

# Is it Time to Update Your Documents?



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*Out-of-date provisions in your association's declaration and bylaws can prevent the association from serving all the needs of its unit owners. The best time to update your documents is before they begin causing trouble.*

*If your association is more than a few years old, your governing documents may not be serving your interests as well as they might.*

## **Documents Drafted Prior to 1984 Were Too Rigid**

Older documents made it hard to amend provisions that need to change with the needs of the community. The documents set a fixed date for annual meetings. They set maximum fees, fines and late charges, not reflecting inflation. They set requirements for insurance that did not allow for changes in the types and cost of available coverages and deductibles. They restricted the priority of the association's lien for common charges beyond what is now allowed by law. They restricted actions taken by the association without mortgagee approval. At times, they overly restricted the actions of the board. Other times, the unit owners had no way of reviewing the board's action without recalling the entire board.

## **The Laws and Regulations Have Changed**

The Common Interest Ownership Act (CIOA) was adopted in Connecticut in 1984. The Act contains many provisions reflecting how associations operate in the real world. Even the term "common interest community," which first came into common use in the Act, recognizes that many common interest communities are not conventional condominiums.

The Act permits associations broad flexibility in meeting the needs of each particular community. Under the Act, charges for optional or special services can be allocated to the individual units that benefit from them. Associations can adjust late charges, fines, and interest for inflation and changes in interest rates. Amendments do not require an unreasonably

high percentage of unit owner votes. Additionally, the Act does not require mortgagee approval of amendments. Furthermore, the Act enables your association to pledge its income from common charges as collateral for loans, empowering you to borrow money.

The regulations of the Federal National Mortgage Corporation, known as Fannie Mae, have also changed. Fannie Mae now accepts the limited priority of the association's lien over first and second mortgages. Additionally, Fannie Mae no longer requires mortgagee consent to your association's actions.

### **“Opting In” Under the Common Interest Ownership Act**

Some of the new powers and flexibilities granted by the Act are automatically conferred on all associations, even those created before 1984. Some apply only if your association's documents specifically grant you the particular powers. Still others apply automatically unless restricted by the documents.

Your association can assume the non-automatic powers and flexibilities granted by the Act by amending your documents. If you assume any of these powers, you are required by the Act to also assume the obligations and responsibilities that go with them.

### **Amendments Reflecting Changes In Today's Economic Environment**

The Act empowers an association to pledge its right to receive common charges as security for a loan. However, this power is not automatically granted by the Act. Your documents must contain a provision allowing you to take advantage of this power. The documents of most communities created after 1984 already contain this provision.

If your documents do not contain this provision, you may amend your documents under the Act. This amendment is useful for communities that need money for capital repairs and improvements, but do not want to levy large assessments against the units. Today, there are lenders who are lending to associations at favorable interest rates.

Several associations we represent have amended their documents to empower the board to designate certain items within the units as “high risk components.” Examples of high risk components include hot water heaters, washing machine hoses, dishwasher hoses, and other similar items. These items are considered high risk because they cause major damage or destruction to units and common elements when they fail. The amendment allows the association to require unit owners to perform regular maintenance on, or replace, these components. The association may direct unit owners to use only certain brands or types of components, designed to reduce the likelihood of failure. Reducing the chance that these components will fail reduces the number of claims made under the association's insurance policy. Reducing the number of claims will help to avoid increases in insurance premiums.

Some associations have amended their documents to allow them to assess shortfalls in insurance coverage caused by deductibles against the individual damaged units. The amendment allows the association to prorate the shortfall, and the amount assessed to the individual unit is proportional to the cost of repairing that unit. This makes for a fair allocation of the shortfall. The unit owner can claim the assessed loss under his or her individual insurance policy, and be reimbursed by his or her insurance carrier. This relieves other unit owners of having to pay additional common charges to recover the shortfall. This also increases the chance that most of the cost of repair is covered by insurance.

## **Should Your Association Consider Amending Its Documents?**

Your association may want to amend its documents to deal with a specific need or problem, such as a bank loan, insurance issues or a change in maintenance responsibilities. Perhaps you have no specific need, but you have realized that your operation is becoming more difficult than it ought to be. In either case, you should update your documents.

There are two ways to update your association's documents. First, you can replace them entirely with documents based on the current forms. This gives you the benefit of the thought and experience accrued over the last forty years. Since most documents drafted since 1984 follow the new forms, you should consider a complete replacement only if your documents were recorded in 1983 or earlier, or if your documents are particularly inept.

Second, you may adopt a selective amendment to correct particular shortcomings. In doing so, you should also adopt the most useful powers and flexibilities now permitted by state law and by Fannie Mae.

Of course, the amendment process can be time-consuming and expensive, especially if done in a time of immediate need. You can avoid a num- *[Continues on page 20]*

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ber of problems and amendments in the future by doing a single updating amendment, saving both time and money.

### **Particular Amendment Provisions**

We recommend you consider the following when updating your documents:

- Eliminate fixed meeting dates.
- Reduce required mortgagee approvals.
- Adopt the power to borrow money and to pledge future common charge income as security for loans.
- Revise the budget approval process.
- Eliminate restrictions on the priority of the association's lien for common charges.
- Provide for special allocation of charges.
- Eliminate fixed fines, interest and late charges.
- Give the board the power to accelerate common charges in cases of nonpayment.
- Update insurance requirements.
- Provide for the allocation and assessment of insurance coverage shortfalls that occur by virtue of deductibles.
- Revise maintenance responsibilities.
- Empower the association to designate certain items within units as "high risk components" and require unit owners to perform regular maintenance and replacement of those items.
- Amend the amendment procedure itself.

Please contact your association's attorney if your association believes it would benefit from updating its documents. ■