



# COMMUNITY BUILDER

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## What to Consider When Amending the Governing Documents

Association governing documents, which include the Declaration, Articles, and Bylaws, are created with the development of a new community and are in place to govern the common interest of the association. But what happens over time when those documents are twenty or thirty years old, and some aspects do not pertain to today's world, or some areas are just unclear and ambiguous? This may be the time for the community to consider amending the governing documents.



### Getting Started

First, establish the current governing documents' amendment guidelines and restrictions. Most often, a super-majority approval vote of all owners will be needed to make changes successfully. Understanding the exact process required before taking any additional steps is wise. This is because the process may require calling meetings of the homeowners, and depending on the challenges in each community, it may be difficult to gain a quorum or vote needed to pass an amendment.

Amending governing documents can be a complicated process and create a significant expense for the association. It is recommended that the board or a committee look to identify all areas that need to be updated simultaneously; this may help cut down on the costs of doing amendments instead of doing the process several times for several different occasions. Once the board or committee has pinpointed the areas of the documents they believe need to be updated, a road map of suggested and desired changes should be provided to the attorney.

Next, engage the association's attorney. The attorney can assist with drafting the amendments, with particular consideration for ensuring they are enforceable and comply with state and local laws. The attorney may also be able to assist with any owners' meetings to discuss the amendments and be on hand to help address questions.

### **Most Common Types of Amendments**

Some of the most common examples of amendments are conflicting sections of the documents, too high of membership vote or quorum requirements, vague and unenforceable rules, discriminatory rules, or rules that conflict with state or local laws. Updates for new technology, such as email notification being allowed for the board and annual meetings and not requiring mailed notification. Allowing virtual meetings may be a good addition; the past two years have seen changes to how boards conduct their business, but governing documents may not allow for virtual meetings for both board and annual meetings.

### **Amendments are Ready for a Vote! Now What?**

Now that the amendment changes are planned, the next step is obtaining the needed votes. A few options are an in-person meeting with in-person voting, proxy voting (aka limited proxy), and online voting. If the governing documents allow for online voting, it may be more convenient for the owners and, ultimately, help to pass the amendments.

Depending on the proposed amendments' type, complexity, and impact, the board may consider holding a town hall-style meeting to discuss the amendments and answer questions ahead of the vote. This helps owners understand the 'why' behind the need for modifications and ensures more members will support passing the amendments.

When it is time to vote on the amendments, have each amendment as its individual voting point. If all amendments are placed into one vote, and owners do not agree with one area, it could cause all the amendments not to pass the vote. If the amendments are broken into different votes, this allows for better chances of passing some amendments, if not all.

The ideas and process for amending the governing documents can be intimidating. However, with the right strategy, people, and resources in play, making amendments to the association's documents can make all the difference in achieving the community's goals.

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