

**GOVERNING DOCUMENTS  
OF  
THE PRESERVE OWNERS' ASSOCIATION**

1. **Arizona State statutes** – the statutes are the laws of Arizona that regulate the scope and the authority of the Board of Directors to conduct the business of the Association on behalf of all Lot owners in the subdivision. The Arizona State laws that apply to **Nonprofit Corporations** can be found on the following Web site. [www.cc.state.az.us/corp/records/np2001pdf](http://www.cc.state.az.us/corp/records/np2001pdf).

We are also governed by the **Arizona Revised Statutes for Planned Communities** (ASR's) numbers 33-1802 through 33-1807. These can be found on <http://azrealestate.westgroup.com>.

2. **Environmentally Sensitive Lands Ordinance** – February 19, 1991, the Council of the City of Scottsdale amended the Zoning Ordinance and created a new section to be known as the **Environmentally Sensitive Lands Overlay District**. The revision was adopted to guide development throughout the 134 square miles north of the Central Arizona Project Canal. Its purpose was to identify and protect environmentally sensitive lands. *The Preserve subdivision is located in this district.* It is this revision that set the stage and requirements for The Preserve's PLAT and CC&R's. On January 31, 2002, the Council of the City of Scottsdale made further revisions to the ESLO.
3. **The PLAT** – Section 1.30 of the CC&R's state the PLAT was recorded in Book 452 of maps, page 16, Official Records of Maricopa County, Arizona. It was recorded October 16, 1997 in the Official Records of Maricopa County by the Recorder, Helen Purcell. The PLAT is the controlling document for the subdivision. All documents that govern the subdivision are driven off of and by the PLAT. The PLAT states, "There will be recorded hereafter a Declaration of Covenants, Conditions, Restrictions and Easements for The Preserve relating to an Association of Owners which will govern the use and maintenance of all areas within The Preserve and will provide for common access easements". The PLAT could only be changed by Monterey, based on **Article 3, Section 3.16** of the CC&R's. Once the homeowners assumed '*ownership*' of The Preserve from the builder in March 2002, revisions to the PLAT became a moot point.
4. **CC&R's** – are the restrictions that run with the land and are binding upon all persons owning or claiming Lots in the subdivision. The CC&R's were filed with the Maricopa County Recorder December 2, 1997. The CC&R's are divided into two parts. **Part one** is the 'Declaration of Covenants, Conditions, Restrictions

and Easements’. *Part two* is the ‘Architectural and Landscaping Design and Review Standards and Procedures’ for The Preserve.

Per **Article 12-TERM, part one**, the CC&R’s cannot be revised until the year 2017. Any changes at that time will require a “YES” vote of 96 members present in person or by proxy to effect a change. However, there are three exceptions addressed in **Article 13-General Provisions, Section 13.01 – Amendments**. This article states there are only three sections that can be changed prior to 2017. They are as follows:

**3.16 – Further Subdivision.** This Section only applied to the original developer, Monterey, and no longer applies to our subdivision. The developer did make one amendment February 28, 1998 to **Section 5.08 – Mailbox Facilities Easement**. The verbiage, in *part one* of the CC&R’s on page 18, for 5.08 is not valid. You must read the revised verbiage for this Section that was filed with the Maricopa County Recorder March 23, 1998.

**8.03 – Annual Assessments** – determined by the Board within certain limits.

**8.04 – Special Assessments** – determined by the Board within certain limits

**Part two, CC&R’s Exhibit A – Architectural and Landscaping Design and Review Standards and Procedures (1. Introduction)** states that

“Landscaping standards may be amended from time to time in accordance with Section 4.03 of the Declaration”. **CC&R’s, Section 4.03 – Architectural and Landscaping Standards** – “the Board shall have the right to make such changes to the Architectural and Landscaping Standards as the Board shall deem appropriate”. The CC&R’s further state in **Section 3.17** that we shall not “violate any applicable statute, ordinance or regulation of the United States of America, the State of Arizona, County of Maricopa, the City or any other municipality, governmental agency or subdivision authority having jurisdiction over the Lots or the use or occupation thereof.” In other words, we must be in compliance with the above mentioned governmental agencies when we make changes to the Architectural and Landscaping Standards.

*A legal opinion expressed by Ekmark & Ekmark in the Arizona Republic dated January 25, 2003, states “If a state law is more restrictive than the documents’ provisions, there is no question that a homeowner would have to obey the state requirement. Similarly, if the CC&R’s are more restrictive than a local ordinance or law, the homeowner would have to comply with the CC&R’s or he would be in violation of the documents. In Arizona, CC&R’s are regarded as contracts by the courts.”*

5. **Articles of Incorporation** – the Articles of Incorporation give the Board of Directors and Owners’ the authority, subject to State regulation, to conduct Association business as a non-profit corporation in the State of Arizona. The Preserve Articles were filed with the State of Arizona December 03, 1997 and can be revised per:

**Article 12 – Amendments** – requires a “YES” vote of 96 Owners.

6. **By-laws** – per Arizona law the term ‘by-laws’ means the code of rules required to be followed by the Board of Directors in the regulation and management of the affairs of the Association. By-laws are not required to be filed with any governmental state, city or local agency. They are only intended for the internal management of the Association. The by-laws can be revised per:

**Article VIII – Amendments** – A majority vote of members present at a duly called regular or special meeting of the members can change the By-laws.

**Article III – Meetings of Members, Section 3.6** requires a quorum of members present in person or by proxy for the transaction of business at a meeting. The minimum number is 29 members for a quorum.

7. **Landscape Rules and Regulations** – the **Environmentally Sensitive Lands Overlay District** required that our subdivision have strict landscape rules. The first landscape rules were written by Mark Lang – Vollmer & Associates and were a compilation of the ESLO. The City of Scottsdale made some revisions to the ESLO that became effective January 31, 2002. These revisions were incorporated into our Rules and Regulations August 2003. The title of our document was also changed at that time to ‘The Preserve Rules and Regulations to Landscaping’.

**Board Adopted Rules** - Article 7, Section 7.07, page 23 of the CC&R’s empowers the Board of Directors to establish and update Rules and Regulations that it deems necessary for the conduct and operation of The Preserve. November 25, 2003 the Board adopted two Rules. The first one was for ‘Go-peds’ and the second one was for the ‘Display of Holiday Decorations’.

**Note: When reading any of the governing documents you need to be aware that anything in caps means that you must look for something else somewhere. Normally you would go to the Definitions Section of the document or in some cases a city ordinance if one is referenced. If you read an article or section and there is no capitalization, then nothing else applies and the verbiage stands on its own merit. It means, in black and white, just what it says, period, with no other interpretation required.**

Sam Strizich – Secretary, The Preserve Owners’ Association – 2003