

Managing Your Environment Going Green Makes Sense, But Revise Your Documents Accordingly.

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Become a part of the green rush. Reduce costs and enhance values. This works to the advantage of both new and existing communities. However, community governing documents need revision to accommodate, facilitate and even encourage sustainable goals.

New community governing documents should provide for the ability to keep up with new technology and beneficial trends. Review and revise restrictions regularly in order to adapt to new developments.

To amend existing community governing documents requires a sales campaign by those advocating change. Do your homework first. Be equipped to show what it looks like, what it costs, has it been tested, what are the estimated cost savings and other benefits and how it will enhance the value of homes and units. At the same time, sell needed flexibility as described above. In many instances, there are tax and other cost rebates and other incentives for green practices.

Governing documents should no longer prohibit solar panels, compost piles, vegetable gardens or clothesline. Try to permit green uses and practices, subject to restrictions needed to deal with any objectionable aspects. For example, at what time of day would use of clotheslines be objectionable? The association can permit solar panels and other alternative energy sources, subject to the right to review and designate locations under standard architectural control procedures. Alternative energy options are appealing to owners and occupants in office, retail and residential projects. Compost piles and vegetable gardens in limited

locations should be encouraged. It may be appropriate to require screening or otherwise control appearance or type of compost system. There are individual home systems or you may prefer a community composting program as an amenity. Water conservation should be considered, especially limiting outside water use. Other practices for consideration are unlimited. How can you reduce noise and air pollution? Consider controlling windows, window coverings (use less air conditioning) and insulation.

The Leadership in Energy and Environmental Design ("LEED") program of the United States Green Building Council provides standards for developing high-performance green building designs. There are LEED Standards for a variety of projects, including new construction, major renovations, homes, and retail. There are also several alternative standards.

The Congress for New Urbanism, National Resources Defense Council, and the U.S. Green Building Council have developed a test version of a "LEED for Neighborhood Development Rating System" (June 2007), which sets an industry standard with an objective set of criteria for determining just how extensively the ideals and green building standards are applied in a community development. A community development earns

credits in various categories of the LEED rating system. However, it requires incorporating appropriate green restrictions in the governing documents, including those that protect steep slopes, limit site disturbance, preserve trees, deal with energy generation requirements, and establish light pollution standards. The governing documents must include mechanisms for meeting the program requirements.

Flexibility the governing documents to accommodate changing technology should permit changes to policies and guidelines without the need for unit owner approval or amendment of the declaration or master deed. The board should be permitted to grant variances if the proposal conforms to the intent of the guidelines and the desired appearance of the community. For example, permit driveways and other concrete slabs to be replaced by an aesthetically pleasing permeable surface.

There are some difficult decisions required. Old restrictions inhibiting green practices should be relaxed, but how much? Are fines appropriate for clotheslines, growing lawns taller in drought conditions, replacing lawns with wildflowers, having compost piles or having vegetable gardens? Carefully decide on what should be an

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absolute prohibition, what should be a requirement and what should

provide flexibility that gives owners a choice to adopt green practices.

Some states are prohibiting by law restrictions on some green practices. There are any number of reasons for green practices and the community governing documents should provide the flexibility to permit these practices with appropriate limitations as discussed above.

The so-called "green rush" will create some difficulty for association boards. When interpreting, enforcing and/or waiving restrictions, boards must act only as authorized by the governing documents and only when action is required by the governing documents. Boards must also act in good faith and with reasonableness. Boards have flexibility when it comes to adopting and enforcing rules and regulations to reflect the opinions at the time. However, restrictions in the recorded declaration or master deed may not provide flexibility and discretion and may require amendment.

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