

E K M A R K & E K M A R K, L.L.C.

ATTORNEYS AT LAW

Amending the association documents can be very difficult. Keep the following in mind when considering an amendment:

- There may be a different amendment process for the declaration (CC&Rs), articles of incorporation and bylaws. It is important to review the amendment provision in each document. Some bylaws may be amended by the board. All amendments to the articles of incorporation need to be published.
- Pay very careful attention to the exact language set forth in the amendment provision. For example, there is a difference between “75% of the owners” and “owners of 75% of the lots.”
- If the owners need to “acknowledge” the amendment, the signatures need to be notarized.
- An amendment may only be possible every so often during a specific window of time. Check your documents carefully to see if they contain this requirement.
- You may not need to be concerned if the document requires the consent of “Eligible Mortgage Holders.” This term is usually defined as holders of first mortgages who have notified the association in writing that they want to be notified in certain situations.
- Some documents require that the declarant approve any amendment. The Condominium Act, however, allows condominiums to ignore this provision after the period of declarant control ends.
- Pursuant to case law here in Arizona, all amendments must apply uniformly to all units unless the documents specifically authorize non-uniform amendments.
- The Condominium Act states that an amendment may only be challenged within one year after recording. There is no similar provision in the Planned Community Act.
- Boards cannot amend documents with resolutions or policies that are inconsistent with the documents.

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