

REES BROOME, PC

COMMUNITY ASSOCIATIONS NEWSLETTER

A Blueprint for Change - Amending Association Governing Documents

By: Ellen Throop and Marissa Kelberman

Community associations rely on their governing documents to understand their powers and required duties. But what happens when documents are outdated, confusing, vague, conflicting or missing important provisions?

Amending the governing documents of a community association is a way to address potential deficiencies and incorporate recent changes in the law. This article addresses common considerations and the general process for amending community association governing documents.

Where to Begin:

The first step in amending governing documents is to determine the changes an association desires. This can include changes based on modernization to better reflect current law, industry practices, new content and practical considerations of the individual community.

Older governing documents tend to lack important detail, rely on prior interpretations of statutes, and omit important changes and updates in the law. If the governing documents require substantial changes, it is likely most beneficial to prepare a full rewrite.

Newer communities' governing documents do not typically require substantial amendments. When there are just a few changes to make, spot amendments may be a better option. A spot amendment is a change for a targeted, specific provision.

It's also important to ensure amendments do not change or delete provisions that were required to be included in the governing documents, such as proffered conditions, easements, and other matters imposed by the jurisdiction during the development of the community; or that conflict with other matters of record or any provisions prescribed by applicable statute.

Timeframe:

The timeframe for completing amendments depends on what kind of amendments are undertaken. For a full governing document re-write, including the declaration, bylaws, and articles of incorporation, the process can take up to a year or more from the initial proposed changes to final recordation. For smaller spot amendments, the timeline may be three months or perhaps a bit more depending upon the complexity of the provision/s and community interest.

How to Amend:

In Virginia, Associations should look to their governing documents for the approval percentage required for an amendment and then review the applicable Virginia statute. For example, under the statutory provisions for condominiums, amendments voted upon by the

1900 Gallows Road • Suite 700 • Tysons Corner, Virginia 22182 • (703) 790-1911 • Fax: (703) 848-2530
7101 Wisconsin Avenue • Suite 1201 • Bethesda, Maryland 20814 • (301) 222-0152 • Fax: (240) 802-2109
1602 Village Market Blvd SE Suite 385 Leesburg, Virginia 20175 • (703) 790-1911 • Fax: (703) 848-2530
www.reesbroome.com

This Rees Broome, PC Client Memorandum is intended solely for use by its clients and their management agents and may not otherwise be reproduced or used without the permission of Rees Broome, PC. The information contained herein is generally reliable but independent consultation with counsel should be engaged to confirm the applicability of the information to your community or circumstances.

unit owners generally require a 2/3 vote but, in some instances, unanimous consent is required. Additionally, the board of directors of condominiums and homeowners association can amend the governing documents without membership approval in certain instances. Sometimes, the provisions of the Declaration may provide for a different approval percentage to amend than the Bylaws.

Also of note, relevant Virginia Property Owners Association and Condominium Act provisions prevent proxy voting on amendment votes. Mail-in ballots and PDF ballots sent via email will meet this requirement, but proxy votes will not.

In Maryland, a homeowners association may amend the declaration or the bylaws by the affirmative vote of lot owners in good standing having at least 60% of the votes in the development, or lower percentage if required by the association's specific governing documents. For other than corrective amendments, generally Maryland condominiums permit amendment of a declaration with written consent of 66 2/3% of the unit owners listed on the current roster, unless any units are owned by the declarant, then an amendment can be achieved only with the written consent of 80% of the unit owners listed on the current roster. With some exceptions, the bylaws of a condominium may be amended by the affirmative vote of unit owners in good standing having at least 60% of the votes in the council, or by a lower percentage if required in the bylaws.

DC's Condominium Act provides that amendments to the condominium instruments (when any one unit owner is an owner other than the declarant) must receive 2/3 agreement of the unit owners, or any larger majority that the condominium instruments may specify.

Further Requirements:

Notice to mortgage holders is also a consideration for the amendment process, and the requirements for notice vary depending upon the content of a document change. In some cases, the Association is required to inform all current mortgage holders of the proposed amendment(s), prior to the amendment(s) going into effect. This is typically done during the same time frame as securing the necessary owner votes or consents.

To do this, the Association will need to research land records and obtain mortgagee information for each owner, and then send a letter to each mortgage holder. How this letter is sent (i.e. certified mail, first class mail, etc.) will be governed by the associations governing documents and by statute.

For Virginia associations, the governing documents and applicable statute may require notice of a proposed amendment be sent to all owners or mortgage holders within a specified timeframe and the timing of such notices may vary based on the type of amendment. Additionally, some governing documents may require voting on the amendment to occur at a meeting or impose other specific requirements for the amendment to be deemed valid.

The Maryland Homeowners Association Act provides that when an association's governing documents require mortgagee holder approval, that approval may be satisfied if the association sends a notice of the proposed amendment to the mortgage holder and the mortgage holder fails to object, in writing, within sixty days after actual receipt of the proposed amendment. The Maryland Condominium Act requires the same under its respective provisions. DC has similar requirements to Maryland.

Finalizing the Amendments:

Governing document amendments must be filed and recorded in land records. The recorded instruments will contain the amended documents, a certification, and the tax ID of all lots or units. Incorporated associations in Virginia also must file with the State Corporation Commission.

Virginia's Condominium Act requires the amendment to be recorded together with a certification, signed by the principal officer of the association that the required majority of unit owners ratified the amendments.

Maryland Condominiums must record their Declaration and Bylaws in Land Records, whereas Maryland Homeowners Associations record their Declaration in Land Records, but file their Bylaws in the Homeowners Association depository. The Maryland Homeowners Association Depository is a required step for Homeowners Association Bylaw Amendments before the Amendments become enforceable.

DC's Condominium Act requires that any amendment to the condominium instruments be prepared, executed, recorded, and certified on behalf of the association by any officer designated for that purpose.

Each jurisdiction has different requirements for filing and recording the amendments properly.

If you are interested in knowing more about amending your Association's Governing Documents, or whether your documents should be amended, please feel free to reach out to our office.