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**D**o your governing documents create obstacles to the orderly administration and governance of the association?  
Do your governing documents contain inapplicable, obsolete or unenforceable provisions?

Are your governing documents poorly drafted or difficult to understand?

Are there circumstances unique to the community that the governing documents do not address?

If you answered "yes" to any of these questions, it may be time for your community association to amend its governing documents.

As communities mature, community leaders may find themselves faced with these and other questions. Some documents do not withstand the test of time; others do. Even newer communities may experience operational and administrative issues if the governing documents are not drafted to address the unique nature of the community. Well-written, state-of-the-art governing documents are essential to provide members with structure, certainty and order in day-to-day association governance and administration. →

## THE DOCUMENTS

### THE DOCUMENTS

#### CONDOMINIUMS

Condominium Instruments  
Declaration and exhibits  
Bylaws  
Common Element Interest Table  
Plats  
Plans

#### PROPERTY OWNERS ASSOCIATIONS

Governing Documents  
Declaration  
Articles of Incorporation  
Bylaws

Articles of Incorporation (sometimes)





**By Ron Pereira, PCAM**

Ron Pereira has been general manager for Lake Ridge Parks and Recreation Association Inc. for the past five years. Ron received his PCAM designation in 2012.

## MANAGING PROPERTY

or the past four years, a committee of Lake Ridge Parks and Recreation Association Inc. homeowners has been working with the association management team to review and consider amendments to the governing documents for Lake Ridge, a 40-year-old community of approximately 7,600 homes in Prince William County, Va.

The goal of this project has been to ensure that the documents create and sustain a sound basis for governance and administration of the community. A secondary goal was to ensure that the governing documents are readable and transparent to provide homeowners with a better understanding of rights and responsibilities.

A "Docs Committee" consisting of board members, members of staff and homeowners, has marshaled the project. The Docs Committee met openly and on a regular basis to conduct a comprehensive review of the governing documents. Participation by homeowners has been encouraged—discussion has been lively and productive. Association legal counsel has actively supported the process to ensure conformance with legal requirements.

The Docs Committee not only considered substantive issues, but also carefully considered the process for making the amendments. This is extremely important due to the high thresholds for approval of the changes—particularly with respect to the Declaration, which requires the written consent of at least 75 percent of all owners to amend.

The Docs Committee realized that successful adoption of amendments requires the community to be well informed about the proposed amendments. This education has been provided by holding town-hall meetings, communicating on the Lake Ridge website, providing amendment updates in the community newsletter and setting up booths at Lake Ridge events staffed with individuals prepared to speak to the amendment process.

This has been a tough project. The faint-hearted should not jump into this! In retrospect, it may have been more productive to divide the Docs Committee into two sub-committees: one committee to draft the changes, thoughts or new concepts, and the second committee to work on the editing and fine-tuning, permitting the workload to be distributed more evenly. However, hindsight is always 20/20.

The Lake Ridge amendment initiative has been a collaborative effort by a dedicated team led by exceptional volunteers. Through hard work and commitment, we expect the proposed governing documents amendments to become a reality.

## Getting Started

Sometimes community leaders launch an amendment initiative as soon as a governing document limitation is identified, with little or no forethought about the amendment process or pertinent circumstances. The absence of forethought can have unfortunate consequences, including proposed amendments not being approved. Other times community leaders forego pursuing amendments entirely, daunted by approval thresholds or procedures, resulting in needed amendments never being considered. Careful planning and making informed decisions are critical in any amendment endeavor and could mean the difference between success and failure.

Before embarking on an amendment project, some preliminary considerations are in order. Ask:

### What is the issue?

Oftentimes the amendment process is triggered when an association encounters an administrative, operational or enforcement hurdle created by or resulting from the governing documents. Other times the process is triggered by a change in pertinent law or community circumstances. The issue may be raised by a board member or by an owner in the community. However, whatever the trigger and however it is raised, precisely identifying the issue or issues at the outset is paramount.

### Can the issue be addressed by action short of amending the governing documents?

Once an issue is identified, consider whether the issue can be addressed by board action—enactment of a rule or adoption of a policy, rather than by amendment to the governing documents. The governing documents may provide authority for the board of directors to adopt a rule or enact a policy, which will adequately address the issue. In such case, amendment to the governing documents may not be necessary.

### What are the prerequisites to amend?

If amendment is necessary, determine what approvals are required to amend the applicable governing documents. Can the board unilaterally effect the amendment or is approval of the owners required? If owner approval is required, is approval by membership class? What about the approval of mortgagees, the declarant (developer), the county or city or a master association, if any? Are other approvals required? Also, consider the approval method. Is approval secured by written consent or by vote? Finally, evaluate requisite approval thresholds.

The governing documents and pertinent statutes must be considered together to determine what is required to amend the governing documents. Each governing document—declaration, bylaws and articles of incorporation—likely establishes different requirements for amendments. In addition, more than one statute may apply. The statutes establish important substantive and procedural requirements to amend governing documents, sometimes in addition to or in lieu of those required in the governing documents. Consultation with association legal counsel to confirm approval requirements and to provide recommendations is advisable.

## Moving Forward

So, the board has considered the prefatory questions and community leaders have decided to move forward with governing document amendments. What next?



# AMENDMENTS

## Develop a Strategic Plan.

First, the board of directors should develop a strategic plan. Developing a strategic plan will ensure a smoother and more orderly amendment process and may increase the likelihood of desired amendments being approved. The development of a sound strategic plan will entail, at a minimum:

- Budgeting for all projected amendment-associated costs;
- Preparing an anticipated amendment timeline contemplating all steps in the amendment process, from start to finish;
- Developing a plan of action to present proposed amendments to the community and strategies to increase likelihood of approval; and,
- Involving management and engaging association legal counsel, as necessary.

When developing a strategic plan, the nature and scope of the desired amendments, amendment thresholds and procedures, community interest as well as association resources—financial and otherwise, must be considered. These and other practical considerations should not be ignored—any one of them may have a bearing on the overall strategic plan, particularly if the association is faced with high amendment thresholds, community apathy or financial constraints.

## Educate the community.

Educating the community regarding proposed amendments and the amendment process is key in any amendment initiative. Disseminating this information can be accomplished a number of ways—by allotting time during board and association meetings to discuss proposed amendments, by holding town-style meetings to encourage open dialogue regarding proposed amendments and

## POPULAR GOVERNING DOCUMENT AMENDMENTS

- Modify board and association authority
- Strengthen enforcement and assessment collection process
- Contemplate technological advances
- Establish board member qualifications
- Reduce quorum requirements
- Eliminate arcane proxy requirements
- Remove assessment ceilings
- Establish leasing restrictions
- Adopt smoking restrictions
- Alter maintenance, repair and replacement responsibility

by describing the proposed amendments in the community newsletter and posting the proposed amendments on the community website, to name a few.

## Engage the community.

Involving the community and soliciting community feedback



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VITAL RECORDS RECOVERY  
MAGNETIC MEDIA AND  
DATA RECOVERY  
BIOHAZARD CLEANUP



## DO LIST

### AMENDMENT DO LIST

- Conduct periodic audit of the governing documents
- Identify the issues
- Outline amendment prerequisites
- Develop a strategic plan
- Budget for the process
- Prepare a timeline
- Educate and engage the community
- Engage legal counsel early in the process
- Look to legal counsel for draft amendments
- Revise association rules and regulations to comport with amendments
- Include copies of amendments in resale certificates or disclosure packets

during the amendment process may be prudent, especially if comprehensive, substantive or controversial amendments are being proposed. Doing so may be helpful in gauging community sentiment regarding proposed amendments and garnering needed support for those amendments. The board should consider the extent and nature of community involvement and plan accordingly. For larger scale amendment initiatives, the board may want to form a committee composed of owners to spearhead the development of the amendment initiative, consider and develop proposed amendments and make recommendations to the board. A committee can be an effective way to engage owners who can do the “heavy lifting” to develop and draft amendments.

#### Draft proposed amendments.

At some point after the strategic plan has been developed, drafts of the governing document amendments must be prepared. Association legal counsel should be engaged to prepare the initial drafts or review proposed drafts to avoid the unauthorized practice of law. It is oftentimes more cost effective for legal counsel to prepare the initial drafts than to revise drafts prepared by others.

During the drafting process, consideration should be given to the amendments—if changes are extensive, a complete amendment and restatement of the governing documents may be preferable to individual, spot amendments. Governing document amendments should be drafted to comport with applicable legal requirements and should be integrated in all of the governing documents, as necessary. Amendments should be drafted for readability and clarity—using clear, simple and concise language and avoiding legalese. For consistency, the format and vernacular of the governing documents being amended should be preserved, if possible. For longer documents, organizational tools, section numbering, table of contents, indexes, may improve readability and provide ease of reference.

#### Crossing the Finish Line

Once the language of the governing document amendments is finalized, with all input received and considered, the proposed amendments must be presented to the membership for approval, as well as to all others enjoying approval rights.

With respect to membership approval, if approval is by vote, a duly held meeting of the association must be convened to secure the requisite approval. Notice requirements must be observed. If approval is by written consent, special care must be taken in drafting consent forms. For others with approval rights, such as mortgagees or the declarant, applicable requirements established by the governing documents and pertinent statutes must be observed. Meeting minutes and written consent evidencing requisite approvals should be made a part of the association books and records.

Presuming that the membership and others with approval rights agree to the proposed amendments, additional steps may need to be taken to effect those amendments. The amendment may need to be filed with the governing state agency or recorded among the applicable land records. Other final steps may be necessary.

Post-amendment, association rules and policies may need to be revised to be consistent with approved amendments. Copies of the governing document amendments should be maintained in the association books and records, as well as included in resale certificates or disclosure packets prepared by the association.

Amending governing documents does not have to be painful. Proper planning and involving the right team of professionals not only can simplify and streamline the amendment process but also may increase the probability that desired governing document amendments will be approved. Most importantly, the amended documents will enhance operation and governance of the community. ☐