

Legal Issues for Oklahoma Community Associations

2022-Part 1

Matthew L. Winton, Esq.

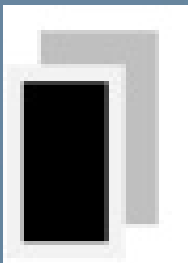
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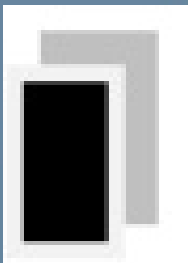
Legal Service for Community

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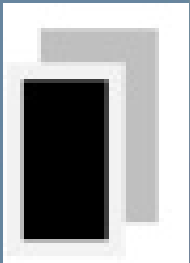


MLW HOA/Condo Resources

- okhoa.blogs.com
- You Tube Channel: Search Winton Law HOA (subscribe to receive notifications of new videos)
- www.wintonlaw.net
- Facebook: Winton Law

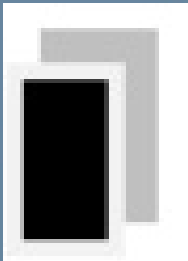
HOA Seminar Part 1

What documents, agreements, and instruments create the HOA and give it its authority?



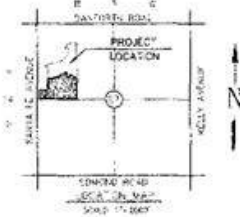
Documents - Overview

- Plat
- Declaration of Covenants
- Certificate of Incorporation
- Articles of Incorporation
- Bylaws
- Corporate Resolutions
- Rules & Regulations



Documents - Plat

RE-PLAT
OF
THE LAKES AT BRIDGEWATER
A PART OF THE NW 1/4, SECTION 27, T-14-N, R-3-W, 1.M.
CITY OF EDMOND, OKLAHOMA COUNTY,
OKLAHOMA



- NOTES:
- 1) THE BEARING OF S00°43'55"E AS SHOWN ON THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 27 T-14-N, R-3-W, 1.M., AND SHOWN ON THE FINAL PLAT OF BRIDGEWATER COMMONAL WAS USED AS THE BASIS OF BEARING FOR THIS FINAL PLAT.
 - 2) EASEMENTS SHOWN HEREIN BY SPECIFIC RECORDING INFORMATION ARE SHOWN FOR REFERENCE PURPOSES ONLY AND ARE NOT DEDICATED PURSUANT TO THIS FINAL PLAT.
- * - INDICATES 3/8" RIB FR
 - D & U/E - DRAINAGE & UTILITY EASEMENT
 - B/L - BUILDING SETBACK LINE
- Lots C and D are Danforth Arroyo to be maintained by the Bridgewater Property Owners Association.

*As reproduced meets the requirements as outlined in Section 802.37, Section 518 as amended

TRIANGLE A&E, INC.
A.S. 01/21/21 - 12/04/21

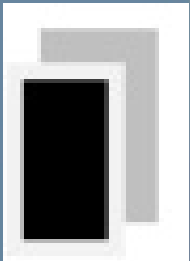
OWNER: **SMITH ROBERTS BALDISCHWILER L.L.C.**
SINCE 7/24/2014 (ALABAMA PAROLE BOARD)
25 SOUTH OF ARKANSAS AVENUE, SUITE 408 - OKLAHOMA CITY, OK 73104
PHONE: (405) 448-7064
OKLAHOMA LICENSE # OF AUTHORIZED SIGN: 2006 EFFES AND 30, 2000

Development Process

- Parcel selected, zoning obtained
- HOA/Condo incorporation
- Plat then covenants recorded with County Clerk – constructive notice
- Lots sold to consumers
- Transition of community association
- Transfer of common areas/elements
- Continued operation of association

HOA Seminar Part 1

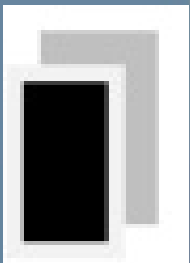
What is “law” and what law applies to HOAs, boards, and members?



Law – Overview

The law of HOAs

- The applicable law is published cases and statutes
 - 60 O.S. 501 et seq. – Condo Act
 - 60 O.S. 851 et seq. – HOA Act
 - 18 O.S. 865; 1001 – Corporation Act
- Where is it? Access the law at **www.oscn.net**



OKC Ordinances: Home Share/Short Term Residential Rentals

- Home must be owner's primary residence
- Up to 30 day rentals
- Application, affidavits, annual fee
- Hotel tax may apply
- Covenants may still restrict
- Violators are subject to a maximum \$500 fine, plus court costs and fees. Each day of continuing violation is a separate offense.

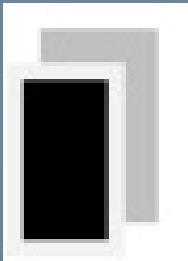
OKC Ordinance: Chickens & Quail

- Sec. 59-8150.2.1; Section 59-9350.7.1
- March 4, 2022 effective date
- 6 hens or quail; no roosters. No permits req'd
- Animal housing requirements: coop/yard size, cleanliness; dusk to dawn restraint; set backs
- Covenants may still restrict
- People who violate the new ordinance can be fined up to \$500 for the first offense and \$1200 for the third or subsequent offense, and or jail time not to exceed 6 months.

Law – Unincorporated Associations

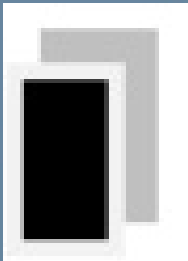
The Law of Unincorporated Associations

- An unincorporated association is when “two or more people associate themselves together and transact business for gain or speculation under a particular appellation.”
- Bylaws, common law, and various statutes are “the law” of the entity.
- The unwritten law: friends don’t let friends join unincorporated associations.



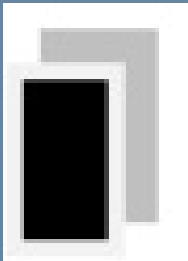
Meetings - Practice

- Annual Meetings
 - Same time each year
 - Written agenda, notice given prior to meeting
 - Provide childcare and refreshments – advertise!
 - Use proxies to attain a quorum
- Board Meetings
 - Open Meeting Act does not apply automatically
 - Should occur at least quarterly
- Meeting Tips
 - Prepare and follow an agenda
 - Limit the floor to minutes and recognized speakers
 - Hold hostile meetings in a church or elementary school



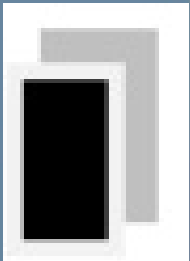
Meetings - Minutes & Resolution Practice

- Resolutions document decisions/acts of the association.
- Sometimes done when awarding contracts for common area maintenance, or for substantial corporate events, such as taking legal action or policy positions.
- Minutes and Resolutions are the written record of the corporation and should be kept together for future boards.
- Minutes are prima facie evidence in court
- See okhoa.blogs.com for samples of a resolution, meeting agenda, and minutes.



Meetings - Default Procedural Rules (“UOP”)

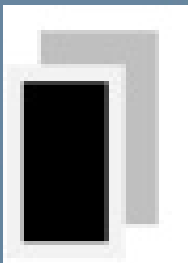
- UOP, Bylaws adopted/amended by “governing body.”
- UOP, quorum is 1/3 of total membership (Can be much less)
- UOP, majority vote except for election of directors.
- UOP, plurality vote for directors.
- UOP, Min. 10 / Max. 60 days notice



Meetings – Quorum

Quorum under the Law

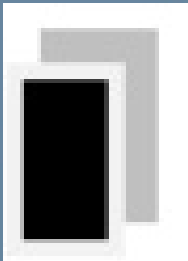
- A quorum is “Such a number as must be present in order that business can be legally transacted.” RONR, p.334-340
- What does Articles or Bylaws provide for quorum?
- If incorporated, 18 O.S. 1060 provides for 1/3 of total membership, but may be less.
- For court-ordered election, the quorum is the number of members present regardless of actual quorum requirement.



Meetings – Proxies

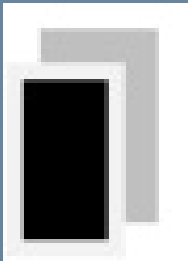
Proxies – A Primer

- 18 O.S. 1057.C & D
 - Proxy must be signed or have signature “affixed” to writing
 - Electronic copies are acceptable
- 18 O.S. 1060
 - UOP, proxy is valid for 3 years
 - What duration is advisable?
- Limited proxy? Voting proxy?



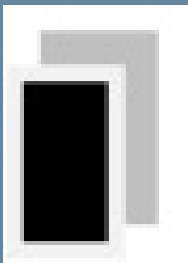
Meetings - Internet/Electronic Voting/Email

- Use the Internet to communicate
 - Governing documents
 - Newsletters/events
 - Contacts
- Remember the “Newspaper Rule” when using email among board members
- Electronic voting is allowable by Oklahoma law; may require governing document amendments.



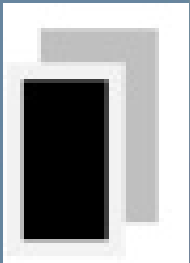
Meetings - FAQ

1. Does the Open Meeting Act apply to community associations?
2. Do members have a right to call special meetings?
3. Do members have a right to remove board members?
4. Can I vote electronically?
5. Can we act without meeting?
6. Class A members and Declarant Class B: What does it mean?



Enforcement

How are governing documents enforced?
What “teeth” do they have?

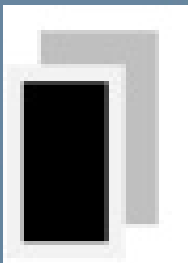


The dangers of a one sided story



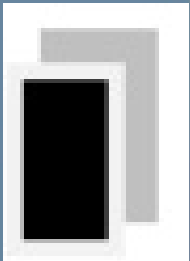
Dispute Resolution – Non-judicial remedies

- Clear, up-front communication
- Room for honest disagreement
- Structuring discussion to remove conflict
- Structuring procedures to remove conflict
- Getting ready for difficult conversations
- Informal mediation
 - Going it alone
 - Taking another with you
- What do the covenants/bylaws say?
 - Hearing en banc
 - Appeals
- Formal mediation
- Binding arbitration



HOA Records Access

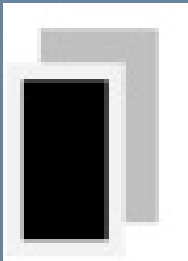
What records are members entitled to and when may they demand them?



Operations – Books & Records

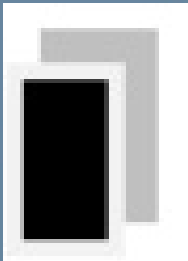
Books & Records: Rights to Access

- 18 O.S. 1065 (if incorporated)
- 18 O.S. 1069 – form of records
- 60 O.S. 521 (for condo)
- None for HOA
- What do Governing Documents provide?
- “Proper purpose”



Operations - Books and Records

- Consist of Financials, Governing Documents, Owner Files, Litigation/Enforcement Files, Minute Book/Organizational File
- Governing Documents may outline member rights to the books and records
- If incorporated, Oklahoma law grants access to members
- See okhoa.blogs.com for an article on records access



Operations – Myths

Have you ever heard...

- “My neighbor’s fence doesn’t comply with the covenants, so I’ll sue the HOA.”
- “Plant more trees in the Common Area or else...”
- “The Board doesn’t enforce the covenants, so I’m not paying my assessments.”
- “I never received a copy of my covenants, so they don’t apply to me.”
- “You can file a lien, but you can’t foreclose.”

