



AMENDING GOVERNING DOCUMENTS IN CONDOMINIUM ASSOCIATIONS

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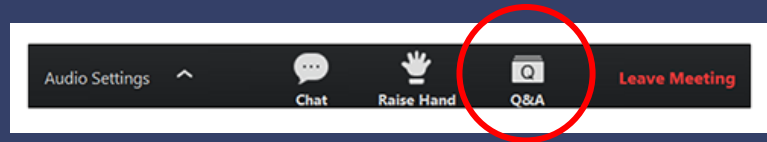
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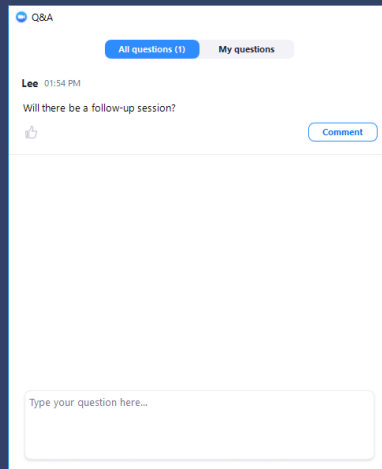
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How to submit a question:

1. Navigate to the tool panel and click on “Q&A”

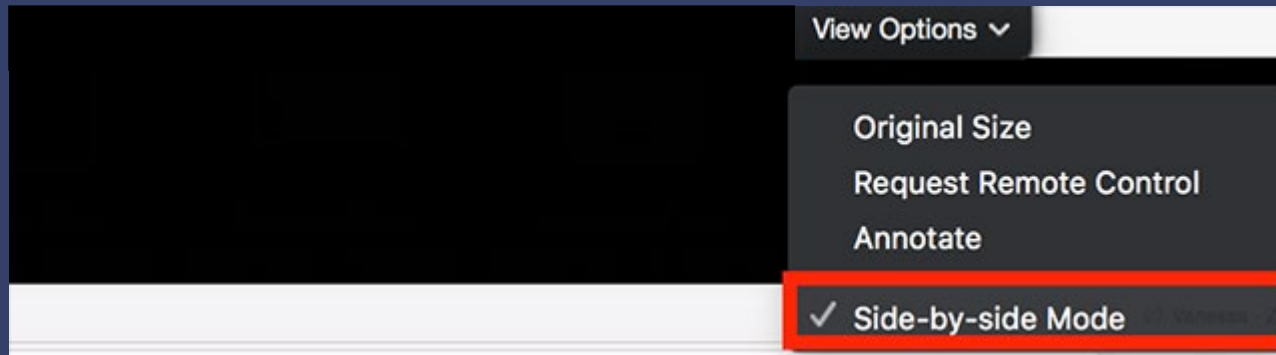


2. A dialog box will open allowing the participant to submit a question.



Adjusting view options:

1. Navigate to the tool panel and click on “View Options”



2. Select “Side-by-side Mode”.

Condominium Owners Organization of Century Village East (COOCVE)

- Not-for-profit corporation
 - Founded in 1976; purpose is to educate and assist the 253 Member Condominium Associations
- Voluntary membership available to all condominium associations in Century Village East
- Voting representation depending on the number of units in the condominium (“COOCVE Delegates”)
- COOCVE Delegates assist in the appointment of directors to Master Management and Cen Club

CVE Master Management, Inc. (MM)

- Not-for-profit corporation (1983)
- Assignment and Assumption Agreement in July 1983 from CEN-DEER COMMUNITIES, INC. to MM
- Responsible for operation and maintenance of the CVE infrastructure, including security, main roads, irrigation, drainage, sewer, trash, basic tv service, bus services, etc.
- Every owner signs an agreement with CVE MM when they purchase by virtue of the declaration for the care and provision of community services and facilities only.

CenClub Recreational Management, Inc. (CenClub)

- Not-for-profit corporation (1976)
- Operates and maintains the Clubhouse and facilities (Tennis Courts, Recreational areas)
- Previously known as “CENCLUB HOMEOWNERS ASSOCIATION, INC, a Florida not for profit corporation” - amendment dated Jan. 13, 2020

Summary of Entities Century Village East Community

CVE Associations

254 Buildings

253 Associations

Each Association has:

- Its own Board of Directors
- Its own set of Governing Documents:
 - Declaration of Condominium
 - Articles of Incorporation
 - Bylaws
 - Rules

GOVERNING DOCUMENTS

Declaration- covenants/restrictions: The “Constitution”

- Duty to Pay Assessments
- Use Restrictions
- Rental and Sales Restrictions
- Architectural Restrictions
- Membership and Ownership Interests

By-Laws: Operation and Administration

- Board composition
- Election Meetings
- Officer duties/roles/restrictions
- Budgeting

Articles of Incorporation – Corporate Charter

- Purpose and Powers
- Officers/Directors
- The document that legally forms the association

Rules and Regulations

- Must be Reasonable
- Imposed by the Board
- Must be consistent with Declaration

Rules and Regulations

Generally, the association has the authority to adopt general rules and regulations that do not conflict with other governing documents.

EXAMPLES: RULES REGARDING → guests, package deliveries, hurricane shutters, food deliveries, elevator usage for moving in/out, etc.

- Entity (or entities) responsible for the operation of common elements, common areas, and recreational facilities may adopt reasonable rules.
- Bylaws may include methods of adopting and amending administrative rules and regulations governing details of the operation and use of common elements.

In a few cases, statutes specifically authorize a board to adopt rules (i.e., written inquiries/location for posting notices/video recording at meetings)

EXAMPLES:

- (i) Adopt rules to prohibit dual usage by a unit owner and a tenant of association property and common elements.
- (ii) Regulate access to official records.
- (iii) Regulate owner participation at meetings.
- (iv) Regulate video recording at meetings.

NOTICE REQUIREMENTS: Must provide no less than 14 days' notice of a board meeting at which an amendment to rules regarding unit use will be considered.

Why amend?

Adaptation to Changing Needs: Over time, the needs and preferences of condominium residents may evolve. By amending the governing documents, the association can update certain restrictions and/or rules and regulations to better align with the community's current requirements. This could involve modifying provisions related to pet policies, parking regulations, architectural guidelines, lease and sale approval process, and/or other aspects that may no longer reflect the desires or lifestyle of the residents.

Changes in the Statute: Florida Statutes, Chapter 718 (the "Condominium Act") is constantly changing. As a result of certain legislative changes, older governing documents necessitate amendments to ensure compliance and alignment with the updated statutes. (i.e. safe harbor provision for lenders who foreclose).

Improved Governance and Operations: Governing documents provide the guidelines for the operation and management of the condominium association. Amendments can be used to enhance governance practices, clarify ambiguous provisions, streamline decision-making processes, or introduce mechanisms for more efficient operations. By amending the governing documents, the association can foster a more transparent, fair, and effective community governance structure that benefits all residents.

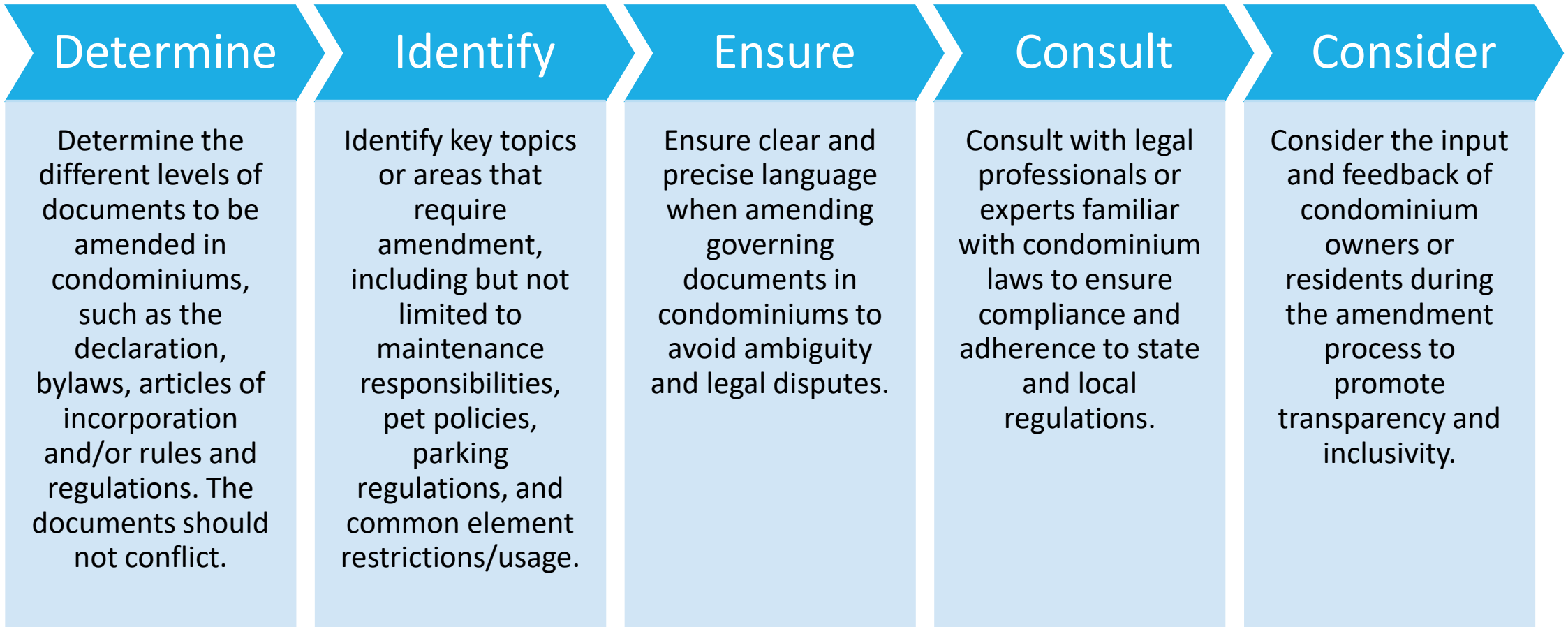
“Minimal” Amendments for the Century Village East Community

Over time, the Century Village East Community has undergone several transformations that have affected the entities involved. These changes have caused discrepancies in the specified terms within each condominium's declaration. It has become necessary to revise these terms to accurately reflect the current entities involved and to eliminate references to terms or restrictions that no longer apply.

The following list comprises the defined terms requiring amendment:

1. Long term lease/Lease
2. Sponsor (also referred to as the “Developer”)
3. Recreational Land Owner and Demised Premises
4. CenClub Homeowners Association, Inc. to CenClub Recreation Management, Inc.
5. Cen Deer Communities, Inc. was replaced by CVE Master Management Company, Inc.
6. Amend definition of Master Management firm
7. “Kaufman” language

Considerations when Amending



Spot Amendment

vs.

Total Rewrite (Amended and Restated)

The extent to which an Association makes amendments varies depending on the governing documents.

- Spot amendments typically involve making specific changes or additions to existing provisions. Spot amendments may be more appropriate for addressing specific issues or updating outdated provisions.

- A total rewrite involves a comprehensive revision of the entire governing documents –must be approved as a whole by members.

A total rewrite may be necessary when the existing governing documents are inadequate or require substantial restructuring to meet current needs and statutory requirements.

HOW TO DECIDE WHICH ONE?

- Pros/Cons to each option
- Type of amendment and approval required (100%?).
- Depends on the complexity and scope of the desired changes.
- Number, age, and complexity of prior amendments of record
- Need to get unfavorable provisions passed so pair same with the provisions all members are in favor of passing
- Type of modification and required approval of members matters
- Feasibility of membership approval
- Does the amendment require mortgagee consent?
- Will the amendment require grandfathering in or involve vested rights of owners?

What is an attorney's role in the amendment process?

An attorney's role in amending the governing documents is to provide legal expertise and guidance throughout the amendment process, ensuring compliance with state laws and regulations.

An attorney would assist with drafting and reviewing the proposed amendments, ensuring clarity, enforceability, and alignment with the condo association's goals and objectives.

Attorneys can also play an important role in facilitating the voting process, advising on the required vote for approval, and ensuring that all necessary legal procedures are followed to properly amend the governing documents.

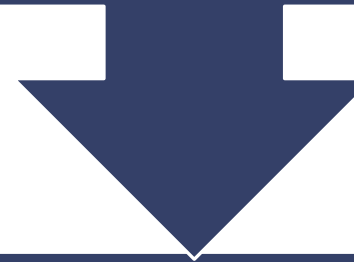
Extent of lawyer involvement and options on how to address potential amendments

Legal involvement in amending governing documents in condos typically requires the expertise of an attorney who specializes in real estate and condominium law.

The attorney can review the existing governing documents to identify the necessary amendments and ensure compliance with relevant laws and regulations.

OR

The Board and/or a Committee can provide the attorney with a list of items of issue and/or concerns for review and amending



To manage legal fees effectively, an attorney may assign associate attorneys to work on amendments under their supervision. This approach allows the associate attorneys to handle the research, drafting, and administrative tasks involved, while the supervising attorney oversees the process, provides guidance, and ensures the quality and accuracy of the work. This division of labor helps streamline the process and can reduce overall legal costs for the client while maintaining the necessary expertise.

Timeline and Unit Owner Involvement

The complexity and scope of proposed amendments can significantly affect the timeline of the review process.

Committees play an important role in the amendment by providing expertise, conducting thorough reviews, and offering recommendations to ensure the community's best interests. Their involvement enhances transparency, promotes community engagement, and helps facilitate effective decision-making during the amendment process. They can also take surveys and be the liaison with the membership.

Balancing building involvement in the review process requires effective communication and collaboration among the members. Establish clear channels for input and feedback, schedule regular meetings or town halls to discuss proposed amendments and encourage constructive dialogue to find common ground and expedite the decision-making process. EXPLAIN the impact and reason for amendments.

Seeking legal guidance and involving an attorney specializing in condominium law from the commencement to come up with a plan of how to address future amendments can help streamline the review process. Doing so can provide valuable insights and guidance and facilitate a more efficient timeline for identifying and implementing amendments to governing documents.

Committees

The process for a committee to review their condo documents in Florida typically involves assessing the existing documents and proposing amendments.

Committees may choose to review the entire set of documents before involving a lawyer, especially if they have a template or sample documents to guide them.

Alternatively, committees can opt to review one section at a time, seeking legal advice as needed during the process to ensure compliance with relevant laws and regulations.

The approach of reviewing everything first or taking it section by section may depend on the complexity of the documents, the skills, ability and time of the committee members and the urgency for said amendments.

Cost Effectiveness Strategies



1. Before making any amendments to the governing documents, understand the process and required approval for the amendment to be effective.
2. Establish a liaison, committee, designated individual or board member to be the main point of contact with the attorney to reduce fees.
3. Ensure that the Board carefully reviews the proposed changes thoroughly before distributing to the members. Take the time to identify the specific areas that require modification, consult with legal professionals specializing in condominium law, and ensure that the amendments align with the needs and objectives of the community.
4. Determine method of communicating changes (i.e. google docs, tracked changes and comments, and/or emails with comments and one main document, etc.)
5. By investing effort into careful planning and review, you can avoid unnecessary expenses associated with revising the documents multiple times or encountering legal complications down the line.
6. Promote open communication and collaboration within your board and committees! This approach can prevent conflicts, mitigate the need for multiple revisions, and minimize legal fees.

Statutory Amendment Procedures:

Declaration of Condominium.

(a) The statute defers to the declaration provided a procedure is set forth in the declaration. *FS 718.110(1)(a)*. **If the declaration does not include an amendment procedure, the statute requires approval by the owners of not less than two-thirds of the units.**

(b) Limitations or Exceptions to Regular Amendments. The foregoing general procedure is subject to a number of exceptions, including, but not limited to:

- i. amendments by a developer;
- ii. amendments that change the configuration or size of a unit in a material;
- iii. amendments that materially alter or modify the appurtenances to a unit;
- iv. amendments that change its percentage of ownership in the common elements, or enlarge the common elements and amendments that change a unit's percentage of ownership in the common surplus or share of the common expense
- v. amendments that restrict the rental of units
- vi. amendments that merge two or more condominiums
(others too)

Articles of Incorporation: The Condominium Act does not specifically address the procedure for adopting amendments to the articles of incorporation. Chapters 607 and 617, as applicable, will govern.

By-Laws: The vote required to approve bylaw amendments must be as set forth in the bylaws, and if the bylaws are silent, a default provision controls that requires two-thirds approval by all the voting interests of the Association.

Formatting - Declaration

Declaration

- An amendment to a declaration of condominium must be evidenced by a certificate of amendment, which sets forth the recording data identifying the **book and page** of the public records of the county in which the declaration was first recorded. The certificate must be executed with the formalities of a deed.
- **No declaration provision may be amended solely by reference to its title or number.** Amendment proposals must set forth the full text of the provision to be amended: new words must be inserted in the text and underlined; words to be deleted must be struck through. However, **if the proposed changes are extensive**, it is sufficient to show only the new proposed text, with a “notation” substantially similar to the following inserted immediately before the text: “Substantial rewording of declaration. See provision ____ for present text.”
- An amendment to a declaration of condominium is effective when the amendment, affixed to a proper certificate of amendment, is recorded in the public records of the county in which the original declaration is recorded and in which the condominium is located.

Sample Amendment – Kaufman Language

PROPOSED AMENDMENTS TO THE DECLARATION OF CONDOMINIUM FOR ABC CONDOMINIUM ASSOCIATION, INC ARTICLES OF INCORPORATION AND BYLAWS OF ABC CONDOMINIUM ASSOCIATION, INC

NOTE: UNLESS OTHERWISE SPECIFIED, NEW WORDS INSERTED IN THE TEXT ARE UNDERLINED AND WORDS DELETED ARE LINED THROUGH.

- 1. Proposed amendment to Article I of the Declaration of Condominium of ABC CONDOMINIUM ASSOCIATION, INC. as recorded in Official Records Book ____, Page ____ of the Public Records of Broward County, Florida, as amended from time to time (the “Declaration”):**

Developer as owner of record of the “Condominium Property” (as hereinafter defined) hereby submits the Condominium Property to condominium ownership pursuant to the Condominium Act; Chapter 718, Florida Statutes, ~~1976~~, as amended from time to time ~~through the date of the recordation of this Declaration (the “Act”). This is a “phase condominium” as contemplated by Section 718.403 of the Act. The plan for the creation of the several phases of this condominium is set forth in Article __ hereof.~~

Formatting – Articles and Bylaws

Articles of Incorporation

- No amendment to the Articles of Incorporation is valid unless recorded with identification of the amendment on the first page of the book of the public records, where the declaration of each condominium operated by the association is recorded.
- Note: Amendments to Articles must also be filed with the Division of Corporations under Chapter 617, FS. (sunbiz.org)

Bylaws

- Bylaw amendments must be recorded to be valid, and the first page of the amendment must set forth the book and page of the public records where the declaration of condominium for each condominium operated by the association is recorded.
- *FS 718.112(2)(h)(2)* requires the use of the underlining and strike-through method.
- Nonmaterial errors or omissions in the bylaw amendment process do not invalidate an amendment otherwise properly promulgated.

So, the Amendment Passed, What Happens Next?

Certificate of Amendment:

Confirms that the necessary approval was obtained and cites to official recording information of document being amended; exhibit containing the Proposed Amendments in the statutory format.

Execution and Notarization:

Must be signed by the authorized parties (e.g., board members) and 2 witnesses. Signatures must be witnessed by a licensed notary public to validate the document.

Record the Amendment:

Submit the executed and notarized Certificate of Amendment to the county's official records office (generally can be filed electronically by attorney's office).

Amendment Indexing:

The county office will assign a unique recording number to the amendment. This number is used for reference and retrieval purposes. **USED TO BE ORB/PAGE NOW "INSTRUMENT NUMBER"

Sample CERTIFICATE OF AMENDMENT

Prepared by:
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Eisinger Law
4000 Hollywood Boulevard, Suite 265-S
Hollywood, Florida 33021
Tel: (954) 894-8000

CERTIFICATE OF AMENDMENT TO THE DECLARATION OF CONDOMINIUM OF ABC CONDOMINIUM ASSOCIATION, INC.

ABC CONDOMINIUM ASSOCIATION, INC., a not-for-profit Florida corporation, organized pursuant to Chapter 718, Florida Statutes, et seq., for the purpose of managing and operating ABC, a Condominium, (the "Condominium"), according to the Declaration of Condominium thereof, as recorded in Official Records Book ____, at Page ____, of the Public Records of Broward County, Florida, as amended from time to time, hereby certifies that on the ____ day of _____, 2023, at a duly and properly noticed and called meeting of the Board of Directors of the Association, (the "Board"), at which a quorum of said Board was present, at least 66 2/3% of the members of said Board (i.e., at least 66 2/3% of the entire Board) affirmatively approved and adopted those certain Amendments to the Declaration of Condominium, attached hereto and made a part hereof as Exhibit "1"; and (ii) At a duly and properly noticed and called meeting of the members of the Association at which a quorum of said members was present, at least 66 2/3% of the members of the Association present, either in person or by proxy, at said meeting, affirmatively approved and adopted those certain Amendments to the Declaration of Condominium, attached hereto and made a part hereof as Exhibit "1".

IN WITNESS WHEREOF, the undersigned has hereunto affixed his signature on this ____ day of _____, 2023.

Signed, sealed and delivered
in the presence of:

ABC CONDOMINIUM ASSOCIATION, INC.
Florida not-for-profit Corporation

By: _____

Witness (As to Both)

Print: _____

Print Name: _____

Title: _____

Witness (As to Both)

Print: _____

Attest: _____

Print Name: _____

Title: _____

STATE OF FLORIDA)

:ss

COUNTY OF BROWARD)







The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2023, by _____ and _____, as President and Secretary, respectively, of ABC CONDOMINIUM ASSOCIATION, INC., a not-for-profit Florida corporation, who are personally known to me or who have produced _____ as identification and who have executed same on behalf of said corporation.

My Commission Expires:

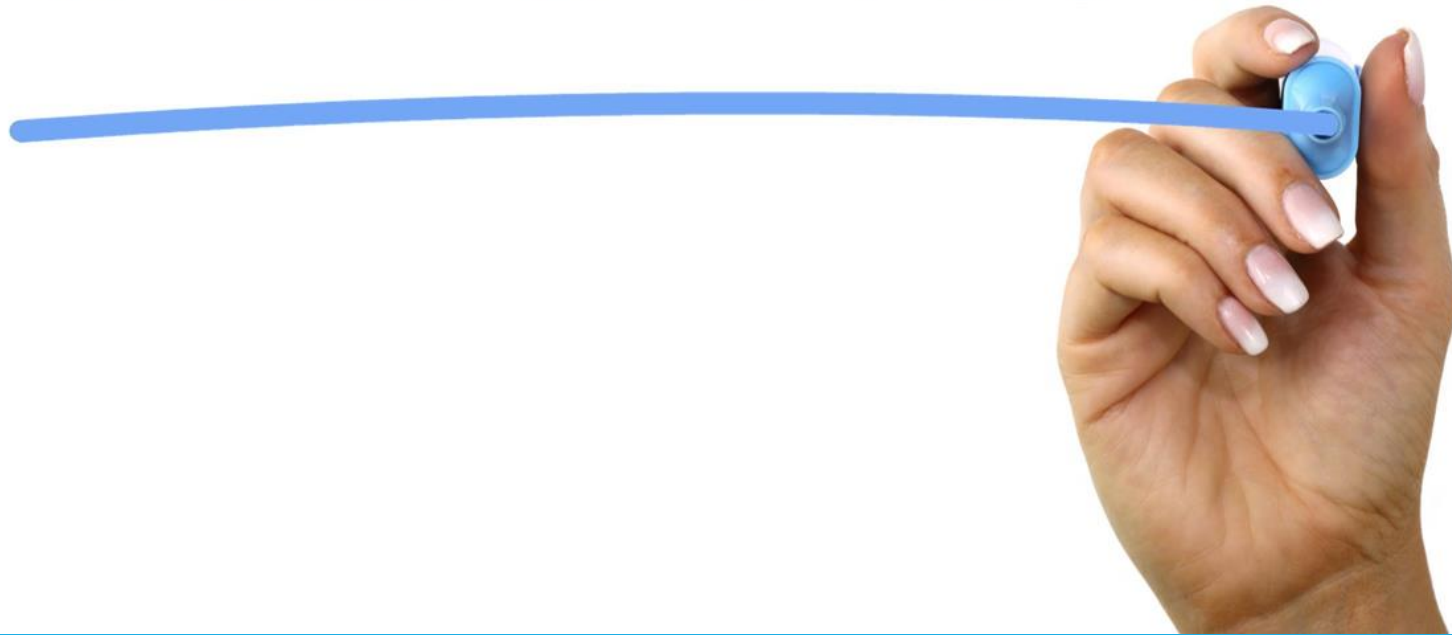
NOTARY PUBLIC – State of Florida

Print Name: _____

General Tips When Amending Documents in Condominium

-  **Townhall Meeting:** Hold a well-organized townhall meeting to discuss proposed amendments. Provide clear explanations of the amendments' purpose, benefits, and potential impacts.
-  **Electronic Voting:** Implement electronic voting systems for convenience and increased participation.
-  **Time of the Year (Seasonal Residents):** Consider the presence of seasonal residents when scheduling meetings or votes. Use communication channels that reach both full-time and seasonal residents.
-  **Limited Proxy:** Define clear rules for limited proxy voting to prevent misuse. Limit the scope of proxy powers to specific amendments or decisions. Verify and authenticate proxy designations to maintain integrity. Ensure Proxy is in attendance at meeting.
-  **Remote Participation:** Provide options for remote participation in meetings, especially for residents unable to attend in person. Use video conferencing tools such as Zoom to enable real-time engagement and discussion.
-  **Amend to Lower Voting Requirements:** Propose amendments that aim to lower the voting threshold for certain decisions. Clearly explain the rationale behind the proposed changes. Highlight potential benefits of quicker decision-making and increased community involvement. Pair with desired amendments.

QUESTIONS



**Scan Here to Download the CONDO/COOP
Legislative update document
in PDF format**





For questions, copies of powerpoint or more information, please contact:

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