

10 REASONS TO *FIX UP* YOUR GOVERNING DOCUMENTS

BY JULIE BLEND

Fix-up tools for your community should not be limited to hammers and nails. The operational foundation should be addressed as well – your governing documents. Here are 10 reasons why “fixing - up” governing documents is a good idea.

Reason Number 10: Address Amended Legislation

Several new state laws became effective September 1, 2015. As recommended by the astute authors of “Texas POA Legislative Update” in the last edition of Community Contact, governing document updates should be considered to reflect new legislation. One newly amended statute, Texas Property Code (TPC) Section 209.00591(a-1), allows homeowners’ associations (not condominiums) to amend their bylaws to require some, but not all, of the board members to reside in the community.

Reason Number 9: Deal With Developers

TPC Section 202.010, which regulates solar energy devices, was amended effective 9/1/15 to require developers of a development with greater than 51 units or lots to now comply with the same restrictions as homeowners’ and condominium associations. If your association does not already have a solar energy device policy, it is time for your attorney to draft one. In addition, once the development period has passed, removing obsolete developer provisions can help to streamline your governing documents.

Reason Number 8: Meet Your Meeting Requirements

TPC Section 209.0051 was recently amended to confirm that homeowners’ association boards (not condominiums) can hold all meetings electronically or telephonically, and allows board action outside of a meeting for certain matters without notice to owners. Notice to owners of electronic or telephonic meetings must

include instructions on how to listen to the meeting. For board action outside of a meeting, each board member must have the opportunity to express their opinion. The amended statute adds 7 new matters that can only be discussed and voted on at a board meeting for which the owners receive notice. Bylaw provisions regarding board meetings should be updated to address any conflicts with the amended statute.

Reason Number 7: Show Me the Money

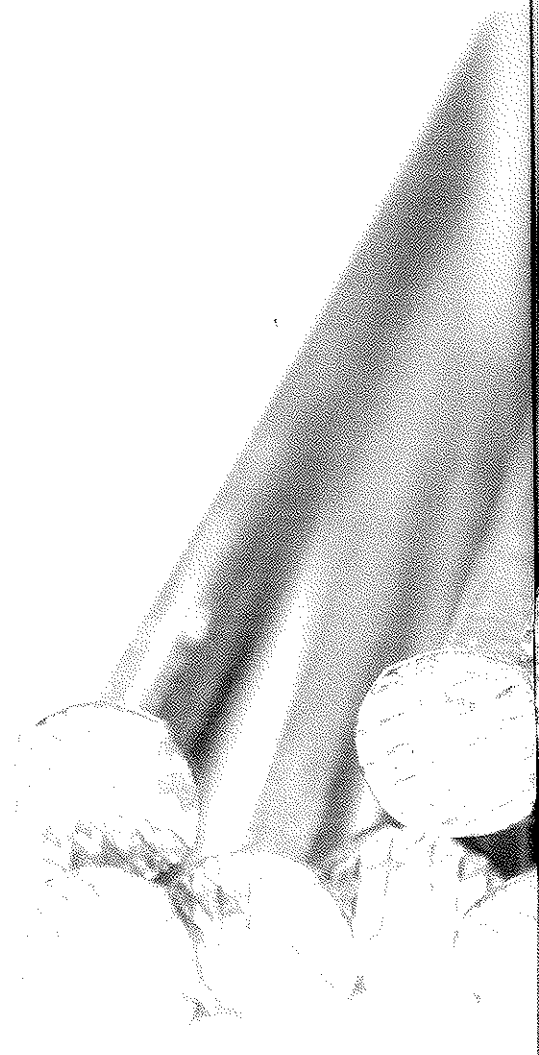
As assessments are the lifeblood of any association, collection policies provisions need to be up to date. TPC Section 209.0062 regarding payment plans was recently amended. Homeowners’ associations are not required to offer payment plans that extend more than 18 months, and are not required to offer a payment plan beyond the 30 day cure period set forth in Section 209.0064.

Reason Number 6: Address New Legislation

Brand new from the 2015 legislative session is Section 202.019, which allows homeowners’ associations and condominiums to adopt rules regulating the use of standby electric generators. Although associations may not prohibit generators completely, they may prohibit their installation in the common areas, and control their location and appearance. All associations should adopt a standby electric generator policy if they have not done so already.

Reason Number 5: Fine Tune Fining Authority

Fining authority is an important component of your governing documents and is a necessary enforcement mechanism to ensure owner compliance. Homeowners’ associations (not condominiums) may now distinguish between two types of covenant violations – curable and incurable. Under TPC amended Section 209.006(b) and



new subsections (c) – (i), the association need only give notice of a reasonable cure period if the violation is curable and does not pose a threat to public health or safety. Notice of the violation, the fine to be imposed and communication of the right to request a hearing still must be sent for incurable violations. Fining policies should be updated to account for the new distinction of violation types and their notice requirements.

Reason Number 4: Make Voting Count

Your governing documents should always reflect the current state of the law regarding voting. Recent legislative changes affecting homeowners' associations (not condominiums) now allow secret ballot voting under certain conditions to be adopted by rule. New TPC Sections 209.0058(a-1) and (d) set forth the parameters for the secret ballot rules to be adopted by the association.

Reason Number 3: Last But Not Leased

The last of the new Texas statutes addressed in this article is TPC Section 209.016, which applies to homeowners' associations (not condominiums) and leasing restrictions. Associations may not require approval of tenants and leases and cannot require credit reports. Leasing rules for homeowners' associations should be amended to assure compliance with the new statute. Federal regulations also impact leasing restrictions. For example, condominiums should be aware of how rental restrictions affect FHA certification, and may need to update their governing documents accordingly.

Reason Number 2: Fair Housing Compliance

If your governing documents have not been updated in the last five to ten years,

chances are you could be breaking the law in some capacity. Fair housing laws can be violated based upon the language of your rules and regulations. For example, courts have held that adult-only swim time or pools violate fair housing on the basis of familial status. Neutral restrictions, however, such as lap-swimming pool time have been found to be non-discriminatory. Have your attorney update your governing documents to protect against fair housing claims.

Reason Number 1: Save Money

Many associations have declarations and bylaws that were created decades ago, or were copied from drafts that are outdated. Often these worn out documents create confusion as to how the association should operate. Legal fees have to be incurred to render opinions regarding issues such as conflicting provisions, or terms that contradict current legislation. Owner disagreement over the interpretation of ambiguous provisions in governing documents can lead to expensive lawsuits. Do yourself a favor and eliminate potential expensive nightmares by having your attorney "fix up" your governing documents.



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