

1250 E. Diehl Road, Suite 405
Naperville, IL 60563
Telephone (630) 369-2700
Facsimile (630) 369-9279



Chicago
(312) 899-9989
info@kmlegal.com

KEOUGH & MOODY, P.C.

Attorneys at Law

www.kmlegal.com

**THE IMPORTANCE OF HAVING RECORDED COPIES
OF YOUR ASSOCIATION'S DECLARATION AND BYLAWS**

By Gabriella R. Comstock

Every association, whether it is a condominium, townhome or homeowners association, has a declaration. It is the recording of this declaration at the Recorder of Deed's Office for the County where the property is located, that creates the association. The association's bylaws can be incorporated as a section within the association's declaration, an exhibit to the declaration, or in some cases it is recorded as a separate document. While most associations appreciate why it is important to have a copy of the association's declaration and bylaws, it is often forgotten that the copy should be a recorded copy of the declaration.

It is the document that is recorded with the County Recorder of Deed's Office that is binding on the Association. Unfortunately, the copy of the unrecorded declaration received by an Owner from the developer or the previous owner, is not always a copy of the same documents that have been recorded with the county. Therefore, an association wants to be sure that the restrictions for which they are enforcing are the ones that are binding upon the subject property. If the association has to pursue any legal remedies to enforce a restriction, it will be required to provide the court with a certified copy of the association's declaration.

How do you know if your association has a recorded copy of the association's declaration? A recorded copy of the document should have a stamp that identifies the recorded document number assigned to the document. For example, the document may have a stamp that identifies the document as "R97-12345" or it may just have a stamp that consists of numbers like "123456" and then states "FILED FOR RECORD WITH KANE COUNTY, IL". Every county identifies a recorded document differently. Yet, all assign numbers to the document and typically identify the county for which the document was recorded. Recorded documents for an association can be obtained at the Recorder of Deed's Office for the County where the association is located. It is important for each member of the Board, the association's property manager and the association's legal counsel to all have copies of the recorded documents for the association. If the association posts its governing documents on a website, the recorded declaration and bylaws should be the copies posted.

Remember, that not only should the original declaration and bylaws be recorded, but to be effective, any amendments to these documents must also be recorded. Lastly, it should be remembered that before an association amends its declaration, it should be confirmed that the section(s) being amended are based on the language within the association's recorded documents.

So take a minute the next time you refer to your governing documents and make sure that you are referring to a recorded set of documents. If you are unsure, or need assistance in obtaining a recorded copy, your legal counsel can assist you.