



AMENDING ASSOCIATION DOCUMENTS

Very often, an Association finds that its governing documents inadequately address an issue that has arisen in its community. The Board of Directors scrutinizes the Declaration, the Articles of Incorporation, the Bylaws and then Rules and Regulations of the Association only to find that the documents just do not provide any protection for the specific issue, whether due to drafting errors, impractical requirements or perhaps due to mere obsolescence.

The time to amend an Association's governing documents is when there are no major difficulties in the community. When a problem arises and the Board attempts to amend the documents to address the issue, communities may become polarized and allow a minor document amendment to become a major legal battle.

Generally, it is better to create reasonably broad governing documents which allow the Association to make and enforce, and, importantly, to modify, Rules and Regulations to handle the day-to-day operation of the community. There is no reason to amend governing documents for cosmetic purposes. If the Association's documents are inconsistent with applicable state and/or federal law, the applicable law will override the documents and, in most cases, there is no urgent need to amend the documents accordingly.

The first question to ask is whether a document amendment is even necessary. If this threshold question is answered affirmatively, then be certain to fully update the documents at the same time, since the extra cost to do so is minimal. The following points are points to consider before amending any of the documents. The list is not complete, and each of the points could be a point of departure for a detailed discussion.

AMENDING THE DECLARATION.

If you decide to amend the Association's Declaration:

- Review the applicable provisions of the Declaration in advance
- Clarify timetables and costs in advance. Allow up to six months for the Board or a drafting committee to study proposed changes and to sponsor one or more public hearings. Allow an unlimited amount of time to get the needed approvals.

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- Sponsor extensive educational meetings for all Owners to garner support for the amendments.
- Amend in part, or amend and restate the entire Declaration. Where you have multiple amendments over the years, or numerous and possibly confusing changes, it is probably best to restate the entire document.
- Lenders usually won't approve amendments without a letter from their unit owner requesting them to approve and sign.
- After approval is received, send all owners and lenders copies of the recorded documents.

In some instances, you might want to ask a court to approve an amendment to the Declaration. A document can be amended by a judicial proceeding if you obtain at least 50% of the approvals otherwise required by the Declaration, and not more than one-third of the owners or lenders file objections. There are a number of other specific requirements to obtain a court approved amendment, which include the following:

- A proposed amendment to the Declaration must be prepared.
- All Owners must receive at least two notices (by any means consistent with the Colorado Revised Nonprofit Corporation Act) of the proposed Amendment from the Association.
- The Association must hold at least one member meeting (called and held in accordance with the Articles of Incorporation and Bylaws) to discuss the proposed Amendment.
- The Owners of at least half of all Units must consent to the proposed Amendment.
- After the four criteria listed above have been met, the Association (acting upon instructions of the Board of Directors) may file a petition with the Court, requesting that the Court approve the proposed Amendment. The court then sets a hearing date on the petition. Within ten (10) days after the hearing date is set, the Association must send written notice of the petition and of the hearing to all Owners. The Court must grant the petition and approve the proposed amendment if the Association has complied with certain requirements and, if in response to the notice of the petition, the petition is not objected to in writing by more than 33 percent of the Owners or lenders.

Recent changes to the Colorado Common Interest Ownership Act ("CCIOA") have now made it easier to obtain lender consent to Declaration amendments where the Declaration requires approval of a certain percentage of lenders. If the proper steps are followed, and no response is

received from a lender, it is deemed to have given its consent.

AMENDING THE ARTICLES OF INCORPORATION

Amendments to the Articles of Incorporation will require approval of a certain percentage of Owners, typically as measured by those attending in person or by proxy at a meeting of the Owners called for that purpose. The Articles of Incorporation should be consulted for specific provisions. The provisions of the Colorado Revised Nonprofit Corporation Act will govern over any inconsistent provisions in the Articles of Incorporation.

AMENDING THE BYLAWS.

Often the Bylaws provide for amendment by a vote of the Board. Another popular approach is to require a percentage of the Lots or Units to vote for an amendment to the Bylaws. The requirements of the Association's Bylaws must be followed if an amendment is to be valid.

AMENDING THE RULES AND REGULATIONS.

The Board usually has the right to adopt and modify the Rules and Regulations. This is because Rules and Regulations are meant to be flexible. At the same time, however, that puts additional pressure on the Board to be sure the Rules and Regulations are current. Check to see if your Rules also provide detailed and precise standards for **enforcement** of the Rules and Regulations. Recent revisions to CCIOA require that notification of amendments to the Rules and Regulations be provided to the Association's members in accordance with the Association's policy governing adoption and amendments of rules.