration or any supplemental Declaration under the provisions of Article II hereof.

“Subordinate Association” shall mean an incorporated or unincorporated association of Owners of any portion of the Property, created by or incorporated in a Subordinate Declaration to provide for the orderly control, administration, **maintenance** and management of **common property** and governance of such portion of the Property.

ARTICLE II

PROPERTY

PROPERTY RIGHTS IN THE COMMON PROPERTY

Section 1. **Members Easements of Enjoyment in Common Property:**

Subject to the provisions of this Declaration, the rules and regulations of the Association and any fees or charges established by the Association, every Member and every guest and lessee of such Member shall have an easement of enjoyment in and to the Common Property and such easements shall be appurtenant to and shall pass with the title of every Lot, Dwelling Unit, Multi-Family Tract or Development Unit Parcel. Employees and guests of the Declarant shall have **access to and enjoyment of the Common Property subject to rules and regulations established by the Board of Directors.**

The right of the Association to adopt and publish rules and regulations governing the use of Common Property and the conduct of Members, their lessees or guests, and to **establish fines and penalties for the infraction of such rules and regulations.**

ARTICLE II

PROPERTY - CONTINUED

Section 4. Declarant's Reserved Rights. Notwithstanding any provisions herein to the contrary, the rights and easements of enjoyment created hereby shall be subject to the following:

(c) **The Declarant reserves unto itself**, its successors and assigns, a perpetual, alienable and **releasable easement and right on, over and under the Common Property to maintain...sewers, water mains, irrigation mains, drainage ways,...pumping stations**,....This easement and right especially includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance.

ARTICLE VI

FUNCTIONS OF ASSOCIATION

Ownership and Maintenance of Common Property: The Association shall be authorized to own and/or maintain (subject to the requirement of any federal, state or local governing body of South Carolina) Common Property

For....bridges within the Property:

For....bulkheads, retaining walls, bridges, docks and piers

For water, sewage, utilities, storm drainage systems and other facilities serving the Property;

For insect control within the Property;

For lakes, pools,....wildlife or preservation areas, open areas and other recreations facilities or amenities of any nature

For any of the services which the Association is authorized to offer under Section 2 of this Article VI.

ARTICLE VI

FUNCTIONS OF ASSOCIATION - CONTINUED

Section 2: **Services: The Association shall be authorized (unless prohibited by the requirements of any federal,.... to provide the following services:**

Cleanup and maintenance of all....lakes, water courses

Maintenance of any lakes, waterways and lagoons located within the Common Property;

Insect and pest control to the extent that it is necessary or desirable in the judgment of the Board of Directors of the Association to **supplement the service provided by State and local governments;**

The services necessary or desirable in the judgment of the Board of Directors of the Association **to carry out the Associations obligations** and business under the terms of this Declaration and the Bylaws;

To take any and all actions necessary to enforce all covenants and restrictions affecting the Property and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Property;

The taking of any and all actions necessary in the discretion of the Board of Directors to enforce these Covenants and all other covenants and restrictions affecting the properties of the Association and to perform any of the functions or services delegated to the Association in this Declaration or other covenants or restrictions authorized by the Board of Directors.

ARTICLE VI

FUNCTIONS OF ASSOCIATION - CONTINUED

Section 3: Obligation of the Association: The Association shall not be obligated to carry out or offer any of the functions and services specified by the provisions of this Article except **the Association shall have an obligation to maintain roadways and drainage facilities in a functional and acceptable condition**. The functions and services to be carried or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members of the Association.

ARTICLE VII

ARCHITECTURAL CONTROL

Section 2: Objectives: Architectural and design review shall be directed towards obtaining **the following objectives for the Property:**

Preventing excessive or unsightly grading, indiscriminate earth moving or clearing of property, removal of trees and vegetation which could cause disruption of natural water courses or scar natural land forms:

Insuring that vegetative or natural buffer areas are preserved between structures and **wetland areas as designated by governmental authorities so as to conform and comply with any agreements to protect jurisdictional wetland areas.**

ARTICLE VIII

USE RESTRICTIONS

Section 9: **Site Alterations:** No site alterations or improvements including, but not limited to, cleaning, landscaping, planting of shrubbery, trees or other vegetation, grading, filling, excavating, drainage work or placement of utilities shall be made without the written approval of the DRB.

Section 20: **Drainage and Septic Systems:** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No person other than Declarant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers or storm drains. Declarant hereby reserves for itself and the Association a perpetual easement across the Property for the purpose of altering drainage and water flow.

Section 28: **Wetlands, Lakes and Water Bodies:** All wetlands, lakes, ponds and streams within the Property, if any, **shall be aesthetic amenities only**, and **no other use thereof**, including, without limitation, fishing, boating, hunting or use of personal flotation devices, **shall be permitted without the prior approval of the Board of Directors.** The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds or streams within the Property. No docks, piers or other structures shall be constructed on or over any body of water within the Property, except such as may be constructed by the Declarant. No pumps shall be placed in a lake, pond or creek for the purpose of removing water for irrigation purposes, **except as approved in writing by the Declarant.**

ARTICLE VIII

USE RESTRICTIONS - CONTINUED

Section 2: **Drainage Easements:** **An easement is hereby reserved for the benefit of the Declarant and the Association,** their respective employees, agents, successors and assigns to enter upon, across, over, in and under any portion of the Property **for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water.** Best efforts shall be made to use this easement so as not to disturb the uses of the Owners, the Association and the Declaration, as applicable to the extent possible to prosecute such easement work properly and expeditiously and to restore any areas affected by such work to a slightly and usable condition as soon as reasonably possible following such work.

Section 3: **Environmental Easement:** **There is hereby reserved for the benefit of the Declarant, the Association** and their respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement on, over and across all unimproved portions of the Property **for the purpose of taking any action necessary to effect compliance with environmental rules,** regulations and procedures from time to time promulgated or instituted by the Board of Directors of the Association or **by any governmental entity,** such easement to include without limitation the right to implement erosion control procedures and practices, the right to drain standing water and the right to control insects, animals and vegetation and **the right to maintain, enforce and restrict wetlands buffer areas.**

Section 6. **The Office of Ocean and Coastal Resource Management,** Notice is hereby given of the restriction that as to any portion of the Property which may contain submerged land or other critical areas, all activities on or over and all uses of such land or other critical areas are **subject to the jurisdiction of The South Carolina Office of Ocean and Coastal Resource Management,** its successors and assigns. Any Owner is liable for any damages to, any inappropriate and unpermitted uses of, and any duties or responsibilities concerning any submerged land, coastal waters or other critical areas.

BYLAWS

PROPERTY OWNERS' ASSOCIATION, INC.

ARTICLE II DEFINITIONS

Section 1. General: All terms used herein and not otherwise defined shall be deemed to have the same meaning as defined in that certain Declaration of Covenants, Conditions and Restrictions

ARTICLE VI BOARD OF DIRECTORS

Section 1. **General Powers:** The Association **shall be governed and the business and affairs of the Association** shall be managed by a Board of Directors.

BYLAWS - CONTINUED

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

- (d) **employ a manager**, an independent **contractor**, or such **other employees** as they deem necessary, and to prescribe their duties;
- (e) **grant utility and ingress/egress easements** on, over and across the Common Property of the Association as provided in the Declaration;
- (g) **exercise on behalf of the Association all other powers, duties and authority** vested in or delegated to the Association as set forth in the Declaration
- (b) **supervise** all officers, agents and employees of the Association, and see that their duties are properly performed;
- (c) **perform all duties set forth in the Declaration, including without limitation:**
 - (5) **causing the Common Property to be maintained or repaired;**
- (f) **cause the Common Property and facilities to be maintained, replaced or improved and properly landscaped;**
- (o) **exercise for the Association all powers, duties and authority vested** in or delegated to the Association by the Declaration and not reserved to the membership by other provisions of these Bylaws or the Articles of Incorporation.

**John K. Reyelt, CHA, RRP, CMCA, AMS, PCAM
President/CEO**

**Gold Crown Management, Inc. AAMC®
(843) 445-6007**

John.Reyelt@gold-crown.com

GCM Website: www.gold-crown.com

SC-CAI Contact Information

**Chapter Executive Director: Kati Segar
(877) 430-2493 (toll free)**

Kati@cai-sc.net

SC-CAI Website: www.cai-sc.net