4--Why are Community Documents So Difficult to Read and Revise?

Governing Documents are difficult to read because they cover a broad range of topics, have different priorities over time, and must be read by a diverse group of people. As a result, there are competing interests in drafting (or revising) the documents. You want them to be easy to read, but specific enough to be clear as to their intent and how they are to be interpreted. Courts usually look at the intent of the drafter to determine what it means but are increasingly moving towards interpreting the document to best serve the community as it exists today. The written words are the best indicator of the intent, but often lack sufficient detail to know what the words actually mean. More detail means longer documents as well as a greater chance that a factual situation could be interpreted as an exception to a written provision.

Many Declarations have copied provisions from their applicable statutes into the documents. This is a low risk option for the drafter, because there can be no error if they copied the statute word for word. This makes the document long, and changes nothing from the statute regarding the rights and obligations of the Owners. One option to deal with length is to skip writing the statute in the document, but instead refer to the statute as controlling.

For example, you can write all of the powers of the Association into a condo Declaration that are provided for in the statutes, filling a couple pages of the document, or you could simply state that the Board can exercise all powers of the Association as provided for in RCW 64.34.304 (the applicable statute for a pre WUCIOA condo), accomplishing the same thing with a single sentence. The latter approach is not usually chosen because most Owners are unfamiliar with the statutes, are unaware that statutes are more controlling than the Declaration and rely exclusively on the

Declaration to interpret their own rights and obligations. Therefore, including the detail of the statute in the Declaration has value in communicating with the Owners. This puts the information in the one place they are most likely to read.

Originally the developer (or their attorney) chooses the level of detail in the documents. Developers' attorneys often draft documents using a boilerplate set of provisions that evolved over time, usually with more and more detail, as the attorneys attempted to anticipate problems for their developer clients. Your developer's goals were likely not consistent with the goals of your current community, both as to their content and the level of specificity required. You can change that.

Most Declarations have a sweeping restriction on activity that is a nuisance or is offensive to neighbors. This provision could be applied to any situation that offends the Board or a neighbor but is very subjective. Because people do live in communities, they must expect some intrusion into their lives from their neighbors. With such a vague provision, how does the community decide when an individual's conduct goes from reasonably expected to offensive?

If a neighbor is playing their piano or radio, neighbors nearby are likely going to hear it. It is unreasonable for neighbors to expect that they would never hear anything from their neighbors. Whether the sound is offensive or not may depend on the time of day, the volume of the sound, the type of sound, and the subjective opinion of the listener. The sound of dogs barking may be more offensive than the sound of classical music playing. A piano during the day may not be offensive, but at four in the morning it is.

Often Boards will draft rules to try and guide the community on what conduct would be considered normal and what would be offensive. One example is a bright line rule establishing specific hours of the day for activities like running dishwashers, vacuums, and washing machines. Operation of these devices would generally be easy to measure as a violation. Some Boards

establish "quiet hours" hoping that any noise would be limited to the allowed times, but this is more difficult to measure for violations, because things like televisions are operated all times of the day, and the potential for offending the neighbor remains.

Often Governing Documents will attempt to put objective criteria in place where there is no direct connection between the criteria of the rule, and the offensive behavior being prohibited. Pet rules are the best example. The goal is to prevent pets from being offensive to other residents. The behavior of a dog and how the dog is controlled by its Owner are the activities that would be offensive, not the size, breed, or number of dogs. However, it is difficult to put objective measures on a dog's conduct, so instead rules are established about the weight of the dogs (say 20 pounds), the number of dogs, or restrictions on breeds of dogs (like prohibitions on pit bulls). This creates a situation where a small dog that is offensive to the neighbors because of barking would be allowed, but a mellow larger dog that is not offensive would be prohibited.

Language is a difficult problem. Generally, shorter, less specific language regarding the dog's behavior is preferred, along with a subjective evaluation of the dog and its Owner's conduct on a case-by-case basis to determine if the animal is offensive. On the other hand, specific measurable criteria provide guidance to an Owner about what kind of dogs would more likely be a good fit in the community and make enforcement if the dog is both offensive and outside the specific criteria much easier. This is another situation where the community is trying to balance conflicting goals in how it drafts its documents.

Often a Declaration will provide that animals can only be kept in compliance with rules adopted by the Board. This allows Boards to craft rules that control pets, but many communities have never adopted rules related to pets, so enforcement is not possible, because there you cannot violate a rule that does not exist.

Statutes can help to objectively evaluate subjective criteria. One Association prohibited parking vehicles that were not "passenger vehicles" or "light trucks." An Owner purchased a shuttle bus, like one you might take to the airport, and converted it into a work vehicle for his business. It was too big to fit in his garage, and to everyone but him, violated the rule prohibiting trucks contained in the Declaration. His attorney argued that it was originally a passenger vehicle or is now a "light truck," thus clearly allowed.

Definitions of the two terms were absent from the Declaration, and no rule had been implemented to clarify what those terms meant. (Who could have predicted that such specificity would ever be needed?) However, there are other statutes that define what a "truck" is, what a "light truck" is and what a "passenger vehicle" is. This bus originally seated too many people to be a passenger vehicle as defined by statute, and the question of whether it was a light truck turned on the exact designed gross vehicle weight of the vehicle, because the state legislature had chosen a gross weight of 12,000 pounds as the difference between a "light truck" and a regular truck. A 12,000-pound truck is much bigger than a pickup truck, which would probably have been a better term than "light truck" in this Declaration.

Absent a statute to provide guidance (usually there are none), courts will give terms their most logical meaning, as would be commonly understood by the public. Look up a word in the dictionary, and find the most common meanings, not obscure meanings (and not the definition chosen by the offending Owner or the unreasonable Board). To the extent that you can rely on other sources to clarify your documents, you limit their length.

Some terms are difficult because they are used frequently with different meanings in the same document. The word "notice" appears over 50 times in a typical Declaration. Sometimes it means the contents of a communication, sometimes it means the process of communicating, and sometimes it means that the communication was received.

Definitions for terms like "dogs" or "commercial businesses" are usually absent from Governing Documents. Most people agree on what these are. You do see definitions on "domestic pets" or "home businesses," because there are many interpretations on what those might be. We were once asked if a pig is an allowed domestic pet. If the Governing Documents say, "only cats and dogs," a pig is clearly not allowed. If the documents say, "only domesticated animals like dogs and cats," the Owner can argue that it is "like" a dog or cat because it is their "pet."

You can shorten the documents and be less specific when there are other sources of information you can go to and supplement the documents if needed. If dealing with the issues of whether noise is offensive, it is possible to measure the level of the noise. You can buy inexpensive sound meters to measure how loud (in decibels) something is. That may not change how a particular listener perceives it but might allow parties to agree on what is an appropriate volume, perhaps for a particular time of day.

When dealing with sound complaints related to hardwood floor installation, engineers can test the floor and tell you exactly how much noise is transmitted through the floor. By comparing the sound levels from the original construction (usually carpet) with what was installed (usually hardwood), you can precisely measure how much of a change has occurred and help evaluate if the new sound level is "offensive." There are published standards, some from the government, that make specific recommendations on the sound reduction of floors and walls between Units, and the actual results of your test can be compared to those standards to determine if violations of the documents have occurred.

Some Boards believe that the more detail they include in their documents, the better their community operates. They may be right for their communities; on the other hand, the longer the documents are, the less likely Owners are to read them.

Many Boards will copy and paste provisions from the Declaration word for word into the Rules, because they think the Owners are more likely to read the Rules than the Declaration. (We are not convinced that is true.) Declarations often copy and paste statutes directly into them. Almost everyone agrees that the statutory language is difficult to understand, but they do not want to take the risk that rewording statutes to make them more readable would change the meaning of the provisions (even if they do not understand the intent of the statutes themselves.)

WUCIOA, adopted by the legislature and effective July 1, 2018, provides better definition to some terms which originated in prior statutes, like the Condo Act and the HOA Act. Terms like record, misconduct, written, and benefitted have increased definition than in their predecessor statutes. As such, such terms in the prior statutes, or in older Declarations could borrow the new definition, or the new definition could be argued to be what the legislature intended in 1990 or 1995 when the prior statutes were adopted. Amending your Declaration to adopt a specific meaning for an ambiguous term is one way to avoid the problem all together.

So, the constant challenge is to balance length and precision against brevity and ease in reading the document. It is impossible to anticipate every situation that might arise or to include specific criteria to direct the community in every situation. Creating a short document that refers to other documents or statutes may mean Owners actually read it, but also requires referencing those other documents to understand what it all means. However, copying statutory provisions into the documents creates lengthy documents that Owners are less likely to read, but are more likely to cover a specific scenario that comes up. Short broad provisions require Boards to make more subjective evaluations about whether the facts of specific situations are reasonable or if there are violations of the documents.