

A Model Homeowners Association Declaration Of Covenants, Conditions, And Restrictions

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HOMEOWNERS ASSOCIATIONS occupy an interesting position in the real estate landscape. They can and do provide quasi-governmental services. But despite doing so, they have absolutely no governmental authority. Still, they can levy assessments. They can restrict use and enjoyment of property. They can fine wrongdoers. They can address and remedy "infrastructure" problems. Some associations are so large that they dwarf some of the smallest governmental subdivisions. Like local governments, however, they come in for their fair share of criticism. Some have argued that the existence of near-governmental authority without the usual checks and balances leaves association members with inadequate avenues for redress. Several high-profile cases have turned on whether restrictions against things like political campaign signs interfere with free-speech rights. Others complain that the governing boards act arbitrarily and capriciously, and just wield too much power.

Although there is probably no way to structure any homeowners' association that will be above all criticism, it is possible to design one that will serve its members well. The Model Declaration Of Covenants, Conditions, And Restrictions that follows is not intended to be exhaustive. Instead, it is intended to provide an overall structure that can be adapted to the unique needs and characteristics of individual associations. Consider it a starting point in the process of establishing a homeowners association that everyone can live in—and live with.

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR ABC HOMEOWNERS ASSOCIATION**

This Declaration of Covenants, Conditions, and Restrictions is made this _____ day of _____ 2007, by ABC, LLC, a political subdivision of the Commonwealth of Virginia, referred to as "Declarant."

WHEREAS, Declarant is the owner of certain land located in _____, _____ more particularly described in _____ attached hereto as a part hereof, said land together with such additional lands as shall be subjected to this Declaration being referred to as the "Property"; and

WHEREAS, the Declarant wishes to establish and assure a uniform plan for the development of the Property and to enhance and protect the economic and aesthetic value and desirability of the Property and the health, safety and welfare of the residents of the Property;

NOW THEREFORE, the Declarant declares that the Property is hereby subjected to and shall be held, sold, occupied, and conveyed subject to this Declaration of Covenants, Conditions, and Restrictions.

The Declarant further declares that this Declaration and all amendments and supplements thereto shall run with the land and shall be binding upon the Declarant, the Association, each Owner, their heirs, successors, and assigns and all parties claiming under them or under this Declaration and shall inure to the benefit of and be enforceable by the Declarant, the Association, each Owner, and all succeeding each Owner.

Additional land owned by the Declarant and described in _____ attached hereto as a part hereof may be subjected or annexed to this Declaration. The Declarant shall not be obligated, however, to develop or annex such additional land. Any such annexation will be governed by the provisions for annexation of land contained herein. Development of the land described in _____ shall be subject to, in all events, applicable laws and regulations.

ABC Homeowners Association, Inc., referred to herein, has been established as a homeowners association incorporated in _____ for the Owners and Residents of the Property.

Article I: Definitions

The words used above or hereafter in this Declaration which begin with capital letters (other than words which would be normally capitalized) shall have the meanings assigned to them in Article I of this Declaration.

1.01 "Annual Assessments" shall mean and refer to the Annual General Assessment and any Services Assessment which may be levied by the Association in each of its fiscal years pursuant to Article IV of this Declaration.

1.02 "Annual General Assessment" shall mean and refer to the annual charge shared by all Class "A" members established pursuant to Article IV of this Declaration.

1.03 "Assessable Property" shall mean and refer to all of the Property except such part or parts thereof as may from time to time constitute Exempt Property.

1.04 "Association" shall mean and refer to ABC Homeowners Association, Inc., a Virginia non-stock corporation, its successors and assigns.

1.05 "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association and any board, group or entity of the successor or assign to the Association serving in a comparable capacity to the Board of Directors of the Association.

1.06 "Class A Members" shall mean and refer to all Owners other than the Class B Member (during the Development Period) and Class C Members.

1.07 "Class B Member" shall mean and refer to the Declarant.

1.08 "Class C Members" shall mean and refer to Participating Builders.

1.09 "Common Area" shall mean and refer to all real property and the improvements thereon from time to time owned or leased by the Association for the common use and enjoyment of the Members. Such property may (but need not) include any common areas, tot lots, recreational facilities, parks and other open space land, lakes and streams, storm water management and drainage facilities, private streets not dedicated to the County of _____ or Commonwealth of Virginia, pathway and bike-way systems, and fencing on Common Area. Association is responsible for management and maintenance of all Common Area.

1.10 "Conservancy" shall mean the ABC Conservancy, Inc., an association of all of the owners of property in the ABC development; and its "Governing Documents" including Declaration, Bylaws, and Articles of Incorporation, and any amendments thereto.

1.11 "Declarant" shall mean and refer to the ABC, LLC, its successors and assigns, as long as it owns at least one (1) Lot or during the Development Period whichever is later. No successor or assignee of the Declarant shall have any rights or obligations of the Declarant hereunder unless such rights and obligations are specifically set forth in an instrument of succession or assignment designating a party as the Declarant hereunder or which pass by operation of law.

1.12 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions as it may be amended from time to time or supplemented in the manner provided herein.

1.13 "Development Period" shall mean and refer to the period commencing on the date of this Declaration first set forth above and terminating on the earlier of: (a) December 31, 20____; or (b) any earlier date specified by the Declarant in a written notice to the Association that the Declarant Control Period is to terminate on that date. If the Declarant is delayed in the improvement and development of the Property due to a sewer, water, or building permit moratorium, or other cause or event beyond the Declarant's control, then the aforesaid period shall be extended for the length of the delay or two years, whichever is less.

1.14 "Dwelling Unit" shall mean any portion of the Property, as improved, intended for any type of independent ownership for use and occupancy as a residence by one household and shall, unless otherwise specified, include within its meaning (in way of illustration, but not limitation) patio, single family detached, or zero lot line homes, as may be used and defined as herein provided or as provided in subsequent Declarations covering all or part of the Property.

1.15 "Exempt Property" shall mean and refer to all land and structures and Common Areas owned by the Association for so long as the Association shall be the owner thereof.

1.16 "Federal Housing Administration" ("FHA") shall mean and refer to that governmental agency of the United States of America so entitled and any agency or regulatory authority of the United States of America which succeeds the Federal Housing Administration.

1.17 "Mortgagee" shall mean the holder of any recorded mortgage, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots. "Mortgage," as used herein, shall include deeds of trust. "First Mortgagee" as used herein, shall mean a holder of a mortgage with priority over other mortgages. As used in this Declaration, the term "Mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration, the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), all corporations and any agency or department of the United States Government or of any state or municipal government. As used in this Declaration, the term

"holder" or "mortgagee" shall include the parties secured by any deed of trust or any beneficiary thereof.

1.18 "Land Development Activity" shall mean and refer to any building, construction, reconstruction, or repair of a Dwelling Unit, roadways, curbing, sidewalks, utility services, or any other Structure on a Lot or any other portion of the Property by the Declarant and/or by other persons regularly engaged in the building or construction business (including a Participating Builder), if granted approval in writing by the Declarant.

1.19 "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property which has been subjected to this Declaration and upon which a Dwelling Unit could be constructed in accordance with _____ County zoning ordinances in accordance with the applicable laws of Virginia in effect from time to time. "Lot" shall not mean and refer to Common Areas.

1.20 "Member" shall mean the Class A and C Members and the Class B Member of the Association.

1.21 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any Lots which is part of the Property but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

1.22 "Participating Builder" shall mean and refer to a person or entity described in writing by the Declarant as a Participating Builder.

1.23 "Person" shall mean and refer to any individual, corporation, joint venture, partnership, association, joint stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof, or any other separate legal entity.

1.24 "Property" shall mean and refer to those certain lands in _____ County, Virginia, more particularly described in _____ attached hereto, together with such additional lands as may be subjected to this Declaration.

1.25 "Resident" shall mean and refer to:

(a) Each individual occupying any Dwelling Unit pursuant to a lease agreement with the Owner thereof who, if requested by the Board of Directors, has delivered proof of such lease agreement to the Board of Directors;

(b) Members of the immediate family of such individual or of an owner