



TOP SEVEN REASONS TO AMEND YOUR CC&RS

CC&Rs are recorded documents and, as a general rule, were written with a great deal of care and with the specific needs of your association in mind. Nevertheless, the author of the documents could not see into the future and probably did not address every concern that has come up or predict every law that has been passed which impacts the enforceability of your CC&Rs.

For some community associations, simple amendments may solve the really pressing issues. While those amendments will still require membership approval (unless the amendment is designed to remove a discriminatory clause), the process can be simple. For many other associations, the documents have become difficult to use and a more dramatic and broad-scoped change is needed.

Here are the most common reasons that I have seen for initiating a complete overhaul of the documents:

- 1 The maintenance responsibilities are not clear.** For many associations, the documents were written in an ambiguous manner or are simply missing an allocation of responsibility for several building components. As a result, the association has spent a lot of money over the years in having attorneys, or perhaps judges, interpret the documents. The lack of specificity has caused division amongst the members. A modern approach to this problem is to set forth all of the building components within the association and provide a checklist as to whether the homeowner or the association will maintain that component.
- 2 The use restrictions are not working.** Some governing documents were originally written without a whole lot of restrictions. As the years pass, members realize that they can do what they want, even to the detriment of the neighbors. Common examples are issues relating to short-term rentals, parking, garage use, smoking, pets, home-based businesses, and the like. Without clear restrictions, the association may have a hard time preventing a decrease in the quality of the community.



- 3 The documents are not user-friendly.** It may be a simple problem of not having page numbers or a table of contents. Or it could be a bigger problem where the language used is only understood by architects or attorneys. For most associations the CC&Rs can become user-friendly just by removing the developer-related provisions to make the document shorter. Whatever the issue, the documents should be written in a manner that everyone can understand if the expectation is that everyone will comply with the provisions of the CC&Rs.
- 4 The documents are outdated.** The laws change every year. It is not necessary to keep updated the CC&Rs to keep up with the changes in the statutes. But, for some associations, the CC&Rs are riddled with provisions that are no longer legally enforceable or contradict the current state of the law. For others, the CC&Rs do not take advantage of what the law has to offer (such as 12% interest on delinquent accounts).
- 5 The practice of the association is in conflict with the CC&Rs.** If the board has determined that the CC&Rs require one thing, but for years the association has been doing something else, you have to amend or change your ways. Common examples are incorrectly assessing owners, maintaining a building component that is meant to be maintained by the homeowner, or enacting rules even though there is no authority to do so.
- 6 Concerns over insurance claims.** Associations generally provided property insurance for the portions of the building required by the CC&Rs. If an association is required to insure components maintained by homeowners, homeowners may have an incentive to make claims and not purchase their own insurance. Limiting the type of insurance the association is required to maintain can result in more options, which can ultimately lead to lower premiums and less of risk of non-renewal of the policy.
- 7 Discriminatory clauses.** Associations are required by law to amend CC&Rs to remove discriminatory clauses.

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