

A close-up photograph of a hand holding a silver pen, writing on a document. The background is blurred, showing another hand resting on the document. The overall scene is dimly lit, with the focus on the hand and pen.

HOW TO UPDATE YOUR

HOA's Governing Documents

Your guide to amending the governing documents
for your community association.



KEYSTONE

Over the course of time, there are various factors that may require your HOA to update the governing documents of the community. Taking on such a task of changing the legal terms that govern the association can feel daunting, but it doesn't have to be.

While this is not intended to replace professional legal advice, this guide will help you navigate the process to update your governing docs in accordance with the law to ensure they are aligned with your community's needs.



An Overview of HOA Governing Documents

Governing documents establish policies for the management and operation of the association.

It's important to delineate the differences between the various HOA governing documents, as terms of each play a specific role.

Here is a quick explanation of each governing document:

Articles of Incorporation

For common interest developments (CIDs) that are a corporation, this genesis document establishes the association as a legal, non-profit mutual benefit corporation and must be filed with the Secretary of State.

Declarations of Covenants, Conditions, and Restrictions (CC&Rs)

Often referred to simply as “declarations” or “CC&Rs” for easy reference, this set of documents are recorded against the parcel generally before anyone purchases. To amend CC&Rs requires a membership vote.

Well-drafted declarations include use restrictions and maintenance provisions; essentially, outlining how homeowners interact, and their rights and responsibilities with reference to the community association.

Bylaws

Bylaws are corporate governance documents that are not recorded but also require membership vote to amend. Well-drafted bylaws are tailored to the community and generally outline operational procedures of the association including when the annual meetings should take place, how the board is elected, the procedure to establish committees, meeting notice guidelines, and power to enter into contracts, to name a few.

Rules & Regulations and/or Architectural Guidelines:

Rules and Regulations are considered the fine-tuning documents of the HOA. They discuss resident conduct and provide operational rules that directly apply to community members. These may include parking regulations, use of common areas, pool rules and operating hours, architectural and front-yard landscape regulations, etc. Revisions to the Rules and Regulations do not require membership vote.

When an HOA determines to update its governing docs, it can use the information here to determine how best to make changes that are accurate, coincide with the current needs of the association, and which follow the necessary member approval process.

Start with Why You Need to Update Your Governing Documents

Before taking on the process of how or when to change governing docs, first determine the why. Generally, there are two reasons why changes to governing documents may be needed. Either the change is required by law or the board decides that updates are necessary to revise outdated language or clarify regulations that have resulted in recurring issues in the community that need to be resolved or enforced.



To help navigate these legislative updates and their impacts, we at Keystone called on attorney James McCormick Jr. Esq., CCAL, a partner of Delphi Law Group, LLP, and Robert DeNichilo, Esq. CCAL, Managing Partner of Richardson | Ober | DeNichilo to lend their expert advice.

Upholding Legal Requirements

Each year, new legislation is passed which may call for an update to your governing documents. As a result, boards should review how legislation impacts their community and determine if there is a need to amend their governing docs.

Example: Several key legislative bills take effect in 2022 and HOA documents must be updated to ensure compliance, minimize legal risk to the association, and help keep things running smoothly.*



SB 391 – Virtual Meeting in Times of Emergency

During the COVID-19 pandemic, virtual meetings became a vital lifeline for connecting with others. SB 391 specifically outlines the criteria required to hold virtual board meetings. Although stay-at-home orders have been lifted, this law allows board meetings to continue to be held virtually without a physical location being provided, but only under limited circumstances.



SB 392 – Document Delivery

New legislation now allows posting general notices on an association's website as long as it's accessible to all members and if designated by the association as the location of posting of general notice on its annual policy statement. Another provision covered by SB 392 requires members to provide their association with their primary and secondary preferred methods of contact, whether via postal service or email, as well as the name, mailing address, and valid email address of the owner's legal representative on an annual basis.



AB 502 – Election by Acclamation

AB 502 states boards of any size with the same or fewer number of candidates than open seats, with a pre-established election outcome, are no longer required to mail out ballots to individual community members and incur the costs of printing and mailing. Instead, the association can proceed via election by acclamation when it has complied with the requirements and there are the same or fewer candidates running for election as there are open seats.



AB 1584 – Housing Omnibus

The 2022 Housing Omnibus bill is an amendment to zoning laws and governing documents regarding rental restrictions in community associations. In January 2021, AB 3182 legislature imposed a ban on CC&R prohibitions on rentals and restrictions.

However, the enforcement of the 2021 law required amending the language of the governing documents, which in turn required a vote of the membership. This made it difficult for boards to obtain approval by the membership to amend CC&Rs and bylaws. AB 1584 amends the previous requirement of needing a membership vote in order to revise the governing documents to remove language which prohibits or unreasonably restricts rentals.

*While Keystone consulted two leading attorneys at law specializing in association management on the writing of this article, we highly recommend that your HOA work closely with an attorney to ensure your HOA is compliant with any recent legislation or before attempting to amend your association's governing documents.

Resolving Outstanding Issues

The second reason why it may be time to update your governing docs is to remedy recurring issues that have come up in the association. Board members should look to areas where issues cannot currently be resolved due to unclear language in the governing documents. For example, maintenance is a common issue to define because there is often a lack of clarity as to the respective duties of the association and the owner.

A board may also want to change older documents that aren't relevant or useful to associations today. Board members may inherit old CC&Rs that may have initially been well-written, but which may need revisions to align with the current community objectives. Therefore, rather than focus on when changes were last made, consider the value of the documents and if they reflect what's necessary for operating successfully today.



Keep Track of Ongoing Issues

Updating governing documents can take considerable time and expense, so it's wise to carefully evaluate the best time to implement the changes. Be thorough and consider incorporating changes for multiple recurring issues all at once versus engaging in the amendment process multiple times for single matters.

Gain Majority Vote

The board works with legal counsel to review, change, and prepare documents to present them for the community member vote. A supermajority of 67% approval from community members is typically required to initiate change(s) to older CC&Rs, although your association should check the specific amendment provision and voting requirement for your CC&Rs.

In California, if an association is unable to obtain the supermajority votes that may be required to amend the CC&Rs but does receive more than a majority, the association can file a "Greenback Petition" with the Superior Court to petition for amendment approval.

Create a log describing the occurrences or issues and how they might be resolved. However, if code changes require amendments by a particular date, make the revisions sooner rather than later, regardless of how many there are.

Team Up with Your HOA Management

Board members are responsible for many moving parts to preserve the success and value of an association. Whether it's a first-time appointment or you've been on the board for years, making changes to governing docs can be a particularly challenging arena. Turn to your HOA management team to guide you through the process. They can help you gather and prepare the necessary paperwork and language prior to submitting it to legal counsel.



HOW TO UPDATE YOUR HOA'S GOVERNING DOCUMENTS

At Keystone, our managers receive ongoing training and education to keep board members informed about new laws taking effect and when documents need to be updated, and we learn from internal discussions regarding problems that often arise within other communities and how they're resolved. This proactive approach helps prevent issues down the road and provides board members expert guidance to implement change.

Furthermore, your HOA management team can help with strategies for incentivizing community members to submit their ballots during the approval process and avoid the additional cost and delay of petitioning the court. We also continuously share our collective knowledge through blogs, seminars, and other ongoing, educational opportunities.

Change is often a good thing, especially when you have an HOA management team to guide you along the way and make the process more manageable.



Keystone is here to help your association succeed.

CONTACT US TODAY TO GET THE CONVERSATION STARTED
ABOUT HOW WE CAN HELP YOU TAKE IT TO THE NEXT LEVEL.

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