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**THE COMMUNITY ASSOCIATION LAW
LUNCH & LEARN LECTURE SERIES**

**Know Your Act from a Hole in the Wall –
Understanding the Condominium Act.**

Authored and presented by
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33-1212 (CC&R Control Section)	Unit boundaries - This Section discusses the boundaries of Units within the Condominium. If the CC&Rs discuss the boundaries of a Unit, then the CC&Rs definition will control. If the CC&Rs are silent regarding the boundaries of a Unit, then this Section will control.
33-1213 (Statute Trumps CC&Rs Section)	Construction and validity of declaration and bylaws - This Section discusses the “Hierarchy of Documents.” Meaning, this Section lays out which documents will control should there be a conflict between the Association’s documents. The Section states that Association documents have the following priority: <ol style="list-style-type: none"> 1. Declaration (CC&Rs); 2. Articles of Incorporation; 3. Bylaws.
33-1215	Contents of declaration – This Section discusses what provisions must be contained within an Association’s Declaration (CC&Rs).
33-1217	Allocation of common element interests, votes and common expense liabilities – This Section mandates that the Declaration (CC&Rs) allocate interests in the Common elements to Owners of Units.
33-1218	Limited common elements – This Section mandates that the Declaration (CC&Rs) allocate limited common elements to the Unit Owners who have exclusive use for said limited common elements.
33-1219	Plat – This Section discusses what must be contained on the Plat of the Association.
33-1220	Exercise of development rights – This Section discussed what rights a Declarant has during the period of Declarant control and how they may execute those rights.
33-1225 (CC&R Control Section)	Use for sale purposes – This Section provides a declarant the right to maintain a sale’s office, model or management office at the Association so long as the Declaration or local laws do not provide otherwise.
33-1227 (Statute Trumps CC&Rs)	Amendment of declaration – This Section sets a baseline for the required owner approval to amend the Declaration

- Section)** (CC&Rs). This Section states that unless the Declaration provides for a greater amount, the Declaration may only be amended so long as the approval of no less that 67% of the votes of the Association is obtained.
- 33-1228 (Statute Trumps Section)** **Termination of condominium** – This Section discusses how a condominium association may be terminated. This Section states that unless the Declaration provides for a greater amount, the condominium association may only be terminated so long as the approval of no less that 80% of the votes of the Association is obtained.
- 33-1241** **Organization of unit owners' association** – This Section requires that a condominium association be formed no later than the date the first Unit in the condominium is sold. The Section also states that the condominium association may be a non-profit association or unincorporated association.
- 33-1242 This Section Both Trumps the CC&Rs and is Trumped by the CC&Rs** **Powers of unit owners' association; notice to unit owner of violation** – This Section discusses the following topics:
1. The powers of the condominium association (**If the Association's documents discuss the powers of the Association, then the Association's documents would control. If the Association's documents are silent regarding the powers of the Association, then this Section will control**) The powers listed in this Section include:
 - a. Adopt and amend bylaws and rules ;
 - b. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners;
 - c. Hire and discharge managing agents and other employees, agents and independent contractors.
 - d. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium.
 - e. Make contracts and incur liabilities.
 - f. Regulate the use, maintenance, repair, replacement and modification of common elements.
 - g. Cause additional improvements to be made as a part of

the common elements.

h. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common elements may be conveyed or subjected to a security interest only pursuant to section 33-1252.

i. Grant easements, leases, licenses and concessions through or over the common elements.

j. Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than limited common elements described in section 33-1212, paragraphs 2 and 4 and for services provided to unit owners.

k. Impose charges for late payment of assessments and, after notice and an opportunity to be heard, impose reasonable monetary penalties upon unit owners for violations of the declaration, bylaws and rules of the association.

l. Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments.

m. Provide for the indemnification of its officers and executive board of directors and maintain directors' and officers' liability insurance.

n. Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly provides.

o. Be a member of a master association or other entity owning, maintaining or governing in any respect any portion of the common elements or other property benefiting or related to the condominium or the unit owners in any respect.

p. Exercise any other powers conferred by the declaration or bylaws.

r. Exercise all other powers that may be exercised in this state by legal entities of the same type as the association.

s. Exercise any other powers necessary and proper for the governance and operation of the association.

2. The remainder of this Section discusses how associations enforce their restrictions. The law requires an association to send out an initial violation letter that details how an owner may contest the violation and provides an owner with the right to contest the violation prior to the association “taking action”, including imposing fines or instituting a lawsuit. **(This Section trumps the Association’s governing documents)**

33-1243 This Section Both Trumps the CC&Rs and is Trumped by the CC&Rs

Board of directors and officers; conflict; powers; limitations; removal; annual audit; applicability – This Section discusses several issues which are outlined below:

1. Powers of the Board **(If the Association’s governing documents discuss Board power, the documents will trump this Section);**

2. The board of directors shall not act on behalf of the association to amend the declaration, terminate the condominium, elect members of the board of directors or determine the qualifications, powers and duties or terms of office of board of directors. The board of directors may fill vacancies in its membership for the unexpired portion of any term. **(If the Association’s governing documents discuss this power, the Statute will trump the documents);**

3. Board of Director Conflicts of Interest. **(If the Association’s governing documents discuss this power, the Statute will trump the documents);**

4. How to prepare and disseminate Association budgets. **(If the Association’s governing documents discuss this power, the documents will trump the Statute);**

5. Period of Declarant Control - Regardless of the period provided in the Declaration, a period of declarant control terminates no later than the earlier of:

- a. Ninety days after conveyance of seventy-five per cent of the units which may be created to unit owners other than a declarant.

- b. Four years after the declarant has ceased to offer units for sale in the ordinary course of business. **(If the Association’s governing documents discuss this power,**

the Statute will trump the documents);

6. Not later than the termination of any period of declarant control the unit owners shall elect a board of directors of at least three members, at least a majority of whom must be unit owners. The board of directors shall elect the officers. The board members and officers shall take office upon election.

7. Removal of Members of the Board of Directors **(If the Association’s governing documents discuss this power, the Statute will trump the documents);**

8. Annual Audit, Review or Compilation – Unless any provision in the condominium documents requires an annual audit by a certified public accountant, the board of directors shall provide for an annual financial audit, review or compilation of the association. The audit, review or compilation shall be completed no later than one hundred eighty days after the end of the association’s fiscal year and shall be made available upon request to the unit owners within thirty days after its completion.

33-1245

Termination of contracts and leases of declarant; applicability – Certain contract entered into by the declarant must have a provision in them stating that the contract may be voided after the termination of the period of declarant control.

33-1246

Bylaws – This Section discusses the requirement to have Bylaws and what provisions must be contained within the Bylaws.

33-1247

Upkeep of the condominium – This Section discusses the Association’s minimum maintenance requirement.

33-1248

Open meetings; exceptions – This Section discusses how to conduct a meeting of the Board of Directors. For more information on this Section, please see the Shaw & Lines Guide on How to Conduct a Board Meeting at www.shawlines.com.

33-1249 (CC&R and
Bylaws Control
Section)

Quorums; applicability – This Sections discusses quorum requirements.

33-1250 Trumps Section)	(Statute CC&Rs	Voting; proxies; absentee ballots; applicability; definition – This Section discusses how to conduct a meetings of the Members. For more information on this Section, please see the Shaw & Lines Guide on How to Conduct an Annual or Special Meeting of the Association at www.shawlines.com .
33-1253 Trumps Section)	(Statute CC&Rs	Insurance – This Section discusses the mandatory insurance obligation.
33-1255		Assessments for common expenses; applicability – This Section discusses the Association’s Assessment obligation, late fees and how to increase the Association’s Assessments. More details will come in our May 6 th Lunch and Learn.
33-1256		Lien for assessments; priority; mechanics’ and materialmen’s liens; applicability – This Section discusses the Association’s Assessment Lien. More details will come in our May 6th Lunch and Learn.
33-1258 Trumps Section)	(Statute CC&Rs	Association financial and other records; applicability – This Section discusses the Association’s requirement to allow Owners to view records of the Association.
33-1260		Resale of units; information required; applicability; definition – This Section discusses resale disclosure statement requirements.
33-1261 Trumps CC&Rs)	(Statute CC&Rs)	Flag display; for sale signs; political petitions; applicability – This Section discusses various signs in the Association.