

THE COMMUNITY BUILDER

Association Terminology

As I so often do when preparing for the next issue of E-News, I was reading a blog today about association issues. The blog and a conversation I had with an association manager recently, made me think about the importance of really understanding the true meaning of some of the terms that we use relative to community associations. I think it is important to use the terminology correctly. It drives me a little crazy when I hear people refer to the documents of a community as "the bylaws". So, let's start with that.

All documents are made up essentially of three parts. The Declaration or Master Deed, the Articles of Incorporation or Charter and the Bylaws. There is a distinct hierarchy or priority of the documents in that almost all cases, the Declaration is the priority document, the Articles next and the Bylaws last.

Each of those parts provides authority, direction or information different than the other.

After the Bylaws, any Rules and Regulations would be recognized next in the hierarchy. Rules and Regulations cannot exceed the authority granted to the association in the documents. They can only clarify and/or provide a process for handling the authority. A good example would be establishing the process by which owners would submit a request for architectural modification; or establishing rules for the use of the clubhouse. Generally, there are some Rules and Regulations that are initially promulgated by the Developer and are used as a basis going forward.

In many cases, the Board of Directors has the authority to change or add rules and regulations. There may be notice requirements and/or the requirement to actually send the proposed rule changes to the members prior to the meeting at which the board will vote to adopt them. And it is absolutely recommended that any new rules or changes be sent to the members prior to their effective date after they have been adopted by the Board. The new rules should always be dated to ensure that owners have the most recent version. While I have seen some communities actually record their Rules and Regulations, it is important to remember that if they are changed after they have been recorded, the new ones

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should also be recorded in order to put everyone on notice they have been changed.

An Amendment is the process by which the Declaration, Articles and Bylaws are changed or added to. An Amendment is generally one of the few things that is voted on by the membership. There are requirements stated either in the particular document or statutes as to the percentage of approval required by the voting membership. A quorum is always required to be met first. It then may take a super majority 75% or generally 66 2/3% of the total membership voting affirmatively in order to pass the proposed amendment. In order to be effective, an amendment may be required to more than one part of the documents such as both the Declaration and the Bylaws. Legal counsel should always draft the amendment(s). An amendment is very different than Rules and Regulations. Amendments are ALWAYS recorded and become a legal part of the existing documents. In many areas, there is even a specified method of presenting amended language by striking out the language to be deleted and underlining the replacement or additional text so the members can see what the difference will be.

A Resolution is a formal expression of an opinion or an intention. A Board would "resolve to hold the open forum portion of their meeting after adjournment and provide 20 minutes" for the owners to bring up issues of importance to them. It can be considered a process. It generally is voted on in the form of a motion at a meeting, but the Resolution is kept separate so that future boards or managers can know what the process is. A Resolution would never take the place of an Amendment.

Prior to transition from developer control, there are actions that the developer can take to make changes to the documents as well. When they are adding phases either in a homeowners association or a condominium, that addition is generally done through a Supplement to the declaration.

If there has been an error in a legal description or in determining the proportionate shares of ownership, these corrections would be made through an amendment correcting a Scriveners Error, but have to be done during the developer's period of control.

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While changes may seem simple and may even entice the Board or a member of the community to draft rules and regulations or amendments, it is always recommended that legal counsel be engaged to review and finalize prior to their presentation, adoption or voting on them. Mistakes and good intentions can be very expensive to the association if there is a problem later on.