



GERSTIN & ASSOCIATES
ATTORNEYS & COUNSELORS AT LAW

Hidden Dangers:



10 Declaration Provisions Every Community Association Must Change

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Educational purposes only. Not meant for legal advice, please consult your attorney for legal advice

- 1. The Magic Language Exception.** Known as the “Magic Language Exception”, inserting the words “as amended from time to time” after a Declaration’s statement of adherence to Florida law allows the Declaration to automatically adapt to changes in Florida law. Failing to incorporate the Magic Language Exception into a Declaration often times results in the loss of income from, and the benefits of, changes in Florida’s law related to the collection of delinquent assessments. *Coral Isles East Condominium Assoc. v. Snyder*, 395 So. 2d 1204 1981.

- 2. The percentage for passage of an amendment is too high.** Many associations are stuck with damaging and confusing *Governing Documents* because the threshold of affirmative votes for an amendment is too high. Consider amending your *Governing Documents* to a lower threshold of affirmative votes needed to pass an amendment in the future.

- 3. Requiring tenant approval without the authority to do so.** Many community associations require pre-approval of tenants without the authority to do so in their *Governing Documents*. Undertaking an action (and possibly collecting a fee to do so) without the requisite authority can result in an expensive lawsuit.

- 4. Enforcing Outdated and Illegal Provisions.** Banning solar panels, improper age restriction enforcement (16 instead of 18), banning satellite dishes or improper debt collection techniques are only a few of the many outdated provisions in the *Governing Documents* of many community associations. Lack of intent and ignorance of the law is not a defense if the association is sued. Guidance to the Board of Directors and the amendment of these provisions should be undertaken.

- 5. Failing to Rein in Rentals.** Community associations, especially condominium associations, that do not limit renting in their communities may scare away lenders from lending to owners or may lose their FHA accreditation. Consider a Declaration amendment restricting new owners from renting until at least two years after their purchase.

- 6. Releasing Homes Purchased at a Foreclosure Auction From Delinquent Assessments.** Although Florida law limits a lender’s liability for past due assessments, the same restriction does not apply to third party purchasers at a foreclosure auction, **unless otherwise stated in your association’s *Governing Documents***. Consider amending all provisions that release third party purchasers of a foreclosed home from payment of past due assessments.

- 7. Borrowing limits.** Many older community associations have bank borrowing limits set at amounts so low such loans would only be obtainable from a payday lender. Consider eliminating or increasing borrowing limits.

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8. Spending Limits. As a way to attract buyers in an era of “community association board’s waste money” many developers incorporated into their *Governing Documents* limits on the amount a Board of Directors can spend without owner approval. Unfortunately, the effects of inflation and increase costs have locked many of these community associations into unrealistic spending limits. Consider eliminating or increasing the amount your Board of Directors can spend without first obtaining owner approval by inserting an amendment that allows for a per year increase formula based on inflation.

9. Unattainable Quorum. Florida law limits the percentage required for a members’ meeting quorum to 30% of the members. Nevertheless, many community associations are still unable to attain a quorum to conduct important business. Consider an amendment that lowers the required quorum for a member’s meeting below 30%.

10. Regulating Guests. Associations with guests residing in units in the absence of an owner or approved tenant often find themselves ill prepared when a problem arises. Declaration provisions relating to the use of homes by guests in the absence of an owner or approved tenant stops people from circumventing rental restrictions. Consider an amendment stating guests can only occupy a unit so many times per year. Another approach to dealing with long-term guests (e.g., guests staying for more than 30 days) is to require them to be screened in the same manner as tenants.

For a free analysis of your association’s community association *Governing Documents* please complete and fax the following to: (561) 750-8185 (no cover page needed) A representative from Gerstin & Associates will contact you to set up your community association’s free *Governing Document* analysis.

Name: _____

Association name: _____

Position at the association (director, property manager, etc.) _____

Email address: _____, Telephone number: _____

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