

MATTHEW L. WINTON<sup>PLLC</sup>

State-wide legal services for  
residential and commercial  
condos and HOAs

2023 HOA Legal Issues

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# Winton Law HOA/Condo Resources

- Oklahoma's law firm singularly focused on HOA/Condo legal issues
- [okhoa.blogs.com](http://okhoa.blogs.com)

- You Tube Channel:

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# Oklahoma Community Association Handbook

- Now in its Third Edition
- Oklahoma's only comprehensive resource for HOA and Condo law, operations, and forms
- Available in hardcopy \$29.95 by emailing [office@wintonlaw.net](mailto:office@wintonlaw.net)
- Ebook available \$19.99 go to [www.smashwords.com](http://www.smashwords.com) and search wintonlaw



# Purposes of the Community Association

- Developer: Orderly development; required by city/county
- Generally: Promote community through information, education, and customer service.
- Manage common areas/elements
- Leadership and governance
- Enforce if necessary but always reasonably

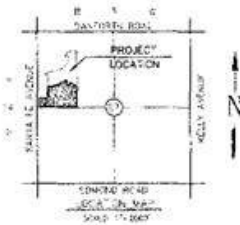
# Governing Documents

- 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°45'55"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 HEREON BY SPECIFIC RECORDING INFORMATION ARE SHOWN FOR REFERENCE PURPOSES ONLY AND ARE NOT DEDICATED PURSUANT TO THIS FINAL PLAT.
- \* - INDICATES 3/8" RISE PER
  - D & U/E - DRAINAGE & UTILITY EASEMENT
  - B/L - BUILDING SETBACK LINE
- Lots C and D are Danforth Arroy 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. 01/21/2021 - 12:00 PM

OWNER: **SMITH ROBERTS BALDISCHWILER L.L.C.**  
SINCE 1984  
25 SOUTH OF ANKNEY AVENUE, SUITE 408 - OKLAHOMA CITY, OK 73124  
PHONE: (405) 448-7000  
OKLAHOMA LICENSE # OF ARCHITECTS: 60-2046 EFFIES: A&E 30-2200



# 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





# Terms, Definitions, and Concepts

- Definitions section in covenants, no duplication in bylaws
- Phased developments – covenants!
- Who is Declarant? Class B?
- Who controls DRB/ARC?
- Who controls the HOA board?
- What retained Declarant rights?

# The law of Oklahoma Community Associations

- 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
  - Title 16 conveyances, title standards
- Where is it? Access the law at **[www.oscn.net](http://www.oscn.net)**
- **Handbook contains statutes and seminal cases**



# **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.



# Edmond Ordinance: Chickens

- Sec. 7.09.130 Edmond Ordinances
- Lot size = limits on number of hens
- Coop requirements
- Requires a \$25 permit from City
- Penalties for violations
- Ordinance does NOT override CCR

# Norman Ordinance 30-309(e)

(e) In the case of a plat proposing the reserving or dedicating of land or amenities to be used in common by owners of lots in a single-family residential subdivision, or in the case of a plat or City rural certificate of survey that contains any portion of the WQPZ, the applicant shall submit evidence acceptable to the City Attorney that all necessary steps have been taken for:

- (1) The establishment of a mandatory property owner's association (POA) or establishment of another acceptable arrangement for adequate maintenance of the common elements and any designated non-structural controls for stormwater management. All mandatory POAs shall submit a declaration of covenants, conditions and restrictions (the declaration) which establishes a minimum framework that provides for the fair and effective administration of the POA and thereby ensures the greater likelihood that the interests of the City and its citizens are secure, and which include the following provisions:
  - (a) A list of all common property in the plat, by legal description. A specific description of all of the common elements within the subdivision including any abutting arterial roadways, the uses allowed for each common element and a description of the person responsible for initially constructing or installing each common element and the responsibility for maintaining the common element after initial installation;

# **Norman Ordinance 30-309(e)(1)(j)**

All POAs must annually register with the City Clerk's office and provide a list of elected officers and their contact information or with the name and contact information for the agent or attorney of record for the POA. A fee, as provided in the City fee schedule, shall be charged for the initial registration, and an additional amount provided in the City fee schedule for each renewal;

# The Law of Oklahoma 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 or operate 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.blogspot.com](https://okhoa.blogspot.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?



# HOA Enforcement

How are governing documents enforced?

What “teeth” do they have?

Is your HOA authorized or empowered to enforce?

Does it want to? Cost/Benefit





# The dangers of a one sided story



# The dangers of a one sided story



# “Enforcement” starts before closing

- Clear, coordinated communication at closing
- Welcome home; tangible gift [directory, covenants, contact info] & valuable information
- Establish expectations for both rights and responsibilities
- What if “enforcement” looked more like educating and serving?



# “Hostile Environment Harassment” and your HOA

- 24 CFR Part 100 - Agree or not, it is the law.
- HOA liability for “failing to take prompt action to correct and end a discriminatory housing practice by a third party, where the person knew or should have known of the discriminatory conduct and had the power to correct it.” 24CFR100.7(a)(iii)
- Totality of circumstances
- “Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with [residential housing]”



# Hostile environment harassment, cont'd

- HOA must be pro-active it cannot take a hands off approach
- Bullying can constitute HEH but not every disagreement is HEH – totality of circum.
- Whether HEH is based on a reasonable person from aggrieved person's position
- Ex: HOA president and the “b\*\*\*\*h\*”
- EX: Two neighbors and cooking smells
- Having a written plan for receipt, investigation, and action on complaints
- Mediation/litigation for HOA protection



# 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 are records?
- Who is entitled to inspect and copy?
- When may they demand them?



# HOA Books & Records

- **Indefinitely**: Minutes, Resolutions, Governing Documents, ARC, enforcement/litigation files
- **7 Years**: Tax returns, audits, reconciled bank statements, budgets, balance sheets, profit & loss statements
- **Discretionary**: Owner files, bids/contracts, invoices, emails, text messages, social media
- DIGITIZE ALL RECORDS
- Current board members and officers
  - Always have access to all except narrow exceptions
- Current members – almost all; form request
- See [okhoa.blogs.com](http://okhoa.blogs.com) for an article on records access





# 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” & power of attorney
- Right = inspect and copy, not demand answers and creation of reports



# HOA Management

- Self-management v. 3<sup>rd</sup> Party
  - Cost v. Benefit; organization/meetings; records; closing letter fees; customer service/continuity of manager
- Areas to Watch
  - Choice of vendors: attorney; CPA; landscaper
  - Embezzlement controls
  - High turn over of account managers
  - Accurate account statements
  - Shifting liability to HOA for expected manager expertise
  - Lack of legal knowledge: FDCPA, Bankruptcy Code
  - Termination clause; release of HOA records
- Absent a Limited Power of Attorney signed by the board and filed with each lien, a manager DOES NOT have legal authority to sign an HOA lien.

