



Whether to Record Board Resolutions

By Lynn Krupnik

A question often arises about whether and/or when board resolutions should be recorded. Here is the analysis that I go through when deciding whether to record a board resolution:

1. If a provision in the recorded restrictions violates the law (such as a restriction preventing children from living in a community that is not age-restricted), I would record a board resolution to make it clear to all potential and future owners that the association is not going to be enforcing this provision. This helps to protect the association from future liability.
2. If a provision in the recorded restrictions violates the law and the board wants to adopt a rule in compliance with the law (such as regarding satellite dishes or flying the American flag), I would record that resolution to put everyone on record notice of the change.
3. I generally would not record rules or architectural guidelines unless (a) the restrictions require these documents to be recorded, or (b) the original rules or guidelines were recorded. Then, if I am going to record amended rules or guidelines, I would make sure to include in the recorded document the recording number(s) of all prior documents, and whether this document is replacing them. The reason I would generally not record these documents is because the association tends to change them on a regular basis and, if the association starts recording these documents, it needs to record all of them and reference any prior documents that it is changing to not cause confusion.
4. Sometimes boards want to record a board resolution because they think that it will give the rule more authority than if it's not recorded, or that they can record a resolution that conflicts with the restrictions and the resolution will be upheld. Usually, recording a resolution will not give it any more authority than if it's not recorded. Additionally, recording a resolution that is in conflict with the restrictions does not make it enforceable. It is still unenforceable.

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