

INFORMATION PAPER  
SPHOA DOCUMENTATION

3 June 2018

Subject: Review of SPHOA Bylaws and Covenants, Conditions and Restrictions (CC&R).

Bottom Line Up Front: The SPHOA documentation is fundamentally sound, but requires substantial updates for internal consistency and to reflect the desires of the current membership.

Background.

1. Bylaws establish the structure of the day-to-day governance of the HOA (eg: board election rules; frequency of elections; number of board members; meeting frequency etc.)
2. Covenants, Conditions and Restrictions (CC&R) is a legally binding document that covers the rights and obligations of the members to the HOA and vice-versa.

Two primary reasons for CC&Rs:

- a. Maintain and enhance property values
- b. Ensure that homeowners can enjoy their property without annoyance, distraction or offensive use by their neighbors that falls short of being an actual violation of existing law.

3. The SPHOA Bylaws and Restrictions (aka CC&R) that are in effect are dated 14 March 1985. Review is recommended after 10 years.

Observations.

1. Is the name of the “corporation” the “Spinnaker Pointe Property Owners Association” or is there another name such as “Spinnaker Pointe Home Owners Association”? The original was consistent developer ownership as discussed in the pre-amble to the original documentation.
2. Does the current HOA have a charter?
3. Is the current corporation listed as a NC tax free association (for the IRS as a 501(c)(4))?
4. References to NC General Statutes need to be updated and rectified with specific codicils within the documentation. For example, Bylaws Article Four § 1 (on page 4) references N.C. Gen. Stat. 55A-32 (1987). According to the official NC Legislative site, Chapter 55A is the “North Carolina Nonprofit Corporation Act.” That is consistent with a

HOA. But there is no chapter 32 in the 1993 base act.

([https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\\_55A.html](https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_55A.html))

5. Many of the restrictions in the un-adopted amendment version seem logical, and can form the basis of a new update, if they still apply.
6. The general language of the documentation is that of a developer and should be rewritten to reflect the perspective of a HOA.
7. Observations specific to the bylaws and CC&R are inserted into the documents.

Recommendations.

1. Update language and rectify references across the two documents (eg; corporate name).
2. Besides the changes listed in the un-adopted amendments, what changes need to be included, such as approval for metal roofs, given specific definitions of for an appropriate metal roof.
3. Engage a lawyer to review a re-written bylaws and CC&R. Expenses may decrease if the HOA provides a 90% solution and just needs a review vice having the lawyer write the documents. HOA bylaws and CC&R creation appear to be a specialized legal skill.

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