

The HOAleader.com Comprehensive Guide to Condo/HOA Governing Documents

An Exclusive Special Report
from HOAleader.com

This report is provided as a research and reference tool. Although we make every reasonable effort to ensure that the information, analytical tools and data provided are useful, accurate, and current, we cannot guarantee that the information, tools and data provided here will be error-free or appropriate for your situation. This site and the information available through it do not, and are not intended to constitute legal or other professional advice. HOA management often involves complex decisions requiring the services of competent, licensed professionals; we urge you to obtain such services before making decisions with legal and other professional implications.

© 2024 Plain-English Media, LLC. All rights reserved.

Users are permitted to make one paper copy for personal, noncommercial use. Unauthorized reprinting, quoting, photocopying, duplication, transmission by facsimile, or incorporation into any information retrieval system, or any unauthorized use without written permission, is a federal offense with severe civil and criminal penalties.



HOAleader.com
custserv@HOAleader.com
(866) 641-4548
909 Marina Village Parkway #183
Alameda, CA 94501

Improve your compliance with HOA laws and train your homeowners association board in best practices more easily

Sign up today for a **FREE TRIAL MEMBERSHIP** to HOAleader.com. You'll discover:

- **Updates:** the latest new laws and court cases affecting HOAs
- **Analysis:** Plain-English explanations of what developments mean to you
- **Advice:** Step-by-step guidance on best practices for homeowner associations
- **Tools:** Checklists, sample policies and forms to keep your community association in compliance with HOA law
- **Community:** Access to HOA board members across the country who understand the challenges you face

Click here for quick **FREE trial sign-up**.

About HOAleader.com

HOAleader.com's attorney editors and experienced journalists constantly research the latest developments in HOA law affecting homeowner and condominium associations across the U.S. Then we publish plain-English analyses of what those developments mean to you as an HOA leader, and what you need to do now to comply with HOA laws, steer clear of legal trouble, avoid or resolve conflicts within your homeowners association, make HOA management easier, and safeguard your community association's property values and quality of life.

You can sign up for **free trial membership here**.

The screenshot shows the HOAleader.com website. At the top is the logo with the tagline 'THE PRACTICAL GUIDE TO HOMEOWNER ASSOCIATION MANAGEMENT'. A navigation bar includes links for Home, Browse by Topic, Discussion Forum, Research, Search, and Member Log-in. The main content area features a large orange sidebar on the left with a sign-up form for a 'FREE HOAleader Tip of the Week' and a search box. The central article is titled 'Practical Advice for Condominium and Homeowners Association Leadership' and lists target audiences such as board members and association managers. Below the article are links for a 'Free 7-Day Trial' and 'Browse by Topic'. On the right, there are sections for 'FREE WHITEPAPERS' (featuring an article on HOA Finances) and 'SPONSORED LINKS' (featuring an advertisement for 'Is your community reaching its potential?').

A Message from the President

Dear HOA Leader,

As a reader of HOAleader.com, you've seen us say it over and over and over: "First, read your governing documents..." Or "Your first stop should be your governing documents." Or "Find out what your governing documents say."

But if you're new to the condo/HOA world, (and even if you're not so new) you may not *really* know what those governing documents include. What documents are included? What should I be looking for if I'm reading them? Are certain documents more important than others? And what about the law—where does that fit in when I'm trying to figure out my governing documents?

We've got you covered. In this information-filled report: The HOAleader.com Comprehensive Guide to Condo/HOA Governing Documents, our legal and community association management experts walk you through those questions and more.

In this report, you'll find information on:

- Condo/HOA Governing Documents: The Basic Definitions
- Why You Need to Read and Understand Your Condo/HOA's Governing Documents
- What Trumps What in Your Condo/HOA's Governing Documents and the Law?
- Condo/HOA Declarations and Covenants Explained
- Condo/HOA Bylaws Explained
- Condo/HOA Rules and Regulations Explained
- Other Condo/HOA Governing Documents Explained
- How to Change Your Condo/HOA's Governing Documents
- How to Begin the Condo/HOA Amendment Process
- Oops! What If You Haven't Been Following Your Condo/HOA Governing Documents?
- Sheesh, Amending These HOA Bylaws Seems Over the Top—Or Is It?
- Easier Ways to Get Lenders' Approval for Your Condo/HOA Amendments
- Can Your Condo/HOA Board Be an Advocate in Votes on Amendments? Elections?
- By All Means, Get Your Condo/HOA Attorney Involved in Amendments
- 7 Provisions That May Mean Your HOA's Governing Documents Are Sub-Par

Our mission is, as it has been for more than 15 years, to offer you useful information in our characteristic clear, plain English that you can immediately adopt in your association.

As always, when it comes to issues of legal compliance for condos and HOAs, it is important to remember that each state has its own rules, and you should consult with an attorney or other professional as to the appropriate steps for your specific situation.

Our goal for this report, as for all HOAleader.com information products, is to help make your association a better run organization and help make you a better leader for your community. I am confident that you will find concrete ideas you can put to work in your condo or homeowners association.

To find more HOA governance tips, [visit HOAleader.com today](https://HOAleader.com).

Best regards,



Matt Humphrey

President

Plain-English Media

Publisher of HOAleader.com

Table of Contents

A Message from the President	i
Condo/HOA Governing Documents: The Basic Definitions	1
Why You Need to Read and Understand Your Condo/HOA’s Governing Documents	4
What Trumps What in Your Condo/HOA’s Governing Documents and the Law?	5
Condo/HOA Declarations and Covenants Explained	7
Condo/HOA Bylaws Explained	9
Condo/HOA Rules and Regulations Explained	11
Other Condo/HOA Governing Documents Explained	14
How to Change Your Condo/HOA’s Governing Documents	16
How to Begin the Condo/HOA Amendment Process	19
Oops! What If You Haven’t Been Following Your Condo/HOA Governing Documents?	24
Sheesh, Amending These HOA Bylaws Seems Over the Top—Or Is It?	28
Easier Ways to Get Lenders’ Approval for Your Condo/HOA Amendments	31
Can Your Condo/HOA Board Be an Advocate in Votes on Amendments? Elections?	34
By All Means, Get Your Condo/HOA Attorney Involved in Amendments	37
7 Provisions That May Mean Your HOA’s Governing Documents Are Sub-Par	39
Appendix 1: Additional Special Reports from HOAleader.com	43
Appendix 2: Webinars Available On Demand from HOAleader.com	48
Appendix 3: Most Popular Articles on HOAleader.com	53

Condo/HOA Governing Documents: The Basic Definitions

What are your condo or HOA's governing documents? They go by different names in different states. The most common names might be the *governing documents*, the *CC&Rs*, the *dec*, the *master deed*, or something else.

Those terms typically encompass a set of documents, and what's included in the full package will vary based on your state and possibly by the type of community in which you live, whether it's a condo, HOA, co-op, or other version of a community association.

For example, Oregon's setup is somewhat common among the states, and it's a good way to help you understand what you might encounter. "The governing documents generally refer to a collective group of documents," states [Katie Anderson](#), PCAM, AMS, CMCA, the founding owner of Aperion Management in Bend, which manages nearly 85 condo, HOA, and townhome associations throughout Oregon.

"When we talk about them, it's generally going to be the CC&Rs, the bylaws, the plat, and rules and regulations," she states. "*Governing documents* is an overarching term you use for all the documents that apply to a particular community."

But not all developers and state lawmakers have been on the same page, and they haven't all used the exact same terms or those exact same documents when they've created their condos and HOAs and the laws that govern them. To give you a feel for the documents you might encounter as you serve in a condo or HOA leadership role, here's a list of the various documents included the governing documents in a snapshot of states, along with a few notes that might help you understand the nuances in these documents.

California—"The CC&Rs are the declaration of covenants, conditions, and restrictions," explains [Susan Hawks McClintic](#), managing shareholder and the chair of the community association transactional practice group at the law firm of Epsten APC in San Diego. "That's created by the developer and the developer's lawyer, and it's a recorded document against the property. We generally refer to it as the property documents."

"We also have bylaws, also drafted by the developer, that address [governance issues](#)," she states. "Some associations are incorporated, so there will also be articles of incorporation. Then there are [rules and regulations](#). Condos will also have a condo plan created by the developer, and those are detailed drawings of the property."

Florida—"In a condo, there will be a declaration of condo—that's the document that creates the condo," explains [Lisa Magill](#), of counsel based in Pompano Beach, Fla., Kaye, Bender & Rembaum. "It's definitely necessary to have underlying deed restrictions in HOAs, but what that's called could be different things. It could be the declaration of restrictions and covenants or the declaration of covenants. You'll see other types of names as well."

“The governing documents also include articles of incorporation, the bylaws, as well as rules and regulations adopted by the association,” says Magill. “All those documents aren’t officially named governing documents by Florida statute, but they are governing documents.

“Also, any plat or plat restrictions would be considered to be governing the association,” she notes. “You could also have other types of things like easements or conservation easements. They’re not typically governing documents, but they are documents that govern the property and instruct the association as to its responsibilities.”

Michigan—“Prior to Michigan enacting its condo act, we had another act called the land division act or something like that,” explains Todd J. Skowronski, an associate at Makower Abbate Guerra Wegner Vollmer PLLC, whose firm advises nearly 2,000 association clients throughout Michigan.

“Under that older law, the developer would record a plat map and generally a declaration of restrictions, sometimes just called the declaration or the declaration of restrictive covenants,” he adds. “That was filed against the entirety of the development, and that’s your main document. It binds owners to [pay assessments](#) and defines the association. In Michigan, we generally call those developments subdivisions.

“Eventually Michigan passed our current condo act, and most developments use the condo act,” states Skowronski. “It simplifies things.

“When a developer owns land, it will record a master deed,” he states. “That’s the main governing document, and attached is the bylaws. There could also be a condo subdivision plan, which depicts the condo, showing things like the structures included. Those three things are all recorded together, and those are the governing documents generally.

“The declaration typically wasn’t conveying title to property,” he notes. “It was encumbering the property. With the master deed, once recorded, all subsequent owners’ rights flow from it. Typically with older subdivisions, someone would buy a lot. The deed would say, ‘You’re buying lot 1 in this subdivision subject to the restrictions in the declaration recorded here.’ That’s how they’d know they were governed by that. Conversely in a condo, you’re buying unit 1 in this condo, subject to the master deed.”

New Hampshire—“We have the declaration and bylaws in New Hampshire,” reports [Robert E. Ducharme](#), founder of Ducharme Law in Stratham, N.H., who has specialized in representing community associations for 25 years. “In HOAs, there will be what’s called the declaration of covenants. For condos, there will be a declaration of ABC condos.

“In our statutes, they’re called the condo instruments—the declaration and bylaws, plus the site plan and the floor plans,” he adds. “Those four documents make up the contract between the associations and the owners.”

New Hampshire has a twist on the effective date of their governing documents. "Our statute says that all four documents become effective as soon as they're filed with the register of deeds," says Ducharme. "It's an anti-ducking-your-head-in-the-sand statute.

"It has to be that way," he asserts. "Otherwise people could say, 'I never read them.' So they're effective once they're filed, and owners are bound to them even if they've never read them.

"Rules and regulations are different," notes Ducharme. "They're effective upon delivery to the owner against whom you want to enforce them, and owners need to be given reasonable time to come into compliance before you enforce them."

Back to Table of Contents ▲

Why You Need to Read and Understand Your Condo/HOA's Governing Documents

When you agree to serve on your condo or HOA board, you're agreeing to enforce the contracts all owners consented to abide by when they purchased in the community. So, you'd better know what you're expected to enforce.

"I'll tell boards and owners, who are almost always running a nonprofit or unincorporated association, that they're not just volunteering to help out in the neighborhood," states Todd J. Skowronski, an associate at Makower Abbate Guerra Wegner Vollmer PLLC, whose firm advises nearly 2,000 association clients throughout Michigan. "You're agreeing to run a business, and its job is to collect money and spend money on what's required in the documents.

"Your actions aren't personal—it's business," he adds. "I believe it's helpful for board members to keep that in mind. You're literally the director of a little business, maybe a big business in a large community. If you're on the board, your duty is to enforce the master deed, the declaration, the bylaws, and any other documents that govern your community."

The work you're doing is enforcing the agreements all owners have consented to, agrees [Lisa Magill](#), of counsel based in Pompano Beach, Fla., Kaye, Bender & Rembaum. "I think the board members I work with certainly understand that these documents form a contract. But it's even more than a contract. It's a land-use restriction, something that governs the use, occupancy, and ownership of that land on a higher level than a contract would be."

[Katie Anderson](#), PCAM, AMS, CMCA, the founding owner of Aperion Management in Bend, which manages nearly 85 condo, HOA, and townhome associations throughout Oregon, agrees. "We as a company go through board training to explain these documents to board members so they understand," she says. "These documents lay out the power of the board but also its responsibility.

"At a minimum, board members should know what they say," she adds. "But the biggest part is to understand them. I've been doing this almost 22 years, and I don't think I've ever seen an identical set of documents. There will be nuances. Board members need to understand the [notice requirements](#), [quorum requirements](#), when the [board has the authority to meet](#), what the board needs to be doing, and many other things. Managers also need to understand these documents.

"And if a community is self-managed, they *really* have to understand those things," states Anderson. "They have to know: What are we responsible to our ownership for? And those duties aren't always taken seriously by boards."

[Back to Table of Contents](#) ▲

What Trumps What in Your Condo/HOA's Governing Documents and the Law?

As you turn to your governing documents in your role as a condo or HOA board member, you'll need to know the hierarchy of your documents and [how they fit in with your state law](#). For instance, if your rules say one thing, should you follow those even if your declaration or state law say something different? (Spoiler alert: No. Rules are the *last* thing in terms of the power of documents and the law.)

The Top of the Pyramid

As a general rule, you'll need to identify your state or federal law on any particular issue you're facing in your community and follow that, regardless of what your documents say. That's a general rule, however, and a state law could have a provision that says something along the lines of, "Unless otherwise provided in the declaration, a condo must..."

California is an interesting example. "There are some laws that very specifically overrule whatever would be in your own documents, and other laws apply as a backup if your documents don't address an issue," says [Susan Hawks McClintic](#), managing shareholder and the chair of the community association transactional practice group at the law firm of Epstein APC in San Diego. "But most of the state laws supersede documents."

"On a [maintenance issue](#), it does say in our California law, 'Unless the declaration provides otherwise, here's how maintenance is handled,'" she explains. "But that's unusual. Usually the law will overrule the governing documents."

Laws will also trump governing documents when it comes to issues considered important to public policy that conflict with provisions in your governing documents. "State law will trump the private land-use restrictions if the issue involves a constitutionally compelling state interest," explains [Lisa Magill](#), of counsel based in Pompano Beach, Fla., Kaye, Bender & Rembaum.

"For instance, back in the day, governing documents actually said things like, 'No Jews,' or 'Owners must be part of the Aryan race,'" she explains. "But the U.S. Supreme Court held in [Shelley v. Kraemer](#) that there's a compelling state interest in prohibiting discrimination. So even though owners privately agreed that they wanted to discriminate by agreeing to provisions like those, those provisions will fall to state law."

"Another example is satellite dishes," says Magill. "The federal government has declared that the ability to get information from a satellite is a compelling state interest. So owners can have those dishes despite provisions in governing documents that might allow a board to restrict the satellites."

"Here in Florida, the big one is [fire sprinklers](#)," she notes. "A statute was passed saying all existing buildings had to install fire sprinklers, and some people wanted to say no."

But the rule is that fire sprinklers are possible for the legislature to implement under its police powers, and [safety](#) is a compelling state need.”

The General Order After

Once you’ve identified whether a state or federal law is in play, then you’ll follow a more general order of priority of documents. Michigan’s structure is typical.

“In Michigan, the order of documents is state law, the declaration, the bylaws, and then the rules,” says Todd J. Skowronski, an associate at Makower Abbate Guerra Wegner Vollmer PLLC, whose firm advises nearly 2,000 association clients throughout Michigan.

“For subdivisions, the order of documents is the declaration and the recorded plat, then the bylaws, and then rules and regulations,” he adds. “For condos, it would be the condo act, the master deed, the bylaws, the subdivision plan, and then rules and regulations.”

That’s generally the structure in Florida as well. “Whatever is the land-use document, which would be the declaration in a condo or HOA, is at the top,” says Magill. “In a co-op, generally a proprietary lease would be the document of the highest priority. Then there would be the articles of incorporation, which would fall above the bylaws.”

California is similar. “If we didn’t have a statute that tells us that the declaration controls over the articles of incorporation, I’d have not thought that,” says [Susan Hawks McClintic](#), managing shareholder and the chair of the community association transactional practice group at the law firm of Epstein APC in San Diego. “Fortunately, there’s typically nothing in the articles that would conflict with the declaration, anyway. But according to California code, articles are inferior to the CC&Rs.”

But Oregon is slightly different. “When it comes to the hierarchy, you have your articles of incorporation, which in Oregon is the document that forms the entity,” states [Katie Anderson](#), PCAM, AMS, CMCA, the founding owner of Aperion Management in Bend, which manages nearly 85 condo, HOA, and townhome associations throughout Oregon. “There’s generally not a lot of meat in that document. It’s a single-page document that spells out the name of the corporation, and it’ll have the address and the initial agent.

“From there, it’s the plat, and then the CC&Rs, which we also call the declaration,” says Anderson. “Then come the bylaws followed by the rules and regulations and architectural guidelines.”

[Robert E. Ducharme](#), founder of Ducharme Law in Stratham, N.H., who has specialized in representing community associations for 25 years, throws an interesting twist into the evaluation of what will govern your activities. “Judges will tell you what the documents mean and what the law is—even if they’re wrong,” he says. “I tell everybody that we’re called humans, and judges aren’t perfect. They get things wrong, but they don’t tell people that.

“Judges will trump statutes and ordinances, and those trump the declaration,” he adds. “Then in New Hampshire, the declaration trumps the bylaws, and those trump rules and regulations. Whatever is lower on hierarchy can’t contradict something higher on the hierarchy. Boards have extraordinary powers do to what they need to do so long as it’s not contradictory to the bylaws and declaration.”

Back to Table of Contents ▲

Condo/HOA Declarations and Covenants Explained

One of the main governing documents is the declaration, sometimes called the covenants, or even other things. It's typically at or near the top of the food chain in the hierarchy of governing documents. Here's what's typically included in this document.

The Property, Defined

In Florida, the document is called the declaration or declaration of restrictions and covenants, or something else depending on whether it's a condo or HOA or who created it, says [Lisa Magill](#), of counsel based in Pompano Beach, Fla., Kaye, Bender & Rembaum. "In a condo, this document creates the condo, lays out the boundaries of the units and common elements, establishes the nature for property ownership, allocates the percentage of ownership for assessments, and more.

"The declaration will delineate what's part of a unit and subject to private ownership and what part is considered a [common element](#), which is owned by all," she adds. "In an HOA, the declaration will establish [architectural control restrictions](#) like what kind of [landscaping](#) is permitted, what kind of house you can build, and what kinds of changes you can make to your house."

In California, this document primarily addresses property issues, says [Susan Hawks McClintic](#), managing shareholder and the chair of the community association transactional practice group at the law firm of Epsten APC in San Diego. "The CC&Rs, or declaration of covenants, conditions, and restrictions, is a recorded document against the property," she says. "I generally refer to it as the property documents. It typically covers use restrictions, such as how owners can use their property, what [insurance](#) is necessary for owners and the association, [maintenance issues](#), and so on."

As we noted, in Michigan, this document might be called the declaration or master deed. "It's safe to say the master deed is like the bible for the community," says Todd J. Skowronski, an associate at Makower Abbate Guerra Wegner Vollmer PLLC, whose firm advises nearly 2,000 association clients throughout Michigan. "It controls all the conduct for the association and owners. It sets up the property and defines things.

"It typically lays out definitions of owners and the association, defines common elements—and there are limited and general common elements—and defines what a unit is," he explains. "And in Michigan, in a condo, there are only two things:

"First, there are units, which are the things the owner owns fee simple title to," says Skowronski. "Second are common elements, and those are the things owners own jointly and have an undivided interest in.

"The master deed will spell out who's responsible for what," he notes. "Do owners maintain their own windows? Who replaces driveways? It'll include easements, too. And the right of the association to [place a lien on owners' property](#) has to be put in the declaration. This document is nuts and bolts about how the community is put together.

“That’s pretty similar to a declaration or covenants,” he adds. “Sometimes they’re called declarations or CC&Rs, but all of these documents impose restrictions on a number of different properties. That’s how you get the HOA; they’re all bound by a single set of restrictions.”

The Broader Versions

In other states, the declaration of CC&Rs might include even more detail, as they sometimes do in Oregon. “They’ll lay out the structure of the association,” says [Katie Anderson](#), PCAM, AMS, CMCA, the founding owner of Aperion Management in Bend, which manages nearly 85 condo, HOA, and townhome associations throughout Oregon. “It’ll generally say what is the common area for the community and what are the responsibilities of the owners. And they’ll generally have all your use restrictions—the things you *can’t* do in the community.

“But here they’ll also lay out the functions of assessments, how they’re calculated, and what an owner with that specific real estate may be obligated to pay,” she adds. “In a planned community, assessments are normally evenly divided among the lots. In a condo, it may be more complex. The percentage of ownership maybe based on the size of the unit and maybe what floor the unit is on.

“The overall document can also lay out the fundamental framework on things like how long the developer gets to control the community, when it gets [turned over to the owners](#), whether the board has the right to create [easements](#), and whether the developer has the right to annex property,” notes Anderson. “So it covers all the rights, how the parties will work together, and the long-term operations of the community.”

[Back to Table of Contents](#) ▲

Condo/HOA Bylaws Explained

Did you know your condo or HOA is likely a corporation? It's often a nonprofit corporation, but it's almost certainly a corporation. And your [association's bylaws](#) outline what any corporation's bylaws spell out—the specifics of how the company will be operated. However, some bylaws may include even more than that.

"Typically, they detail the business functions for the corporation," states [Katie Anderson](#), PCAM, AMS, CMCA, the founding owner of Aperion Management in Bend, which manages nearly 85 condo, HOA, and townhome associations throughout Oregon.

"They'll lay out [how a board is elected](#), when [meetings](#) have to be held, where meetings will be held, [quorum requirements](#), the different types of meetings, and the [powers of the board](#)," she explains. "And if the community has stated [committees](#), there may be information about what their responsibilities are and their structure. It's all about the business of how the corporation is run."

That's much the case in California, too. "The bylaws address [governance issues](#)," reports [Susan Hawks McClintic](#), managing shareholder and the chair of the community association transactional practice group at the law firm of Epsten APC in San Diego. "They cover the rights and duties of the board and owners in terms of who makes certain decisions, the power and authority of the board, what things have to [go to members for vote](#), and how meetings are conducted."

"Housekeeping" is the term [Lisa Magill](#), of counsel based in Pompano Beach, Fla., Kaye, Bender & Rembaum, uses to describe bylaws. "It's how you hold your meetings, how big your board is, procedures for corporate action, and the authority of the association," she explains. "Some will also say the board has [authority to borrow](#) and to enter into contracts for things like bulk pest control and other services like [maintenance contracts](#)."

"Also, before our statute was revised, the bylaws would include condo election matters," states Magill. "Now there's a [statute for condo elections](#). But in Florida HOAs, elections are controlled by the bylaws. There could also be information included on owners' eligibility to serve on the board."

Other topics could also show up. "In New Hampshire, the declaration sets up the community, and the bylaws sets up how it's operated," says [Robert E. Ducharme](#), founder of Ducharme Law in Stratham, N.H., who has specialized in representing community associations for 25 years. "They could include information ranging from how many people are on the board to who [controls the money](#) and how a claim against the association or an owner is handled."

And in some states, the bylaws will have the nitty gritty of community association daily life. "Bylaws are sort of the operating guide, so they might include who's a member of the association and how [assessments are collected](#)," says [Todd J. Skowronski](#), an associate at Makower Abbate Guerra Wegner Vollmer PLLC, whose firm advises nearly 2,000 association clients throughout Michigan. "There could also be actual restrictions like

[picking up your dog poop](#) and the procedure for [leasing your property](#), if that's permitted. They speak more to governing the conduct of owners and the association and enforcement rights, like the [ability to sue](#) and what happens if you win.

"We have some subdivisions that will have a declaration, and those will also usually have bylaws," he adds. "They'll talk about how the association operates. The difference between condo and subdivision bylaws is that subdivision bylaws tend to not be recorded. And they tend to get lost because they're not recorded."

Back to Table of Contents ▲

Condo/HOA Rules and Regulations Explained

When can owners put their trash bins out and when must they remove them from the curb? What are your pool hours? What must residents know before planting political signs all over their property?

Those everyday matters are often part of the rules and regulations. The key with rules and regulations is that they're typically created by the board, and the board can revoke that rule the next day, if it chooses.

"The bylaws should give every board all the tools they need to operate the association in case something happens so they have the means to address it," states [Robert E. Ducharme](#), founder of Ducharme Law in Stratham, N.H., who has specialized in representing community associations for 25 years. "In New Hampshire, boards have the right to fill in any gap in their documents they want with their rules and regulations so long as what they fill in isn't contradicting their bylaws.

"For instance, most bylaws don't have anything on drones—there's no language in the declaration or bylaws," he explains. "There's a gap there. If drones start flying in the community, the board should be able to quickly respond. If there are gaps in their governing documents, the New Hampshire Supreme Court has made it clear that boards have the right to fill in those gaps."

Todd J. Skowronski, an associate at Makower Abbate Guerra Wegner Vollmer PLLC, whose firm advises nearly 2,000 association clients throughout Michigan, agrees. "They're meant to be gap fillers or clarifiers," he says.

Boards Have Broad Power

"Rules and regulations are voted on by the board, with a straight majority vote, as long as the documents allow it," reports [Katie Anderson](#), PCAM, AMS, CMCA, the founding owner of Aperion Management in Bend, which manages nearly 85 condo, HOA, and townhome associations throughout Oregon. "In other states, this might look different, but in Oregon, our declaration and bylaws generally provide boards the ability to adopt rules and regulations."

The process in your state or under your documents might differ slightly. "Rules and regulations are sort of a day-to-day working subdocument that's inferior to both the bylaws and CC&Rs," says [Susan Hawks McClintic](#), managing shareholder and the chair of the community association transactional practice group at the law firm of Epsten APC in San Diego. "They'll go into more detail on day-to-day issues than you'd want in your CC&Rs and bylaws.

"Sometimes they'll have more [meeting](#) and [election procedures](#) and details on how you can use your property than the CC&Rs and bylaws have," she states. "Sometimes they address specifics of [parking](#) and [noise issues](#). And all are created by the board.

"Different states and documents have different requirements and processes for creating rules," she notes. "But it is a board process, that they create the rules."

But these are general practices. Before your board acts, you must be sure you have the authority to pass any rules and regulations you adopt. "Generally speaking, there has to be some sort of provision in the declaration for a subdivision expressly giving the board the power to provide rules and regulations," says Skowronski. "In condos, our statute says boards can do this as provided in the governing documents."

Why Boards Need This Authority

Some people lament the power of boards to create rules, but Ducharme thinks it's appropriate. "Either you have association members make the rules or let the board do it," he explains. "My belief is that members should never make the rules."

"Boards need to act quickly," says Ducharme. "Let's say someone starts [flying drones over houses](#). If owners made the rules, you'd have to send notice of a meeting, make sure you have a quorum, and so on. Meanwhile, four kids have been hit by drones."

"The counterweight is that, at least in the documents I draft, you have to have an appeals process," he notes. "So, the documents give the board the power it needs to operate but also an appeal process to make sure the board got it right. There should always be a checks-and-balances system."

Policies, Rules, Poh-tay-toes, Poh-tah-toes

In some cases, rules and regulations are called board policies. "They're not statutory and not set in stone," explains [Lisa Magill](#), of counsel based in Pompano Beach, Fla., Kaye, Bender & Rembaum. "Whatever they're called, they're typically regarding the use and occupancy of property, quiet hours, hours of operation for the pool, how many [guests](#) you can bring to the [pool](#), [parking](#) on the right side of the street, and so on."

"Board policies could also be called rules," she adds. "Those often cover the way the board has set up how other things are handled, such as how owners file complaints and request work orders. They might also cover internal policies for the [retention of records](#) and allowing access to records, along with how you get [architectural approval](#), from the application to procedures to follow."

The Limits of Rules

"With both rules and regulations and architectural guidelines, those documents don't become a means by which the board can fix things they don't like in the CC&Rs and by-laws," stresses Anderson. "The rules can't conflict with those documents."

"If your CC&Rs say you can't have recreational vehicles in driveways, your board can't create a rule that says you can do that for seven days," Anderson explains. "Rules can't conflict with something above them in the hierarchy."

"That means they become a mechanism for the board to expand or clarify anything already established in the CC&Rs or governing documents," she states. "Maybe the

governing documents say owners can have basketball hoops in the driveway subject to the rules established by the board.

"Then the board can say, 'These are the circumstances in which we allow basketball hoops. They must be on a fixed pole, set in cement, X distance from the street, and this size and color,'" notes Anderson. "The rules and regulations become a process to set policy that expands on what's established in the CC&Rs."

Skowronski agrees. "Rules have to be consistent with the governing documents, meaning the declaration or the master deed or bylaws—those are the main documents," he explains. "A good example is that a lot of condo bylaws say the board may pass reasonable rules to govern parking or parking assignments."

"So, the board can clarify that there's no street parking overnight," says Skowronski. "That's a gap filler, a clarifier, an expression of how to apply other restrictions. Legally speaking, if a rule conflicts with the recorded document, the recorded document will control."

Reining in Rules

There's an additional limit on rules in New Hampshire. "Rules and regulations are effective upon delivery to the owner against whom you want to enforce them," explains Ducharme. "Yet owners need to be given reasonable time to come into compliance before you enforce them."

"You can [publicize rules on your website](#), provide hand delivery, or whatever—you just need to show you've notified owners of the rules," he says. "The rules can change from week to week or year to year."

"But you don't want to publish them with the registry where you record other documents," notes Ducharme. "That's not good. Because if you add a rule saying you can have only one pet, but owners have four pets, owners won't know you passed a new rule because you didn't provide that delivery of notice."

Back to Table of Contents ▲

Other Condo/HOA Governing Documents Explained

You've got your declaration or CC&Rs, then your bylaws, then your rules and regulations. And then there are a smattering of other documents that might be added in your state or in your set of governing documents. Here's what you might see and what those documents might cover.

Articles of incorporation—"Some associations are incorporated, so there will be articles of incorporation in the governing documents," says [Susan Hawks McClintic](#), managing shareholder and the chair of the community association transactional practice group at the law firm of Epstein APC in San Diego. "According to our code, these are inferior to the CC&Rs."

Condo plan—"Condos will have a condo plan," says McClintic. "It's very detailed drawings created by the developer that show the dimensions of every condo. It's a recorded document and one of the most important documents in creating a condo because it tells owners exactly what they own. When a homeowner gets their deed, it'll refer to the condo plan and identify the specific unit they own, sometimes in addition to parking spots if those are also assigned on the deeds."

Floor plan—As [Robert E. Ducharme](#), founder of Ducharme Law in Stratham, N.H., who has specialized in representing community associations for 25 years, noted, the four main documents in New Hampshire are the declaration, bylaws, the site plan, and the floor plans.

"To understand floor plans, imagine that you cut off the top of each floor and are hovering over a unit," he explains. "It's what you'd see if you then looked down."

"These are supposed to be updated—and our statute requires them to be accurate," he explains. "If you've reconfigured a load-bearing wall, that's supposed to be on the site and floor plans. Our statute also requires the board to approve the changes. The board hires someone to do that and assesses the owner."

"This is important because that's what [insurance companies are insuring on](#)," says Ducharme. "There have been two cases in the last year with fires in units, and owners hadn't notified the board of changes in their units. In one case, the owners got rid of linoleum and installed marble. Two owners in two different associations were out of money—one more than \$10,000—because the insurance company said, 'You're out of luck because we don't have record of this change.'"

"I have language I draft in my documents that says if owners have improvements of over \$1,000, they have to notify the board, and it will notify the insurance carrier," he says.

Plat—“The plat will give you easement information if there are utility easements or setback requirements on the lot,” says [Katie Anderson](#), PCAM, AMS, CMCA, the founding owner of Aperion Management in Bend, which manages nearly 85 condo, HOA, and townhome associations throughout Oregon. “If there’s a corner lot and a utility easement, the owner may not be able to build a fence there. So the plat has valuable information about easements and individual lots if there are varying setback requirements.”

Site plan—“This is similar to a floor plan,” says Ducharme. “If you had a helicopter and could fly over the property, the site plan shows what you’d see from above,” he explains.

On another note, there may be powers or provisions missing in these and other governing documents that you might expect to be there—but they just aren’t.

“Older documents may not give the association power to purchase property or to [incur indebtedness, like taking out loans](#),” says [Lisa Magill](#), of counsel based in Pompano Beach, Fla., Kaye, Bender & Rembaum. “Documents may not have very comprehensive [indemnification provisions for board members](#). They might have a one-sentence indemnification as opposed to a comprehensive provision.

“It’s important for association leaders and owners to know whether they have all the governing documents for their community,” she advises. “Boards should occasionally be performing a title search, going back to the plat, and researching what amendments were adopted over the years to make sure you have a full set. We often take over representation of a community, and we find they’re missing things.”

Back to Table of Contents ▲

How to Change Your Condo/HOA's Governing Documents

What if you don't like that your declaration bans fences? Or that your bylaws have a 50 percent quorum requirement to conduct an election?

You can change most things in your governing documents. It's just a matter of how hard you have to work to accomplish that. [State laws](#) and your governing documents will tell you exactly how you can amend each of your governing documents. But here's a rundown of the typical requirements our experts see with various documents.

Declarations and CC&Rs—These typically require a certain percentage of owners to vote and to approve changes. "In Florida, you can change your declaration with a membership vote," reports [Lisa Magill](#), of counsel based in Pompano Beach, Fla., Kaye, Bender & Rembaum. "The specifics depend on what the documents say. They'll typically contain the procedure for amendment. Florida statute is the default position.

"The worst-case scenario, and this is very much for older documents, is that you can change only with 100 percent of owners approving," she adds. "Back in the 1960s and 1970s, a lot of times developers didn't include amendment provisions. So, if you don't have a procedure to amend, you need 100 percent of owners to approve to amend. That's because you're all parties to that contract, and you all have to agree to changes to it.

"Now you very rarely see that really high threshold to change," says Magill. "Most of the time, it will be some lesser percentage. Today, requirements are all over the place, but approval of two-thirds of owners is a good rule of thumb."

In Michigan, this is completely document dependent. "For subdivisions, there's no governing law that dictates this," reports Todd J. Skowronski, an associate at Makower Abbate Guerra Wegner Vollmer PLLC, whose firm advises nearly 2,000 association clients throughout Michigan. "The process is typically dependent on the terms and conditions in the document itself.

"Often changes require a supermajority of owners to approve," he adds. "Sometimes it's 75 percent, and sometimes it's two-thirds. That's for subdivisions. For condos, the act says material amendments to the governing documents must be approved by a two-thirds vote, though there are exceptions. The question is: Is this a change in the way the condo works such that the change is material? There aren't usually fights over what's material."

In California, amendment requirements are usually spelled out in the CC&Rs, says [Susan Hawks McClintic](#), managing shareholder and the chair of the community association transactional practice group at the law firm of Epstein APC in San Diego. "It's some percentage vote of members, usually more than a majority," she says. "It's not uncommon to see CC&Rs requiring 75 percent or 67 percent owner approval to make any

changes to the CC&Rs. And that's of all members, not of the quorum at a meeting, with one vote for property."

The rules are also document specific in Oregon. "Each set of documents will have the requirements," notes [Katie Anderson](#), PCAM, AMS, CMCA, the founding owner of Apeiron Management in Bend, which manages nearly 85 condo, HOA, and townhome associations throughout Oregon. "With some older documents, it's 51 percent. With some newer ones, it's 75 of all voters, not a quorum at a meeting, with the exception that our statute requires 100 percent approval to amend the way assessments are calculated."

Bylaws—"In the minority of cases, a small minority, the board is allowed to make changes to the articles or bylaws, but that's somewhat unusual," says Magill. "Typically, those changes need an owner vote. But not always."

Changing the bylaws in California is similar to changing the CC&Rs. "That's typically a membership vote also," says McClintic. "When we look at the approval needed, in CC&Rs, it's typical to see 67 percent or 75 percent. In newer ones, we're seeing more of a majority. In bylaws, it's usually a majority vote, too."

In New Hampshire, boards aren't allowed to change the declaration or bylaws—owners have to vote, explains [Robert E. Ducharme](#), founder of Ducharme Law in Stratham, N.H., who has specialized in representing community associations for 25 years. "The law and most documents say two-thirds of owners must vote to amend," he explains. "That hasn't changed since the dawn of the condo act."

Rules and regulations—"These can typically be changed by a board," says Magill. That's also true in New Hampshire. "Boards don't need owners' approval to change these," says Ducharme. "They just need to [give owners notice](#)."

Yet California has outliers. "In most documents, it's a board vote," says McClintic. "I do have some that would require a membership vote for rules, but that's rare. Usually, the board is given authority to amend rules and regulations, but they have to be consistent with the CC&Rs and bylaws."

A Critical Point to Remember

Note that with these requirements, if our experts are saying CC&Rs need a 75 percent vote of owners to change, they typically mean a straight-up approval of 75 percent of owners—not 75 percent of the people who attend a meeting at which quorum is met.

"In California, that means a majority of all members, not a majority of a quorum at a meeting," adds McClintic. "When we rewrite or restate documents, we'll recommend boards bring the percentages down for future amendments. There's so much [apathy](#) that it's hard to get a vote.

"When you say a majority of a quorum, it's a majority of those who vote once the quorum is established," she adds. "Let's say you meet your quorum of 50 percent; half of those present can then approve the change. Both CC&Rs and bylaws require a majority of all owners to change them, not of the quorum. So basically, a nonvote is a no vote."

In Florida, the voting analysis depends on a few factors. "In condos, owners typically get one vote per unit, and the same is true with HOAs, but that's not mandated," says Magill. "So a declaration can create different voting rights. Some say certain units will have five votes, others might have one, and you need a percentage of voting interests to make the change.

"In co-ops, owners have shares," she adds. "So instead of one vote per unit, you vote by share. If yours is 235 shares, you get 235 votes on an issue."

It's complicated. But the message is that if your documents require 66 percent approval to amend a document, you should always follow that by asking: 66 percent of what?

Oh, and one more note: Be sure to check whether you need approval of the lenders who hold your [owners' mortgages](#). Yes, that's sometimes a requirement. And it's a hard one to meet.

Back to Table of Contents ▲

How to Begin the Condo/HOA Amendment Process

Readers submitted great questions for HOAleader's April [Ask Us Anything](#) webinar—so many we couldn't address all of them. Among those submitted was this question probably very common among our readers:

"I'm the secretary, and it's clear all of our documents need language updates and consistency updates. I know there's a Florida statute, then declaration of condominium, then bylaws, then building rules. Some language needs to be eliminated, like where the servants can congregate! Yikes. Also, there are inconsistencies within the bylaws themselves. Some statements are clear in the Florida statute, and then there are similar statements but room for debate in the bylaws. Where do I start?"

Here, our experts discuss what the document amendment process should look like, including whether you should head down that path at all.

Great Question, Say Our Experts

"You really hit the nail on the head," says [Molly Peacock](#), counsel at Rees Broome in Tysons Corner, Va., who has represented condos and HOAs for 16 years. "I think it's helpful and comforting to think: 'What is the process?' For me, this process of amendments is like eating an elephant—you do it one bite at a time."

The first step, according to several of our experts, is to step back to figure out if you really need to take this journey. "I think the process starts with identifying the true needs of the community," explains Isaiah Henry, CCAM®, CMCA®, AMS, CEO of Seabreeze Management based in Aliso Viejo, Calif., which manages about 500 associations throughout California. "Sometimes, clients say they want to amend to keep up with the current code, or a board will say that laws are changing, and they need to amend their documents.

"But it may not be necessary," he adds. "In those cases, it may not be worth the money or energy since current laws prevail anyway, whatever your documents say."

[Janet Oulousian Aronson](#), a partner at Marcus Errico Emmer & Brooks in Braintree, Mass., who is licensed in that state, in addition to Rhode Island and New Hampshire, agrees. "This is a frequently asked question, mostly because many condo documents here are old, and people have this natural desire to update them," she explains. "I tell them to think hard about doing that.

"Yes, they may not be the most up-to-date set of documents, but the law supersedes what's in your documents anyway," she adds. "And amending them is a big process. It typically requires unit owner approval, and depending on what's being amended, maybe mortgage holder approval. And owners are always reluctant to sign off on amendments, so isn't easy."

Amend Away!

When might amending make sense? "Maybe it has been a while since the documents were written or amended, and the current living conditions don't fit the documents," suggests Henry. "Then it's probably worth the time and effort and to generate the legal costs.

"Even then, I believe the first step is to confirm that the board wants this to happen and why," he adds. "It's a good idea to ensure the entire board understands why we're moving in this direction.

"So many times, we've seen where a client has an issue a couple of board members are super passionate about, and the amendment is approved by the board because the majority of the board agree," he explains. "Then there are the other board members who say: 'What are we doing? Why are we doing this?'

"At least get a head nod from all board members that they understand: this is the cost, this is the time it'll take to pass, and this is the why, before the board begins pushing for it," suggests Henry. "You don't necessarily need the agreement of all board members, but I do think you need an understanding of what we're all doing here."

Peacock says there are many good reasons to update your documents. "I believe there are lots of good, tangible benefits of amending," she explains. "I believe it looks good for potential buyers to have these updates. The reason I think that is some feedback I've gotten from real estate professionals and new owners. It's anecdotal, so maybe it's not take-it-to-the-bank-gospel truth. But what I hear is that some documents are old and yucky, but when they're new, it says there's been a lot of thoughtfulness on the part of the board and community.

"I also think amending can also *control costs*, so the amendment process may pay for itself," says Peacock. "If we have clarity, we don't spend as much on legal fees to divine the meaning of some provisions or to divine what to do when there are no relevant provisions. And you don't have to go to court to have the court tell us if we're right or wrong in what we've determined when the documents aren't clear or don't tell us how to proceed."

The Steps to Take

If you believe amendments are necessary, Aronson recommends a targeted approach. "If there are provisions that are unclear or problematic, I suggest clients focus on those provisions," she explains. "Then at least we've accomplished something, even though it's narrower, because maybe you have the ability to get those changes through. I think owners see a whole set of documents being amended, and they don't know what's in the new set. A targeted process works better than a complete overhaul."

Peacock suggests starting with a checklist, and the first item on it would be that the board, plus any homeowners who want to be involved, should get together to either split up the documents or have everybody on that team read the documents in full.

"The goal is to tell me, your lawyer, what you don't like, what's confusing, what you think needs updating, and whether you have a thought—it doesn't have to be perfect verbiage yet—about a new concept to add," she explains. "And lastly, please tell me what your goal is."

"When I ask that, I often hear, 'I don't know' or 'How do I even make a goal?'" says Peacock. "I tell clients that my goal is—to make the documents clear and updated into this century and, to the extent we can, incorporate good practices, case law, and things we've learned in the 50 years this practice of community association law has existed."

[Scott D. Weiss](#), CCAL, a community association lawyer at Ortale Kelley in Nashville, Tenn., who represents more than 650 condos/HOA communities throughout the state, also recommends you spend time identifying provisions that give you trouble. "I suggest boards to go their attorney to discuss the problems they're having and what they're dealing with," he says. "Then let the attorney craft the language of the amendments."

"I've done this so long that I usually have documents for pretty much everything," he adds. "Experienced lawyers will have documents and won't have to reinvent the wheel, so it's important to hire an experienced HOA lawyer for that reason. A general real estate lawyer might have a set of documents they've used—they might—but they're not on the ground on a daily basis and often don't know trends and current law without doing research."

Also determine what your documents say about amending. "You and your lawyer need to look at what the amendment provisions in your documents require," explains Peacock. "Usually, the process is fairly the same among my clients, but there might be nuances that affect the price tag or whether we have an information-only [meeting with owners](#) first or we have no meeting at all and instead go door to door to get votes."

Weiss agrees. "It's really controlled by the individual [association's governing documents](#), and usually there are two sets—one is a declaration or a master deed, and the other is the bylaws," he explains. "Those are definitely two different and distinct documents. The term bylaws is often used for both, but they're different, and usually, each has their own way to amend that particular document."

What Will This Cost?

Another critical step is asking your lawyer for an estimate, even if it's a ballpark, on the legal fees you'll have to cough up to complete the process.

"I get that question almost every time I'm approached to draft an amendment," explains Weiss. "What drives the cost is the number of drafts. I'll send a first draft, and we'll go back and forth, amending and adding, usually three to five times before we have the final version to present to homeowners. Sometimes we'll do that as many as seven times."

"The other thing that drives cost, but it's very important, is the board having a conversation with the attorney about what the amendments are going to do," he adds. "The board is going to get calls from homeowners. So it's also a worthwhile expense to have me, as their attorney, on the call or at the meeting when the owners are ready to vote on the amendments."

"A lot of these documents are written in legalese," notes Weiss. "Sometimes, owners won't vote in favor of the amendments because they think the documents say something they don't say. People are always suspicious of the board and the attorney, thinking they're trying to pull a fast one on the owners. In these meetings, I often say, 'Look, I don't live in your subdivision, and I don't care if you adopt these amendments or not. I'm here to lend my expertise and make things better, and I get paid whether you adopt the amendments or not.'

"In the end, owners typically end up voting in favor of the amendments because I've been able to explain that," he explains. "So I tell clients these meetings are very important."

Aronson agrees, saying that sometimes meetings with owners should occur early, and other times they should occur later. "Maybe you're making the [common area no smoking](#)," she explains. "That's fairly straightforward. There's no sense having the attorney prepare that amendment if it's not going to pass. So we need to know if it's going to have sufficient support. In that case, I suggest the board poll the owners asking how owners would feel about having a no-smoking ban in effect. If you get a lot of negative reaction, you're done. You're not going to spend money to do that amendment."

"In another case, we did changes to the condo documents—not many, just three covering [remote meetings](#), alternative [voting](#) and a [transfer fee](#) on the sale of a unit," says Aronson. "We had several back and forths about the changes. Then the board wanted to present the amendments to the owners for a vote. I suggested an informational meeting first."

"It's always a good idea to have a discussion first," she says. "At least you've fleshed the topic out a bit. Maybe unit owners bring up a point, and we can change the amendment as a result and then bring it to a vote. I do like involving owners, and it depends on the amendment whether it's before or after we draft the amendment."

Costs for the full amendment process will vary across the country and based on what you're trying to accomplish. "It's hard to say what to budget, but I consistently quote a higher number than I think it'll come in for," says Weiss. "If I think the process can be done for \$2,000, I suggest boards budget \$3,000."

In the nation's capital, costs might be higher. "In this metro Washington, D.C., area, usually a ballpark of \$5,000 is accurate, though it could be less," says Peacock. "It depends on the meetings, how many there are and how many you want me to come to. Other areas around the country might be—I hope—less expensive. If clients don't have the money in this year's budget for that, if the amendments are at all worth making, I say that perhaps they should budget for it next year."

How to Inadvertently Raise Your Costs

Pro tip: You may be thinking you'll save money by doing a bunch of the drafting work yourself and then taking what you consider a nearly complete version of amended documents to your lawyer for a once over. Our experts say that'll likely backfire on you and cost more.

"I'd like the client to identify the provisions they want to change and tell me what they believe the provisions should state," says Aronson. "That helps me; now I know what my clients want. But I tell them to let us draft the amendments. Sometimes when they start drafting things and you try to fix what they've drafted, it doesn't save them any money.

"Sometimes, it's made things worse," she adds. "I can't tell you all the things I've seen. Maybe the board doesn't recite things properly, and the natural question is: So was this really adopted as it should have been? The wrong wording can leave things open to challenge."

True that, says Weiss. "I think it's a horrible idea for HOAs to draft themselves, and there are many reasons why," he explains. "Pretty much every state interprets restrictive covenants, a.k.a. governing documents, as a contract. They're typically strictly construed, so the terms and how they're written are very important, including every comma and semi colon. As I'm drafting, I'm thinking of court because that's where [disputes](#) are going to end up. And those provisions are going to be interpreted against the association. So you have to be very careful in the drafting

"Another reason is that it's very common for homeowners to try to find loopholes in the documents, so it's extremely important to have attorneys draft these documents to close those loopholes," he says. "With my documents, my goal is to try to keep the association out of court. I'm keeping in mind the quintessential owner in every subdivision—all they want to do is cause problems and challenge everything the association does—while I'm crafting documents."

Back to Table of Contents ▲

Oops! What If You Haven't Been Following Your Condo/HOA Governing Documents?

It's the rare board that—at some point—hasn't realized they've been misinterpreting their governing documents. Or that they've been letting slide what they were required to enforce.

What if you realize that you've been failing to comply with your governing documents and want to begin holding all owners to the agreements they've signed? It's possible. You'll need [notice](#), an explanation, time for owners to come into compliance, and commitment.

"We call it refreshing the restrictions," says [Lisa Magill](#), of counsel based in Pompano Beach, Fla., Kaye, Bender & Rembaum.

Let's first discuss laws on whether you can begin re-enforcing. And then we'll walk through the steps of refreshing your restrictions.

Have You Lost Authority to Enforce?

Generally, the failure to enforce a provision in your governing documents doesn't mean you can't begin to do so.

"In Oregon, most of our governing documents and state statute say that even if the board or prior boards haven't enforced provisions, that doesn't prevent them from enforcing them in the future," states [Katie Anderson](#), PCAM, AMS, CMCA, the founding owner of Aperion Management in Bend, which manages nearly 85 condo, HOA, and townhome associations throughout Oregon. "The lack of enforcement doesn't vacate the provisions.

"There's no permanent precedent," she adds. "Owners like to say, 'You can't do this because you've allowed that.' But there's no such thing because the board has the authority to change how things are done within the framework of their governing documents."

However, ability to begin enforcing again isn't a given. "In condos in Michigan, most documents will have an anti-waiver provision built in," explains Todd J. Skowronski, an associate at Makower Abbate Guerra Wegner Vollmer PLLC, whose firm advises nearly 2,000 association clients throughout Michigan. "They say that the failure to enforce isn't a waiver. And Michigan law recognizes the enforceability of an anti-waiver clause."

However, the issue is squishier and fact-dependent when it comes to HOAs. "Maybe you have a declaration that says all residences must have two-car garages," explains Skowronski. "And over time, multiple three-car garages were built and nobody said anything about it.

"Courts will likely say that because of the failure to enforce, conditions have changed, and you can no longer enforce that provision," he states. "However, if a new owner is building a home, they can probably build a three-car garage, but they probably can't build a four- or five-car garage. So the board likely still has the right to enforce the provision against a more serious violation in the future.

"Let's say your bylaws [prohibit dogs](#), and there are half a dozen dogs in the neighborhood because old boards never acted," says Skowronski. "Your legal counsel says your documents contain an anti-waiver clause, and those owners with dogs are in violation. So you could send those owners violation letters and make them remove their dogs. That probably will fly legally if there's no nuance that the board told those owners that having dogs was fine.

"That would be acceptable, and a board could make that business decision," he adds. "But there's also a fairness factor. The board could instead say, 'We'll agree not to enforce against current violations but will enforce in the future.'

"If you have discussions with owners, explanations as to why you're doing this, and lots of notice, that will be enforced," says Skowronski. "Lots of owners will say, 'I had no idea I couldn't have dogs!' So you can allow them to keep their current dog, but you should also seek an amendment at the same time preventing them from getting a new dog."

How to Reassert the Rules

So you want to begin enforcing your documents. These steps constitute best practices for the process:

1. Back up. Ask whether the community wants this rule enforced. Before you jump into enforcement, your first question should be whether there was a lack of enforcement for a reason, for example, your owners don't support this provision anymore.

"This depends on whether the provision is something that's even applicable in today's world," says [Lisa Magill](#), of counsel based in Pompano Beach, Fla., Kaye, Bender & Rembaum. "If you have a rule from 1970 saying no trucks, back then, pickup trucks weren't really used as day-to-day transportation. But now they're popular.

"So if you haven't been enforcing that rule for years, it's extremely difficult to turn around and reinforce it going forward tomorrow because that's not something most people will even want," she adds. "The better recommendation would be to try to amend that provision out or to publish something saying that it's in your documents, but you're not going to enforce it. You're essentially telling owners that since owners wouldn't support enforcement, that's just not right for your community."

Skowronski agrees with the idea of amending. "Let's take that dog scenario again," he says. "If the board thinks this is now a dog-friendly community and wants to allow dogs, they need to attempt to amend the document.

"The board is required to enforce the documents as written," he says. "They can't [selectively enforce](#). Someone can move in and say, 'I relied on that no-dogs provision, and I'll sue you for failure to enforce the documents.' If there's a restriction you don't want to enforce, we advise clients to amend it out."

2. Notice to owners of a lapse. "In Oregon, we point to the board's authority to begin enforcing even after a period of nonenforcement," says Anderson. "And we essentially let owners know, 'This has been allowed in the past, but not anymore. These are the steps the board is taking.'"

[Susan Hawks McClintic](#), managing shareholder and the chair of the community association transactional practice group at the law firm of Epstein APC in San Diego, calls that the new-sheriff-in-town letter. "What I've done before where an association hadn't been enforcing and we want to start enforcing after a new board gets elected is to send a letter from the board to owners," she explains.

"That's the board letting owners know the new board was elected, and part of their duties are to enforce the governing documents," she adds. "The letter essentially states, 'We're putting you on notice that we're going to do that. We're giving you a grace period. And then we're going to start enforcing this.'"

"Maybe people have been [parking](#) their recreational vehicles in their driveway without moving them, and that's against the rules," says McClintic. "The letter says the association is giving owners 30, 60, or whatever number of days, and then the board is going to start enforcing. They should give owners a lot of notice and a reasonable opportunity to come into compliance."

3. Allow time for owners to comply. That time for owners to correct their behavior is ever so critical. "You have to give people a reasonable period of time to come into compliance," states [Robert E. Ducharme](#), founder of Ducharme Law in Stratham, N.H., who has specialized in representing community associations for 25 years. "You can have language that says no decorations are allowed, which is standard because if someone starts flying a Nazi flag or a swastika, the association has the authority to say that's not allowed."

"Generally, decoration rules allow the board to essentially say, 'We get to enforce as we see fit,'" he adds. "That way, Gladys gets to have her holiday wreath or menorah, but you don't have to tolerate a swastika. So when you allow time for owners to comply, I don't think you need to give them 30 days to take their swastika down. It's on a case-by-case basis."

"We have a court case here involving a commercial condo association that had a Volvo mechanic on site who use to park cars in an empty field in the community," recalls Ducharme. "The board didn't like that mechanic, so they passed a provision that said there could be no more than two cars per unit. And 10 minutes later, they towed all the cars in the field."

"That owner went to our state supreme court," he explains. "The court said the board could make a rule that affected only one person. But the board still had to give that person time to come into compliance."

McClintic agrees that timing is critical. "Maybe you're beginning to enforce paint colors on houses," she says. "You don't expect the change to happen overnight. If someone just painted their home, you might say, 'This is for the next time you paint your home; then you have to come into compliance.'

"Or you could say owners have one or two years to comply," she adds. "I've had boards do that. But it seems fairer to say the next time you paint your home, you have to bring your home into compliance. And it could take a while to get compliance. If the rule relates to parking your vehicle, the reasonable time will be different than painting your entire house if you just painted."

Anderson has a similar approach. "Most of the time, there's a process in which you might have to work with owners who might need time to bring their property into compliance," she explains. "These purple sheds will remain. But when they need to be repainted, we won't allow you to paint them that color again, and no sheds not of an accepted color will be allowed in the future.

"The board needs to understand such changes may require them to be reasonable with owners and to set a time to allow owners to come into compliance," states Anderson. "You may even need a transition of ownership, meaning when someone sells."

Back to Table of Contents ▲

Sheesh, Amending These HOA Bylaws Seems Over the Top—Or Is It?

An [HOAleader.com reader asks](#): Our golf and country club (governed by [Florida statutes 720](#)) declaration (written by the developer 20+ years ago) states: 'This Declaration may be amended with the approval of (i) sixty six and 2/3 percent (66%) of the Board; and (ii) seventy-five percent (75%) of all of the votes in Association. No amendment shall be effective until it is recorded in the Public Records.' What does all the votes mean? It doesn't state 'voters.' All the votes cast or all the eligible voters?"

Here, we ask our experts about this double requirement for passing amendments and how they'd read that provision about "all the votes." We also ask whether they'd suggest amending since those thresholds seem unnecessarily onerous.

Not So Unusual

Let's start with an expert on the ground in Florida. [Alessandra Stivelman](#), who is board-certified in condo and planned development law and a partner at Eisinger Law in Hollywood, Fla., says this type of provision is common in the governing documents she's seen.

"Generally, we like to have the board as a board approve amendments, anyway, but this provision is often in governing documents," she explains. "It's almost an assurance to the members that the board supports the amendment."

A requirement like this also shows up in Missouri, reports [Todd J. Billy](#), CCAL, an attorney at The Community Association Lawyers in St. Louis, who is licensed in Missouri and Illinois and has more than 1,000 active condo and HOA clients. "I have seen both board and association members being required to vote for amendments," he says. "It's not common. I'm not sure what drove the drafters to do that other than to make sure the owners don't do something the board is against."

This requirement appears on some older documents in Georgia, states Julie McGhee Howard, co-founder and managing partner of NowackHoward LLC in Atlanta, who at any given time represents hundreds of condos and HOAs throughout Georgia. "I've seen it for some amendment provisions," she notes. "Some of the older documents in Georgia will require the board to first approve an amendment, and then the amendment goes out to a membership vote. I have a couple of clients that require that, and it's not usual here.

"But the most common requirements are from our governing condo and property owners association acts, which require only the approval of membership," she adds. "Of course, board members are part of membership, so it doesn't make sense to have those provisions. But in reality, amendments aren't going to go out for a vote unless the board approves them. So the requirement to get both to approve isn't a big deal."

That said, one of our Wisconsin pros hasn't seen this provision. [Daniel J. Miske](#), CCAL, an equity partner at Husch Blackwell in Milwaukee who represents 800 associations throughout Wisconsin at any given time, can't think of a single set of governing documents with such a provision. "Because of the statute in Wisconsin, the declarations and bylaws almost always require the vote of the owners, not the board," he explains. "That's if the documents were written after 1978, when Wisconsin's statute was enacted. Before then, bylaws could be amended other ways."

That Phrase Means What It Says

On the provision requiring 75 percent of "all votes in the association" to approve an amendment, does that literally mean 75 percent of all ownership interests, or might it mean something else, such as 75 percent of a quorum at a duly noticed membership meeting?

Stivelman says all owners means all owners. "I read it to mean all the voting interests of the members," she explains. "If the association allows one person one vote and there are 100 units, the amendment needs 75 votes to pass. Unless it says 'eligible voters after a quorum has been achieved,' that's what would be required."

In Georgia, that language would also mean all votes, not just enough votes after a quorum is met. "That's what's required for amendments here," says Howard. "For anything required in the land records, the standard here is two-thirds of owners to vote, while some documents some say 75 percent."

In the states in which Billy practices, he'd want to review the full set of documents before reaching such a conclusion. "I'd need the rest of the documents," he says. "Let's assume the rest of the documents are silent, then that amendment process does sound like it's in two parts. First, the board has to sign off—and you'd think if the association is proposing that amendment, that's the easy part.

"But 'all votes of the association' doesn't say a meeting is required," he adds. "So do they need a vote of 75 percent of all owners? Assuming it's an HOA and each lot has an equal share of ownership, then the default would be that each lot would be getting a vote of equal weight. If it's a condo, it would be votes based on the ownership percentage, but we'd have to go to the statute to review that, too."

Is an Amendment in Order?

This seems onerous, perhaps unnecessarily so.

However, Billy isn't sold on that thought. "I think it depends on the size of the community and their active participation," he says. "If you're a smaller condo, you don't want an easy amendment procedure. You want to force participation. If everybody's not pulling their weight in a smaller condo, it doesn't work.

"That's where experience comes in, as to what the right thresholds to have—it depends," he adds. "Most uniform acts stick with a two-thirds percentage of ownership voting to amend. If this reader's statute allows less than 75 percent, I'd encourage them to do the amendment to make it easier or at least to find a way to make it easier for owners to participate.

"Let's say there are strict rules for participating in meetings and voting," says Billy. "Requiring things to take place at meetings inherently will chill people coming and participating. Any time you have owners voting, you should make it easy. If you don't, you're only hurting yourself."

Miske disagrees. "Is it too complicated?" Miske asks. "One thousand percent. If this were my client, I'd advise them that the next time they amend their documents, they should also amend this provision. I'd get rid of the board approval requirement. I think it's a waste of time."

Back to Table of Contents ▲

Easier Ways to Get Lenders' Approval for Your Condo/HOA Amendments

An [HOAleader.com reader asks](#): "We're a seven-unit, self-managed HOA, for which I'm the treasurer. Our bylaws state that no more than 30 percent of our units can be rented out, but there were no restrictions. We just voted on a rental policy restricting short-term rentals and defining short-term rentals as any lease less than 12 months. All seven homeowners approved, although we needed only 67 percent (5 homeowners).

Our bylaws state that any addendum to the HOA bylaws also requires 51 percent of the lenders to approve; 6 of the 7 units are lender financed, so I assume I need 3.06 (can this be reduced to 3?) of the lenders to approve this? How do I go about this? Is there a template I can use to send to these lenders?"

(You can view and respond to the [original post](#) on the HOAleader.com Discussion Forum here.)

Here, we ask our experts for their tips on how to get lenders—who typically are slow responders to such requests—to approve amendments.

Your State May Help

The great news is that some states have spelled out a process for this or waived the process altogether. Florida has essentially told condos and HOAs to forget about this—at least in some situations, says [Matthew Zifrony](#), who advises homeowners and condo associations at Tripp Scott, a Ft. Lauderdale law firm, and who has also served as the president of a 3,000-home association. "It's an interesting question, and it has come up with an association client right now.

"The Florida legislature recognized that it would be virtually impossible to get approvals from lenders," he explains. "A lot of [governing documents](#) will say that, to amend, you need X percentage of owners and a certain percentage of lenders to approve. But who would you even know whom to ask at some of the large banks? And who at the large bank would ever sign off? That's just not what they do.

"We have a statute that says that, when the documents require an amendment to be approved by owners, as long as the amendment doesn't substantially interfere with the lenders' rights, the lender doesn't have to approve the amendment, regardless of what the governing documents say," explains Zifrony. "There are some caveats. But the Florida legislature recognized that's not practical. That's been very helpful when amending association documents."

[Michigan law](#) also eases the burden—for condos, at least, reports Matthew W. Heron, a member at Hirzel Law in Farmington, Mich., which represents hundreds of community associations throughout Michigan. "There are only certain things a lender can vote on," he explains. "There are categories identified in the statute. And the statute includes wording to use to communicate to the lender.

“So in Michigan, a condo board would first need to figure out if one of these nine things listed in the statute is being triggered by what they’re doing,” says Heron. “Then, the mortgagee gets 90 days to respond. If they don’t respond, their lack of response is considered acceptance.

“Whether the Michigan legislature has done anything right in the past or not, at least on this issue, they recognize that mortgage companies tend not to respond,” he notes. “It’s a decent road map for the association to know what to include in such requests.”

A Court OKs Another Process

California doesn’t waive the requirement of getting lender approval. “If you’re required to do it, you’re required to do it,” reports [Alex Noland](#), CCAL, founder of Noland Law in San Francisco, which represents 200-plus community associations throughout California. “I’m doing one right now for a 202-unit condo in San Francisco. They recently approved their bylaws and CC&Rs, changing maintenance and renter provisions, so they have to get approval.

“What to do depends on the approval required,” he explains. “Sometimes for an eligible mortgage, a lender has to put something in writing that they want to be notified or have a right to approve certain amendments. In my experience, lenders don’t typically do that. It would be rare for them to do that or for the HOA to have record of receiving it. So if there’s nothing you have in your file stating that, the lender has no right to require approval.”

When you do need approval in California, an appellate case, [Fourth La Costa Condominium Association v. Seith](#), helps a great deal, according to [Jasmine F. Hale](#), a partner at Berding & Weil based in Walnut Creek, Calif., who advises condos and HOAs throughout California.

“Lender approval wasn’t the only element of the case, but it was an element,” she explains. “In that case, the board went through the amendment process. Lender approval was required, but the governing documents didn’t specify how the condo should go about getting it.

“It’s really an elegant solution,” says Hale. “The condo association had prepared a letter to lenders saying, ‘If you don’t evidence your lack of consent, we’ll consider your signature to accept our certified mail return request receipt as acceptance. You have 30 days to respond with a negative.’ The condo kept all the return receipt cards.

“If you do that, when lenders don’t respond, you attach those certified mail return request receipts as the lender’s consent to the amendment,” she explains. “It raises the costs to do this by certified mail return request receipt, but it allows for the association to get consent. I’ve done countless lender approval processes. And other than Wells Fargo, I’ve never had any respond—and Wells Fargo uniformly responds with a no. Every single time. That’s my solution because I know the process has been approved by the appellate court.”

Getting Your List of Lenders is Tough

But how to get all the lenders' information? Well, that's admittedly a bear. "I go to a title company and pull the most recent recorded deed of trust or mortgage against all units or lots," explains Noland. "You have to look at those to figure out who's the lender, using the correspondence address in the deed of trust or by making your best guess.

"I do a spreadsheet," he adds. "Then I send a request for approval or a Dropbox link, offering to provide a hard copy by email or overnight if they want it. Then you send those for a vote."

"I've had boards say, 'Can we just ask owners to provide their deed so we don't have to pay the title company?'" reports Noland. "I tell clients they can ask, but the owners may not have it. Or they may not provide it. Then are we getting everything we need? I think you should just spend an extra couple of thousand dollars to do it right so someone can't contest it later."

For Hale personally, getting owners' lender information was the most onerous part of the process. Asking owners simply didn't work and ended up just prolonging the process.

"You can ask owners, saying, 'Hey, we're not trying to look up your mortgage, and we don't want to know what you owe; just tell us your lender,'" she suggests. "But in my own HOA, we have 1,400 homes. When we went through a process that required lender approval, we had to spend a couple of months asking owners, 'Hey, homeowners, would you let us know your lender?' Virtually nobody responded.

"So we hired a title company to look that up," she says. "Statistically, only about 60 percent of homeowners have mortgages. We ended up with a list of those who didn't appear to have mortgages and those who did. You also need to identify things like which is the senior lender and which is a home equity line."

One more tip: When you do your next round of amendments, see if you can remove as many of those lender-approval provisions as possible. "When I'm rewriting documents," says Noland, "I try to avoid things that require such approval."

Back to Table of Contents ▲

Can Your Condo/HOA Board Be an Advocate in Votes on Amendments? Elections?

An HOAleader reader [asks](#) if it's OK for a board, after its first attempt to pass an amendment failed, to set up a committee to advocate for the amendment.

Here, we ask our experts when a board can push for owners to vote certain ways (example two: could it ever advocate for a candidate or against a candidate in a board election?).

In amendments, advocacy works

Generally, with proposed amendments to governing documents, the board has already done some groundwork and has even probably voted among its own members. So advocating for a proposed amendment makes sense.

"I think boards absolutely can and probably should advocate for amendments," says [Elina Gilbert](#), a shareholder at Altitude Community Law in Lakewood, Colo., who has specialized in community association law for 22 years, it's a definite yes. "In 99.9 percent of the cases, the board is the party that's proposing the amendment to the homeowners. Obviously, it's advocating for it, and they need to explain to owners why it's a good idea."

That's also typically the process for amendments coming to homeowners in Florida. "When a board does present an amendment, and if the board votes and says it's in favor of it, we can say the board recommends voting in favor of the amendment," reports [Jennifer Biletznikoff](#), a shareholder in the Naples, Fla., office of Becker & Poliakoff, who has represented condos and HOAs for more than 15 years.

"And in reality, the board better well have actually recommended that amendment—at least the majority of the board better have recommended that amendment," she adds. "So they definitely can advocate for a proposed amendment."

[Zuly Maribona](#), LCAM, the Bonita Springs, Fla.-based senior vice president and partner at KW Property Management who oversees the company's southwest Florida, Jacksonville, Orlando, Tampa, and North Carolina operations, agrees. "I think the board can cautiously recommend an amendment to the governing documents," she says.

"I've seen situations where it has been said that the board is in favor of this amendment or that the board encourages owners to vote in favor of this amendment, and here's why," explains Maribona. "So owners are given background.

"They might be told something like, 'We'd like to pass a pet rule, and here's a brief summary as to why this would benefit the community,'" she adds. "It's not that the informa-

tion provided is so subjective. And it's not like you're campaigning. But there's a summary explaining that, as a collective, the board is in favor of this and here's why."

That's also the case in Connecticut, according to [Patricia A. Ayars](#), founder of Ayars & Associates in Glastonbury, Conn., who has been practicing association law for more than 30 years.

"Boards can say, 'We as a board say you should support this,'" she explains.

"Suppose an amendment has to do with something the town is requiring the association to do," she explains. "Maybe it's something to do with conservation, and under the documents, the board doesn't have the power to meet that town requirement. Of course, you'd advocate that you need that power to comply."

Elections are different

On the board-member election front, our experts say state laws may demand that boards stay out of influencing members. If they don't, that's still a good practice, except in rare situations.

"With an election, they should not advocate," says Biletnikoff. "Here's essentially why. In Florida, condos have a very definite statutory process that must be followed for elections. When you're putting forth a ballot, the candidates must be in alphabetical order, and there can be nothing that indicates that someone is an incumbent.

"If you expand on the reasoning for that, it's because legislators wanted everyone to get a fair shake," she explains. "That's what they try to avoid someone being recommended. That puts everyone on the same playing field."

The HOA world in Florida is slightly different. "I still work with HOAs that have a nominating committee," says Biletnikoff. "I work with one now whose bylaws say that the board selects a nominating committee and that the committee selects a slate of candidates equal to the number of open seats. That creates its own controversy. Isn't the board essentially picking the next board?"

"If you have a 3,000-unit HOA and a nominating committee puts up five persons for five open seats, and maybe they've sent out the ballots, what are the chances of Mr. Jones being successful as a write-in candidate at the annual meeting?" she asks. "So with HOAs, if you have certain language in your documents, the board could definitely hand pick the candidates."

Gilbert doesn't see why boards can't advocate for a slate of candidates in an election under Colorado law. "There's nothing that prohibits it, and it's not a conflict of interest, at least as that's defined in Colorado.

"It may look bad and may not be a good idea, but there's nothing that prohibits it," she says. "I think it can be a good idea to do if it wouldn't be in the best interest of the association for some people to get elected. In that case, the board could do a little campaigning, saying, 'This is who we're recommending.' Maybe it's someone who's always delinquent, always in violation, always complaining, or who isn't mentally stable.

"But except in those situations, I think it's probably a good idea to stay neutral," says Gilbert. "It's not a legal issue but more a practical issue. It just looks better."

True, but if there really is a potentially damaging candidate, Maribona believes the board can achieve its goals with some strategizing. "I always err on the side of being conservative on that front," says Maribona. "Elections can be very contentious, and the board getting involved could be considered campaigning, which could work against you."

"A candidate could say, 'You're making me look bad!'" she adds. "Or they could argue that you're using your platform as a board that's accessible to you but not available to them. That's where the perception could be that you're sabotaging that candidate. So we always advise against that."

"But if there's a candidate who's trying to blow things up in the community, maybe the board can finesse that," states Maribona. "It's almost like you want someone else who's not on the board to do that. Do you have other key condo or HOA members who are open to putting the word out? Or do you want a meet-the-candidate forum where people could ask key questions so the issues you're concerned about are aired out and exposed? It's about being strategic."

In Connecticut, Ayars says this would be driven by the documents and state law, including its corporate law. "Boards do advocate for candidates sometimes," she says. "It's not uncommon for an association to put out its nominees, or those it endorses. It happens a lot when a board member is up for reelection."

"The board might say John did a great job and explain what John accomplished," explains Ayars. "Boards do that all the time. But it can have a really negative effect. In fact, boards don't know what will happen if they choose to advocate for someone. Depending on how owners feel about the board, it could be a kiss of death."

What about advocating *against* someone running? "I've seen boards say they *don't* support a candidate," notes Ayars. "There was one guy who was running who was a sex offender, and our law protects those on the sex offender list. I had to tell that board to stop doing that. A board that does that is taking a chance the person will get mad and sue the board for libel and slander."

[Back to Table of Contents](#) ▲

By All Means, Get Your Condo/HOA Attorney Involved in Amendments

An [HOAleader.com reader asks a question](#) that will give community association lawyers the vapors: “Our HOA is in the process of totally revamping our declarations and covenants. Our question is: Do we need to have our attorney draw up these documents and, if not, would the documents be valid without the attorney drafting them?”

Let’s put this reader’s question a different way: Is there any circumstance under which a condo or HOA *shouldn’t* seek the advice of a community association lawyer in this situation?

This Isn’t a Self-Serving Yes

“Boards should get their attorney involved here, but it’s not to put money the lawyers’ pockets,” asserts [Todd J. Billy](#), an attorney at The Community Association Lawyers in St. Louis, who’s a licensed attorney in Missouri and Illinois and has more than 1,000 active condo and HOA clients. “A lawyer with experience in this area of the law will make it much easier and most cost effective by working with them. It’s about recognizing the value of having a lawyer play a role throughout this process because the lawyer will have ideas and concepts that you won’t think of.”

Some lawyers will be more helpful than others, admits Frank Simone, general counsel at KW Property Management in Miami. Simone is on the board of his own condo association, but he doesn’t represent or advise community associations in his legal role at the management company.

“It’s a terrible idea to not consult a lawyer,” he contends. “I’m not going to say that lawyers are the very best because some are better than others in crafting such documents. But an association of laypersons would have a very hard time doing this and doing it in a way that the documents are enforceable.

“There’s so much case law out there that this would be a fool’s errand,” he asserts. “And there are so many great, qualified lawyers who could assist to ensure that the rules those boards want would be included and would be enforceable.”

Simone also points out that it’s [much more cost-effective](#) to hire a lawyer in the drafting stage than the defending-your-documents stage of document enforcement. “It costs exponentially more money to defend a challenge to your governing documents,” he says. “There’s a presumption in the law in Florida that everything is correct and enforceable in governing documents so long as it’s not ambiguous.

“So maybe this board can write something that’s clear,” he states. “But they’re not going to know if what they’re drafting is pursuant to applicable law. The money they’ll spend now on the lawyer’s drafting will pay for itself over the years—especially when exhibit A in any dispute will be the board’s decision to not hire an association lawyer to help draft the amendments. I believe also that would be a breach of the [board’s fiduciary duty to the association](#).”

How to Keep Costs Under Control

You're simply not going to hear our experts say it's OK to not hire a lawyer in this instance. They also say that a tactic you might think will reduce your legal fees could actually backfire.

"You don't need to hire a lawyer in this case, but you definitely should," states [Edward Hoffman Jr.](#), founder of Barrow Hoffman, a law firm based in Warminster, Pa., who has represented community associations for more than 15 years. "The documents have to be legal, they have to be clear, they have to be unambiguous, and they have to be concise. You have to be able to understand and interpret those documents if there's ever a dispute.

"For many obvious reasons, my advice would be if that you don't want the attorney to do it from scratch, do a draft of what your intent is and provide that to your attorney for feedback and revisions," he suggests. "Still, it's typically cheaper for us to draft our own governing documents than to review and update documents drafted and submitted to us for our input."

That's true in Billy's experience, too. "I generally agree that it's not cost effective to send lawyers drafted documents—not that I don't have it come up every once in a while and am asked to do it," he says.

Even one of our nonlawyer experts agrees that you need legal advice, but she does have a cost-saving suggestion that might work. "You need an attorney, but what you can do is review the documents you're amending and make notations of the areas you'd like to see changed," advises [Barbara Holland](#), CPM, regional manager for FirstService Residential in Las Vegas. "Let's assume you have cumulative voting—which I hate because I think it distorts things. Or let's say you have a three-person board, and that was OK when your community was developer-controlled, but now it's not as effective.

"So you list the things you'd like to see changed and the things that don't provide proper clarification currently," she states. "For example that crack in the condo wall—who fixes it? That's such a pain in the neck to interpret in some governing documents. It can be helpful for you to let the attorney know what you'd like to see updated."

Back to Table of Contents ▲

7 Provisions That May Mean Your HOA's Governing Documents Are Sub-Par

One of HOAleader.com's experts, [Robert E. Ducharme](#), founder of Ducharme Law in Stratham, N.H., who specializes in representing community associations, says bad legal documents can cost you money and grief.

His industry colleague, [Barbara Holland](#), CPM, regional manager for FirstService Residential in Las Vegas, couldn't agree more. "I see this all the time," she laments. "Often it's because the documents are older ones."

But that's not always the case.

Here, Ducharme, Holland, and another HOA expert list seven provisions in their clients' [governing documents](#) that cause the most problems, and they offer suggestions to help you fix those problem areas in your own documents.

1. **Seriously obsolete terms.** "Those are huge," contends [Melissa Garcia](#), a partner at Hindman Sanchez, a law firm in Arvada, Colo., with about 1,600 association clients. "I often see provisions about the developer's rights and obligations, and that doesn't matter anymore because the community has been around for 20 years.

"I also still see old language—I see 'telegram' and 'telegraph' when reviewing some governing documents," she adds.

2. **Conflicting provisions.** If your [bylaws](#) don't track your articles of incorporation, or there are other conflicts among the combination of individual documents that make up your governing documents, you're in for some trouble. "I see a lot of inconsistencies between the various governing documents," says Garcia. "One will say one thing, and another will address the same topic but differently, and that's an issue."

3. **Provisions that conflict with your state or federal laws.** Nevada has seen major legislative changes, and Holland says she can quickly and easily identify the documents that were created before that flurry of statutory alterations.

"If your state has had a tremendous amount of changes in the law, those legal changes could be superseding what's in your governing documents," she says.

"Many states pass statutes that say by operation of law, these changes are in effect in governing documents. So you don't always have to amend your governing documents; you have to look at how a new law was passed to determine if that's necessary.

"But you probably have to go through the [process of noticing the changes to your owners](#), and you can't just keep adding an addendum to an addendum to your documents," says Holland. "What happens is that there'll be an argument over an

issue, and you realize that nobody did an addendum to reflect the change in this particular law.”

That’s also a common concern for Garcia. “This is Colorado-centric, but I know that other states are also trying to be more transparent, so there have been a lot of changes in the law,” she explains. “I can tell by glancing through the bylaws whether 15 or 20 percent of the governing documents are contrary to Colorado law. “I know what those legal changes are, and I see that so many of the older governing documents don’t have them included,” she states. “Documents should reflect compliance with modifications in the law.”

You’ll need to figure out how many laws that would affect your governing documents have really changed,” says Holland. “If you have an [astute property manager](#), that manager can pick that up. Or you might have a lawyer look at your documents.”

4. **Provisions preventing no businesses to be operated in units.** There are definitely good reasons to have such provisions in your governing documents. You simply don’t need hundreds of people tramping through your grounds daily to get to your [owners’ home businesses](#).

But too often, those provisions target perfectly unobjectionable businesses by your owners, and that lead to expensive and silly legal fights.

“You’ll have in a residential condo association provisions stating that units are limited to residential use,” explains Ducharme. “On its face, that seems pretty clear.

“But in this day and age, people are working from home, telecommuting, and making work calls from their cell phone at home,” he states. “You have someone who has, say, an internet business. You can’t see it, hear it, touch it, or smell it, and the owner doesn’t have clients coming to his home. But the owner is definitely working out of his home. That’s a [violation](#).”

Holland also sees this problem. “You want to address things that are changing standards in our world,” she says, specifically noting home-business provisions. “I’ll get a letter over a home-based business, and the real issue is whether the owner is operating a warehouse at which trucks come to pick up and drop off supplies versus a business that’s totally on the Internet. That’s a perfect example.”

One association in Ducharme’s area got hauled into court over this predicament. “An association had this problem and got sued,” he recalls. “One owner didn’t like the person operating the home business, but the board let the owner continue to work out of his home because it wasn’t causing any harm, even though it was against the governing document language.

“Then Owner One said to Owner Two—the home-business operator—‘I’m suing you, and I’m [suing the association for not enforcing this rule](#),’” recalls Ducharme. “They both did get sued. The case went to court, and the association won. But its insurance premiums went up, too.

“You might think this issue is silly—let owners sue over that stuff,” states Ducharme. “But the [association’s insurance premiums](#) will go up because you’ve had a claim. And there go your condo fees.”

Holland notes that some states have statutes for HOAs—Nevada is one, she says—that may help you address this situation. “Some statutes say that when it comes to enforcement, we may not have to enforce provisions because of changing standards, which can be a defense if we’re taken to court,” she explains.

Ducharme’s solution is to “bring your documents into the 2000s” by amending them to allow limited business operations as approved by the board.

“We had one situation where an 18-wheel truck was coming in every week dropping off new product to an owner’s home business,” he says. “The home was in a cul de sac, so the truck was tearing up people’s grass. That’s the kind of business you want to prohibit.”

5. **Pets provisions.** This is really a broader issue, one Holland has referred to, and that’s the character of your community.

Garcia says, “After I delve into an association’s documents and I know who the client is and what the client wants, I’ll see that many conditions the developer has put in the template governing documents don’t reflect what the community wants. There will be a [no-pets provision](#), and here in Colorado everybody has three dogs.

“They don’t reflect today’s wants, and then boards don’t enforce those provisions,” explains Garcia. “That could lead to liability. I always tell my clients: Don’t ignore provisions that don’t reflect your community. [Amend them out](#), or you’re going to be exposed to liability.”

6. **Sections that cover who’s responsible for behind-the-walls repairs.** “It’s a big risk for associations to lose a battle in court because your documents aren’t as clear as they could be,” says Holland. “You want to be thinking: Can we reword some sections?

“The worst sections are often who’s responsible for that water leak in the shared wall,” asserts Holland. “By the time you get to the answer in the documents, you need an engineer to explain it. Many are written that way, where who’s in charge of handling the plumbing is very poor.”

Garcia agrees. “When documents have ambiguities, maybe that’s intended so boards can be more flexible in their rules,” she explains. “But sometimes that’s not good, and that’s often when it applies to [maintenance](#) and insurance issues. You don’t know where units end and common elements begin.”

7. **Provisions that are unclear or confusing.** “One of the best ways to save associations legal fees is to make the interpretation of all the vague terms within the board’s discretion,” says Ducharme. “Banning something that’s a [nuisance](#), an ‘annoyance,’ ‘cause for alarm,’ or ‘too loud’ all sounds well and good, but there’s no universal definition for all those situations.

“You’ll end up going to court, and that’s a coin-flip case that could go either way,” he states. “The best thing is to leave those determinations to the board and have an appeals process for owners found to have violated them.

"Leave all the gray-area determinations to the board," suggests Ducharme. "That's what you elected them for. If you don't like how they're leading, get rid of them."

One more note, and it's really a request from Holland to the attorneys who draft governing documents. "C'mon attorneys!" she cries. "Please give me a table of contents in the governing documents!"

Back to Table of Contents ▲

Additional Special Reports from HOAleader.com

[Condo/HOA Special Assessments: An A-to-Z Guide for Smart Board Members](#)

Special assessments get no respect. We'd even go so far as to say that they're almost universally reviled. However, the wisest board members view them through a practical lens. Special assessments are simply a tool to help communities fund necessary projects—one you should consider when necessary rather than let required maintenance or repairs go undone. In this comprehensive report: Condo/HOA Special Assessments: An A-to-Z Guide for Smart Board Members, we've sought the advice of legal and community association management experts to help you better understand the role of the special assessment and make your job of deploying them less stressful. [Download now»](#)



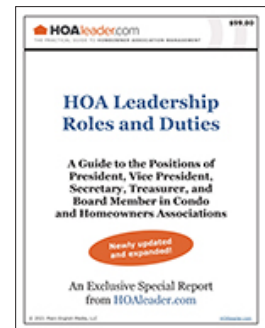
[HOA Transition - A Guide for New Boards Moving from Developer to Owner Control](#)

In this comprehensive report: HOA Transition: A Guide for New Boards Moving from Developer to Owner Control, we've sought the advice of legal and community association management experts so that we can provide insights and concrete tips on how to do your job wisely and well. [Download now»](#)



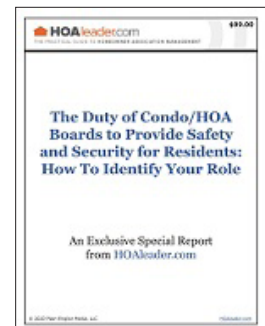
[HOA Leadership Roles and Duties: A Guide to the Positions of President, Vice President, Secretary, Treasurer, and Board Member in Condo and Homeowners Associations](#)

We're hearing from a growing number of association members who want more detail about their responsibilities—or who want an easy way to educate their newly elected fellow board members about what, exactly, board members do. What's the president supposed to do? How about the vice president, secretary, and treasurer? [Download now»](#)



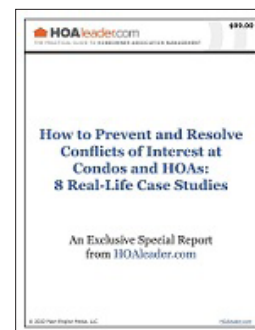
[The Duty of Condo/HOA Boards to Provide Safety and Security for Residents: How To Identify Your Role](#)

We're confident the information in this report will help you begin to identify your duties when it comes to community safety. [Download now»](#)



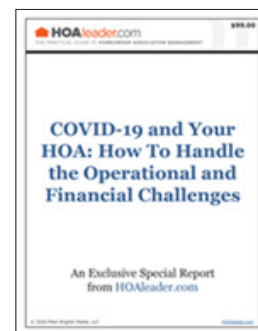
How to Prevent and Resolve Conflicts of Interest at Condos and HOAs: 8 Real-Life Case Studies

In this comprehensive report, we've sought the advice of legal experts on the best practices for identifying, avoiding, and resolving these conflicts in your association. [Download now »](#)



COVID-19 and Your HOA: How To Handle the Operational and Financial Challenges

COVID-19 has likely affected nearly all aspects of your role as an HOA leader, which is why we've put together this Special Report as a service to our community. [Download now »](#)



HOA Finances: Best Practices for Getting Your Homeowners Association through Difficult Economic Times

This report was created to help you make smart decisions that will in turn help your HOA weather the current financial storm. We've spoken to leading condominium and homeowner association advisors across the country and distilled their recommendations down into practical, plain-English suggestions for what you can do now to best position your association for financial stability. Times are tough, but the good news is there are steps you can take today that will help. [Download now »](#)



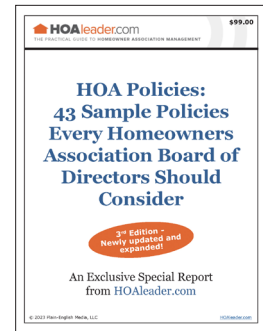
How to More Easily and More Effectively Address Violations in Your Condo or HOA

For this comprehensive report, we've sought the advice of legal experts nationwide on the best practices for handling violations in your association. [Download now »](#)



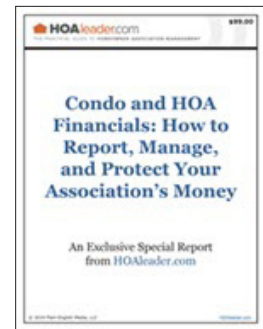
HOA Policies: 43 Sample Policies Every Homeowners Association Board of Directors Should Consider

In this newly updated and expanded special report, we lay the groundwork for your HOA board to draft policies and procedures governing a broad scope of condo or homeowners association life by providing you with 43 sample policies released exclusively to you by HOAleader.com's expert contributors. [Download now »](#)



Condo and HOA Financials: How to Report, Manage, and Protect Your Association's Money

This report will help you more effectively oversee the finances underpinning all of your operations. We've sought the advice of legal and management experts nationwide to compile this comprehensive report on the best practices for handling financial reporting and management at your association. [Download now »](#)



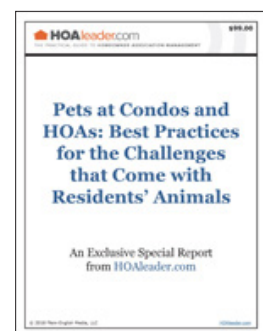
Board Member's Guide to Managing the Most Challenging People Issues at Your HOA or Condo

Surely you've heard this mantra spoken by HOA insiders: The biggest challenges boards face are "the 3 Ps," which stand for Parking, Pets, and People. In this report, our editorial team has tapped into the expertise of legal and management experts nationwide to provide you with information on best practices for handling the most difficult people challenges in your community. [Download now »](#)



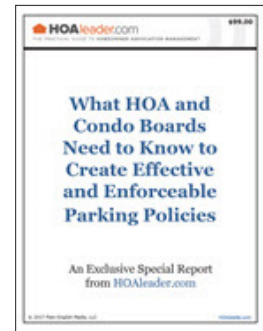
Pets at Condos and HOAs: Best Practices for the Challenges that Come with Residents' Animals

You may recall a fact often cited by many HOA insiders: The biggest challenges boards face are "the 3 Ps," which stand for Parking, Pets, and People. Here, our editorial team and our legal and management experts nationwide have come together to provide information on best practices for handling the difficult issues you face with pets in your community. [Download now »](#)



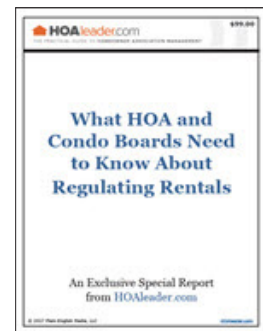
What HOA and Condo Boards Need to Know to Create Effective and Enforceable Parking Policies

HOA insiders often say that the biggest challenges boards face are “the 3 Ps.” Based on your own experience as an HOA board member, you can probably guess that those Ps stand for Parking, Pets, and People. It’s our overarching goal to make your life easier. So with this report, “Eliminate Parking Problems at Your HOA: How to Create an Effective and Enforceable Parking Policy,” we’re aiming to remove parking as one of the issues that throws speed bumps in your path to effective management. Here our editorial team and HOA legal and management experts all over the nation share with you tips and tools you can start using today to take the angst and stress out of parking in your community. [Download now »](#)



What HOA and Condo Boards Need to Know About Regulating Rentals

Rental restrictions are unlike most other policies HOA boards create because they necessarily curb owners’ real property rights. The law jealously protects property owners’ rights, which means any HOA board that seeks to restrict rentals in their community needs to act wisely and deliberately. This report provides you with the information you need achieve that goal. [Download now »](#)



HOA Debt Collection from A to Z: How to Create and Implement a Debt Collection System at Your HOA Special Report

In this report, our editorial team and experts on HOA law, management, and collections from across the country provide information you can begin implementing immediately to collect money due your association more quickly and easily. [Download now »](#)



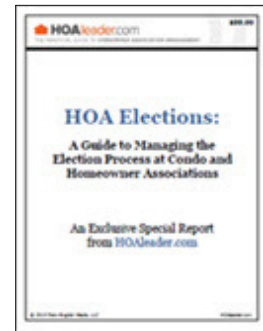
HOA Checklists: Your Road Map for an Entire Year of Homeowner Association Operations

This report is intended to be your road map for an entire year of operations that you begin using today and turn to for years to come. It provides you with checklists compiled by our editorial team with substantial input from experts on HOA operations and management from across the country to ensure you’re steering your association in the right direction and not letting crucial issues slip through the cracks. [Download now »](#)



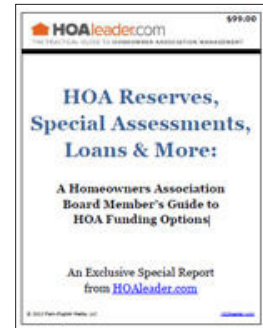
HOA Elections: A Guide to Managing the Election Process at Condo and Homeowner Associations

In this report you'll discover tips from our editorial team and experts on HOA governance and management from across the country on how to plan, properly notice, and execute an HOA election. These are tips you can begin implementing immediately to make your elections run more smoothly and withstand challenges from disgruntled homeowners. [Download now»](#)



HOA Reserves, Special Assessments, Loans & More: A Homeowners Association Board Member's Guide to HOA Funding Options

In this special report, you'll discover tips and guidance on funding options from HOAleader.com's expert contributors—professionals who've devoted their careers to serving and advising homeowners associations. Governing documents and state laws vary, but this information will help you understand how your association can meet all of its financial needs—and thrive. [Download now»](#)



Webinars Available On Demand from HOAleader.com

Enforcement of Your HOA's Rules: How to Create Enforceable Rules, Effective Fines, and a Fair Violation Process

[View now »](#)

De-Escalating Conflict in the Moment: How HOA Board Members Can Lower the Temperature When Things Get Heated

[View now »](#)

HOA Reserves and Other Funding Options: Tips for Everyday Smart Money Management

[View now »](#)

Condo/HOA Recordkeeping: How to Avoid Getting Burned in the Age of Texting, Facebook, WhatsApp, and Other Social Media

[View now »](#)

Service and Emotional Support Animals: What You Can and Can't Do When Owners Request Them

[View now »](#)

How to Make Your Architectural Review Committee More Fair and Effective

[View now »](#)

Ask Our Condo/HOA Experts Anything!

[View now »](#)

The 12 Most Pressing Issues for Condo/HOA Boards In the New Year

[View now »](#)

A Step-by-Step Guide to Successful Condo/HOA Elections: How to Plan for and Execute a Successful Election Now

[View now »](#)

Lessons from the Pandemic: How Your Role as a Condo/HOA Board Has Changed

[View now »](#)

[How to Be a Better Condo/HOA Board Member \(While Reducing the Stress of the Job\)](#)

[View now »](#)

[How to Manage HOA Collections During the COVID-19 Pandemic and Current Economic Crisis](#)

[View now »](#)

[COVID-19 Update: HOA and Condo Association Boards Can Navigate Coronavirus](#)

[View now »](#)

[The Challenges of Growing Legalization of Marijuana: What HOA and Condo Association Boards Need to Know](#)

[View now »](#)

[Reduce Your Stress: Effective Dispute Resolution Techniques to Use at Your Condo or HOA](#)

[View now »](#)

[8 Privacy Pitfalls for Your HOA or Condo Board – and How to Handle Them](#)

[View now »](#)

[Religion in Your HOA or Condo: How to Handle the Complicated Issues Surrounding Religion in Your HOA or Condo Without Getting Sued](#)

[View now »](#)

[HOA Board Members and Fiduciary Duties: What You Must Know to Fulfill Your Duty to Your Association and Protect Yourself from Personal Liability](#)

[View now »](#)

[How to Prevent Today's Climate of Tension and Anger from Taking Hold at Your Condo or HOA](#)

[View now »](#)

[Rentals in Your HOA or Condo Getting You Down? What HOA Boards Need to Know About Regulating Rentals](#)

[View now »](#)

[Prevent Embezzlement & Theft at Your HOA or Condo: Steps to Take Today to Protect Your Money](#)

[View now »](#)

[How to Read Your Association's Financial Reports \(and Fulfill Your Fiduciary Duty\)](#)

[View now »](#)

[HOA Reserves and Other Funding Options: How to Be a Smart HOA Money Manager](#)

[View now »](#)

[How to Protect Yourself and HOA from the Neighborhood Sociopath](#)

[View now »](#)

[How to Handle the Growing Challenges of Service and Emotional Support Animals: What HOA and Condo Association Boards Can Do — without Triggering Costly Legal Trouble](#)

[View now »](#)

[Community Association Insurance Made Easy — and 10 Must-Have Endorsements to Save Money and Your Skin](#)

[View now »](#)

[The Good & Bad of Social Media for HOAs: How to Use Social Media Effectively in Your HOA — and Protect Your Association and Board](#)

[View now »](#)

[Make Your Job Easier: Say Yes to an HOA Board Code of Conduct](#)

[View now »](#)

[Executive Session: When, Why, and How HOA Boards Should Meet Behind Closed Doors](#)

[View now »](#)

[Are You a Self-Managed HOA or Thinking About Going It Alone? Know the Risks — and How to Minimize Them — to Protect Your HOA and Yourself](#)

[View now »](#)

[Save Money and Protect Your Association and Yourself: What You Need to Know about Condo and HOA Insurance](#)

[View now »](#)

What's My Line?: The Roles, Duties, and Responsibilities of HOA or Condo Board Members

[View now »](#)

Easier Enforcement of Your HOA's Rules: Steps to Create Enforceable Rules, Effective Fines, and a Fair Violation Process

[View now »](#)

Collect More, and Collect It More Easily: Best Practices for Condo/HOA Debt Collection

[View now »](#)

HOA Elections: A Step-by-Step Guide to Plan, Properly Notice, and Execute Successful Elections at Your Homeowner Association

[View now »](#)

Accommodation Requests Under the Fair Housing Act: Best Practices to Avoid Discrimination Claims & Lawsuits

[View now »](#)

Special Assessments: How to Avoid Them When Possible, and Pass Them When Needed

[View now »](#)

Litigation and Your HOA: How to Avoid It, When to Pursue It, and How to Manage It Wisely

[View now »](#)

Anger and Apathy at Your HOA: Best Practices to Beat These Bedeviling Issues

[View now »](#)

How to Create a New-Owner Orientation Program for Your HOA

[View now »](#)

New HOA Board Members? Here's How to Run a Successful Board Orientation

[View now »](#)

How to Choose and Work with Your HOA's Manager

[View now »](#)

Are Owners Violating Your HOA’s Pet Rules? How to Simplify Your Pet Policies and Make Enforcement Easier

[View now »](#)

What You Need to Know to Effectively Regulate Parking in Your HOA

[View now »](#)

What It Means to Run Your HOA Like a Business – and How to Get It Right

[View now »](#)

How to Save Money on Every Contract Your HOA Signs

[View now »](#)

Improve Your HOA Meetings: What You Need to Know about *Robert’s Rules* and Other Parliamentary Procedures

[View now »](#)

Most Popular Articles on HOAleader.com

1. HOA Voting: Everything You Need to Know About Proxies

What's a proxy? Who can assign it and when? Who can it be assigned to? Can your association implement any limits on the use of proxies? Here, our expert contributors answer your questions. [Read more»](#)

2. The Top Seven Reasons HOAs Get Sued

Smart HOA boards need to know the answers to two questions: What are the most common reasons associations get sued? And how do they head off those costly cases? Here are answers. [Read more»](#)

3. HOA Board Members: 7 Things You Must Know If You're Sued Personally for Board Actions

Sometimes homeowners sue HOA boards, and sometimes they sue both the board and board members individually. Here are seven things you should know if you're personally sued for actions taken as a condo or homeowners association board member.

[Read more»](#)

4. How to Differentiate Between HOA Repairs and Home Owner Repairs

An HOAleader.com reader writes, "What policies can a board implement to ensure the association is paying for common element maintenance only? Our association has a lot of exterior leaks, which hopefully for the most part has been resolved. Unit owners claim the damage is from an exterior leak. The HOA pays for the repairs, but there seem to be additional repairs performed that are unrelated to the exterior leak. This has been going on for years and has become a great expense to the association." Here we provide guidance on policies and procedures you should implement to determine which repairs your HOA should cover and which home owners must pay. [Read more»](#)

5. What Happens When Nobody Runs for the HOA Board?

An HOAleader.com reader wants to know what happens when nobody runs for any open board seats. Here our experts give the lowdown. [Read more»](#)

6. Living Up to Your Fiduciary Duty as an HOA Board Member

"Fiduciary" is not just a big word. It carries legal consequences if you—even unknowingly—breach that duty. Here's what you need to know about fulfilling your fiduciary duty as a homeowners association board member. [Read more»](#)

7. 9 Mistakes New HOA Board Members Make—And How to Avoid Them

Here we list the nine most common mistakes new HOA board members make and provide tips for turning those mistakes into successes. [Read more»](#)

8. HOA Checklists: Your Road Map for an Entire Year of Homeowner Association Operations

This report is intended to be your road map for an entire year of operations that you begin using today and turn to for years to come. It provides you with checklists compiled by our editorial team with substantial input from experts on HOA operations and management from across the country to ensure you're steering your association in the right direction and not letting crucial issues slip through the cracks. [Read more»](#)

9. HOA Elections: 6 Mistakes to Avoid with your Condo or Homeowners Association Elections

It's very easy to invalidate an election by not following every rule to a T. Keep an eye out for these common mistakes condo and homeowners associations make when conducting elections. [Read more»](#)

10. The Facts on What HOA/Condo Board Presidents Can and Can't Do

Can your HOA or condo board president vote on routine issues at your association's board meetings, or is the president allowed to vote only if there's a tie? That's just one situation related to board presidents that's commonly misunderstood. [Read more»](#)

11. 9 Responsibilities HOA Boards Shouldn't Delegate to a Manager

HOA management companies can be a great help to an association's board of directors. But a manager is not supposed to usurp the board's duties. Here we share nine duties you shouldn't allow your HOA manager to handle. [Read more»](#)

12. HOA Owners and Security Cameras: OK or No Way?

In the blogosphere, an HOA owner contends her neighbor has put security cameras in places that intrude on her privacy, like above his unit's door in the common area and on his window pointing at her unit. The HOA asked the owner to remove the camera in the common area, and he did. No word on any HOA action in the second incident. [Read more»](#)

13. HOA Board Meetings: Open Meetings and Executive Session—What You Must Know

Does your state require that your condo or homeowner association board have open meetings? If so, what does that mean? And what about executive session? What can you discuss privately, and what must you discuss in front of homeowners who wish to attend? Here's a rundown. [Read more»](#)

14. HOA Transition Tips: Moving from Developer to Owner Control

The transition from a developer-controlled to a homeowner-controlled community is fraught with risks for homeowners. If your HOA board is about to take over from your developer or has recently done so, here are tips for making sure the transition goes as smoothly as possible. [Read more»](#)

15. Discussion Forum Follow-Up: Reining in Bullies on Your HOA Board

A reader on the HOAleader.com discussion board asks: "I am on the board of directors of our HOA, but the president is just running wild and not following any of the bylaws or CC&Rs..." Here, we provide tips for handling secretive, power-hungry board member tactfully yet effectively. [Read more»](#)

16. Master Homeowners Associations: Is Your HOA Its Own Master?

Imagine your surprise. You buy a home in a community knowing full well that you'll become a member of your local homeowners association only to learn that your homeowners association is really a subassociation and you're bound to follow the rules of a bigger "master" association. Here's a primer on master associations and how masters and subassociations, often called "subs," interact. [Read more»](#)

17. 10 Traits of Successful HOA Board Members

What qualities must you have to be a good homeowners association board member? Here, our experts reveal the top 10 traits of board members who serve their HOA well. [Read more»](#)

18. HOA Rules: What You Must Know About Flag Restrictions

There are several legitimate reasons why your HOA might want to provide guidance to homeowners on flag displays. Before you do, however, make sure you understand the maze of laws governing the issue. [Read more»](#)

19. Handicap Parking: What Your Homeowners Association Must Know

Is your condo or homeowners association required to provide handicapped parking for residents and visitors? If so, how many spaces do you need, and where must they be? What if an owner requests handicapped parking? Can you require proof, and where must you locate the spot? When can you legally deny the request? Here, we answer those questions. [Read more»](#)

20. HOA Communications: Dos and Don'ts for Responding to Owners' Letters to the Board

Surely, you get letters from owners. The question is how your should HOA Board of Directors respond. Do all letters require a response? If not, which do, and which don't? And who should respond? Your board president, the property manager, or another person? Finally, what should and shouldn't you include in responses to owners' letters? Here we offer dos and don'ts. [Read more»](#)

21. HOA Board Member Behaving Badly? Know How and When to Discipline

You may be surprised to learn that you and your fellow volunteers can be disciplined for your behavior as members of the board of directors of your homeowners association or condominium association. Here we explain when it's appropriate for boards to consider disciplining their fellow board members, along with the possible range of action they can take. [Read more»](#)

22. Tax Day: What Your Board Must Know about Homeowners Association Taxes

Homeowners associations have to file tax returns like the rest of the corporations in the United States. Here's a primer on the rules associations must follow when they file and advice on minimizing the stress of tax day for your HOA. [Read more»](#)

23. HOA Pet Rules & Required Accommodations: The Facts About Comfort Animals

Is Fido a medical necessity, or are we being taken for chumps? That's the question HOA board members are asking themselves as a growing number of owners claim that their beloved pet isn't a violation of their association's rules but a critical part of their medical treatment. Here's what you need to know about comfort animals and how your association should treat owners' requests for them. [Read more»](#)

24. Robert's Rules for HOAs: What You Need to Know

Robert's Rules of Order is a more-than-100 year old guide that provides governing bodies procedural rules to keep their deliberations orderly. What are the pros and cons of following Robert's Rules? If your association decides to follow it, what are the most important rules everyone should know? Here's a summary. [Read more»](#)

25. HOA Reserve Studies: What You Need to Know

Just what is a reserve study? What should it include, and how often should it be done? We've got answers. [Read more»](#)

26. What's a Reasonable HOA Fee or Penalty?

An HOAleader.com reader writes, "Our HOA is considering charging fees and penalties for noncompliance with our covenants and restrictions. What are some ideas on amounts to charge for violations? Example: Not repairing when given notice, not picking up dog poo? Need some feedback from other associations for different violations they charge for and how much." [Read more»](#)

27. How Far Does an HOA President's Power Extend? Discussion Forum Follow-Up

Can a president sign a landscape contract without the board's approval? And did the president of this reader's HOA have a conflict of interest here? Our experts provide answers. [Read more»](#)

28. No Quorum for Meeting to Elect a Board: Give Up? And Can the Prior Board Carry On?

An HOAleader.com reader asks, "The CC&Rs say 51% for a quorum. If no quorum, quorum requirements drop to 25% for the adjourned annual meeting. My question is if a first adjourned meeting has to be called because the 25% quorum requirements were not met, and the second adjourned meeting also fails to meet the 25% quorum, what then? Does the sitting board just continue into the next term? When does the board declare failure to meet quorum requirements and end the torture?" [Read more»](#)

29. A Sex Offender Has Moved Into Your HOA ... What Now?

If you're like most homeowners, your first thought when you learn that a sex offender has moved into your community is: What can we do to get the offender to leave? Here's what you must know about your association's—and the offender's—rights. [Read more»](#)

30. HOA Architectural Review: How to be Fair and Reasonable With Requests for Variances

It's inevitable that at least one of your homeowners will approach your board and ask for a variance from the association's architectural review standards. Can your HOA grant a variance? If so, should it? Here are some answers. [Read more»](#)

31. HOA Fees on Rentals: Can Your HOA Impose a Fee Just Because Owners Rent Their Unit?

Sure, you can probably require owners who rent their units to pay a security deposit to your HOA to cover the tenant's potential damage of HOA facilities. You can probably also charge move-in and move-out fees. But can you slap a general fee on owners who rent out their units just because? [Read more»](#)

32. HOAs and Parking: What Your Homeowner Association Board Should Know About Towing

Here's what you need to know about creating a towing policy that complies with your local laws and provides owners proper notice before their car gets hauled away. We also provide tips if you're entering into a contract with a towing company. [Read more»](#)

33. What HOA and Condo Boards Need to Know About Regulating Rentals

Rental restrictions are unlike most other policies HOA boards create because they necessarily curb owners' real property rights. The law jealously protects property owners' rights, which means any HOA board that seeks to restrict rentals in their community needs to act wisely and deliberately. [Read more»](#)

34. Definition: Declaration of Covenants, Codes & Restrictions (CC&Rs)

The declaration of covenants, conditions, and restrictions (CC&Rs) are recorded with the register of deeds in the initial phase of development of a townhome or planned community. [Read more»](#)

35. Who's Responsible for an HOA's Poorly Designed Drainage System?

An HOAleader.com reader writes, "I live in a PUD, and my home is the lowest lot on the street of our association, consisting of 26 homes and 4 townhouses. These homes were built 15 years ago before our city implemented city storm-water management guidelines; therefore, the builders didn't have any guidelines regarding downspouts and water runoff. [Read more»](#)

36. Can You Have "Working" HOA Meetings and Exclude Homeowners?

A new type of meeting has sprung up among some HOA boards—the "working meeting." It supposedly permits boards to meet in private outside of regular meetings and not provide owners notice or the opportunity to attend. Is this legit? [Read more»](#)

37. HOA Board: "We Don't Follow Our Own Rules. Sue Us!"

An HOAleader.com reader has a bone to pick with one of our experts, Nancy Polomis. [Read more»](#)

38. HOA Board Waiting for Developer Transition; 7 Tips to Handle Developer Control

An HOAleader.com reader writes, "I live in the state of Delaware... [and] our community is in the early stages of development; there are about 100 lived-in homes. The community is about seven years old... I have lived here less than two years. Our developer has

appointed a board of directors consisting of three of his employees and probably not surprisingly maintains solid control of the community. [Read more»](#)

39. HOA Contracts: Can One Board Member Contractually Bind Your Homeowners Association?

Can one board member, without the board's knowledge, bind the association to a contract? The short answer is yes. However, our experts have suggested practices you can implement to prevent it from happening at your association. [Read more»](#)

40. Operating a Business Out of an HOA Unit: When It Turns Into a Problem

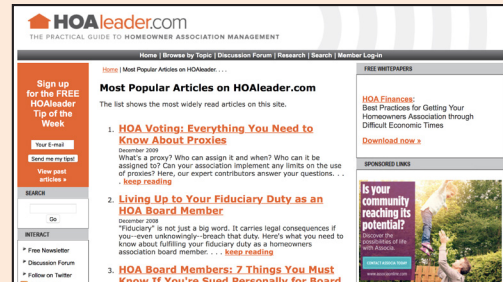
You already know it's wise to implement Smart Rules for Home-Based Businesses. But even then, you'll run into gray areas because some businesses are more quiet and less intrusive than others. What's a board to do when faced with an owner who occasionally has clients come for a meeting versus an owner who operates a public relations firm with three employees from the house? [Read more»](#)

Your Entire HOA Board Can Benefit with a Group Membership to HOAleader.com

As a member of HOAleader.com, you can add up to 9 additional members to your account . . . **at no additional cost.**

Each board member gets his or her own username and password, and access to:

- **Updates:** the latest new laws and court cases affecting HOAs
- **Analysis:** Plain-English explanations of what those developments mean to you
- **Advice:** Step-by-step [guidance](#) on best practices
- **Tools:** Checklists, Sample Policies and Forms
- **Community:** The HOAleader.com discussion forum



It's an unbeatable deal! **Start your Group Membership Today.**