

A Basic Understanding of CC&Rs

By Alex Pankonin

General Counsel for Assured Title Agency

The Declaration, Covenants, Conditions and Restrictions (also known as CC&Rs) is a recorded document that creates and governs a common-interest community. A common-interest community is real estate which can be a condominium building, or townhome complex, or a planned unit development of single family homes. Each person, by virtue of such person's ownership of a unit within the common-interest community, is obligated for the shared support and maintenance of the community. By purchasing the home, owners become bound by the CC&Rs for the community the home is located. In other words, this means that the homeowner is now part of the homeowner's association (HOA), which is responsible for fulfilling the obligations found in the CC&Rs.



The CC&Rs describe:

1. The boundaries of the common-interest community,
2. The common elements,
3. The limited common elements and how they are allocated,
4. Any restrictions on the use, occupancy, and ability to sell the units within the common-interest community, and;
5. How the various unit owners will come together and share the burden of caring for the community.

The common elements are the areas in the community that all unit owners have an undivided interest in and the right to use and enjoy.

General Common Elements

These areas generally include open space, sidewalks, walkways, parking areas, paths, grass, shrubbery, trees, planters, driveways, roadways, landscaping, and gardens.

Limited Common Elements

Limited common elements are those parts of the common elements which are limited to and reserved for the use of one or more unit owners, but fewer than all unit owners. Limited common elements can include balconies, decks, patios, entryways, porches, or storage spaces.

One of the largest benefits to a homeowner in a common-interest community is that the cost of amenities is scalable across the various owners. Therefore, a homeowner can enjoy amenities that she would otherwise find too expensive. For instance, if a homeowner wanted a pool, it might be prohibitively expensive to own it by herself. However, in a common-interest community the cost of the pool is divided equally among all the owners in the community.

Another advantage of living in a common-interest community is that it maintains and safeguards the quality of life in the community. The property values of homes in the community are protected from the threat of abandonment, misuse or disrepair.

Real estate brokers and their buyers are well advised to review the CC&Rs for any community they are looking to buy into.

Highlighted below are two items important to flag if and how they are included in the CC&Rs:

Right of First Refusal

A right of first refusal places a restriction on the conveyance of the owner's title which allows the owner's association or another unit owner in the common-interest community the right to buy the unit at the price and terms the owner might negotiate with an eligible buyer. When a right of first refusal is found in the CC&Rs it is a prerequisite to selling a property and the procedure and process varies from community to community, but must be followed in order for a valid sale of the property to occur.

Parking Spaces (especially in condominium associations)

Many times the decision to purchase a condominium is based on the number of parking spaces that the buyer will be able to use. How parking spaces are allocated differs depending on the community. Sometimes the parking spaces are assigned by the HOA. Other times they are freely conveyed from one party to another irrespective of ownership in the condominium. Still, other times a parking space is not allowed to be conveyed separately from the unit. All the information concerning how a parking space is allocated and transferred can be found in the CC&Rs.

Also, buyers should be careful to compare how the parking space is physically labeled in relation to how it is designated on a recorded condominium plat map. This may affect one's ability to use the parking space in the future.

Buying a home is not just about the structure itself. Buyers should also be aware that they are buying into a larger community. Communities vary in cost and restrictions. As part of one's due diligence, it is wise to familiarize oneself with the obligations associated with living in a common-interest community. As part of the Colorado real estate contract the seller of a property must supply the buyer with the homeowners association documents, which contains the CC&Rs, bylaws, rules and regulations, minutes of board meetings in the last six months, financial documents, and other organizational documents.