

The why and how of amending condo documents

By Daniel M. Polvere, Esq.

Every condominium trustee and owner should fully understand the provisions of the Master Deed, Declaration of Trust and by-laws, since these documents govern the rights, remedies and obligations of owners and boards. While some matters (such as liens and the collection of common area fees) are covered by the law, most matters are left to the association documents to control. Over time, you may realize that the documents do not address a particular issue at all or may do so in an unsatisfactory manner. For example, quorum requirements may be so high that meetings are usually impossible to hold and trustees in effect choose their successors.

What are some areas where amendments to your documents may be necessary or desirable? Although individual condominiums may have specific problems, there are some common issues.

As suggested above, quorums are often a problem. A quorum typically requires a majority of all owners, which does not work in practice. Reducing the requirement to a practical level and adding explicit proxy provisions (so that absent owners can vote) will aid governance.

Other voting requirements may also present problems. By-laws often require an absolute majority of all owners to elect trustees. A majority of a quorum at a meeting should be sufficient.

Amendments to the documents could cover such areas as mandating or authorizing certain insurance coverages. Because of skyrocketing premiums, a current hot topic is increasing deductibles on the master policy and providing that the deductible portion of a loss be borne by the affected unit owners (who may choose to get their own supplemental coverage).

Finally, increasing restrictions on use of units may require amending the association documents. Such restrictions could include strengthening tenancy requirements (such as minimum lease term), changing pet rules or addressing business use of units.

The Amendment Process

The usual provision found in documents for amending them is that a supermajority (sometimes 67 or 75 percent) of the unit owners, measured by their beneficial interests in the condominium, is required to approve them. This may appear so daunting that many boards give up at this point. However, the documents usually don't require that unit owners must approve amendments at a meeting or at one time. (Be sure to consult and follow your particular documentary requirements exactly.) While you're at it, you might want to consider an amendment to lower the percentage required for future amendments!

As a board considering matters that might call for amendment, you should consult legal counsel on the legality of proposals, alternative approaches, drafting of language and further suggestions for amendment. Based on this consultation, you may decide that some amendments may be controversial and others not. From there, you should decide whether the amendments should be presented as a package or piecemeal.

It may be a good idea to circulate proposed amendments, accompanied by a brief explanation and rationale for the change. Then you can schedule a meeting of owners to discuss the proposals, answer questions and determine support or opposition. If there is substantial opposition, your board can scrap or redraft the proposal.

Once the board determines that support is likely to be obtained for the proposals, you can begin collecting signatures. The usual amendment provision will permit the trustees, manager and other interested owners to go around the development collecting signatures until the necessary percentage is obtained. Time limits, if present, are usually generous and with some effort, you should be able to obtain the necessary number.

The next step is to put the formal amendment document in order. This contains the text of the amendments, is usually executed by a majority of the trustees and recites the percentage of the unit owners voting in favor. (It is essential that the signature sheets be retained in the permanent records of the condominium.) Then the amendment is recorded at the Registry of Deeds as the final step in making it effective.

To summarize, the process of amending your association documents involves: determining what should be changed, assessing the feasibility of getting amendments passed, drafting the language, “selling” the proposed changes to unit owners, finalizing the amendment document and recording it—all with the aid of legal counsel.

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