



#326 HOA Homefront – Before Amending CC&Rs, Avoid “Ready, Fire, Aim!”

By Kelly G. Richardson, Esq. CCAL

- 1. First, check with the members.** Amending CC&Rs usually takes a supermajority (i.e. more than simply a majority of the quorum), so strong membership support is essential. Drafting a great amendment is meaningless if the homeowners will not vote for it.
- 2. Avoid controversial amendments,** such as amendments changing assessments so that some members pay a higher or lower amount or unpopular use restrictions.
- 3. Some amendments do not require a membership vote.** Under the Civil Code, amendments deleting developer marketing provisions (Section 4230) or removing illegal discriminatory restrictions (Section 4235), or simply changing the old Civil Code references to the current (Section 4235), are all amendments which can be adopted by the board of directors in an open meeting.
- 4. Get out the vote.** Explain to the members that the failure to vote (abstaining) is the same as a “no” vote. Divide up the community into sectors and divide those sectors among volunteers. CC&R amendments are not often very interesting, and apathy is usually their greatest enemy.
- 5. If you cannot meet the supermajority** required by your CC&Rs, Civil Code 4275 allows the HOA to file a court petition to seek judicial approval - however, to petition, more than 50% of all members, not just a majority of the quorum, must vote in favor. These petitions really should be viewed as a last resort, due to the legal, mailing, and copying cost involved.
- 6. The EXACT text of the amendment must be sent** out with the ballots - even if it was already previously distributed. This is required by Civil Code 5115(e). When sending amendments to members, help them by sending TWO versions - one "redlined", showing what is being removed and what is being added, and another version showing the text as it will read if it is approved. If your association is pursuing a complete rewrite of your CC&Rs, don't worry about this last item - a "redline" version will be too complicated. Instead, consider sending along a summary of "highlights" of what will be new or different in the proposed CC&Rs.
- 7. While trying to amend your association CC&Rs, consider whether bylaw amendments are also needed.** More may be accomplished with the same vote (and effort). Bylaw amendments usually require less votes to approve, and a court can also order them approved under Corporations Code 7515.



8. If homeowners wish to speak in opposition, allow them to speak.

Normally, boards explain with the amendment package explain why it should be passed, in HOA meetings, or newsletters. If some members strongly oppose the amendment, the Wittenberg v. Beachwalk case reminds us that the board cannot prevent others from expressing opposition. Besides, if there is a significant amount of disagreement, the board should slow down and work more to build a consensus. CC&R amendments should be widely supported.

9. Have an attorney prepare the amendment. CC&Rs are a legal document. I occasionally discover that a client presented an amendment which unknowingly violates the law or contradicts another part of the CC&Rs. Your association attorney should be involved very early in the amendment process, to avoid wasted effort.

10. Make sure your amendment is recorded. Once the amendment is filed with the County Recorder, all owners and future owners are deemed by law to have legal notification and are therefore bound by it.