

Legal Issues for Oklahoma Community Associations

February 23, 2008
ENA Neighborhood Summit

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Legal Service for Community

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Speaker Profile



Matthew L. Winton is a founding partner of the Vaughn, Winton & Clark law firm. Matthew is a member of the American, Texas, and Oklahoma Bar Associations.

Contact. Matthew may be contacted at his Oklahoma office at 405.478.4818, or via email at mlw@vaughnandwinton.com. He published the Oklahoma Community Association Handbook, Second Edition, and hosts a blog on community association issues at www.okhoa.blogs.com.

Statement of Practice. Matthew represents real estate developers, both newly formed and firmly established condominium and homeowner associations, and real property owners in all matters of community association governance and law. Throughout his practice, Matthew has advised and represented over one hundred community associations and currently acts as general counsel to dozens of community associations.

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First Breakout Session:

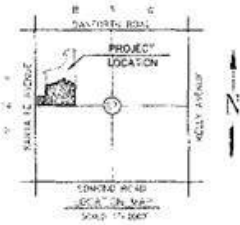
1. Basics of association governing documents
2. Board & HOA Functions/Operations
3. Incorporation
4. Taxation
5. Time for group discussion



Association Governing Documents: What & Where

- Plat
- Real property covenant
- Easement/Servitude
- Right of Way
- Articles of Incorporation
- Bylaws
- Financials: Budget, P&L
- Corporate resolutions
- Board/annual meeting minutes

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



- NOTES:
- 1) THE BEARING OF SOUTHWEST AS SHOWN ON THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 27, T-14-N, R-3-W, 1/4, 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" R.O.W. P.W.
 - D & U/E - DRAINAGE & UTILITY EASEMENT
 - B/A - BUILDING SETBACK LINE
- Lots C and D are Common Area to be maintained by the Bridgewater Property Owners Association.

This reproduction meets the requirements as outlined in Service 801 377, Section 518 as amended.

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Issue: HOA function and operation

- Function of a Community Association – Isn't just to collect dues
 - Governance – ARC, elections, communication
 - Business – Collections, title letters
 - Services – Social and economic
- Operation of a Community Association
 - Should operate like a small business – not a “good old boy” system and not a “mom and pop”
 - Collection rate indicates customer satisfaction and “buy-in”
 - Written annual goals and plans – budget
 - Ask the questions: what service do we provide? To what goals do we aspire?

Issue: Board function and operation

- Board members are the elected hands and feet of the community association
- Board members should model the behavior the Association expects from members – this is the HOA Golden Rule
- Most Boards will meet monthly, at least quarterly.
- Communication – internet, open meetings, fair elections
- Limiting liability – encourage participation

Association Corporate & Financial Health

- HOA should be incorporated if it collects ANY money
- Practice Bylaws, minutes, and resolutions
- Assessments: Annual, Special, and Specific/Individual
- Procedure: Computerized accounting system; Owner tracking; invoicing
- Collections: Clear communication; customer service; Liens; Judicial actions
- Financial planning with reserves
- Competitive bidding
- Open books and records

First Session FAQ:

- Am I bound by covenants if I wasn't given a copy of them when I bought my house?
- Do "Open Meeting" Laws apply to my HOA?
- Can I withhold my dues if I don't like the board members?
- Can I sue the board if I don't like them?
- Am I personally liable as a board member?
- Can we restrict leasing and sex offenders with our covenants?

Second Breakout Session:

- Legal Issues Update
- Proven conflict resolution
- Alternate dispute resolution
- Collecting assessments
- Enforcing structural covenants
- Enforcing use restrictions



Community Association Law Update

- Federal Flag Display Act
 - Community Association cannot restrict displays of the American Flag except as provided within the Flag Act.
- Oklahoma sex offender act
 - 57 O.S. 590: unlawful for a registered sex offender to reside, either temporarily or permanently, within 2000 feet of a playground or park.
 - 57 O.S. 590.1: unlawful for more than one registered sex offender to reside in one dwelling.

Conflict Resolution

- Clear, up-front communication
- Room for honest disagreement
- Informal Mediation
- Binding arbitration
- Self-help
- Small Claims Court
 - Collections of assessments and fines
 - Damages under \$6,000.00
- District Court
 - Structural and use restriction violations
 - Declaratory actions (honest disagreement)

Alternate Dispute Resolution

- Communicating with the parties
- Board review of ARC decisions
- Mediation
- Binding Arbitration
- Individual owner action

Collecting Assessments

- Periodic review of amount
- Consistent application of interest
- Uniform invoicing and collections
- Systematic preparation and filing of liens
- Small claims actions

Structural Restrictions

- Structural restrictions pertain to types or quality of structures:
 - Square footage of dwelling
 - Type of shingle
- Administered by Board or ARC
- Enforced by fine or injunction



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Use Restrictions

- Govern the use one may make of their Lot
 - Occupancy restrictions
 - Parking guidelines
 - Decorations
- Administered by Board
- Enforced by fine or injunction



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Second Session FAQ:

- Can an HOA foreclose an assessment lien?
- Can individual owners enforce structural/use restrictions or just the HOA?
- Is my home day care a violation of a single-family use restriction?
- Why won't the City enforce my covenants?

Oklahoma Community Association Handbook, 2nd Ed.

The Oklahoma Community Association Handbook, Second Edition is a unique resource available for those living in, working for, or thinking about Oklahoma community associations. Written by Matthew L. Winton, an attorney who devotes his practice to community association law and issues, the Handbook provides an excellent guide to associations for residents, board members, attorneys, realtors, and others. You may order yours today by calling 405.478.4818 or emailing mlw@vaughnandwinton.com. The Second Edition of the Handbook contains over four hundred pages of useful commentary, Oklahoma law, and forms. The soft-back book may be purchased for \$64.95.

Handbook Table of Contents

CH. 1 – Forms of Community Associations

CH.2 – Condominiums

CH.3 – Homeowners Associations

CH.4 – Declaration of CCRs

CH.5 – Associations and Incorporation

CH.6 – By-laws of the Community Association

CH.7 – Association Boards; Operation & Management

CH.8 – Committees within the Association

CH.9 – Association Meetings

CH.10 – The Architectural Review Committee

CH.11. – Reserves and Capital Improvements

CH. 12 – Association Taxation

CH.13 – Developer Transition

CH.14 – Conflict Resolution

CH.15 – Special Issues: Leasing; Sex Offenders; Grants

CH.16 – Association Insurance

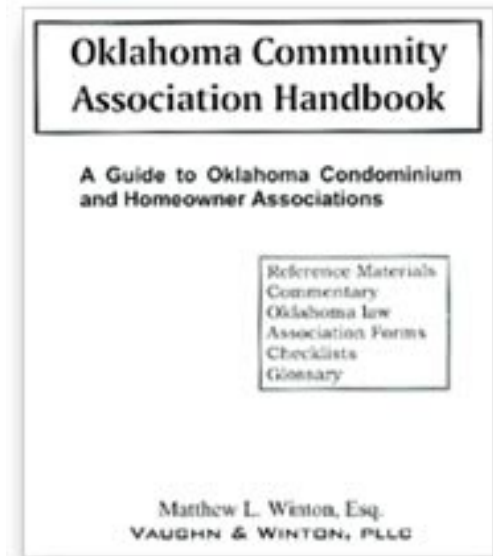
App.1 – Glossary

App.2 – County Clerk Information

App.3 – Statutes and Case Law

App.4 – Forms

App.5 - Checklists



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