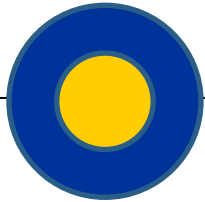


# So you joined a community association board, now what?



Kevin M. Hirzel, Esq.  
[kevin@hirzellaw.com](mailto:kevin@hirzellaw.com)  
248-478-1800





## What is a community association?

### Real Estate



### Government



### Society

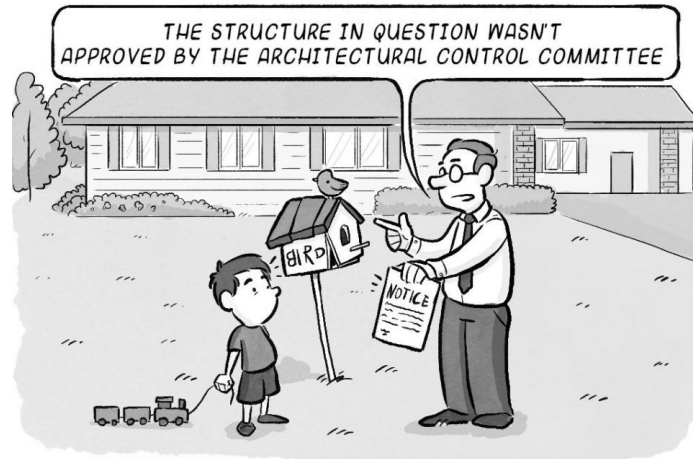




## Overview

- **What are the governing documents and why are they important?**
- **What are the different types of meetings and how do you legally take action?**
- **How do you enforce the governing documents?**
- **BONUS: Hirzel's Hurtful Mistakes to Avoid**

# *The Governing Documents*





## Articles of Incorporation

What are the types of entities?

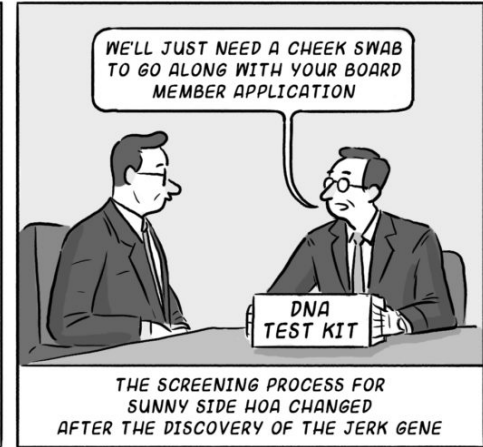
1. **Nonprofit (membership v. directorship)**
2. **For Profit**
3. **Unincorporated**
4. **Voluntary v. Mandatory**

A Corporation is formed by filing the Articles of Incorporation. The Articles of Incorporation are filed with LARA:

<https://cofs.lara.state.mi.us/corpweb/CorpSearch/CorpSearch.aspx>



gogladly.com/comics gladly



THE SCREENING PROCESS FOR SUNNY SIDE HOA CHANGED AFTER THE DISCOVERY OF THE JERK GENE

**An annual report must be filed each year to maintain the corporate existence.**

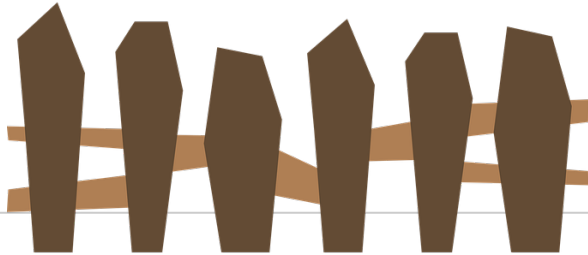


## Articles of Incorporation

- **Corporate Purpose:** Who are the members and what power does the Association have?
- **Membership:** Who are the members? Are land contract vendees members and do they have membership rights?
- **Limitation of Director/Officer Liability:** What is the standard of care for directors?
- **Indemnification:** Are Directors/Officers/Volunteers indemnified if they are sued and under what circumstances?
- **Action without a Meeting:** Are you required to hold a meeting or can you circulate a ballot without calling a meeting?
- **Compromise or plan for reorganization amongst creditors**

# Director Liability

Jo Jo Brown is the President of the Virus Valley Association. He is on the board with Joe Manwich and Kristen Cinema. Jo Jo Brown wants to beef up the infrastructure and repair the road in the condo. In a 2-1 decision, the board votes down Jo Jo's build the road back better plan. Jo Jo consults with the Association's attorney who advises Jo Jo he can enter into a contract with a road company anyway since he is the President. Jo Jo enters into a contract for \$1,000,000. Joe and Kristen sue Jo Jo.



**Is Jo Jo liable for  
the \$1,000,000?**



# Avoiding Liability

- **Rely on the Advice of Counsel**
  - MCL 450.2541
  - Business Judgment Rule



- A director or officer is not entitled to rely on the information if he or she has knowledge concerning the matter in question that makes reliance unwarranted.
- **Enforce the Documents as Written!**



# Director Liability

Jo Jo's head explodes after the "Build Back Better" lawsuit. The Bylaws require the Association to carry \$2,000,000 in insurance. Joe and Kristen previously voted 2-1 to reduce the Association's insurance coverage from \$10,000,000 to \$1,000,000. The clubhouse burns down and costs \$2,000,000 to rebuild. The Board votes 2-1 to levy an additional assessment for \$1,000,000 to rebuild the clubhouse. Jo Jo sues Joe and Kristen for breach of fiduciary duty.



**Are Joe and  
Kristen liable?**



## **Director Liability– POST 2015 AMENDMENTS - MCL 450.2209(c)**

The Articles of Incorporation may eliminate director/officer liability for money damages for any action or any failure to take action with the following exceptions.

- A financial benefit received by a director or volunteer officer to which he or she is not entitled.
- Intentional infliction of harm to the corporation, its shareholders, or members.
- An intentional criminal act.
- A liability imposed under section 497(a) (attorney’s fees and costs incurred in a failed derivative action).

**ELIMINATION OF LIABILITY IS OPTIONAL – CUSTOMIZE YOUR DOCUMENTS**

## **Indemnification – MCL 450.2209(e)**

The Articles of Incorporation may allow the Association to assume liability under the following circumstances:

- The volunteer was acting or reasonably believed he or she was acting within the scope of his or her authority.
- The volunteer was acting in good faith.
- The volunteer's conduct did not amount to gross negligence or willful and wanton misconduct.
- The volunteer's conduct was not an intentional tort.
- The volunteer's conduct was not a tort arising out of the ownership, maintenance, or use of a motor vehicle.

## Directors & Officers Insurance

- Duty to Defend
- Duty to Indemnify
- Occurrence (broader) v. claims made (limited)
- Crime / Fidelity / Cyber





## The Remaining Governing Documents

### Condominiums

- Master Deed
- Condominium Bylaws
- Corporate Bylaws  
(separate or combined)

### HOA's

- Restrictive Covenants  
(a/k/a Deed Restrictions or Declarations)
- Corporate Bylaws (typically not recorded)



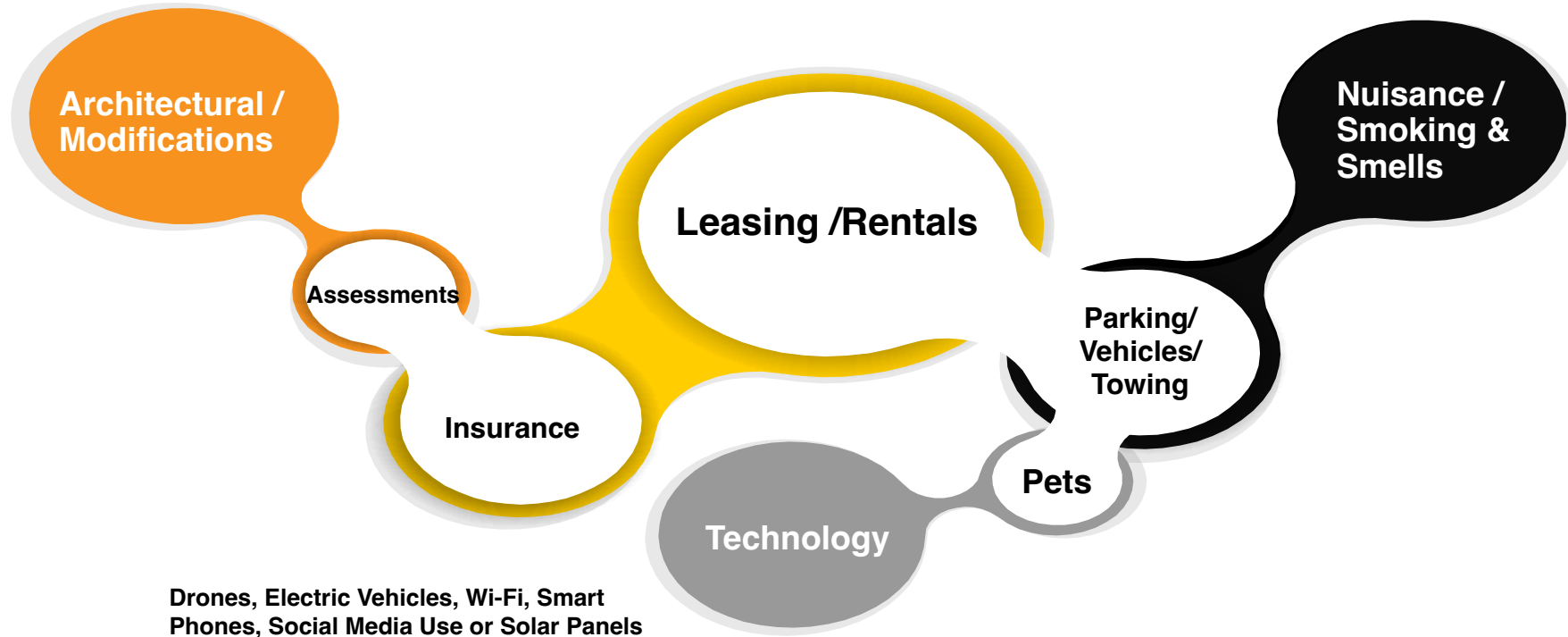


## What to look for in the Master Deed

- **Legal Description:** Is it correct? Do the number of units in the text match the condominium subdivision plan?
- **Common Elements:** Limited v. General. Are the responsibilities of repair clearly outlined?
- **Responsibility for repair:** Association v. Co-owner
- **Percentage of Value:** Does it add up to 100%? Is it used for ownership of common elements, voting and/or assessments?
- **Easements:** Do third-parties or the developer have rights to use the property?
- **Amendments:** 2/3 co-owner approval, 2/3 mortgagee approval & developer consent.

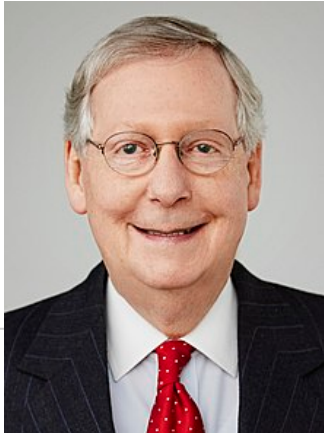


## Condominium Bylaws/ Covenants



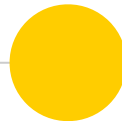
# Rules and Regulations

The Virus Valley Association bylaws require the Association to maintain, repair, and replace the limited common element front door of each unit. The bylaws also permit the board to adopt rules regarding the appearance of the condo. The board adopts a rule requiring that all front doors be painted brown at the co-owner's



**The Association sues Mitch!**

**Who Wins?**







## Signs Your Documents Need to Amended

**Master Deed  
& Bylaws –  
Pre 2002**

**No  
Amendments  
after  
Developer  
Turnover**

**Technology**

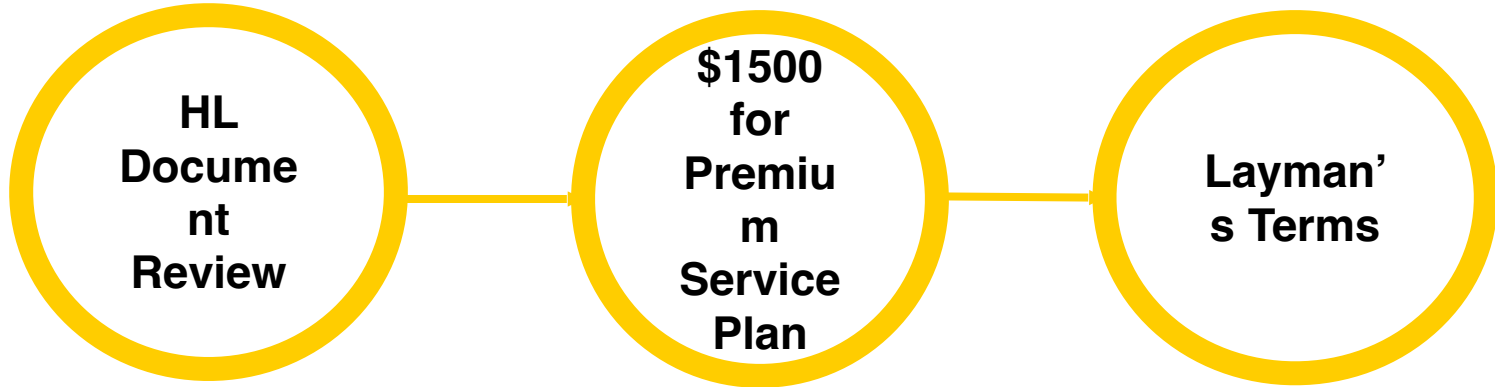
**Practice  
differs from  
language**

**Conflicting  
Provisions /  
Confusing**

**No  
Limitations on  
Liability**



## Condo / HOA Report Cards



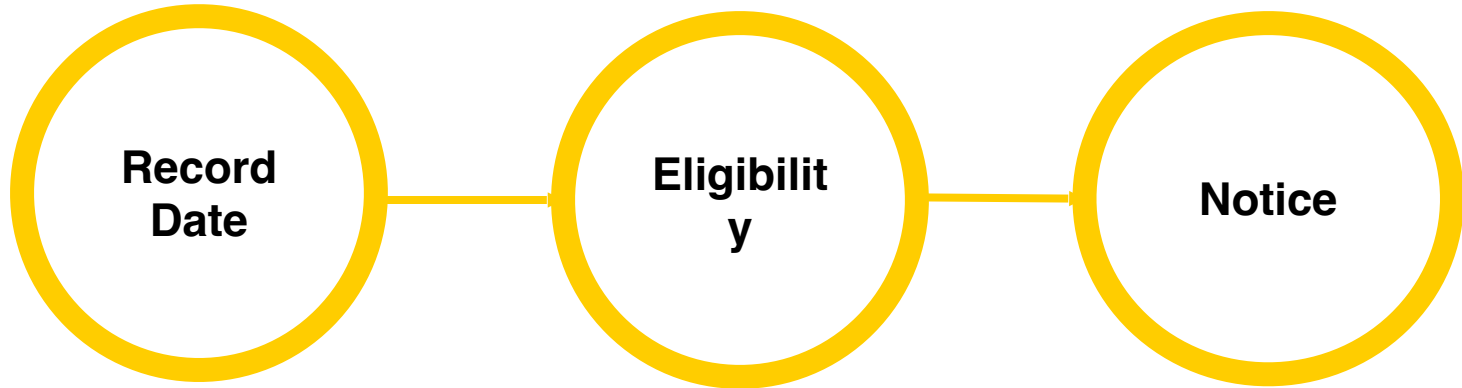
# Meetings

*HAVING CONCLUDED THE EVENING WITHOUT SHOUTING OR VIOLENCE,  
KAREN CONSIDERS THIS WEEK'S BOARD MEETING A RESOUNDING SUCCESS.*





## The Annual Meeting



**Make sure you are electing  
directors, not officers at the  
annual meeting!**



## Board Meetings

**Architectural  
Approval**

**Budgets**

**Contracts**

**Elect Officers**

**Enforce  
Restrictions**

**Meeting  
Minutes**

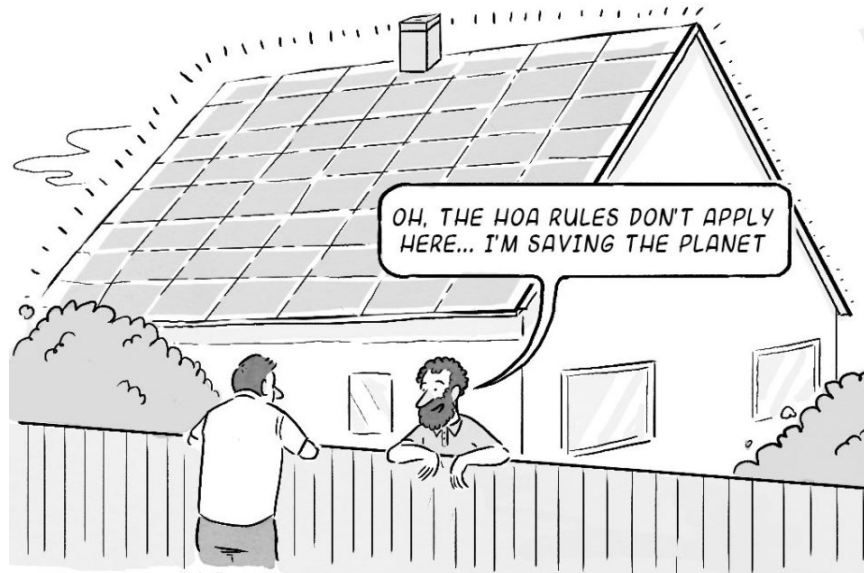
# The Board Meeting

The Virus Valley Association can't convene a board meeting. Jo Jo does not want to be in the same room as Joe Manwich after he tanked his "Build Back Better" plan. Jo Jo proposes the following options:

**Are any of these viable options?**



# *Enforcement*





## How to enforce the governing documents?

- Fines
- Liens
- Money Damages
- Injunctive Relief
- Recovery of Attorney's Fees (Is your provision specific, does it cover pre-litigation fees?)
- Bylaw Enforcement/Collection Policies





# Fines

Hunter Brown is an investor that owns 10 condo units. The bylaws are well drafted, most likely by the top-notch attorneys at Hirzel Law, PLC. The bylaws prohibit rentals for less than 6 months. Hunter rents his units on Airbnb on a weekly basis. Jo Jo says he knows nothing about Hunter's investments.

Joe Manwich and Kristen Cinema instruct the property manager to fine Hunter \$100 for each violation per the bylaws. Hunter does not pay the fine. The Association places a lien for the unpaid fines.



[gogladly.com/comics](http://gogladly.com/comics) 

**Hunter sues to have  
the liens removed.  
Who wins?**



## Liens and Foreclosure

Hunter Brown is upset about the rental restrictions and stops paying assessments. Hunter has a unit that has \$500,000 that is owed on his 1st mortgage.

What is the best course of action if the Unit is worth \$1,000,000?

What is the best course of action if the Unit is worth \$100,000?

What if the mortgage was a 2<sup>nd</sup> mortgage?



## Injunctions

The condo bylaws require board permission to alter any of the common elements. Hunter Brown places a hot tub on his limited common element deck that is for his exclusive use. Hunter hires an electrician to install a dedicated box to power the hot tub on his limited common element porch. The bylaws are silent on whether hot tubs are allowed. The Association sues Hunter and seeks an injunction to remove the hot tub as Hunter did not request permission to modify the limited common element porch or connect to the Association's electrical system.



**Does Hunter get to keep the hot tub?**



## Money Damages

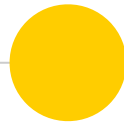
After his short-term rental business is closed, Hunter Brown opens a recreational marijuana business. The condo bylaws prohibit illegal activity, but Michigan has decriminalized marijuana. Hunter plugs his grow lights into the common element hallway electrical outlets to save some money. The Association's electric bill increases \$10,000 the next month.

Can Hunter grow marijuana?

How can the Association recover the \$10,000?



# **Hirzel's Hurtful Mistakes to Avoid!**



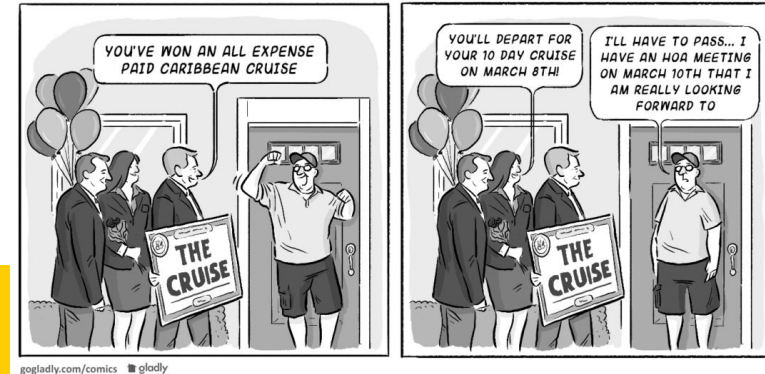


## Quorum

Virus Valley has 100 units. The bylaws state that quorum is 50% of the co-owners that are in good standing. All co-owners are in good standing. 48 people show up to the annual meeting. The Association proceeds with the meeting. Donald Bump, Donald Bump, Jr. and Ivana Fairelection are elected to the board at the meeting by a razor thin margin.

Jo Jo sues and says the meeting was invalid.  
Will the court order a new election?

What if somebody made a motion to waive  
quorum?





## Audits and Reviews

Donald Bump is concerned that Jo Jo is mismanaging the Association's finances. He demands that the Association perform an audit. Joe Manchin and Kristen Cinema indicate that an audit would cost \$4,000 per year and that an audit is not required by the condo bylaws. They obtain a compilation for \$500 instead of an audit and send it the co-owners.



[gogladly.com/comics](http://gogladly.com/comics) gogladly

**Donald sues the Association for an audit. Who wins?**

# Record Inspections

Donald Bump wants a full investigation into the Association's expenditures. He claims that Jo Jo is improperly involved in Hunter's business dealings. Donald attends the next board meeting and demands that the board email copies of every receipt for every



**Does the board have to produce the records?**





# Fannie Mae / Freddie Mac Approval

Virus Valley is an attached condo with 100 units. 20% of the units are delinquent. The Association receives an engineering report from a structural engineer indicating that the building has minor concrete cracking that can be



**Will Fannie Mae/Freddie Mac  
purchase mortgages from this  
condominium?**



# Fair Housing

Virus Valley re-opens the pool after the COVID-19 pandemic. The board adopts rules requiring that any child under the age of 3 use the kiddie pool and any child under the age of 13 be accompanied by an adult when using the large pool

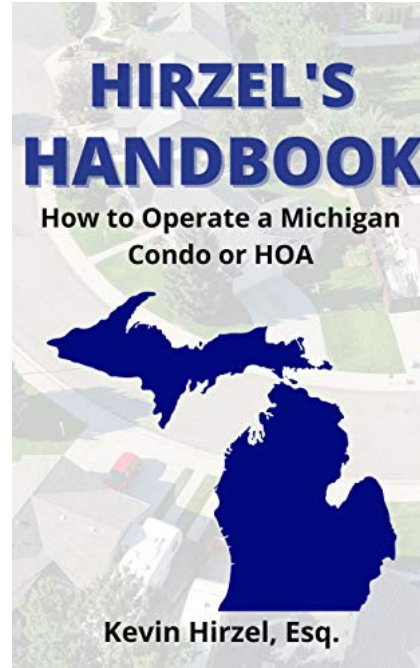


**Is Hunter correct?**





## The Book



**\$9.99 on  
Amazon.com**

**<https://www.amazon.com/Hirzels-Handbook-Operate-Michigan-Condo-ebook/dp/B08RJYMJVR>**

*This template is from SlidesCarnival. More info on how to use this template at [www.slidescarnival.com/help-use-presentation-template](http://www.slidescarnival.com/help-use-presentation-template)*



# Thanks!

***Any questions ?***

You can find me at