

INSTRUCTIONS FOR USE OF LEGAL DOCUMENTS

FOR PLANNED-UNIT DEVELOPMENTS

These legal documents for planned-unit development are for nationwide use by the Department of Housing and Urban Development and the Veterans Administration. They should be carefully examined for conformance with local laws and changed where necessary. Their use is not mandatory but recommended because they will facilitate and expedite review by HUD-FHA and VA. They reflect the basic requirements of both agencies.

The documents were prepared for use in planned-unit developments with a home association, such as those described in Land Planning Bulletin No. 6. Such developments are, in essence, subdivisions of land into lots for use predominantly for owner-occupied homes which contain common land comprising an essential or major element of the development, such common land being owned by a home association (usually incorporated) to which residence land owners must belong and to which they must pay lien-supported maintenance assessments. The forms were prepared for use in town house, row house, or cluster-type developments. They may also be used in developments of single-family, detached houses which otherwise conform with the requirements of Land Planning Bulletin No. 6.

The following comments are made to assist in adapting these forms for use. Recommended provisions for special features such as exterior maintenance, etc., are contained in the List of Forms at the end of these instructions.

1. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Introductory Paragraph: The introductory paragraph must describe all property which will be subjected to the Declaration of Covenants, Conditions and Restrictions (Declaration), including the common area and the lots. Reference to an attached plan or plat is not sufficient. In staged developments, only the first stage should be described (see Section 7 of these instructions).

Article I, Section 4: The common area should be adequately identified by description. The developer must convey the completed common area to the association free and clear of encumbrances before the first lot is conveyed to a homeowner. In staged developments, only the common area in the first stage should be described (see Section 7).

Article II: If on-site vehicular parking is not provided on each lot, provisions for parking space should be included in this article (see paragraph 6).

Article III: The Class B membership and its weighted vote are intended to assure the developer that he will have control of the homeowners' association until seventy-five percent (75%) of the dwellings are sold. The specified date on which the Class B membership will convert to Class A membership should be not later than the estimated time required to complete and market seventy-five percent (75%) of the dwellings in the

development. In those jurisdictions which limit each member to one vote, the provision for Class B membership should be deleted.

Article IV: The maximum annual assessment entered in Section 3 should be adequate to enable the home association to carry out its responsibilities but should not be excessive. Lots owned by the developer should not be exempt from assessment.

The method of enforcing the assessment lien provided in Section 8 should be changed to conform with local law where necessary.

If it is contemplated that some nonresidential property in the development will be owned by public authorities or charitable organizations, it may be advisable to exempt such properties from the assessments. This may be accomplished by adding a new section to Article IV (see form #1 in the List of Forms).

Page 1
HUD-Wash., D.C.

4/73

4140.2

APPENDIX 1

2. ARTICLES OF INCORPORATION

The Articles of Incorporation may be changed to conform with local law, but they should not contain any provisions which are inconsistent with the Declaration.

Article IV: The property description in this article should be identical to that contained in the introductory paragraph of the Declaration. In staged developments, the description may include the entire development.

Article VI: The specified date on which the Class B membership will convert to Class A membership should be the same as the date inserted in Article III of the Declaration.

3. BY-LAWS

The recommended By-Laws contain only provisions relating to the functioning of the association and the Board of Directors. Provisions of the Declaration relating to the rights and obligations of owners (such as Articles II, III and IV) may be repeated in the By-Laws.

4. USE RESTRICTIONS

Customary use restrictions and easements for public utilities may be included in the Declaration. A new article should be employed for this purpose.

5. EXTERIOR MAINTENANCE

It may be advisable, particularly in town house developments, for the association to provide exterior maintenance of residences. The proper

maintenance of residence will thereby be assured. To accomplish this, a new article should be inserted in the Declaration (see form #2a in the List of Forms). If there are exterior features which the association would not maintain, such as patios or carports, such features may be itemized under this article.

If the association will maintain the exterior of individual residences, the annual assessment should include an amount sufficient for this purpose. If some of the residence will require far more maintenance than others because of greater exterior exposure, the covenants may provide for a different basis upon which the assessments will be calculated.

In developments where exterior maintenance is not contemplated as a normal function of the association, a provision whereby the association could perform exterior maintenance if a homeowner fails to maintain his residence in a satisfactory manner may be inserted (see form #2b in the List of Forms). This action would generally be taken by the association only in extraordinary circumstances in which the failure to act would jeopardize the value of the properties in the development.

In no event should the association provide interior maintenance of structures not owned by the association.

The By-Laws should contain, in any development where the association is given the authority to provide exterior maintenance, a provision imposing a duty on the Board of Directors to maintain the exterior of residences. The provision may be inserted in Article VII, Section 2 (see form #2c in the List of Forms).

6. TOWN HOUSES

If it is contemplated that the development will include town houses, it is advisable to provide for the following:

Exterior Maintenance: See Section 5 (above).

4/73

Page 2
HUD-Wash., D.C.

4140.2

APPENDIX 1

Parking: The lot size in many town house developments is not large enough to permit on-site or curb vehicular parking. The homeowner should be assured that he has sufficient, permanent exclusive parking space in the common area and that other owners may not claim a right to its use by virtue of their general easement. The general easement provision in Article II, Section 1 of the Declaration should contain an appropriate limitation (see form #3a in the List of Forms), and a new section should be added to Article II establishing the homeowner's right to sufficient parking space in the common area as a property right (see form #3b in the List of Forms).

Party Walls: In town house developments, a new article may be added to the Declaration to define the obligation of owners in relation to common

walls (see form #4 in the List of Forms).

7. STAGED DEVELOPMENTS

If the developer proposes to start with a relatively small development and to progress by stages, as explained in Sections 4.36 and 4.37 of Land Planning Bulletin No. 6, an additional provision, such as form #5 in the List of Forms, may be incorporated in Article VIII, Section 4 of the Declaration to permit annexation by the developer without the consent of the homeowners.

The developer should submit to HUD-FHA and VA a general plan of the entire development at the time of submission for the first stage. The general plan should contain:

- (1) a general indication of size and location of additional development stages and proposed land uses in each;
- (2) the approximate size and location of common properties proposed for each stage;
- (3) the general nature of proposed common facilities and improvements; and
- (4) a statement that the proposed additions, if made, will become subject to assessment for their share of association expenses.

Unless otherwise stated therein, such general plan shall not bind the developer to make the proposed additions or to adhere to the plan in any subsequent development. The general plan shall contain a statement to this effect. However, if the developer does proceed with development, as provided in this section, he must then submit detailed plans for the land to be developed.

As stated above, the property described in the introductory clause and Article I, Section 4 of the Declaration should include only the first stage. This will subject only that part of the subdivision in the initial stage to the Declaration. Other stages may be added by annexation as the development progresses.

8. DEDICATION OF COMMON AREAS

That plat should contain dedication language which will prevent an implication of dedication for public use (see form #6 in the List of Forms).

9. DEED CLAUSE

It is recommended in most jurisdictions that the deeds to individual lots contain provisions to preclude an implication that the grantee takes title to the middle of abutting streets, streams, etc. (see form #7 in the List of Forms).

10. INFORMATION BROCHURE

A written statement in simple terms must be prepared for use in the sales program to inform all home buyers about the homes association and the rights and obligations of lot owners. Specific information which must be included in the brochure is:

1. Organizational structure of the association.
2. Membership and voting rights of homeowners and the developer.

4140.2

APPENDIX 1

3. Requirements for annexation, merger and dissolution, and an explanation that the total membership of the homes association may be increased.
4. The maximum amount and the initial amount of assessments, the assessment lien, and method of enforcement.
5. Methods of changing the maximum assessments.
6. User fees, if any.
7. Nature of the common property, including improvements.
8. Services provided by the association.
9. Exterior maintenance of dwellings, if any.
10. Architectural control.

4/73

4140.2

APPENDIX 1

LIST OF FORMS

Exempt Property

Form #1

Section 10, Exempt Property: All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of _____ shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Exterior Maintenance

Form #2a

ARTICLE _____

EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior

maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

Form #2b

ARTICLE _____

EXTERIOR MAINTENANCE

In the event an owner of any Lot in the Properties shall fall to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

Form #2c

(h) cause the exterior of the dwellings to be maintained.

Parking

Form #3a

(d) The right of individual owners to the exclusive use of parking spaces as provided in this article.

4140.2

APPENDIX 1

Form #3b

Section 3, Parking Rights: Ownership of each lot shall entitle the owner or owners thereof to the use of not more than _____ automobile parking spaces, which shall be as near and convenient to said lot as reasonably possible, together with the right of ingress and egress in and upon said parking area. The association shall permanently assign _____ vehicle parking spaces for each dwelling.

Party Walls

Form #4

ARTICLE _____

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

Staged Developments

Form #5

(b) Additional land within the area described in Deed Book _____, Page _____ of the land records of _____ may be annexed by the Declarant without the consent of members within _____ years of the date of this instrument provided that HUD-FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

4/73

Page 6
HUD-Wash., D.C.

4140.1

Dedication of Common Areas

Form #6

_____ (Declarant)
 in recording this plat of _____
 (name of subdivision)
 has designated certain areas of land as _____
 (park(s), playground(s), etc.)

 intended for use by the homeowners in _____
 (name of subdivision)
 for recreation and other related activities.

The designated areas are not dedicated hereby for use by the
 general public but are dedicated to the common use and enjoyment of
 the homeowners in _____
 (name of subdivision)
 as more fully provided in the Declaration of Covenants, Conditions and
 Restrictions applicable to _____ dated _____
 (name of subdivision)
 19___. Said Declaration of Covenants, Conditions and Restrictions is
 hereby incorporated and made a part of this plat.

Deed Clause

Form #7

The fee title to any lot described as bounded by any street, lane,
 walkway, park, playground, lake, pond, pool or any other common
 property which has not been dedicated or accepted by the public and
 the fee title to any lot shown on the recorded plat of

 (name of subdivision)
 as abutting upon any such common property shall not extend upon such
 common property and the fee title to such common property is reserved
 to the grantor to be conveyed to the _____
 Association for the common enjoyment of all of the residents in
 _____.
 (name of subdivision)