

**ARE YOUR GOVERNING DOCUMENTS
PUTTING YOUR COMMUNITY AT RISK?**

**SHOULD THE ASSOCIATION SEEK
AMENDMENTS?**

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**ARE YOUR GOVERNING DOCUMENTS PUTTING YOUR COMMUNITY AT RISK?
SHOULD THE ASSOCIATION SEEK AMENDMENTS?**

Many common interest communities have not kept their documents current with changes in the law, changes in their community or changes in governance and operations of their association. Additionally, many communities have not formalized amendments owners have approved to their governing documents. Do out-of-date documents, or amendments approved but not reflected in written documents create risk for the Community?

Document Risk Analysis

The Declaration, Articles of Incorporation and Bylaws (the “governing documents”) create the community and define the governance and operations of the association. Yet, these documents may be years, if not decades, old.

Associations should consider having these documents reviewed and analyzed for outdated, inconsistent provisions, changes in state and federal law, changes in how associations operate and to reflect all prior amendments. This type of review can be performed by the association's attorneys and presented to the board or a committee. This review will reveal risks associated with the governing documents. The board can then determine if steps should be taken, and when, to seek to eliminate risks.

Should Amendments Be Sought?

Use this checklist to make a quick determination of whether the association should consider seeking to amend one or all of its governing documents.

Yes No

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | The declaration contains declarant or developer rights which have expired, never expire, or provided for two classes of voting. |
| <input type="checkbox"/> | <input type="checkbox"/> | The governing documents conflict with state law (CCIOA, Senate Bill 100, Senate Bill 89, etc.) or federal law. |
| <input type="checkbox"/> | <input type="checkbox"/> | The declaration contains use restrictions which are impractical or no longer desirable or have been overridden by state law (shake shingle roofing requirements, for example). |
| <input type="checkbox"/> | <input type="checkbox"/> | Covenants in the declaration are frequently violated or are not enforced. |
| <input type="checkbox"/> | <input type="checkbox"/> | The declaration contains covenants which the board believes should not be enforced, because they are no longer appropriate for the community (a restriction prohibiting home businesses, for example). |

- The association can only raise assessments to a certain level because of an "assessment cap" based upon a percentage of the previous year's assessments or the consumer price index.
- The association has consulted with legal counsel several times for assistance in interpreting the governing documents.
- The documents for the community are not current and in step or stride with the owners in the community.
- Maintenance responsibilities are clearly allocated to the association or the owners.
- The association has difficulty in obtaining a quorum at the annual meeting.
- The articles of incorporation do not expressly permit the association to limit the personal liability of directors
- The bylaws do not contain an indemnification provision.
- One or more of our governing documents is more than 15 years old.
- The governing documents conflict with each other. (For example, articles authorize 3 directors but the board has been operating with 5 directors.)
- The board and members are overwhelmed and confused by the content of the articles of incorporation, bylaws and declaration.

If you answered "no" to all of the above, the governing documents need not be changed and amendments are not needed.

If you answered "yes" to between 1 and 6 of the above, the governing documents should be considered for amendment. If you answered "yes" to more than 6 of the above, the governing documents are putting your community at risk and should be carefully considered for amendment.

Once you have decided to amend, how do you determine what to amend?

The following six points summarize an organized, inclusive approach to seeking amendments: Make a list of the issues and points that you would like covered

- Consult with your attorney
- Determine if you need limited amendments or a new document
- Get the community involved
- Educate and reach out to your members

- Develop a plan for approving the amendments.

For more assistance on possible amendments, or whether your documents are putting your community at risk, contact an attorney at our office.