



Extending the Life of Your Governing Documents

By Glenn H. Youngling, Esq.

How often should an association undertake a full update of their bylaws and CC&Rs? Initial developer-drafted documents tend to be generic and often lack the tools to effectively address important subjects. As a rule of thumb, it may be wise to consider customizing and updating original documents in the range of three to five years. Beyond that, about every ten years is a good time frame to consider whether or not to restate the documents.

What follows are some suggestions for HOAs to keep their documents both fresh and reliable as they age. These steps will also prolong the document life cycle. Board “mini updates” to bylaws and CC&Rs and up-to-date rules and policies can also be used to accomplish this.

Board Authority to Update Without Member Approval

1. The next HOA bylaw and/or CC&R update should include a provision that basically does the following:
 - a. Gives the board the authority to update any provision(s) to address preemption resulting from changes in any statutory law and/or developments in applicable case law. Then such an update need not include a full member vote.

- b. Requires confirmation from counsel as to the nature of the legal preemption.
 - c. Utilizes the same Notice to Owners as a rule or policy change. [Civil Code § 4360]

2. Note that there are statutory changes that permit the board to conform documents without a member vote:
 - a. Reasonable rental restrictions [Civil Code § 4741(f)]
 - b. Deletion of unlawful restrictions [Civil Code § 4225]

Update Rules and Policies

Use policies to fill in gaps and shift reliance away from outdated CC&R provisions. This is especially important for subjects where statutes require the HOA to have rules or policies that reflect current law:

1. Collection policy [Civil Code § 5310(a)(7)]
2. Architectural procedures [Civil Code § 4765]
3. Voting and elections procedure/policy [Civil Code §§ 5100-5130]
4. Internal dispute resolution [Civil Code § 5905]

There may be a long list of other rules or policies that are useful but are not required by statute. They can be very helpful as user-friendly tools to educate owners and other residents. Hot topics include enforcement policy and schedule of fines, accessory dwelling units (ADUs/JADUs), electric vehicle charging stations, and solar and house batteries.

“Teachers Edition” Bylaws and CC&Rs with Annotations

In 2014, the entire Davis-Stirling Act was reorganized, renumbered, and restated. At that point, nearly every set of documents in the state contained at least a few statutory numeric references to laws that were no longer valid. To buy time before fully updating, many HOAs annotated the new statutory numbers within the margins of the operative documents. With these in the hands of directors and managers, they had a quick reference guide to current statutory authorities. With the caveat that these notes in the margins are not part of the “official” document, annotations can be a helpful tool and extend the useful life of documents.

CC&Rs versus Rules/Policies

When revising CC&Rs, HOAs should consider tipping the balance of subject specificity versus adding the subject specificity to the list appropriate for rules and policies.

1. Pros and cons of specificity in the CC&Rs: In the event of a dispute, CC&R provisions are presumptively valid in nearly all instances. This means that an owner challenging a CC&R standard or provision has a substantial burden to overcome. The opposite is true for enforcement of rules or policies. In a dispute arising from a rule or policy, the HOA generally has the burden of establishing that the rule or policy is reasonable. Details in the CC&Rs can make a huge strategic difference. However, too much detail in the CC&Rs can prematurely age documents as demographics change, buildings age, and preferences evolve. Conversely, when the details are in the rules or policies, they can be easily updated by the board without the delay and cost of a member vote.

2. When updating the CC&Rs, HOAs should consider the appropriate balance of CC&R detail versus rule detail on subjects such as vehicles and parking, nuisance, pest control, home occupations, common area uses, landscape maintenance, pets, and BBQs/outside fires.

Scheduling and Budget

An increasingly common practice is to add the governing document update as a line item in the HOA’s reserve study. If there is a ten-year horizon, the item will stay on the radar while directors and perhaps managers come and go. A CPA may see the subject as a “stretch” for inclusion in the reserves. However, a line item in the reserve study is a natural for scheduling and budgeting.

Reliable and up-to-date governing documents provide an HOA’s board, management, and owners with the tools to operate efficiently, manage risk, set balances of owner and HOA responsibility, and avoid problems before they start. HOAs can make the most of their documents by cyclically updating them, and it will be time and money well invested.



After more than 40 years in the role of general counsel to more than 100 associations, Glenn Youngling now focuses his years of experience on working with HOAs to update their governing documents.

