

CLEAR & Comprehensive

Amending Governing Documents For A More Efficient Operation

By Jay Roberts

Governing documents (i.e. Declaration of Condominium, Articles of Incorporation, and Bylaws) represent the fundamental connection between owners and the association that serves them. While there are many reasons why an association should take a strategic and critical review of its governing documents, I have found that the following apply without exception to all community associations:

Authors

Your associations' governing documents were originally drafted on behalf of a developer and were crafted from a developer's perspective. That perspective, at times, is not in the best interest of a member-controlled association. Leaving certain developer rights in governing documents may lead to confusion or unintended consequences. For example, many developer-created documents provide that members of the board do not have to

be members of the association (i.e., unit or parcel owners). The post-transition association may not want non-owners/members of the association to serve on its board of directors. Once an association has been transitioned to the control of the members, the board of directors should consider proposing a set of rewritten governing documents to the members that accurately represents the current status of the association and properly addresses the needs of the community. At the very least amendments should be considered that negate the impact of the unwanted developer-created provisions.

Laws

As most of you are acutely aware, ordinarily there are multiple legislative amendments each year to the Condominium Act. In addition to the statutory changes, there are dozens of appellate court decisions each year that impact condominium association operations in a variety of manners. Due to the ever evolving nature of the law, it is my recommendation that community associations should strongly consider rewriting their governing documents every 12 to 15 years in order to

account for changes in the law. In addition, court decisions often adversely affect associations because of existing provisions in the governing documents. I have found this to be particularly true in regard to collections of delinquent assessments. Many times the adverse impact of an appellate court's decision may be avoided or minimized through the amendment of one or more governing document amendments. In such situations, document amendment translates into financial benefit for the association.

Details

The governing documents describe the contractual relationships among the owners and between the owners and the association. In my experience, well-drafted governing documents are detailed

in describing procedures, rights, and restrictions. Governing documents that are not appropriately comprehensive and detailed lead to ambiguity, which, in turn, often leads to costly disputes or general disharmony in the community. The clear assignment of rights and obligations to the association and to its members, respectively, is of great benefit to the association both financially and operationally.

Re-writing governing documents may require a relatively substantial investment of time and financial resources. Having a modern set of governing documents, however, that appropriately reflects your community and tracks the current state of the law can, and usually does, lead to a more efficient and peaceful operation of the community. The result is worth the investment. ■

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