

Public Offering, Declaration amendments; Approval for HOA's

Consistency:

- 1) Applies relevant and applicable statutes currently contained in the Condominium act to the Planned Community act. Included the provision of 33-1213, 1215, 1219 and 1270 which prescribe the minimum content of the plat and declaration and requires that the commissioner of the DEPT. of Real Estate approve those documents as part of the initial public offering approval for the subdivision. *Both planned communities and Condominiums must have a detailed plat and declaration established and recorded prior to the sale of any unite or home. Both type of subdivisions require an initial public offering report to be approved by the commissioner but under current statute only the Condominium act defines the minimum content of the plat and the declaration and only the condominium act requires the commissioner to specifically approve the plat and the declaration. This proposal will make all these issues consistent between both condominiums and planned communities as they should be. These sections help validate the constitutionality of the administrative agency to adjudicate the dispute resolution process under the separation of powers doctrine.*
- 2) Provides a requirement that a new Declaration and any amendments to the Declaration must be reviewed against the current state statutes and made consistent with either the Condominium act or the planned community act as applicable. *Every board is granted the power to amend the CC&R's to comply with current state and federal law but they seldom do. But when declarations are initially drafted they must initially comply with the current statutes to be valid and enforceable as written. By adding these requirements it will ensure that the provisions of the CC&R's are consistent with current statutes and if the CC&R are ever amended that they will be brought current to any modifications in the law since they were initially drafted. This will help both boards and homeowners understand the requirement under which they must live and act.*
- 3) Make the current provision in the Condominium act consistent with the limitations of Servitudes law relative to significant material changes to the Declaration that will require unanimous consent of the owners. Applies those same criteria to the Planned Community act. *The existing language is statute is too limiting and applies the unanimous consent requirement to legitimate changes that the declarant could make without that level of approval as part of their development rights. If the declarant added more units it would change the allocation of all existing units by reducing that allocation, this should not require unanimous consent. The Language from the Restatement better clarifies what exactly would require unanimous consent by the owners.*
- 4) Modifies the statute of repose relative to challenges to any amendments to the declaration specified in the condominium act consistent with existing statute in section to 4 years for section 12-546 for contracts or 6 year for section 12-548 for creation or collection of debt. And applies those requirements to the planned community act as well.

Clarity:

- 1) Requires material changes to the public offering statement to require approval of any current home owner. *If a developer of a subdivision wishes to make a material change to the public offering statute existing statutes prevent the sale of any new unit or home until the public report is approved by the Commissioner of the Dept. of Real Estate. Any unit or home that is under contract but not closed can be canceled as a result of that material change but the current statutes do not address the impact of that change to existing*

homeowners that have already closed on a home or unit. This provision requires that if an adverse material change to a public report is considered it must receive the unanimous consent of all current owners. The public report is a contract between the buyers and the developer, it cannot be changed without the consent of the parties.

- 2) Clarifies that the Commissioner of the Dept. of Real Estate has the authority to enforce both the Condominium act and the planned community Act via the dispute resolution process assigned to the Department in 2016. *This clarification is essential to validate the constitutionality of dispute resolution process under the Department and the use of an administrative law judge to enforce the law and the community documents.***