Amending Association Documents & Implementing Rental Restrictions

MULCAHY

Community Association Cheat Sheet©

BRINGING ANSWERS TO COMMUNITY ASSOCIATIONS

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

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REASONS TO AMEND AN ASSOCIATION'S DOCUMENTS

The most common reasons for amending association documents are the following: to delete or modify restrictions that are outdated, ambiguous or unreasonable; to comply with changes in federal, state and local laws or ordinances; to delete or modify provisions inconsistent with the management and operation of the association; to delete provisions regarding the rights of the developer after the developer is no longer in control; and to correct provisions that conflict with other governing documents (bylaws, articles of incorporation and rules and regulations).

Because there are several requirements which must be met prior to amending an association's documents, an association should prepare a strategy for amending its documents to assure that they meet the needs of the association and are enforceable.

The MULCAHY LAW FIRM, P.C. has successfully assisted hundreds of associations in the process of amending documents using the following five step plan.

A FIVE STEP PLAN FOR AMENDING CC&RS

Step One: Determine what is required to amend the documents.

The board of directors should check the specific language of the association's documents. Typically, there is a provision in each document which outlines the proper procedures to amend the CC&Rs, articles of incorporation, bylaws and rules and regulations. Most documents require a vote of the membership and, in many associations, a percentage of membership approval is required to approve the amendment. However, in some *rare* cases, the association's board of directors can amend the documents without the approval of a percentage of the membership.

The rules and regulations can be promulgated and amended in most associations by a majority vote of the board. However, again in some *rare* cases, some associations require a vote with approval by a percentage of the membership to amend the rules and regulations.

If the amendment procedures are ambiguous or difficult to understand, the association should consult with legal counsel.

Step Two: Review the documents for changes and draft the proposed changes.

The board of directors should form a committee to research and prepare amendments to the association's documents.

The amendment committee should solicit the ideas of committee members, board members and owners regarding changes to the documents and draft the proposed changes.

It is important that the association's legal counsel review the documents and assist in the drafting of proposed changes during this step so that the documents are legally enforceable.

Step Three: Educate and solicit community support of the proposed changes.

The board and/or amendment committee should use informational meetings, homeowner input forums, town hall meetings, coffees and/or newsletters and other printed materials to educate and inform the membership of potential changes.

The input and comments should be discussed by the board and/or amendment committee and final changes to the proposed amendments should be made at this time.

Step Four: Develop a plan and a reasonable time frame for obtaining approval of the proposed amendments.

The amendment committee should create strategic steps for completion (owner meeting/use of mail-in ballot) with a time line and proposed dates for voting. Legal counsel should assist with this process.

Step Five: Finalize and record the CC&Rs.

Once the amendments have been approved as specified in the documents, the amendments must be recorded at the county recorder's office to become a legal document and enforceable. Bylaws and rules do not need to be recorded, but should be maintained with the official records of the association. Legal counsel should assist with this process.

www.recorder.maricopa.gov – You can search for documents by going to the top of the page and clicking on "Recorded images are now available for viewing and purchase from 1871 forward." (note: records are available approximately 15 days after submittal.) From the search page you can search for your documents by inserting the requisite information on the form. (***note: you do not need to create an account to view information.***)

RENTAL RESTRICTIONS

Over the past few years, there has been a dramatic increase in the number of rental properties in Arizona. Unfortunately, in some instances, tenants do not follow association rules and restrictions and do not maintain the rental property as well as owner occupied properties. Association boards and managers frequently contact our office to request information on implementing rental restrictions in their associations. Set forth below are suggestions for implementing rental restrictions.

RIGHT TO RESTRICT RENTALS UPHELD

On December 22, 2005, the Arizona Court of Appeals made an important decision regarding an association's ability to restrict rental properties in a community association in the case entitled Vales v. Kings Hill Condominium Association. In this case, the Court upheld an association's amendment to its CC&Rs prohibiting owners from renting their units in the association as soon as the first of the following was to occur:

(1) sale of the unit by the owner(s) of the unit at the time the amendment was recorded;
(2) death of the owner(s); or
(3) if the owner(s) at the time of adoption of the amendment ceased to rent or lease their unit for more than three consecutive months.

Arizona law was previously unsettled regarding an association's ability to restrict or eliminate rental properties in an association.

In our opinion, this ruling applies to planned communities and condominiums created prior to January 1, 1986. It is still questionable under Arizona law whether this ruling applies to condominiums created after Jan. 1, 1986 since A.R.S. Section 33-1227(D) states that unanimous consent of unit owners is required if the use of a unit is restricted.

To obtain a full copy of this case:
www.cofad1.state.az.us/opinionfiles/CV/CV040816.pdf

MEMBERSHIP APPROVAL

It is important to note that in most cases, in order to implement a rental restriction, an association will need to obtain the requisite approval of the membership to amend its CC&Rs.

GRANDFATHER CLAUSE

It is our opinion that associations considering adopting a rental restriction should proceed forward with a proposed amendment against future owners. Accordingly, a proposed amendment to the Declaration regarding rental restrictions should contain a grandfather clause that grandfathers all current owners. The clause should state that the grandfathered owners' right to rent their units/lot shall expire upon the transfer of the title (sale) of a lot/unit.

MONITOR RENTALS WITH LANDLORD/TENANT REGISTRATION

Our firm recommends that associations monitor rentals in the association by proposing an amendment to an association's CC&Rs, which requires the owner of a unit/lot to register his/her/its tenant with the association. The owner should provide the association with his/her/its current address, the tenant's contact information, other relevant information (such as tenant's vehicles and license plate numbers), a copy of the current lease and the dates of commencement and termination of the lease.

The association should also require a statement signed by the tenant indicating that the tenant has received a copy of all association documents and that the tenant agrees to comply with the associations rules and CC&R restrictions.

NOTIFY RENTAL OWNERS REGARDING LIABILITY FOR TENANTS

The association's CC&Rs are a contract between the owner of the unit/lot and the association. Therefore, it is important for the association to notify owners of the property (landlords) of their responsibility regarding their rental unit/lot and their liability for the failure of their tenant(s) to comply with the association's governing documents. Associations should consider levying fines against the owners for violations by their tenants or, in more serious situations file a lawsuit against owners when the association's documents are not being followed.

LANDLORDS MUST REGISTER RENTAL PROPERTIES WITH COUNTY

On August 6, 1999, the Arizona legislature enacted the Residential Rental Property Registration law. Pursuant to A.R.S. Section 33-1902, an owner of a residential property located in Arizona is required to file a notification form with the county where the residential property is located. The notification form contains the following information: the property owner's name, address and telephone number; the street address of the residential property; and the year the property was built. Owners who do not comply with this requirement after notification and a ten (10) day grace period are subject to a civil penalty of $1,000 plus $100 per month for every month the owner is not in compliance with this notification requirement.

To obtain a rental property notification form, go to:
http://www.maricopa.gov
Click on Services, Forms & Applications and scroll to
Residential Rental Property Registration Form

Associations may also verify owners who have registered by going to: http://www.maricopa.gov
Click on Services, Forms & Applications and scroll to
Residential Rental Property Search