

Restating HOA Governing Documents

HOAs are encouraged to ensure their governing documents and rules are up to date, current, correct, comply with State HOA laws and easy to read. HOAs that have existed for at least ten years most likely have their governing documents conflicting with recent State laws. In addition, there may have been changes to the official governing documents approved by home owners that are most likely in separate documents and can add to confusion and misunderstandings. The task to consolidate and restate is more complex than it seems.

First, what we are talking about is not changing the substance of the governing documents or the rights of home owners: that requires a special process and a vote of home owners. Consolidating and rewriting will involve the approval of home owners but only to approve the final version of the documents. Be prepared to spend five to seven thousand dollars or more to complete the task. You will need legal counsel (to do it right). This project can take over a year with versions being reviewed by the Board, Committees, at town hall meetings and by home owners prior to any vote of approval. The HOA should form a review Committee to work with the Board and the lawyer on the proposed content.

The restate effort may also require a review of the HOA home owners handbook. The governing documents will discuss covenants, controls, restrictions, governance and maintenance but often there are details defined in the handbook that provide further guidance. In most cases, the restating will not address lower level governance issues such as the allowable paint colors, types of trees that can be planted, specifics on maintenance responsibilities, etc. Governing documents will indicate, for example, that architectural and landscaping projects by home owners must have prior approval but the handbook will define the specific parameters that will be required of the project: types of materials, design approvals, colors. If restating the governing documents take the time to review the home owner's handbook for accuracy and compatibility and support of governing documents.

If your HOA is contemplating changes to the governing documents based on home owner petitions or Board suggestions it is best to wait until these are completed to take on the review/restating. The restating can wait until these issues are settled so you don't end up with a rewrite and immediately have a change to be incorporated in the main documents.