

# Legal Issues for Oklahoma Community Associations

A Basics Seminar

**Matthew L. Winton<sup>PLLC</sup>, Esq.**

**WINTON LAW**

3233 East Memorial Rd., Suite 103  
Edmond, Oklahoma 73013  
405.478.4818

[www.wintonlaw.net](http://www.wintonlaw.net)  
[www.okhoa.blogs.com](http://www.okhoa.blogs.com)  
[mlw@wintonlaw.net](mailto:mlw@wintonlaw.net)

**Legal Service for Community**

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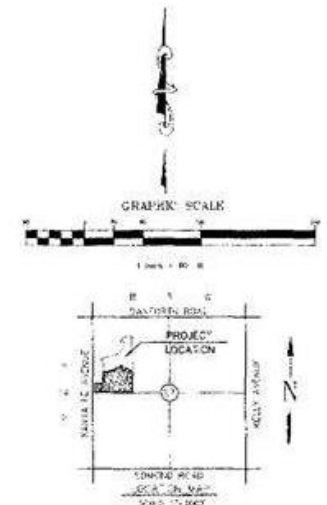
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# Documents - Overview

- 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 BEARINGS OF SOUTHWEST 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 COMMERCIAL, WAS USED AS THE BASIS OF BEARINGS 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 3/4" ROR PM
  - D & U/E - DRAINAGE & UTILITY EASEMENT
  - B/L - BUILDING SETBACK LINE
- Lots C and D are Common Area to be maintained by the Bridgewater Property Owners Association.

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 25 SOUTH OKLAHOMA AVENUE - SUITE 400 - OKLAHOMA CITY, OK 73104  
 PHONE: 405.443.7004  
 OKLAHOMA LEASHEED OF ASSOCIATION NO. 2046 EXPIRES APR 30, 2003

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# Law – Overview

## The law of HOAs

- 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
- Where is it? Access the law at **[www.oscn.net](http://www.oscn.net)**
- Recent changes: Lending requirements: FHA/VA (condo projects)

# Law – Parliamentary Procedure Applicable Case Law

- Horry v. City of Tulsa, 2004 OK CIV APP 13 (tie vote means no decision, NOT a “no” decision) [No RONR]
- Stone v. Dean, 1959 OK 111; Estes v. Tompkins, 1962 OK 47 (What constitutes adequate notice?) [Yes RONR]
- Oldham v. Drummond Bd. Of Educ., 1975 OK 147 (Statute controls over RONR) [No RONR]

# Law – Parliamentary Procedure Applicable Case Law, cont'd

- Bonney v. Smith, 1944 OK 149 (On a 3 member board,  $\frac{3}{4}$  vote requirement means all 3 members approving) [No RONR]
- Gelder v. Loomis, 1980 OK 10 (Motions to limit discussion permissible under “normal parliamentary procedure.” [No RONR]
- First Nat’l Bank v. Daugherty, 1926 OK 876, ¶14, 17; Hartford Accident & Indemnity Co. v. City of Sulphur, Okl., 123 F.2d 566, 571 (10<sup>th</sup> Cir. 1941) minutes are prima facie evidence of meeting events. Rebuttable presumption.

# **Law – Unincorporated Associations**

## **The Law of 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 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 [www.okhoa.blogspot.com](http://www.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
- RONR disfavors proxy voting
- 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?

# Amendments – Reasons Why

9. No shooting from boats, except for cripples, and in no event shall a motor be ‘running’ in so doing. (The boat shall not be in forward motion.



# Amendments - Overview

## Gov. Doc. Amendments

- Why? Defective/obsolete language, grammatical errors, change in law and/or facts, remove defunct Declarant language.
- Follow amendment provision within document.
- 11 O.S. 42-106.1
- Absent special amendment provision, each Lot owner must execute a notarized ballot to be filed with the amendment
- Covenants – Regular and intentional oversight
  - Special amendments – 11 O.S. 42-106.1(D)
- Bylaws – Board and member amendments – 18 O.S. 1013

# Assessments: Overview

- Four types: Annual, Special, and Specific/Individual, Reserve (See, CAIRF BPR for reserves)
- Procedure: Accounting system; Owner tracking; invoicing, title companies
- Collections: Communication; customer service; Liens; Judicial actions
- Costs and Attorneys Fees

# Assessments - Collections

- Periodic review of amount
- Consistent application of interest
- Uniform invoicing and collections; title company contact
- Systematic preparation and filing of liens
- Small claims actions
- Foreclosure of liens

# Dispute Resolution - Overview

- Clear, up-front communication
- Room for honest disagreement
- Informal Mediation
- Binding arbitration
- Penalties: no vote, no common area
- Monetary Fines
- Small Claims Court
  - Collections of assessments and fines
  - Amounts under \$6,000.00
- District Court
  - Injunctions, damages
  - Declaratory actions (honest disagreement)

# Finance - Overview

- Budgeting
- Accounts receivable
- Account payable
- Reserve funding (sinking fund, savings)
- Taxation
- Association borrowing
- Working with lenders and title companies

# Finance - Some Basic Financial Practices

- On a monthly basis, the treasurer or bookkeeper should reconcile the Association accounts. This means comparing the bank statement with the accounts ledger and coming to a zero balance.
- On a monthly basis, the Association's financial picture should be reported to the board.
- The board should adopt a standardized collections resolution for the prompt collection of accounts payable, which also serves to treat each owner uniformly.
- The board should have several persons who can sign checks to allow for continuity
- The board should make its contact information known to area title companies to ensure prompt payment at closings.

# Finance - Reserve Funding

- Capital improvements wear out, break, etc.
- Unless their replacement can be covered within the annual budget, the replacement would be a reserve item.
- Reserve Study
- Reserve assessments
- Special assessments
- Fairness

# **Insurance - Overview**

## **Insurance Issues**

- Insurance protects against casualties and liabilities
- Specialized insurance packages for community associations
- Director's & Officers Insurance
- Insurance must “fit” to Gov. Doc.
- Annual review of coverage
- Duty to defend certain claims



# Operations – Board Primer

## Getting Started...

- Find a mentor
- Accumulate resources
- Learn the governing documents
  - Covenants
  - Bylaws
  - History
- Know your duties
- Use systems, forms, checklists

# Operations - Board Duties

- Look for the “shall”
- Business judgment rule
- Duty of loyalty
- Duty against self-dealing
- Duty of inquiry: accounting
- Arbitrary and capricious
- Protect against embezzlement

# Operations – Board Statutory Immunities

- 18 O.S. 865-867
- 18 O.S. 1027(E): A member of the board of directors, or a member of any committee designated by the board of directors, in the performance of the member's duties, shall be fully protected in relying in good faith upon the records of the corporation and upon information, opinions, reports, or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within the officer's, employee's, committee's or other person's competence and who have been selected with reasonable care by or on behalf of the corporation.

# Operations – Books & Records

## 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”

# Operations - Books and Records

- Consist of Financials, Governing Documents, Owner Files, Litigation/Enforcement Files, Minute Book/Organizational File
- Governing Documents may outline member rights to the books and records
- If incorporated, Oklahoma law grants access to members
- See [www.okhoa.blogs.com](http://www.okhoa.blogs.com) for an article on records access

# Operations - Common Mistakes in Common Interest Communities

- Over-eager/under-eager enforcement
- Failure to provide due process if required by the governing documents
- Failure to properly constitute the ARC
- Enforcing non-existent covenants
- Assuming court will be a panacea
- Failing to place a D&O insurance policy

# Operations – Myths

## Have you ever heard...

- “My neighbor’s fence doesn’t comply with the covenants, so I’ll sue the HOA.”
- “Plant more trees in the Common Area or else...”
- “The Board doesn’t enforce the covenants, so I’m not paying my assessments.”
- “I never received a copy of my covenants, so they don’t apply to me.”
- “You can file a lien, but you can’t foreclose.”