

## **DEFINITIONS**

**Reference:** <https://info.legalzoom.com/difference-between-bylaws-covenants-27294.html>

### **What Is the Difference Between Bylaws & Covenants?**

Bylaws and covenants are both types of promises made between parties with possible consequences for a breach of the promise. The major difference between these two concepts lies in the nature and format of their creations, as well as the typical context in which both are enacted. While bylaws are generally mutually agreed upon governing rules for an organization or business, covenants are usually long-term promises to do something or refrain from action that may last for several generations.

### **Purpose of Bylaws**

Corporations, non-profit organizations or any similar group of people who are working together for a similar purpose and need a governing set of rules use bylaws. Bylaws typically address issues like membership, annual dues, the roles and duties of the governing board and reasons why a member may be disciplined or excluded. When an organization gets started, the founding members decide on the bylaws following mutual input and discussion. Failure to abide by a bylaw will likely result in some sort of discipline as indicated by the bylaws themselves, as opposed to personal liability or legal recourse from a tribunal.

### **Examples of Bylaws**

Within a set of bylaws is usually a section pertaining to the course a person must take to become a member within the organization. For instance, the prospective member may need to enroll in training or obtain approval from a majority of current members. Another common bylaw often involves the payment of annual dues to a corporation to

maintain membership. Bylaws also often set forth discipline procedures for members, which may include private admonition, censure and eventually termination from the organization.

## **Purpose of a Covenant**

A covenant, by contrast, is a more formal promise or contract between two parties to engage in, or refrain from, certain conduct or behavior. The term itself is considered Biblically based, although it has several applications in modern law. A covenant promise is a more formal arrangement than a bylaw and is generally used between two individuals as opposed to used in a larger business or organization sense. Breach of a covenant can lead to personal liability or other consequences as decided upon by the parties. Covenants are generally put in writing and may be used in a property deed or contract.

## **Examples of Covenants**

Covenants are commonly found in deeds to property subject to restrictions enforced by a homeowners' association. While a bylaw only pertains to the individual entering into membership in the organization, a covenant may actually bind all successive property owners. Covenants are also used in contracts to ensure that parties adhere to the provisions of the agreement. A breach of contract covenant can result in a lawsuit for damages or termination of the agreement.

**Reference:** <https://www.kppm.com/understanding-the-differences-between-ccrs-bylaws-and-rules-regulations/>

## **Understanding the Differences Between CC&Rs, Bylaws and Rules & Regulations**

Your homeowners association has three types of governing documents:

- a. Covenants
- b. Conditions & Restrictions (called "CC&Rs")
- c. Rules & Regulations, and Bylaws.

Frequently, the function of these documents or implementing them can be confusing.

## **Covenants, Conditions & Restrictions (CC&Rs)**

This is a legally binding document that is officially recorded and filed with your state. Your CC&Rs cover the rights and [obligations of the homeowners association](#) to its members and vice versa.

CC&Rs often cover legal issues, such as:

- Property-use restrictions
- Clearly defined maintenance obligations for the HOA and individual members
- Mechanisms for rule enforcement and dispute resolution
- Lender protection provisions
- Assessment obligations
- Insurance obligations
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Because this record is kept on file with the state, it can be difficult to amend and requires a vote by the membership to make any changes.

## **Bylaws**

As stated above, If CC&Rs cover the “what” of the HOA, the bylaws cover the “how.” Your community’s bylaws establish the structure of day-to-day governance of your homeowners association. This includes things like:

- Frequency of HOA board elections
- Process for nominating and electing new board members
- Number of members that serve at one time
- Length of board member service terms
- Meeting frequency and quorum requirements
- Duties and responsibilities of board members

Like CC&Rs, Bylaws are difficult to change, as they too may require a vote by the membership to amend.

## **Rules & Regulations**

Your community's Rules & Regulations are a catch-all for the things that aren't covered in the Bylaws or CC&Rs. These are often the rules that might need revising over time due to changes in the community. For example, an HOA might have a rule that states that no children are allowed in the community pool before noon. This rule would not be a part of the community's CC&Rs because it might need to change seasonally, or as more children move into the community.

Rules & Regulations can be changed by an HOA board vote with review by the members of the community. Traditionally, the Board will adopt a rule then send a notice to the community members who will have 30 days to review it. After 30 days, the board will review the comments and concerns of members, considering the members' feedback in the final decision.

### **Every Restriction Can Be Changed**

CC&Rs, Rules & Regulations, and Bylaws are usually determined when a developer incorporates the community. The developer will try to anticipate the type of community or commercial property space they are creating, but the needs of a community often aren't fully clear until residents move in.

Every rule, regulation, covenant, condition and bylaw can be changed – it's simply a matter of which process is required to make the change. CC&R changes require re-filing with the state, so changes should be made sparingly and with the help of an experienced attorney. Meanwhile, Rules & Regulations are in effect at the community level and simply require a board vote with community member review.