

# Board Authority, Easement Limits, and Ballot Disclosure Requirements Regarding Proposed Pool Changes (IR PUD CC&Rs 2022)

## Purpose

This document responds to the assertion made at the Pool Committee Town Hall that the Board may “repurpose” or “decommission” a common-area swimming pool without member approval, and to related statements that any required vote would be a vote on a “plan.” It is based solely on the **IR PUD CC&Rs (2022)** and is intended to help members understand both the **current limits on Board authority** and the **required scope of disclosure for any member vote**.

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## Terminology, Claimed Authority, and Easement Context

The words “**repurpose**” and “**decommission**” do **not** appear anywhere in the **IR PUD CC&Rs (2022)**. The governing documents do not define those terms, grant authority to act under them, or establish any procedure associated with them.

To the extent the Board or Committee may contend that authority to “repurpose” or “decommission” a common-area swimming pool exists, that position appears to rely on the Board’s general authority to “**assign, rent, license or otherwise designate and control the use of the Common Area and/or the improvements thereon**” (Article 4, Section 4.3(A)). That provision addresses **regulation and management of existing uses** — such as rules, scheduling, access conditions, or temporary closures — and does not authorize the **permanent conversion, elimination, or fundamental change in purpose** of a defined Common Facility.

## What the Governing Documents Say

### 1. Swimming pools are defined Common Facilities

Swimming pools are expressly listed as **Common Facilities** in the Declaration and are governed as such.

*IR PUD CC&Rs (2022), Article 1, Section 1.13*

### 2. Owners hold recorded easements of use and enjoyment

Every owner holds a **non-exclusive easement for use and enjoyment of the Common Area and Common Facilities**, including swimming pools. This easement is appurtenant to ownership, runs with the land, and constitutes a recorded property right that cannot be eliminated or materially impaired by Board action alone.

*IR PUD CC&Rs (2022), Article 3, Section 3.1*

### **3. Easement rights are not lost through non-use**

The Declaration expressly provides that owners do not waive their rights by choosing not to use a Common Facility. Declining usage therefore does not authorize permanent conversion or elimination of a pool.

*IR PUD CC&Rs (2022), Article 3, Section 3.3*

### **4. Board authority is limited where member approval is required**

Although the Board manages Association affairs, its authority exists **subject to limitations requiring member approval** elsewhere in the governing documents. Board powers cannot be exercised in a manner that overrides recorded easement rights.

*IR PUD CC&Rs (2022), Article 4, Section 4.1*

### **5. Regulation is different from impairment of an easement**

The Board may regulate how common areas are used. Permanently converting a swimming pool to a different use would eliminate pool use altogether and **materially impair the easement of enjoyment**, which goes beyond routine management.

*IR PUD CC&Rs (2022), Article 4, Section 4.3(A)*

### **6. Rules cannot override easements granted in the Declaration**

If a Board action or rule conflicts with the Declaration, the Declaration controls. Rules or resolutions cannot override easement rights granted to owners.

*IR PUD CC&Rs (2022), Article 4, Section 4.2(B)*

### **7. Title, mapping, and marketability implications**

Unless owners' easements are lawfully extinguished through a **member-approved amendment**, they continue to run with the land. If a pool were "repurposed" or "decommissioned" without extinguishing those easements and the property were later transferred or sold, a buyer would take title **subject to those easements**, and a title insurer would be required to except them from coverage, materially affecting insurability and financing.

While plat, tract, or parcel maps do not extinguish easements, they must be **conformed only after** any easement changes have first been lawfully approved and recorded through amendment of the CC&Rs.

## 8. Voting clarity and scope of member approval

The Board’s proposal materials do not specify **what would actually appear on the ballot** if members are asked to vote on a “plan.” In particular, the materials do not state whether any vote would seek approval of:

- an amendment to the governing documents,
- extinguishment or modification of easement rights, or
- permanent repurposing or decommissioning of a Common Facility.

Absent that clarity, members cannot reasonably determine **what rights they are being asked to approve, modify, or relinquish**. A generalized vote on a “plan” is not a substitute for a clearly defined ballot measure specifying its legal effect.

## 9. Ballot disclosure requirements — how and why this must be stated

If the Board proposes an amendment to authorize “repurposing” or “decommissioning” of Common Facilities, the **ballot itself must clearly and expressly disclose** the legal effect of that vote. Such an amendment would expand Board authority beyond existing limits and alter owners’ recorded easement rights. Members must therefore be informed that they are being asked to approve **a permanent delegation of discretionary power**, not merely a single project or concept.

A ballot that does not disclose these consequences would not provide meaningful notice of the rights being modified or relinquished.

## 10. Example of adequate ballot disclosure (illustrative only)

### **Proposed Amendment to the Declaration**

Approval of this measure would amend the IR PUD CC&Rs to grant the Board of Directors ongoing authority to repurpose or decommission Common Facilities without further member votes. Approval would permit impairment or extinguishment of owners’ easements of use and enjoyment in Common Areas as determined by the Board, and would eliminate future member voting rights on facility-specific changes that currently require membership approval.

## **Bottom Line for Members**

Under the **IR PUD CC&Rs (2022)**, a common-area swimming pool is a defined Common Facility subject to **recorded easements held by all owners**. Any action that permanently repurposes or decommissions a pool, or that materially impairs those easements, **cannot be accomplished by Board action alone**.

**Any ballot seeking to expand Board authority must clearly disclose that it reallocates future decision-making power and reduces member voting rights beyond the specific facility currently under discussion.**

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*Prepared by a PUD member based on a review of the IR PUD CC&Rs (2022). This summary is provided for informational purposes to assist members in understanding the governing documents.*