

Making Sense of the Puzzle

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During summer vacation, you may have had the opportunity to put a puzzle together with your family. When you dumped the puzzle pieces out on the table, how did you sort them? By color? By pulling the edge pieces out? And then how did you tackle it? Starting with the edge pieces? Building certain portions? Navigating community association governing documents and statutes on a given issue is a lot like putting an actual puzzle together—although probably not as much fun.

No single document can be read and interpreted in a vacuum. As such, one must understand where each document falls in terms of authority and read them together. For instance, a community association's declaration may allow the association to take a specific action, i.e., assess monetary charges for violations, while the bylaws may set forth a due process procedure that the board must undertake to enforce the covenants—including the assessment of monetary charges. If board members or managers read only the declaration and fail to follow the bylaw procedures, then any assessed charges will be suspect and may not withstand a legal challenge.

We can take this example one step further. Let's assume the declaration of a Virginia condominium does allow the association to assess monetary charges and the board has followed the due process provisions in the bylaws. The board determines a violation exists and the unit owner should be assessed \$250 for the violation and \$100 a day until the violation is cured. At first glance, it appears the board has done everything correctly and in accordance with the governing documents; however, this association is located in Virginia and by statute, monetary charges cannot exceed \$50 per occurrence and \$10 a day, up to 90 days, for ongoing violations. Thus, failure to read the statute in conjunction with the governing documents may result in board action being nullified.

While reviewing documents and statutes doesn't necessarily sound like fun; a few minutes reviewing all of the relevant documents will certainly save you man hours

down the road and greatly reduce the frustration you will surely feel once you discover you have wasted a great deal of time and energy heading down a path that leads nowhere.

The easiest way to avoid this frustration is to start at the top of the document hierarchy—state statute. When an issue arises, review the applicable statutes first to determine if there are provisions which govern the issue. If provisions do exist, carefully read to determine if they appear to apply. For instance, a statute may read, "The association shall send notice of special meetings at least 10 days prior to the meeting" In this instance, regardless of what the association's governing documents provide, the statute supersedes the association's documents and at least 10-days' notice must be provided. If the statute reads, "Unless otherwise provided for in the governing documents, the association shall send notice of a special meeting at least 10 days prior to the meeting" the association could send the notice in the time frame required by the governing documents, even if such notice is less than 10 days.

If the association is incorporated, there are additional documents and statutes that may have bearing on a particular issue. There are statutes which specifically deal with nonstock corporations and there are additional terms and restrictions contained in an association's articles of incorporation. Finally, even after reviewing all of these documents and statutes, your review is not done. Boards adopt rules and regulations which may also be germane to the issue. So, a membership meeting policy resolution adopted by a board years ago may actually dictate the amount of notice to be sent to owners for special meetings, even if the other documents are silent.

While this sounds like a great deal of work, spending the time navigating the documents and statutes upfront to confirm how the association should proceed on a given issue will save the board a lot of expense and frustration in redoing the whole process because one puzzle piece was missing. Imagine how frustrating that would have been on vacation. 📺