

Process to Change Covenants

Changing a Covenant in Comstock Village is not an easy task. It was designed that way. The Covenants require a signature vote of at least 60% of the record owners of the 595 lots. That is a total of 357 positive votes. If a lot owner of record does not cast a vote, it is treated as a "No" vote for that property. Only one vote per property is allowed.

The process for changing the Covenants, and general ideas and suggestions follows.

Decide exactly how you want the change(s) to read. We would suggest talking with a Board Member or two, and maybe an attorney, in order to determine the best way to write the change and to make sure that the change does not violate some other Covenant or applicable laws, ordinances, etc.

Enlist some help to walk the neighborhood for signatures. It would not be easy to poll 595 homeowners by yourself.

Write the proposal by showing what the current Covenant says and then show the Covenant as you want it to be after the change is approved.

Have your proposed change placed on the agenda for a Board Meeting by contacting the Administrator or a Board Member. Attend the meeting in person. At the meeting, present your proposed change to the Board for approval of the form for the proposed amendment to the Covenants, and to obtain approval of the ballot. The Board cannot take a position either in favor of or against the proposed Covenant, unless the Board itself is proposing the change. However, individual Board Members have the right to their own opinion and each Board Member can have his or her own position on whether the proposed change in the Covenants is desirable or not.

Prepare a ballot to be used to obtain signatures. Each ballot should be on its own page (or half a page if not lengthy) and only one address per ballot. Each proposed change should have its own ballot. This enables you to arrange the ballots in proper order before turning them in for the counting. A Board Member can help you design the ballot.

You may wish to consider the pros and cons of your proposed amendment and write up your arguments to present to homeowners to help them consider whether to accept or reject the change.

Once the Board approves the change and the form of the ballot for the change, you are ready to start obtaining votes.

Get the Administrator to give you a tally sheet for the entire subdivision. The tally sheet will show the name or names of the property owner/s for each property, and the addresses will be in alphabetical and then numerical order by street. Make backup copies of the tally sheet before you write on it.

Get a map of the subdivision that shows all of the streets and properties by street number. The Administrator has the map. Make backup copies of the map before you write on it. As you

collect votes, you can color each lot to reflect the vote of the owner of the lot (e.g., green for yes and red for no).

As you obtain the votes, arrange the written ballots in the same alphabetical and number order as the tally sheet. That will make it much easier and faster for the Board Members who are counting the ballots, and much easier for you to keep track of who voted and who didn't.

Turn in the tally sheet and the signed ballots when you have enough. How many votes is enough? That's up to you and how confident you are in the ballots you obtained. Recommend that you do not stop at 357 (60% of the 595 lots in the HOA) because some votes may be rejected for various reasons. Get as many as you can.

Additional considerations are offered below to help make the process as efficient as possible.

Change in Ownership:

You should keep in mind that homeowners change. Some homes will be sold and purchased during the time you are collecting the ballots. If you have a "yes" ballot on a home and the home is sold before the votes are counted, you must get the new owner to vote. A "yes" vote from a previous homeowner - as of the time the votes are counted - does not count.

You should ask the Administrator to keep you advised of any change in ownership of homes during the time you are collecting ballots. She can give you certain information about the new owner, but no information that would be considered private, like phone numbers and email addresses. If you cannot make contact with the new owner, a Board Member may help you because the Board Member can access the private information and make contact with the new owner without violating privacy rules.

Do Not Badger the Homeowners!

If a homeowner votes "No", then it is a "No" vote. If a homeowner declines to sign a ballot, then it is a "No" vote. Leave them alone after that. Don't annoy the homeowner with arguments about why the homeowner should change his or her mind. But if a homeowner has not cast a ballot, it is fair game. If a homeowner is inclined to vote "No" but has some concerns or questions, it may be appropriate to try to answer the concerns or questions so the homeowner is informed.

Getting Help to Obtain Votes:

You can get as many helpers as you want to knock on doors and get votes, but someone has to be in charge of organizing the actions of the helpers so that we don't have many helpers asking for votes from the same homeowners. Try to avoid multiple attempts unless no one answers the door. As votes are turned in, the "no" votes should be clearly noted on each helper's map of the subdivision to avoid repeat visits.

Votes by Email:

The Board has authorized votes by email. Check with the Administrator on how to get votes by email. This is especially helpful where the owner is an absentee owner, such as military who are deployed.

Rental Properties:

Comstock has many rental properties. A tenant cannot sign as the owner. The owner has to sign and it has to be the owner whose name appears on the tally sheet. If the owner has appointed an agent to act on his behalf, such as a family Member, the agent may cast the ballot but you may be called on to prove that the agent does have the authority to vote on behalf of the record owner.

Who Can Sign the ballot?

The tally sheet provided by the Administrator will have the name or names of the owners of each property, and that is the most current information the HOA has. If the person who answers the door is not named on the tally sheet, he or she cannot vote. The person who signs the ballot must be named on the tally sheet. If it turns out that the tally sheet is wrong (it happens) then you have to find out who the current owner or owners of the property are. You should let the Administrator know so the Administrator can verify and change the information to correct the tally sheet. If you have any questions about whether a certain person can sign the ballot, check with a Board Member or with the Administrator.

Sometimes a home is owned by a trust, or an LLC or a Corporation. Sometimes the owner listed on the tally sheet is a property manager or an agent. If that is the case, you have to find out who has authority to sign on behalf of the trust or other entity that owns or manages the property. In such cases, the agent or trustee should have something in writing to show that the agent has the authority to sign on behalf of the owner. Attach a copy of the power or attorney or other written instrument to the ballot.

When to turn in the ballots:

The Board will most likely give you a due date for turning in the ballots and who to give them to. You should scan or make a copy of the ballots for yourself after you have put them in order - the same order as the tally sheet. As you are preparing the ballots to turn in, you would check off the yes votes on your own copy of the tally sheet and count them before you turn them in to make sure you have enough votes to pass the amendment.

Don't forget to vote for your own ballot!

What happens after the votes are counted:

If the vote count shows that there are more than 60% of the lot owners who are in agreement with the proposed change, and if there are no objections that need to be addressed and resolved, the Board will accept the vote at the next meeting. Once the vote has been accepted, the Board will cause a notarized notice of change of Covenants to be filed in the El Paso County Clerk &

Recorder's office. After the change has been recorded, the matter is final and the new Covenant change is in effect.

Good luck and be sure to ask a Board Member if you have any questions about the process.

The above process was written by Board Member Sidney Patin in 2021. The procedures and statements contained herein are based on the experience of the author, who successfully changed the Covenants in 2018.