



# CMCA STUDY GUIDE

## Legal Basis and Governance of Community Associations

*Steven L. Sugarman, Esquire  
Steven L. Sugarman & Associates  
1273 Lancaster Avenue  
Berwyn, PA 19312  
(610) 889-0700 (FAX) (610) 993-0498  
[www.suglaw.com](http://www.suglaw.com)  
August 11, 2020*

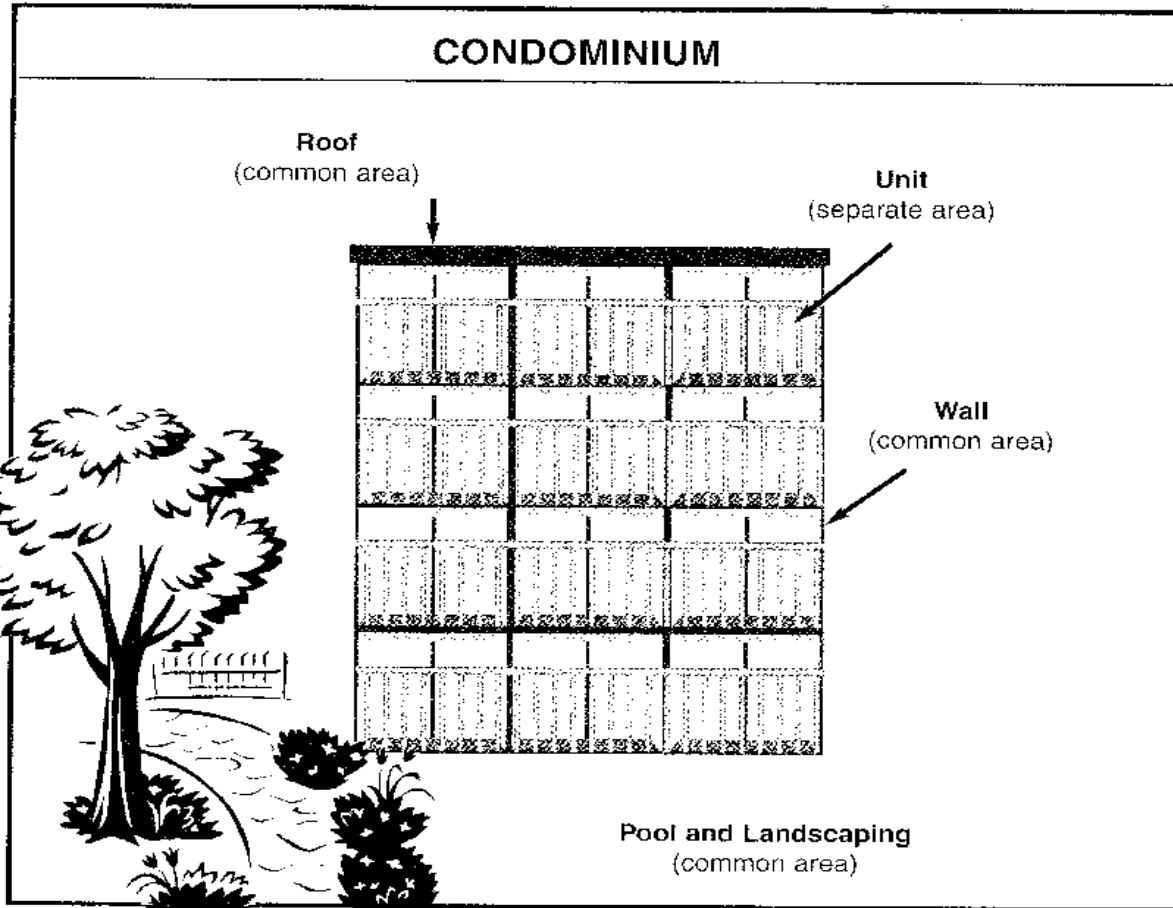
***FORMS OF  
COMMON INTEREST  
OWNERSHIP***

# Common Interest Ownership: The Fundamentals

- Owners, by virtue of accepting a deed, automatically become members of a community association
- Governing documents, including the declaration, bylaws and rules and regulations, create mutual obligations
- Assessments are levied and collected for the operation of the Association
- Owners share a property interest
- All constitute forms of common interest ownership, not a structure or style of housing

# Distinctive Ownership Interest

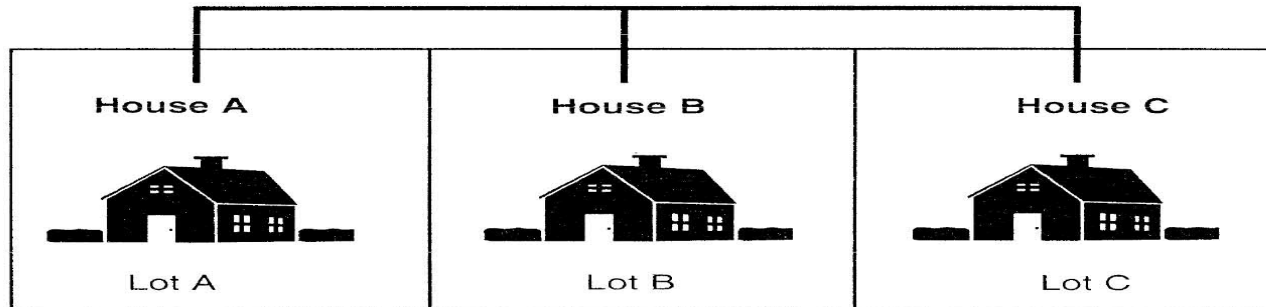
- ***Condominium*** – buyer owns space within a unit and an undivided percentage interest in the common elements
- ***Planned communities*** – buyer owns the entire unit and the association owns the common elements
- ***Cooperative*** – buyer owns shares of the cooperative, plus an exclusive right, under a proprietary lease, to occupy a unit and the cooperative owns the entire project
- ***Master associations*** – buyer owns a unit, plus an interest in the common area owned by an umbrella association and in the common area within a separate neighborhood association



\*Reprinted with the permission of CAI

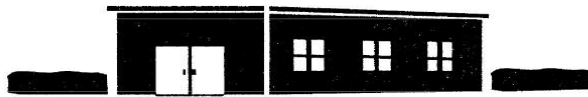
# PLANNED COMMUNITY

## SEPARATE AREA

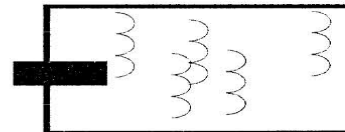


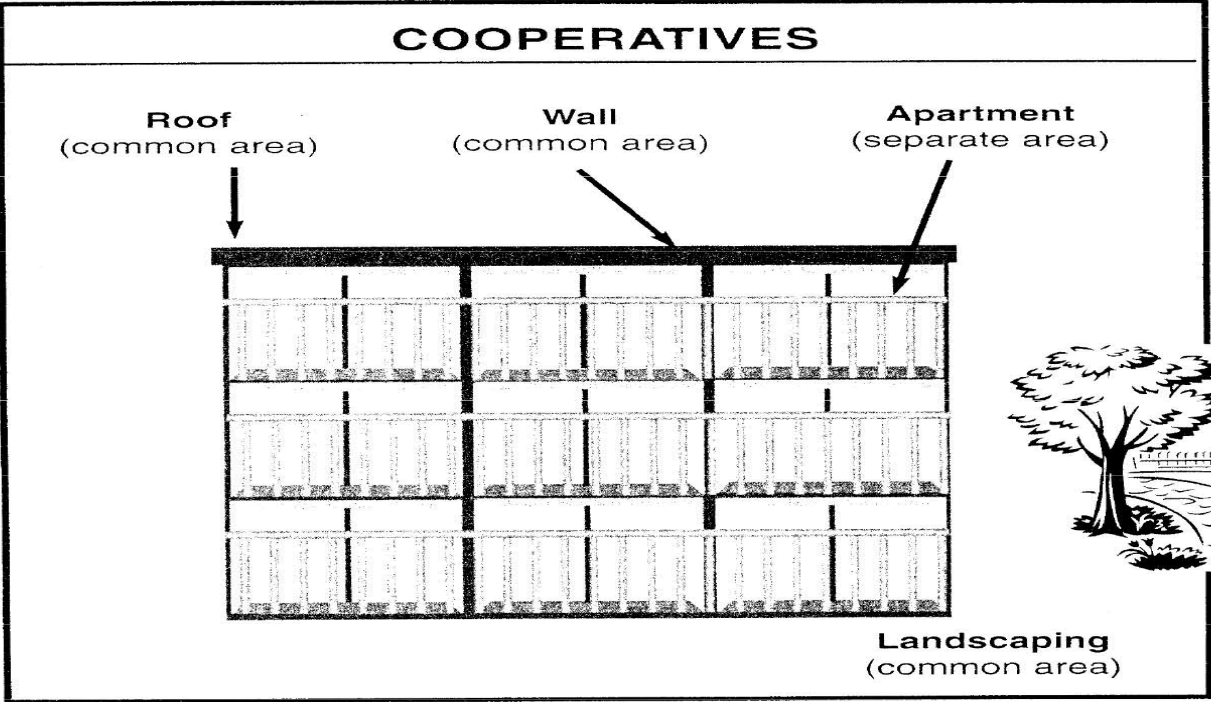
## COMMON AREAS

Clubhouse

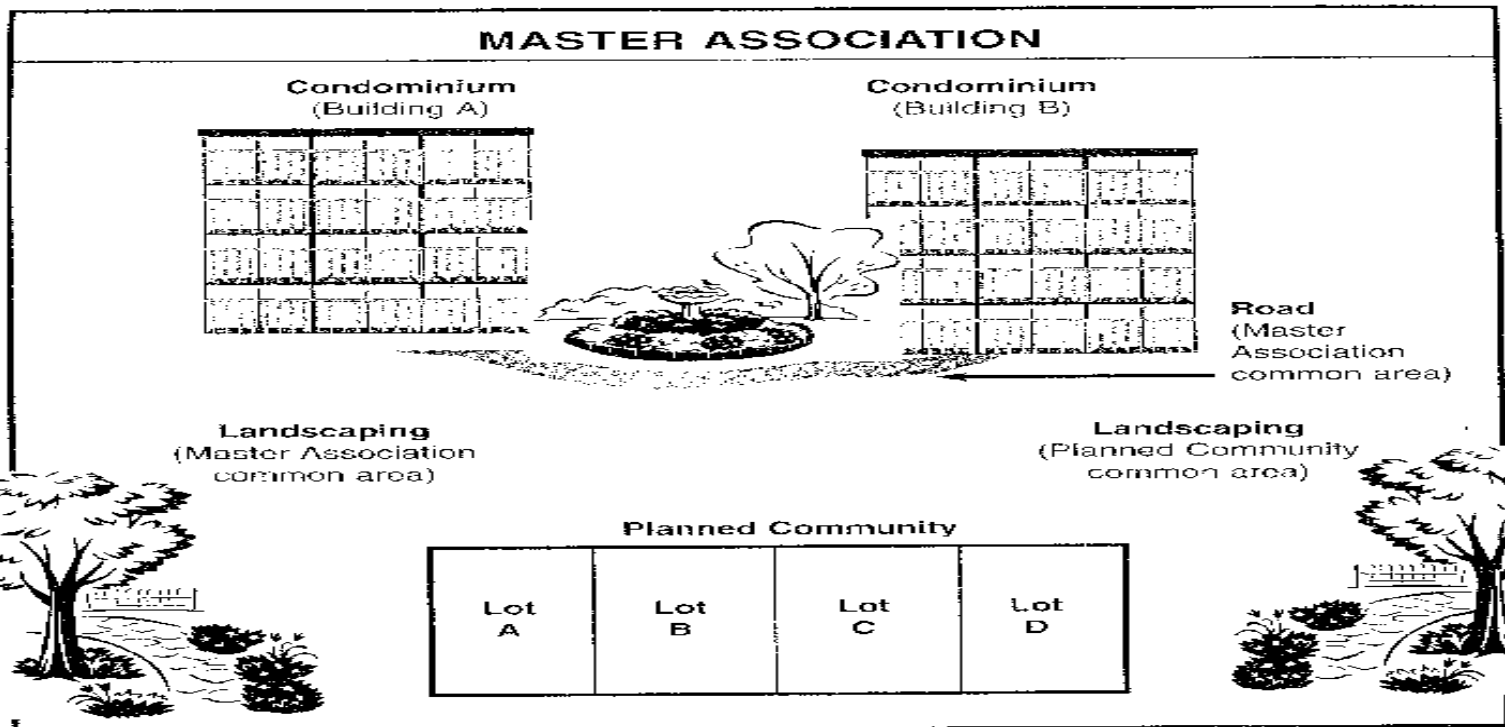


Swimming Pool





\*Reprinted with the permission of CAI



\*Reprinted with the permission of CAI



***FORMATION  
OF THE  
COMMUNITY  
ASSOCIATION***

# Formed and Operated as a Business Entity

- Developer/Declarant forms the entity
- Usually a non-profit corporation pursuant to state law
- May be unincorporated association, business corporation or trust
- The Association is a private residential community, but may have some facilities open to the public

# Sources of Authority

- Statutory authority: Uniform Condominium Act, Uniform Planned Community Act or Uniform Common Interest Ownership Act
- Governing Documents:
  - Declaration of covenants, conditions and restrictions (commonly referred to as the “CC&R’s”)
  - Plats and Plans
  - Articles of Incorporation
  - Bylaws
  - Rules and Regulations

# Hierarchy of Documents

- **Declaration**
  - Recorded document
  - Amendment requires membership vote (usually by super-majority, i.e. 67%)
- **Articles of Incorporation**
  - Filed with the Department of State
  - Amendment usually requires a membership vote
- **Bylaws**
  - Not recorded
  - Amendment usually requires a membership vote (usually by majority)
- **Rules and Regulations**
  - Not recorded
  - Adoption or amendments require board vote, only

# Federal Statutory Law

Although formed under and subject to State law, community associations are also impacted and guided by Federal statutory laws, including the following:

- United States Bankruptcy Code
- Fair Debt Collections Practices Act
- Telecommunications Act of 1996 (OTARD--Over the Air Reception Devices)
- Fair Housing Act (FHA)

***Roles of the Developer,  
Board of Directors of the  
Association and Unit Owners***

# Developer

- Creates the community
- Prepares the original governing documents
- Creates initial association budget and maintains records during the period of declarant control of the association
- Appoints the initial members of the Board of Directors
- May also be the Seller of units within the Association

# Board of Directors

- Responsible for the operation of the association pursuant to statutory law and the governing documents
- Acts in all instances on behalf of the association
- Fiduciary Duty:
  - Board members must perform their duties in good faith, in the best interest of the association and with reasonable care, including reasonable inquiry, skill and diligence as a person of ordinary prudence would use under similar circumstances
  - Discharge duties by relying upon the advice of third-party professionals



# The Unit Owners

- Right to stand for election to and elect the board
- Authorization to amend the governing documents and the budget proposed by the board
- Obligation to pay assessments and adhere to the restrictive covenants and other provisions set forth in the governing documents



*Governance and  
Meetings*

# Conflicts in the Community

- The nature of the community association regime necessarily engenders conflicts between the interests of the community as a whole and the private rights and interests of the unit owners. Such conflicts typically involve the regulation of such matters as:
  - Pets
  - Vehicles and parking
  - Leasing
  - Architectural controls
  - Noise
  - Smoking

# Governance by the Board

- Board's rule-making authority
- Rules must be consistent with declaration/bylaws
- Enforcement mechanisms:
  - Fines
  - Suspension of rights to facilities
  - Injunctive relief in the court

# Dispute Resolution Procedures

- State mandated grievance procedures
- Internal grievance procedures
- Use of due process, i.e., notice and an opportunity to be heard
- Mediation or arbitration
- Private contractual agreements, including indemnification and maintenance agreements
- Always maintain communication in the community association

# Meetings of the Association

- Agenda
  - Prepare for Each Membership Meeting
  - Spell out Each Item With Particularity
  - Use to Control the Meeting

- Notice of Meetings
  - Getting the Members to Attend
  - Annual vs. Special Meetings
  - Comply with All Governing Documents for Timely Notice and Method of Notice
  
- Voting Tools and Methods
  - Proxies and Mail-In Ballots
  - In-person by Ballot
  - Use of Electronic Technology
  - Must be Authorized Under the Governing Documents and/or State Laws

- Conducting the Meeting
  - Robert's Rules of Order
  - The Modern Rules
  - Board Resolutions and Rules for Meetings
  - Use of Electronic Technology and Telephone Conferences
  - Appointment of Judges of Election
  - Unanimous Consent of the Board Members in Lieu of Meeting
  - Remember to Follow the Bylaws, Statutory Laws and Rules