
ONE FOCUS – Community Association Law

GOVERNING DOCUMENT REWRITE FLAT FEE SERVICE

CUSTOM PROPOSAL
FOR

*Silver Springs Single Family
Homeowners Association*



Flat Fee Proposal for Services Described Below: \$7,000

The services we provide as part of the Flat Fee:

- (1) We will obtain and review the recorded plats, declarations, bylaws, and any rules, articles of incorporation, and any prior versions of these documents back to the time the project was formed.

We don't just hit a macro and change the names and the number of units on a form. We review all of the present and past governing documents of the association. We actually research title records to make sure we have all of these documents. We verify the proper procedure for adopting new documents and identify issues that need to be addressed in a

rewrite. A governing document rewrite is a time consuming effort for an association. It would be a terrible waste if problems that could be solved in the rewrite were not identified and addressed. Our comprehensive review maximizes the odds that we find and address those problems.

- (2) We prepare and send out a questionnaire, in plain English, to get basic information from which we prepare the initial draft.

This greatly reduces the Board's time in preparing for a rewrite and provides for a much more thorough rewrite. We also sometimes catch issues that Board members don't even realize are an issue.

- (3) We visit and tour the project with the manager and board.

There is no way to properly revise and replace governing documents without visiting and touring the project. This isn't a drive-by. We typically spend two to three hours at the project in this first visit. This interaction also gives us an opportunity to talk to the manager and board members. We always find issues that need to be addressed in the rewrite when we personally visit the project. While walking through the project in conjunction with our review of the documents, we help you identify and solve the problems that you did not even know you had, but that can turn into serious problems. We call these legal problems the "landmines." If you have them, you don't even know about it until someone steps on it and it blows up into a dispute or litigation. It sometimes takes a little digging to find these problems. We dig.

- (4) We prepare and provide drafts of:
 - a. Declaration
 - b. Bylaws
 - c. Articles of Incorporation (if necessary)

Our templates reflect the latest in community association law and industry good practices. We are constantly updating and revising our documents to incorporate new and changed good practices and to address and prevent issues that come up in our practice. After having assisted a client with a new issue, the next step is always to lean back in our chair and think about how a change or addition to the governing documents could have minimized or prevented the problem, or led to a better result for the Association. If we can think of it, we update our template. This often solves that problem for any association using our documents long before it ever arises. That is the Morris Sperry way of solving problems.

- (5) After we prepare the initial drafts, we will communicate and meet with the Management Committee for up to three hours related to the revisions to assist in producing a final draft for distribution to the owners for review and acceptance.

The questionnaire greatly reduces the board's time in this project. Nonetheless, we will include up to three hours of telephone calls and meetings for changes from the delivery of

the draft until the board's approval of a final draft for submission to the owners and throughout the approval process. Extra time for this process is billed separately.

- (6) After delivery of the final drafts, we attend a meeting (either in person or via teleconference) of the owners for up to two hours and answer questions about the draft documents and the amendment process.

Our goal is not simply to mail you a draft and send you a bill. We build work into our flat fee that occurs after the drafting and that is solely related to assisting the Association with getting the documents adopted. It is critical that you have owner buy-in or you won't get the votes. A critical part of getting owner buy-in is to explain and allow discussion about the documents. This is impossible without the Association's counsel present and involved to explain the interrelation of provisions in the various documents, to provide context from the industry and the applicable law, and to quickly answer questions that come up in these types of meetings. Our involvement in this process dramatically increases the odds that your documents actually get adopted and significantly decreases the stress and time required for the board members and owners in this process.

- (7) We will spend up to three hours meeting, conferencing, and making final changes and adjustments after the meeting with the Owners.

The value of owner input cannot be underestimated. You need the votes and owners will often raise issues and problems with the drafts. We recommend that the Board remains flexible at this meeting and considers changes that will both garner votes and make the documents acceptable.

- (8) We provide the Association with step-by-step instructions for amending and replacing the Declaration, Bylaws, and Articles of Incorporation.

This is an often overlooked but critically important part of the rewrite process. We estimate that over one-half of amendments made to governing documents are susceptible to challenge because they were not consistent with both the law applicable to amendments and the procedures in the governing documents. This is a very tricky area of the law and simply following your governing document amendment procedure does not always comply with the law. Consistent with our desire to help associations actually get documents properly passed, we build this work into our flat fee.

Additional Services billed at our regular hourly rates (if necessary):

- (1) The Underdrain System.

We understand that there is a significant issue in Silver Springs related to the drainage system and that you have previously obtained an opinion related to this issue. This issue is outside the scope of our re-write proposal and any work related to such issue will be billed separately at our normal hourly rates.

- (2) Drafting time if the association reverses earlier decisions or direction.

We will be reasonable with changes and revisions, but a change of direction after significant drafting based on an earlier decision is billed separately.

- (3) Implementing special drafting strategies for dealing with contentious issues while nonetheless getting new documents adopted.

We can offer strategies for dealing with very contentious issues in rewrites that require extra drafting and preparation time. That time is billed hourly outside of the flat fee.

- (4) Drafting, legal or factual research, work, and consultation time related to serious structural problems such as prior amendment problems, extra time and analysis of material ambiguity or internal or legal conflicts in the existing documents (plat, declaration, bylaws, articles of incorporation) that must be resolved to proceed with the rewrite, extraordinary legal issues such as smoking prohibitions, sexual offender prohibitions, commercial use issues, easements that extend onto the project from outside the project or the reverse, plat problems or inconsistencies, uses inconsistent with the governing documents or the law that require grandfathering or other special drafting considerations, or other legal issues that require independent legal research.

Occasionally we discover or are presented with serious problems with the plat, embedded or complicated legal issues that must be resolved prior to a rewrite, or very rare or controversial issues that require special consideration and extra drafting time. This work is not included in the flat fee because it is so unpredictable and because we cannot offer a flat fee price if we include extensive analysis and resolution of these types of issues.

- (5) Meetings, conferences, and drafting time in excess of three hours after the delivery of initial drafts.

We offer up to three hours of meetings, phone conferences, and additional drafting after the delivery of the initial drafts of the documents. Any time in excess of three hours is billed separately.

- (6) Extra meetings or phone conferences after the delivery of final drafts and instructions.

Sometimes, further revisions are needed after the delivery of final drafts. If those revisions relate to error, ambiguity, or inconsistencies in our drafting, we include those revisions in our flat fee price. To the extent there are additional changes or consultations other than to correct errors in our drafting, that work is billed separately.

- (7) Requests for written responses to questions from owners or extensive written explanations to board members.

Our flat fee assumes that the bulk of our interaction with owners and the board members will occur at the meetings and during the times that we have built into our flat fee process. Occasionally an extremely active owner or board member will submit questions regarding the rewrite or the association outside of the meeting and the board will ask us to respond. This time is also billed separately.

- (8) Work related to assisting with or obtaining mortgagee approvals, recording final documents, and verifying voting results.

Some documents require mortgagee approvals. We can assist with that process by drafting letters compliant with applicable laws and the governing documents. Some associations also ask us to handle the recording of final documents and the verification that the voting was appropriate. We can assist with all of these services, but we bill that time separately. We will try to use our staff as much as possible and bill that time at rates significantly less than attorney time.

- (9) Drafting Rules and Other Documents not specifically included above.

If a rewrite is successfully adopted, the Association's Rules and any other applicable procedures will almost certainly need to be revised in order to reflect the terms of the new documents. Since we don't know if this work is needed until the rewrite is adopted, we don't include it in the flat fee price.

- (10) Analysis of Water and Mineral Rights and any Water Company.

Some associations and governing documents have mineral rights issues and provisions, water rights issues and provisions, or share jurisdiction over the Project with a water company. Those issues, if they exist, bring an entirely different level of complexity to a rewrite and must be analyzed and billed separately as it relates to a rewrite.

- (11) Work and drafting related to the ongoing or incomplete development of the project if the project is not completely developed or if the project is still developer controlled.

When a project is in development or contains undeveloped parcels or expandable property, special care needs to be taken regarding developer (declarant) rights, the association's rights with regard to the future development, and carefully drafting the new documents to protect the association given those rights. This is not typical and can be a significant amount of work so, it is not included in the flat fee price.

- (12) Work and drafting related to different types of units in the project if different maintenance provisions, uses, or other terms and conditions are customized for different types of units.

Occasionally, some units in a project are a lot older or significantly different than other units either physically or in how they are used. This requires special drafting that we don't include in a rewrite because it is rare and can be time consuming.

- (13) Any other services not included in the flat fee price and that the Association authorizes.

Flat fee quotes are inherently risky for attorneys because no rewrite is exactly the same as any other. That is why we try to be careful in clarifying what is and what is not included. We nonetheless remain ready and willing to do any further work necessary for the rewrite or that the Association asks us to do.

Billing / Payment Procedure:

We will require payment of one half of the flat fee price upon our delivery of the questionnaire. We require payment of the final one half of the flat fee price upon delivery of the initial draft of the declaration, bylaws, and articles of incorporation (if necessary).

Expiration:

This proposal and quoted price are available for 90 days starting from September 2, 2014.