

AMENITY STRATEGIES FOR PLANNED DEVELOPMENTS

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AMENITY STRATEGIES FOR PLANNED DEVELOPMENTS

I. INTRODUCTION

Planned communities with substantial recreational amenities are no longer the exception but, increasingly, the rule, in Texas as in many other parts of the country. The attorney must understand the options for ownership and operation of the amenities and the developmental, marketing, and legal implications of each in order to help the client develop, document, and implement an appropriate amenity strategy.

II. OWNERSHIP OPTIONS

A developer has three basic options for the creation and long-term ownership of recreational amenities in a planned community:

- establish a special district to construct, operate, and maintain the amenities;
- develop the amenities itself and convey them to a property owners association; or
- develop the amenities and either retain ownership or convey them to a separate entity to operate on a non-profit or commercial basis.

The developer may choose to use any one or a combination of these options for various recreational amenities within the community. Each option has its benefits and drawbacks depending on the circumstances of the particular developer and community. In counseling the client, the attorney must be sensitive to the developer's initial and long-term goals and interests, as well as the market factors that can affect the success of whichever option or options are used.

At the outset, the developer must address the fundamental question of whether it is in the business of selling real estate, operating recreational facilities, or both. If its primary business is selling real estate and the amenity package is merely a means of enhancing the value and marketability of that real estate, then it needs an amenity strategy that will allow it to transfer the amenities and exit the community upon completion of development and sale of its real estate inventory, or as soon as possible thereafter. The goal, then, is to select the option or combination of options that allows the developer to best capitalize on its investment in the amenities in a manner that respects and protects, to the extent possible, the interests of the property owners who purchase lots or homes in the community.

A. Special District

Special districts are creatures of statute and are commonly used in Texas to finance, own, and operate a variety of public infrastructure improvements, from drainage and storm water detention facilities to water, sewer and power facilities. Tex. Local Gov't Code §376.463 (2004). They may also be used to finance the construction of, and provide for the long-term ownership and operation of community amenities, including such things as landscaping, pedestrian and bicycle paths and trails, parks, lakes, gardens, open space and recreational amenities and the provision of special or supplemental services including recreational, educational, and cultural services and enhancements to improve and promote the area within the district. These improvement projects may be undertaken by the district acting alone, or jointly with another person, and the district may pay part or all of the costs of the improvement project. *See*, Tex. Special District Local Laws Code §3813.104 (2004).

The use of a special district allows a developer to finance the cost of acquisition and construction of community amenities through the issuance of municipal bonds that are repaid by special assessments that the district levies against the property within its boundaries. The resulting cost to the developer of providing the amenities may be significantly less than if financed through a traditional development loan with market rate interest.

Although the benefits of using a special district can be significant, the cost of establishing the district and issuing the bonds may also be substantial and, depending on the amount and cost of capital that the developer needs, could reduce or completely offset the benefits. Even if it makes economic sense, the developer must be aware that, because the district is a quasi-governmental entity, its improvements are "public" in nature and may have to be accessible to a larger community than just the property owners and residents in the client's development. The developer must also understand that the governing body of the district ultimately will be elected by the residents of the district, rather than the property owners, which could substantially diminish the developer's ability to control the maintenance and operation of the amenities during the period of development and sale of the community.

B. Property Owners Association

A very common approach for addressing the long-term ownership and operation of recreational amenities in new communities is for the developer to construct

the facilities and convey them to the property owners association for the community they are intended to serve. Although in some cases the conveyance might be made subject to a mortgage to be repaid by the property owners association over time, it is customary and generally expected that the promised amenities will be conveyed to the association at no charge, on the theory that the value of the amenities was reflected in the purchase price of the lots or homes and paid by the property owners at the time they bought into the community. As a result, this approach tends to be most often used in situations where the developer's capital investment in the amenities is small relative to the number of lots in the community and can easily be recouped by adjusting lot prices to reflect the added value of the amenity package.

In some cases, the association may hold the amenities as common area, extending the privilege of using the amenities to all residents of the community and funding the costs of ownership, operation, and maintenance through assessments against all of the property owners. Alternatively, the association may operate the amenities as limited common area for the benefit of only those property owners and residents, and perhaps persons outside the community, who elect to pay separate fees for the privilege of using them.

Among the benefits of this approach is that a property owners association can be created with relative ease and little expense compared to a special district. The developer also is able to control the level of maintenance and operation of the facilities until substantially all of the real estate is developed and sold and, once the developer has sold all of its real estate, it can be assured that there is a mechanism in place with a guaranteed level of support for the long-term maintenance and operation of the amenities.

If the developer has appropriately considered market demand, the size of the community, and affordability factors in developing the amenity plan, the availability of the amenities should enhance the value and marketability of the real estate. However, if the amenities are expensive to own and operate and do not have widespread appeal, as is often the case with equestrian facilities and even golf courses, the assessment burden to operate and maintain them can have an adverse impact on real estate sales.

Perhaps the primary drawback to using the property owners association as the vehicle for long-term ownership and maintenance of the amenities is that the developer may not be able to realize the same value from the amenities that it might if they were "sold" separate and apart from the real estate.

C. Independent Operation

When the developer's capital investment in the amenities is great relative to the number of lots in the community, and the price and product mix in the community makes it difficult to recoup that investment through lot prices, many developers seek to maximize the return on their investment by forming a separate entity, independent of the property owners association, to own and operate the amenities on either a non-profit or commercial basis. With amenities such as golf courses, swim and tennis facilities, and clubhouses, this operation typically takes the form of a private or semi-private club. With amenities such as marinas and equestrian facilities that have more limited appeal and lend themselves to rental of space, it may simply be a commercial operation with contractual agreements regarding use or rental of defined space.

Creating a club entity, whether non-profit or a commercial operation, has the advantage of giving the developer two types of inventory to sell -- real estate (often with enhanced value due to the availability of the amenities), and club memberships. If there is a strong market for the club memberships, this approach can maximize the developer's return on its investment on the theory that the separate pieces are worth more than the whole. However, if the market is weak and the membership sales do not keep pace with the real estate sales, the developer may find itself holding excess memberships and funding the club's operating deficits for an extended period of time.

1. Non-Profit Club

The creation of a non-profit entity separate from the property owners association provides an exit strategy for the developer similar to that of a property owners association with the potential to realize greater value from the amenity through the sale of separate memberships. Typically, the developer constructs the facilities and conveys them to the non-profit entity in exchange for all of the memberships in the non-profit entity. The developer then sells the memberships to recoup its costs and, ideally, a reasonable return on its investment, while retaining the right to control the non-profit entity and manage the club until all of the memberships have been sold. Ultimately, the members will elect the directors of the non-profit entity and take over management of the club, enabling the developer to exit the community.

2. Commercial Operation

If the depth of the market for club memberships is uncertain or the amenities have the potential to generate a significant profit from operations, the developer may wish to preserve its flexibility by

retaining ownership of some or all of the amenities and operating them on a commercial basis, perhaps transferring them to a third party commercial operator when there is a sufficient level of support from the community to operate them profitably. Under this scenario, the developer or other operator will typically grant licenses or similar rights to use the amenities for a fee. In the case of an amenity such as a golf course, it might operate the facility as a private or semi-private club, maximizing the value of the memberships or other rights to use the facility. Alternatively, it might make the facility available to the general public on a daily fee basis, thereby preserving the flexibility to adjust operations as needed to maximize profitability. In either case, those granted use privileges have no proprietary interest in the facility or right to participate in management of the facility as they would if owned by a property owners association or a non-profit club.

If there is strong demand in the local market for the particular type of amenity, this approach has the potential of maximizing the developer's return on its investment over the long-term, either through profits generated from operations or from gain realized on sale of the facilities once the community is sufficiently built out to allow it to allow it to operate profitably, making it an attractive acquisition for a commercial operator. However, there may be greater risk in this approach than with some of the other options, as there is no guarantee that the necessary level of demand will exist to make the operation profitable, or that the value will be realized when the developer has completed its development and sales and is ready to exit the community.

III. LINKING THE AMENITIES TO THE REAL ESTATE

Although real estate sales have remained strong in most parts of the country during the sluggish economy of the last several years, club membership sales have not done as well. This has led developers of communities that include golf and other significant amenities to seek other options to maximize the return on their capital investment, achieve that return in a timely manner, and guarantee a sufficient level of support to operate and maintain the amenities when the developer is gone. Increasingly, these developers are looking to arrangements that bundle club memberships with the real estate, obligating property owners, as a condition of owning property in the community, to support golf and other significant recreational amenities, either through mandatory membership in a property owners association or through some level of mandatory membership in a separate club.

A. Development and Market Considerations

Not all situations, communities, and markets lend themselves to mandatory membership arrangements. The number of lots in the community relative to the capacity of the facilities, the competition from other clubs in the area, and the depth of the outside market for the particular amenity are all factors to be considered. In addition, the developer's desire to create an exclusive club environment may influence the decision as to whether to impose a membership obligation. Finally, timing of the decision in the development and sale process may be a decisive factor.

1. Capacity Versus Demand.

If the capacity of the recreational facilities is less than the expected demand from the residential community, or there is a strong market for club memberships outside the developer's community due to a lack of significant competition from comparable clubs in the area, the developer may feel no need to require membership as a condition of property ownership. On the other hand, if the capacity of the recreational facilities is equal to or greater than necessary to accommodate the developer's community, and there is little or no outside market (as is often the case when there are a large number of daily fee golf courses in the area), creating a mandatory membership arrangement may be the best strategy for guaranteeing the necessary level of long-term support for the recreational amenities.

Of course, it is not necessary to deal with all of the amenities in a particular community in the same manner. It may be advisable to handle those amenities with the least value or market demand in a mandatory membership arrangement while making access to higher demand amenities optional. For example, swim, tennis and dining facilities are often essential to the club experience, but are rarely able to sustain themselves, much less generate a profit for the club operator. As a result, they are often subsidized by the golf operations. In some cases, it may make sense to create a mandatory social or "lifestyle" membership for property owners to provide access to and guarantee the necessary level of support for these amenities, while making access to the golf facilities an optional "add on" to the basic membership.

2. The Exclusivity Factor.

It is also important to consider, in the particular market and price range, the desirability of an "exclusive" club environment. Memberships in an exclusive, private club -- one with a strict process for considering and extending invitations to potential candidates for membership -- tend to have greater

intrinsic value than memberships in a less exclusive club or in a property owners association with comparable amenities. However, once membership is made mandatory for property owners, the club's ability to pick and choose its members is very limited, if not nonexistent.

Although it might be desirable to restrict the ownership or occupancy of homes in the community to persons accepted for club membership, doing so will likely subject the club's selection process to fair housing considerations under Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §3601-3619, as well as state which prohibit discrimination in the sale or rental of housing on the basis of race, color, creed, national origin, disability or familial status. Even if the club does not intend to discriminate in the selection of its members on any of these prohibited bases, if the club's process is so selective as to substantially impair a property owner's ability to sell his home or lot, the arrangement risks being challenged as an unreasonable restraint on alienation. Thus, if exclusivity is important, optional club memberships may be the best approach.

3. Timing Considerations.

It is generally not advisable to attempt to implement a mandatory membership arrangement after the developer has begun conveying lots to builders or others, particularly if there is to be an initiation fee or significant dues obligation that was not disclosed when lots were sold. Such obligations generally cannot be imposed on lot owners after they have taken title without their consent, so if lots have already been sold when the decision is made to implement a mandatory membership program, the developer must either go back to each of those owners and sell them on the concept and obtain their consent, or accept the fact that all lots will not be subject to the membership obligation. Consent may be difficult to obtain once those owners realize that, by not being subject to the mandatory membership obligation, they may have an advantage over other lot owners in reselling their property in the community.

Failing to have all lots in the community subject to mandatory membership can create marketing problems as owners whose lots are not subject to the obligation compete for buyers with the developer and other sellers whose lots are subject to the covenant. The developer needs to be able to sell the arrangement to prospective buyers as part of a "lifestyle" that they are buying into when they purchase real estate in the community. That is difficult to do when there are property owners who bought in before the arrangement

was implemented and are therefore not subject to the membership obligation. The disparity in treatment of similar lots may also lead to attempts to challenge the validity of the arrangement for those lots that are subject to the membership obligation.

B. Documenting the Arrangement

Assuming a decision is made to create a mandatory membership arrangement, the attorney must consider the most appropriate method of documenting the arrangement. The property owners' obligation to accept and maintain a membership in the property owners association is typically established through a recorded declaration of covenants, conditions and restrictions applicable to the lots in the community. If the ownership entity is to be a separate club, the obligation can be established in any of several ways, including:

- incorporating the obligation in the recorded declaration of covenants, conditions and restrictions, for the express benefit of the club entity;
- recording a separate recreational covenant on the property in the community, obligating the property owners association to share costs or pay specified amounts to the club operator and granting to the association's members the right to use the club facilities; or
- recording a recreational covenant on the property in the community, making it a separate and independent obligation of each owner to maintain a membership in the club and pay specified membership fees to the club and establishing the obligation of the club to grant a membership to each property owner.

While any of these methods can be effective, there are pros and cons to each.

Incorporating the recreational covenant in the community's declaration of covenants, conditions and restrictions ensures that all property submitted to the community declaration is also subject to the mandatory membership obligation. That may or may not be desirable, as discussed below. Moreover, the obligation is subject to the amendment provisions of the community's declaration and the constraints of state laws, which may be more onerous than the club owner would want.

A covenant granting to the members of the property owners association the right to use some or all of the club facilities and obligating the association to share certain costs or pay specified fees can simplify the process of collecting fees and amending the

document as needed in the future, since the club operator need only deal with one entity rather than numerous property owners. However, this arrangement obviously positions the association as a "middle man" between the property owners and the club operator, increasing the possibility of the association's interference in that relationship. Since the association has assessment power to fund its activities and controls the flow of funds to the club, it can wield substantial leverage in lobbying or negotiating on behalf of property owners for changes in the relationship and is more likely take on such role than any individual or group of individual property owners.

If the developer intends for the membership obligation to apply only to a particular product type, such as golf villas or estate lots fronting on the golf course, then it generally is preferable to establish the obligation through a recreational covenant that applies only to that product type, rather than cluttering the community's declaration with covenants that apply only to a small portion of the lots or involving the association in a matter that only affects a small number of its members.

C. Drafting Considerations

Regardless of the form of ownership and documentation used to establish the membership obligation, two critical issues that need to be considered and addressed in the documentation are: (1) the extent to which property owner members may use the recreational facilities and extend their use rights to others; and (2) their financial obligations as members. Both issues can have an impact on the marketability of the real estate as well as the value of any club memberships sold to persons outside the community.

1. Controlling Use

When dealing with recreational facilities with limited capacity, such as golf courses, tennis courts, and spa facilities, controlling use in order to avoid exceeding that capacity becomes a major concern, particularly where the number of residents in the community suggests greater demand than the facilities can reasonably accommodate. While the tendency is to want to handle access to facilities under any mandatory membership in the same manner as access would be handled if the facilities were common area of the property owners association, that may not be practical in all cases.

In a typical property owners association scenario, the association owns and operates recreational facilities for the benefit of its members and the owner of each lot has an easement for use of the facilities. The owner generally may extend that easement to the members of

his or her household and guests, subject to the board's reasonable regulation. If the owner leases his home, the owner is generally deemed to have assigned all such use rights to the tenant for the term of the lease.

In other mandatory membership arrangements, the nature of the community and the facilities the member is entitled to use may require that the use privileges of the membership be more limited. This is particularly true in second home or resort communities and in age-restricted communities.

a. Ownership vs. Occupancy

Although the obligation to accept and maintain a membership runs with title to a lot, it may be desirable to provide that the use privileges of the membership are exercisable only by the occupants of the home, rather than by the property owners. This approach would be appropriate, for example, when the membership obligation applies to vacation homes in a resort development that are likely to be rented on a short-term basis. The property owner may rarely occupy the home or be in a position to exercise the use privileges, but would likely want such use privileges to be available to its renters while they are in occupancy.

Likewise, it is not uncommon in a second home community for two or more families to share ownership of a home, with one or the other occupying the home at any given time and, occasionally, both families in occupancy. The document establishing the membership rights and obligations must anticipate this situation and address whether the use privileges may be exercised by only one family, or by either family but only while in occupancy. Will one co-owner be considered the "member" and entitled to exercise the membership privileges while the others are considered guests (and thereby subject to guest fees and limitations on guest use), or are all co-owners considered to hold the membership jointly, with the use privileges exercisable only by the co-owner in occupancy at any given time?

A similar situation is presented in "active adult" communities where covenants require that at least one person age 55 or older be a permanent resident of each occupied home. Younger people often purchase the homes in such communities as an investment and lease them, or purchase them for an elderly parent to occupy. In such case, it may be desirable to provide that the use privileges of the club membership are exercisable only by the occupants of the home, so that the club is available as an amenity for the residents, as intended, rather than having the memberships usurped by nonresident property owners.

b. Number of Users

A second level of analysis in controlling use of recreational facilities involves the number of users authorized to enjoy the membership privileges. If demand for some or all of the facilities, such as a spa or golf course, exceeds the capacity, it may be necessary to limit the number of authorized users of those amenities, rather than making all amenities available for use by all persons in the member's or occupant's household, as would be typical in the property owners association scenario.

One approach is to distinguish between the facilities for which demand exceeds capacity and other facilities where capacity is rarely an issue. For example, the membership privileges may include access for all occupants of a home to the "social" amenities, such as the clubhouse dining facilities and pool, while limiting access to other facilities to one or two members of the household whom the member designates or limiting the number of times that a particular facility may be used in a specified period of time by the authorized users of any one membership.

Alternatively, it may be desirable to limit all use privileges under the mandatory membership to a specified number of users from each household, then offer optional memberships at an additional fee for additional occupants of the household. This approach may be particularly beneficial in a resort or second home community where there may be multiple households who jointly own or occupy a particular property.

2. Establishing the Financial Obligations

Perhaps the most important, and most difficult, issue to deal with in drafting recreational covenants is the financial obligations of the property owners to the owner or operator of the recreational facility. The covenant must address the method of computing and collecting any initiation fee for the membership as well as the member's obligation to pay periodic dues. The key lies in balancing the needs and interests of the club owner or operator with some protection for the property owners who are "captives" of the arrangement.

a. Initiation Fee

As stated earlier, when a property association owns and operates recreational facilities for the benefit of the property owners in the community, it is customary for the value of those amenities to be reflected in the lot and home prices. Thus, typically there is no initiation fee charged for association membership. In the separate club scenario, the developer may choose to reflect the value of the

amenities in its lot and home prices, but instead will often seek to recoup its investment in the recreational facilities, and perhaps a return on that investment, by requiring each property owner to pay an initiation fee for membership upon taking title to a lot or home in the community.

The amount of any initiation fee will likely depend on the value of the amenities and the willingness and ability of the target market to pay. In some cases, the initiation fee may be sufficient for the developer to recover its costs and any required return from the fees collected on the initial sale of the lots in the community. In other cases, the ability to charge an initiation fee may be more limited. In each case, the developer or club operator must determine whether the fee will be charged only on the initial sale of each home or lot and thereafter reflected in the resale value, or charged on both initial sales and resales.

The decision should again take into consideration the developer's long-term goals and exit strategy. If the developer merely intends to recoup its investment and exit the community, leaving the recreational facilities in the hands of a non-profit entity, collecting an initiation fee on the initial sale may be all that is necessary. On the other hand, if the developer intends to operate the club on a for-profit basis with an eye toward resale in the future, it may want to maximize the club's asset value by requiring payment of an initiation fee on each resale or transfer of a home or lot in the community.

There may be situations in which a particular property or transaction should be exempt from payment of the initiation fee. If the initiation fee will be payable on each resale or transfer of a property in the community, the attorney should consider whether it is appropriate for the covenant to exempt certain types of transfers, such as limited transfers between spouses or family members, transfer of the property upon death of the owner, transfers upon foreclosure, and transfers upon the occurrence of similar events. If lots or homes are sold prior to completion of the recreational facilities, the covenant should address the possibility of a resale prior to the facilities becoming available for use and specifically whether another initiation fee will be due upon such resale.

If the developer is selling lots to home builders, as opposed to building and selling all of the homes itself, it is important to address the home builders' obligation, if any, to pay the initiation fee and, if they pay the fee, their rights, if any, to enjoy the privileges of the membership before the home is built and sold. In many cases, it may be preferable to defer collection of the initiation fee until the builder resells the property to the first homebuyer. Likewise, when unimproved lots

are sold to the public with no immediate requirement to build on the lot, the developer may want to consider deferring the obligation to pay the initiation fee until a home is built on the lot, particularly if the use privileges may only be exercised by those in occupancy of a particular property.

b. Periodic Dues

The method of computing, assessing and collecting periodic dues for mandatory memberships will likely vary depending on whether the facilities are to be operated on a non-profit or a commercial basis.

If the facilities are to be operated on a non-profit basis, the recreational covenant should provide a methodology by which the non-profit entity will budget, on an annual basis, for the expenses that it expects to incur in maintaining and operating the facilities and the amount that needs to be set aside in a reserve fund for capital repairs and replacements. The covenant should give the facility owner the right to assess each lot and home for its share of those expenses, with the assessment to be secured by a lien.

If a commercial operator owns the facilities, or the developer wants to preserve its ability to sell the facilities to a commercial operator in the future and maximize their value on resale, it will want to ensure that the periodic dues are at least sufficient to guarantee the break-even operation of the facilities that are subject to the mandatory membership. In some cases, the operator will expect to generate a profit as well.

When there is a commercial operator, the covenant establishing the obligation to pay any initiation fee and periodic dues should include limitations to ensure that future increases in the amount of such fees and dues are reasonable. Although the community developer may be constrained in setting fees by its need to sell real estate, the covenant needs to anticipate and minimize the risk of abuse by a future club owner or operator who has no real estate to sell and thus is not so constrained in setting the amounts of these fees.

In light of the fact that the property owners are, in essence, a captive audience, enabling the club operator to charge excessive initiation fees or dues to maximize the club operator's profit or subsidize other club operations could lead to a challenge of the entire arrangement on grounds that the obligation constitutes an unreasonable restraint on alienation of the lots and homes in the community, violates public policy, or constitutes an illegal tying arrangement under antitrust laws. While case law may or may not support such challenges in a particular case, certainly the cost of

defending the arrangement and the potential adverse affect that litigation could have on club operations and real estate sales merit attention to this risk in the drafting process.

There are two basic approaches to computing periodic dues in an effort to balance the interests of the club operator and the property owners. One approach would be to compute each member's dues as a pro rata share of the actual expenses incurred in owning, operating, and maintaining the facility, with or without a specified percentage of such expenses included as a "management fee" or permissible profit. Another option would be to specify the amount of the periodic dues for a base year (e.g., the initial year of operations) and then limit future increases to an amount equal to the percentage increase in the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics, or a similar index.

The benefit of the first approach is that it guarantees to the club operator that it will have sufficient funding to cover its expenses and a reasonable management fee or profit, regardless of what those expenses actually are, thereby removing much of the risk in owning and operating recreational facilities that may or may not be profitable. The tradeoff is that, in order to ensure that the club operator is not inflating the expenses or otherwise taking advantage of the property owner members, the operator's books and records relating to the mandatory membership facilities should be open to inspection by the property owners or their representative. This obviously raises concerns that the club operator's management and operating policies will become subject to the scrutiny of the property owners, with the concomitant level of "second guessing" that one might expect in such a situation. Therefore, the covenant should make clear that the right to inspect does not include a right to dictate or otherwise participate in management or operating decisions.

The second approach would appear to be a compromise that provides some level of protection to the property owner members against future increases without requiring that the club operator open its books and records to inspection by property owners. However, since operating expenses do not necessarily rise and fall with the Consumer Price Index or any other index that might be used, property owners run the risk that periodic increases will exceed what the market will bear, having a negative impact on resale values of property in the community. The club operator runs the risk that the allowable percentage increase in periodic dues will not be sufficient to cover actual increases in expenses over time. If it becomes unprofitable to operate the facilities, or they cannot at least be

operated on a break-even basis, they will lose their value to the club operator, with potentially negative consequences for the property owners and their property values.

c. Collecting Membership Fees

Regardless of who owns and operates the facilities, the covenant must address the timing and manner of collecting initiation fees and periodic dues. The covenant should provide for written notice to the operator in the event of a transfer of title to a lot or home in the community, a lien in favor of the operator to collect the initiation fee at the time of transfer and periodic dues thereafter, and the operator's remedies if the initiation fee or dues are not paid in a timely manner.

IV. CONCLUSION

Analyzing the options for ownership and operation of recreational amenities in a planned community in light of the developer's long-term goals is the first step in helping the developer to establish an appropriate amenity strategy for the community. When that strategy includes bundling of club memberships with real estate through a mandatory membership arrangement, the lawyer in the role of counselor and drafter must be prepared to advise the client on the developmental, marketing, and legal implications and address, through appropriate documentation, not only the creation of such obligation but the various issues relating to capacity, use rights, and fees that can affect the success or failure of the arrangement and, ultimately, the success of the community.

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