

DECLARATION AMMENDMENT

LOMAA Monthly Meeting

March 7, 2022

Amendments Authorized

- Except to the extent that a declaration provides by its express terms that it is not amendable, in whole or in part, a declaration that fails to include provisions permitting its amendment at all times during its existence may be amended at any time. (Civil Code §4260)

Amendment Procedure

- With limited exception, an amendment is effective after all of the following requirements have been met (Civil Code §4270)
 - 1) The amendment has been approved by the percentage of members required by the declaration and any other person whose approval is required by the declaration.
 - 2) That fact has been certified in a writing executed and acknowledged by the officer designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association.
 - 3) The amendment has been recorded in each county in which a portion of the common interest development is located.
- If the declaration does not specify the percentage of members who must approve an amendment of the declaration, an amendment may be approved by a majority of all members

Unlawful Restrictive Covenants

- No declaration or other governing document shall include a restrictive covenant in violation of Section 12955 of the Government Code. (Civil Code §4225)
- The board, without approval of the members, shall amend any governing document that includes a restrictive covenant to delete the restrictive covenant, and shall restate the declaration or other governing document without the restrictive covenant but with no other change to the declaration or governing document.
- The board shall record the restated declaration in each county in which the common interest development is located.

Declarant Provisions (Civil Code §4230)

- After the developer has completed construction and marketing activities for the separate interests within the development, a board may, with the approval of a quorum of the members, adopt an amendment deleting from any of the governing documents those provisions which facilitated the developer in completing the construction and marketing of the development.
- At least 30 days prior to taking action pursuant to subdivision the board shall deliver to all members, by individual delivery, a copy of all amendments to the governing documents proposed and a notice of the time, date, and place the board will consider adoption of the amendments.
- The board may consider adoption of these amendments only at a meeting that is open to all members, who shall be given opportunity to make comments thereon. All deliberations of the board shall only be conducted in an open meeting.

Cross-Referencing Corrections

- If the governing documents include a reference to a provision of the Davis-Stirling Common Interest Development Act that was repealed and continued in a new provision by the (2013) act that added this code section, the board may amend the governing documents, solely to correct the cross-reference. (Civil Code §4230)
- A declaration that is corrected under this code section may be restated in corrected form and recorded, provided that a copy of the board resolution authorizing the corrections is recorded along with the restated declaration.

Judicial Authorization of Amendments

- If in order to amend a declaration, the declaration requires members having more than 50 percent of the votes in the association, the association, or any member, may petition the superior court of the county in which the common interest development is located for an order reducing the percentage of the affirmative votes necessary for such an amendment. (Civil Code §4275)
- There is a lengthy list of exhibits that must accompany the petition
- There is an even more lengthy set of conditions for the court to grant or deny the petition.