

# November 2018

## *Community Associations Newsletter*

### **Amending Government Documents**

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In your community, from time to time you will hear talk of amending your association's governing documents. Now you are on the board and you are going to get it done! Read on to learn the questions to ask and topics to cover while making this unique and valuable improvement to your community.

Why amend documents? Nationally, and in Virginia, DC, and Maryland, condominium and homeowners association ("community associations") development was in its infancy forty years ago. Their legal infrastructure was built by the developers' lawyers who drafted and filed the covenants and bylaws of the association as seemed most prudent at the time. The laws and best practices surrounding community associations have evolved over the past few decades. Seasoned Board members might notice (with irritation) their association's lawyer advising "your documents do not allow you to do XYZ, which other associations may do because their documents permit it." For example, some communities' documents give the association more legal heft to recover legal fees spent enforcing the covenants; other documents have unrealistic quorum

requirements that result in added expense and difficulty associated with holding membership meetings. Some condominium associations are also plagued with fallout from inaccurate, outdated insurance provisions in which case amending a section of the insurance covenants could lead to significant cost savings in future years.

Some Boards find old directives about the creation of their community, including references to the declarant and its voting power to be unnecessary distractions, and confusing. Finally, having updated governing documents generally improves operations by permitting electronic notices, which can generate cost savings to the community. Plus, having modern, readable governing provisions instills a sense of confidence in the event that legal action is required at some point in time.

If amending documents is such a great idea, then why do so many communities still have dated documents? Because of the cost benefit analysis. Amendments can be costly and time consuming. Amending recorded covenants almost always requires the approval of a supermajority (usually between 60-75%) of the entire membership of the

association. Amending recorded covenants also often requires notice to each mortgagee and can require the mortgagee's consent. (In Virginia, and Maryland thanks to recent changes in the law, mortgagee consent is more easily obtained.) Educating the membership and campaigning for a change enough to have a chance of obtaining 60% or 75% approvals from all owners also takes time, attention, and energy.

So how to decide whether the improvements accomplished by amendments to the documents are worth the cost? Here is a checklist to help answer that question.

- What are the Board's primary goals with amending the documents?
- Can those goals be achieved via enactment of a rule rather than amending the documents?
- Is it realistic for these goals to be achieved via amendments to the documents?
- What is the cost estimate for the amendment effort?
- What is the estimated time line for the amendment effort?
- What amount of educating the membership should be undertaken?
- Who will be in charge of that education and follow-up with the community?

Owners and realtors often impress on Boards and Management how important flowers are, and therefore many communities budget healthily for landscape maintenance. Similarly, for many communities, especially communities that were developed decades ago, there also comes a time when putting updating the legal framework and covenants for the community

can be as important as tending to the more tangible parts of the association.

If you are interested in amending your documents, let's begin the analysis.