

# Amending The Governing Documents

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# Should we even embark on this process?

- Negatives:
  - Time-consuming
  - Expensive
  - May not obtain approval after all the work is done
- Positives:
  - Increased protection for directors
  - Ability to take action without a meeting
  - More enforcement tools
  - Elimination of risks/responsibilities

## Some key dates:

- 1963: Horizontal Property Regime Act
- 1978: Michigan Condominium Act
- 1985: Amendments to Nonprofit Corporation Act
- 2000: Significant overhaul of Michigan Condo Act
- 2003: Fixing the “boo-boos” in the 2003 changes
- 2008: Amendments to the Nonprofit Corporation Act

# Two Stages to the Process:

1. Identifying, reviewing, and drafting the documents.
2. Obtaining member (and mortgagee) approval.

# Identifying the Documents:

- Articles of Incorporation
- Master Deed
- Condominium Bylaws
- Corporate or Association Bylaws
- Site Plan
- Amendments to any or all of the above

# Articles of Incorporation

- Indemnification of Directors
- Action without a meeting
- Quorum requirements
- Electronic notice and voting
- Eliminating “litigation approval” provisions

# Master Deed

- Resolving ambiguities regarding common elements and units and responsibility for maintenance, repair, and replacement
- Giving the association authority to grant easements
- Changing voting rights to “one vote per unit” rather than by percentage of value
- Changing amendment requirements to conform to the MI Condominium Act

# Condominium Bylaws

- Leasing restrictions
- Fines procedures
- Quorum requirements
- Attorney fees
- Mortgagee liability (from “possession” to “acquisition”)
- Eliminating purchaser approval clauses
- Insurance provisions/repair provisions (“... incidental damage to a unit caused by a common element...”)
- Action without a meeting
- Electronic notice and voting
- Eliminating “litigation approval” provisions



# Corporate Bylaws

- Consider folding into condominium bylaws and eliminating entirely
  - Only one document to keep track of
  - Everyone on notice because recorded in chain of title

# Site Plan

- Rarely, if ever does a Site Plan need revisions
  - Errors in identification of limited common elements and general common elements
  - Conversion of unconstructed units to general common elements (requires court order)

# Review and Drafting

- The board identifies longstanding difficulties in project administration caused by ambiguities or contradictions in the documents
- The board polls the members for suggestions for changes (consider setting up a committee)
- The attorney suggests revisions resulting from changes to the law

# Restating or piecemeal amending?

- For minor changes, piecemeal amendment is faster, cheaper, easier
- For significant, pervasive revisions, a complete restatement of the document saves a lot of time in the future

How long does the process take?

# The voting process

- Approval of members
- Approval of mortgagees
  - Shifting MMR responsibility to members from association
  - Shifting insurance responsibility to members from association
  - Leasing restrictions
  - Change in formula to determine percentage of value
  - Modifying unit or limited common element dimensions
  - Termination of the project

# Member approval

- Is a meeting required?
- Annual or special meeting?
- Who is “qualified to vote”?
- Different documents have different vote requirements:
  - Master Deed and Condo bylaws require 66-2/3<sup>rd</sup>% of co-owners
  - Corporate bylaws and Articles of Incorporation probably require simple majority

# The devil can be in the details:

- Determining who is qualified to vote
- Noticing requirements
- Quorum
- Proxies
- Written votes



# Approval of Mortgagees is easy, but not cheap

- Notice goes to the address stated in the mortgage (or assignment) of record on the date the co-owners approve the amendments (requires a title search)
- Failure of a mortgagee to respond is a “yes” vote

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