PART II

THE CLUB AND ITS MEMBERSHIP DOCUMENTS
# Part II
## The Club and Its Membership Documents

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Chapter 1
Introduction

The Role of Membership Documents

The membership documents of a private club are an important element of the membership program and the private club experience. Membership documents govern all aspects of club affairs. They determine the policy for:

- Membership Privileges
  - Description of club facilities the member is entitled to use
  - Definition of family members entitled to membership privileges
  - List of dues, fees and other charges the member is responsible for paying
- Member Disputes
  - Refund rights upon resignation or other termination of the membership
  - Ownership of the membership in the event of divorce or bankruptcy
  - Rights regarding the transfer of the membership
  - Rights of the member and the club regarding suspension and/or revocation of the membership due to violations of club rules
- Club Ownership Structure
  - Member-owned (equity vs. non-equity)
  - Developer-owned
  - Third-party owner
• Operational Matters
  • Rules for use of the various club facilities
  • Hours of operation
  • Club governance
• Financial Matters
  • Revenue sources, such as dues, fees and other charges
  • Member liability for assessments

The membership experience and benefits can vary greatly between clubs with similar facilities and a similar membership roster merely because of the provisions in the membership documents.

The importance of membership documents in the membership program will become clear in Chapter 3, which discusses how membership documents can be a problem-solver or a problem-creator with respect to a variety of issues and questions that arise every day. The role of membership documents will also become clear through a discussion of the basic membership plan documents and basic membership document provisions included in this chapter.

Other Elements of a Membership Program
As important as membership documents are to the operation of the club, they do not make a club. Membership documents are just one element of a successful club membership program. Other elements of a membership program include the structure of the membership program, the club environment, the club facilities, the management of the club and the members.

Structure
The structure of a membership program should incorporate basic elements, such as:
• Is the club member-owned or is it owned by a third party?
• What membership categories are offered?
• Have limits on the number of members in each category been established?
• Which club facilities may members in each category use?
• Can members’ guests and family use the club facilities? If so, what are the terms for their use of the facilities?
• Are persons other than members and their family and guests permitted to use the club facilities?
• Are memberships transferable?
• Are the initiation fees or membership deposits paid for the memberships refundable?

It is useful to distinguish the basic elements of the membership program from the written membership provisions. In developing a membership program, one must carefully consider each of the above questions and how the answers impact the membership program.

The structure of a membership program determines fundamental aspects of the club experience, including:
• How difficult will it be for a member to reserve tee times and/or court times?
• When a new or prospective member visits the club, will he or she experience a small, intimate club and be likely to know many fellow members, or will there be many people the new member does not know?
• Is there a sufficient number of other members who share the new or prospective member’s interests in golf or tennis, etc.? For example, is there an appropriate league for the new or prospective member based on age, skill level and gender?

**The Club Environment**

The club environment is its atmosphere, which determines the feeling a member gets when he or she visits the club. Different clubs convey different feelings: relaxing, festive, social, business oriented, family-friendly where small children are welcome, family-friendly where teenage children are welcome, men’s golf club, loud, fun, etc.

There are many factors that may affect a club’s environment. They include its furniture, decor, membership demographics, membership size, membership structure, membership rules, management style, club facilities and location.

**Club Facilities**

The club facilities are the physical recreational facilities of the club. The club facilities themselves often classify a club as a golf club, a country club, city club or a yacht club. Characteristics at a golf club, such as difficulty of the course, ranking in golf publications, course designer and course condition also affect members’ perceptions about the golf course and the club.
The Membership

The membership refers to the members themselves. People often classify a club by the demographics of the membership: age, gender, occupation, ethnic heritage and background. Some clubs even take a proactive approach to recruiting members from varied backgrounds, so that the club will not be stereotyped as belonging to a particular type of person and to make the membership more interesting.

Types of Membership Programs

There are many different types of membership programs. A membership program is characterized primarily by whether the members own and control the operation of the club facilities and whether non-members are entitled to use the club facilities. However, there are additional distinctions among membership programs.

Member-Owned Club

The club facilities are owned by a legal entity, usually a corporation, which in turn is owned by the equity members of the club. Equity membership in the club entitles the equity members to voting rights in addition to the privilege to use the club facilities in accordance with the membership documents. The voting rights generally include the right to elect a governing board and to approve major decisions, such as material changes to the membership documents, assessments for capital improvements or the mortgaging of the club facilities.

The equity members are not generally motivated to make a profit from the club operations, except in rare instances when there is very significant use of the club facilities by non-members. Dues are established at a level sufficient to pay operating expenses, less any outside sources of revenue.

The most common types of corporate structures are:

• Nonprofit Corporation. A nonprofit corporation is not the same as a tax-exempt entity for federal income tax purposes. A nonprofit corporation may apply for tax-exempt status; however, it must independently satisfy federal statutory requirements. The primary significance of being a nonprofit corporation, as distinct from a for-profit corporation, is that the members of nonprofit corporations are not entitled to receive distributions of profits from the operation of the club. Instead, profits generated by the club go to reduce member dues in the following year and for capital improvements.
• *For-Profit Corporation*. Each equity member holds common stock in the for-profit corporation.

Many member-owned clubs were originally developed by a third party, often the developer of the surrounding real estate development. The developer will have significant rights before it turns over control of the club to the members. These rights will be set forth in the membership documents, and often include the right to (i) retain proceeds from the sale of memberships, (ii) receive other monetary payments, (iii) receive profits from club operations before turnover and (iv) appoint the governing board of the club entity.

**Non-Equity Private Club**

A non-equity private club is owned and operated by a third party. Membership grants members the privilege to use the club facilities in accordance with the membership documents. A non-equity club may be a private club that prohibits non-member use of the club facilities, or it may be semi-private and allow some public usage of the club facilities.

There are two general types of non-equity membership programs:

• *Annual Membership Program*. Members pay annual dues, but do not pay a membership fee or deposit to join the club.

• *Initiation Fee or Deposit Programs*. Members are required to pay a fee or deposit to join the club. This fee or deposit may be refundable, nonrefundable, or partially refundable; the specific terms regarding refunds are set out in the membership documents.

The third-party owner of the club facilities makes all major decisions regarding the operation of the club facilities, including management, staffing, hours of operation, playing rules, programming, and maintenance and capital improvements. The owner of the club facilities may establish an advisory board and member committees to recommend club policies and suggest member programming and events; however, all final decisions rest with the club owner.

Even when the club owner retains all power and authority, members may have recourse if the club owner closes the club facilities or makes a material change in the club facilities or membership program, especially when the members have paid a
significant membership fee or deposit to join the club. Members’ ability to challenge major changes in their club membership program often hinges on the provisions contained in membership documents and other disclosures provided to members.

**Public Golf Course**

A public golf course is open to the public and normally does not have a membership program. Anyone can use the club facilities upon payment of the applicable usage fee or charge. A public golf course may sell “passbooks” or establish other types of programs where persons may receive a discount for frequent use of the facilities; however, these types of programs should not be referred to as “membership” programs.

**Hybrid Programs**

Many clubs do not fall entirely within one of the above categories and have elements of different programs. For example:

- Many non-equity programs are semi-private. They offer memberships and also allow the general public to use the club facilities. Members are generally given priority to reserve use of the recreational facilities over the general public, either by a preferred advance sign-up privilege or by limitations on general public usage during preferred times or days.

- An equity club may offer an annual or seasonal membership to generate revenues and allow the club to limit or avoid dues increases. Also, many equity clubs actively market rooms in their clubhouse to the general public for banquets, weddings and private parties. These practices, however, will jeopardize a club’s tax-exempt status if non-member income exceeds 15% of all club income. Allowing non-member use of the club facilities will also subject a private club to federal and state public accommodation laws.

- There are also membership programs that have some characteristics of member-owned clubs as well as characteristics of non-equity membership programs. Some developers have structured their clubs as preferred stock programs. The developer forms a for-profit corporation to own and operate the club facilities and retains the common stock of the corporation and offers preferred stock to the members of the club. As the owner of the common stock, the developer will have the right to make major decisions and will have the right to distributions from profits from the club operations.
However, the members, as holders of preferred stock in the corporation, also have an ownership interest in the corporation and may be given important rights, including the right to elect a minority of the governing board, the right to distributions upon liquidation of the company and the right to approve very major decisions, such as the sale of the club facilities or capital assessments that they are required to pay. Members who hold preferred stock are generally not subject to assessments for operating deficits.

These structures are relatively recent and there is not a significant body of case law to determine exactly what the members’ rights and privileges are in these corporations. Any type of ownership structure that grants ownership rights to both the developer and the members should be carefully considered because the goals of the developer and the members are often different, which creates the potential for conflict. For example, the developer may be primarily concerned with lot sales and revenue generation, while the members are generally concerned with obtaining the most advantageous use privileges for the lowest possible dues and fees.

How does one determine the type of membership program in existence at a particular club? Look at the membership documents. Well-crafted membership documents will tell a prospective member everything he or she needs to know about the rights and privileges of membership in a club.
Chapter 2
Membership Document Basics

Types of Membership Documents

The names and types of membership documents differ significantly from club to club. The Membership Plan may be the primary document at one club, whereas another club may have Bylaws or Rules as its primary membership document.

The names and types of membership documents depend in part on the type of club. A public course would need only a short set of rules to advise people about the basic rules of play. A private, non-equity club will need more comprehensive rules that govern not only the rules of play for the golf course, but also the various membership rules.

The club may have a Membership Plan to summarize the rights and privileges of members. It is recommended that a non-equity club have the following documents:

• Membership Plan
• Rules and Regulations
• Frequently Asked Questions
• Membership Application
• Membership Agreement
• Promissory Note (if applicable)
• Agreement with Developer (if applicable)
A member-owned club will generally have many more documents. A member-owned club will have the general club documents described above, as well as legal formation or incorporation documents, including:

- Articles of Incorporation (or other applicable entity formation document)
- Bylaws (or other applicable entity governing document)

The membership documents and their functions are described below:

**Articles of Incorporation**

This document creates the corporation that owns the real estate property and facilities of a member-owned club. In some states, this document is called a Certificate of Incorporation or Charter rather than Articles of Incorporation. The Articles of Incorporation and any amendments must be filed with the state’s Secretary of State.

The contents of the Articles of Incorporation will vary from state to state, depending on requirements set forth in the state’s nonprofit corporation statutes. Generally, the Articles of Incorporation must include the very basic member rights. The Articles of Incorporation often include the following information about the corporation:

- Name and principal office address;
- Purpose and powers;
- Whether the corporation is for-profit or nonprofit;
- Whether the corporation has stock (generally, nonprofit corporations do not have stock);
- Qualifications for membership;
- Voting rights of members; and
- How the governing board is selected.

If the club will be a member-owned nonprofit corporation with 501(c)(7) tax-exempt status, certain additional provisions are required by federal regulation.

**Bylaws**

The Bylaws are the governing document for the corporation that owns the real estate and personal property of a member-owned club. The contents of the Bylaws will vary from club to club. At a minimum, the Bylaws set forth how the corporation is
governed and will include provisions regulating the following matters:

- Member meetings
  - Frequency of member meetings (must be at least annual)
  - Notice, quorum and voting requirements
- Board of directors
  - Number of directors
  - Nomination and election procedures; removal process
  - Meetings, notice, quorum and voting requirements
  - Powers and duties
- Officers
  - Officers required
  - Duties
  - Selection and removal process

In addition, Bylaws should include a listing of all of the categories of membership offered with a description of the rights, privileges, duties and obligations of each category. The Bylaws should also contain a provision regarding the requirements and procedure for amendment; some provisions may require a vote of the membership, while other provisions may be amended by the board of directors.

**Membership Plan**

Private, non-equity clubs will often have a comprehensive document referred to as the membership plan, which contains all of the various provisions regarding the membership program, including the rights, privileges, duties and obligations of members of each category offered at the club. However, a member-owned club may not use a separate membership plan document if all provisions regarding the categories of membership and the usage privileges and benefits, and duties and obligations of each category are set out in the Bylaws.

**Rules and Regulations**

The Rules and Regulations include specific requirements and prohibitions with respect to the use of each of the recreational facilities. They also cover procedural matters regarding membership. Rules and Regulations can include provisions for:
• Issuance of membership cards;
• Payment of dues and maintenance of member accounts;
• Procedures for reservation of facilities;
• Attire;
• Guest privileges; and
• Rules of play for each of the club facilities.

Frequently Asked Questions

Many clubs also prepare a “Frequently Asked Questions” document that includes questions frequently asked by prospective members and the answers to these questions. The Frequently Asked Questions are generally a four- to five-page document that can be quickly read to gain a general understanding about a membership program at a specific club. The Membership Plan and the Frequently Asked Questions are very important in a club’s marketing efforts.

Membership Application and Agreement

The Membership Application is a form that a prospective member will complete and submit in order to be considered for membership. The Membership Application includes important information about the applicant that will be reviewed by either the membership committee (for private, member-owned clubs), or the membership director of a third-party owned club. The Membership Application should include an authorization allowing the club to perform a credit check and a criminal background check, and contact personal references. The information furnished on the Membership Application should be sufficient to enable the club to perform these important functions.

If the applicant is accepted for membership, the information furnished on the Membership Application is useful to the membership director to develop analyses of the membership, prepare a membership directory and even enable the membership director to provide personal touches, such as welcoming the member and the member’s family by name and sending the member birthday or anniversary cards.

Every applicant accepted for membership must complete and sign the Membership Agreement. Often, the Membership Agreement is submitted with the Membership Application; however, it must be clear on the Membership Agreement that membership is contingent on the acceptance of the applicant for membership by the club.
The Membership Agreement can be considered the most important membership document. It is the contractual agreement between the club and the member. It sets forth the amount and the payment terms for the initiation or joining fee, or membership deposit. A well-crafted Membership Agreement should also include an agreement of the member to (i) be bound by the membership documents, as they may be amended from time to time, (ii) timely pay all dues, fees and charges accruing under the membership, and (iii) abide by any special or specific arrangements or terms that are applicable to the member or the membership.

It is important that a club have a signed Membership Agreement and Application for each member because these documents form the basis of the club’s contractual relationship with the member. Without a signed Membership Agreement and Application, a club may have difficulty enforcing membership document provisions against the member.

**Promissory Note**

A club that allows members to finance all or a portion of their membership joining fee or deposit over a period of time should require the member to sign a promissory note. By signing the promissory note, the member agrees to pay the unpaid balance of the membership joining fee or deposit in accordance with the terms of the promissory note. The promissory note is generally a separate document executed in connection with the acquisition of the membership and the signing of the Membership Agreement. The promissory note will also set forth payment terms, such as payment amounts, due dates and interest, and the rights and remedies of the club in the event of nonpayment.

If interest is charged, the club is required under federal law to provide disclosures to the member by giving the member a Truth-in-Lending Form. The terms of the promissory note must also comply with state usury and consumer lending laws.

**Agreement with Developer**

The developer of a club often retains significant powers and rights until it turns over ownership and control of the club to the members. An agreement with the developer (often called a Transfer Agreement or Turnover Agreement) governs the relationship
between the developer and the club entity. The Transfer Agreement determines what payments the developer is entitled to receive, outlines the developer’s rights to control management and operation of the entity before turnover (and sometimes, after turnover), and sets forth the developer’s obligations to construct, maintain and transfer the club facilities to the members.

**Basic Membership Document Provisions**

There are certain basic provisions that should be in the membership documents of both equity member-owned clubs and non-equity private clubs:

**Club Facilities**

Membership documents should list and briefly describe the club facilities. It is important to identify the club facilities accurately and completely for several reasons. In the case of equity member-owned clubs, it is important to identify the club facilities so that prospective members know the assets of the entity in which they consider acquiring an ownership interest. For all types of clubs, listing the club facilities is important in providing prospective members information on the exact nature of the club facilities to avoid misunderstandings as to their ability to use neighboring community facilities or because there may be some type of special arrangement involving the club facilities, such as a lease.

**Facility Use Privileges**

There should be a clear statement describing the use privileges for each category of membership. This statement should identify the specific club facilities that members of each category are entitled to use, any advance sign-up or reservation privileges and the fees that must be paid for use of the facilities.

**Guest and Family Privileges**

The membership documents should explain who, other than the person designated as the member, may use the club facilities and on what conditions. Prospective members will want to know whether their family and guests may use the club facilities, whether they must be accompanied, who is included in the definition of “family,” whether there are any restrictions on such use and what fees must be paid for such use.
Membership Application and Selection Process

This provision answers the questions: who can be a member and how does a person become a member? Generally, the membership documents should state that membership is by invitation only. If there are any additional requirements for membership, those requirements should also be listed in this section. Examples of additional requirements include property ownership and age restrictions. This section should also describe the selection criteria and the evaluation process, and should identify whether a Membership Committee or some other person or group conducts the evaluation and selection process.

Transferability of Membership

Most state nonprofit corporate statutes require that any restrictions on transferability of membership are set forth in the Articles of Incorporation and/or the Bylaws. Therefore, for equity member-owned clubs, the provision regarding the transfer of memberships should state whether the membership and the membership certificate, if applicable, are freely transferable by the member to anyone at any price, or only to persons approved for membership at any price determined by the member, or only through the club to persons approved for membership at the membership price established by the club. It is generally recommended that regardless of whether a club is an equity member-owned club or a non-equity private club, the transfer provision should require (i) all transfers of memberships be handled through the club, and (ii) all new members be required to pay the then-current initiation fee in the amount established by the club. The membership documents should also clearly explain how the transferability of membership relates to resignation requirements.

Other Users of Facilities

If anyone other than the members, their family members and guests is permitted to use the club facilities, this should be clearly stated in the membership documents to give full disclosure to members and prospective members. Other users of the facilities may include the general public; nonequity, annual, or seasonal members; honorary members and the developer and its designees. In addition, if the club has the right to enter into reciprocal arrangements with other resorts or clubs, this should be stated in the membership documents.
Operation of Club
This provision provides information regarding how the club is governed and controlled. In member-owned clubs, the club is governed by a board of directors or board of governors. The Bylaws will describe how the board members are elected. The Bylaws of the club will set forth officers’ duties and powers and will also describe the various member committees. In non-equity private clubs, the club is generally controlled and operated by the owner, often through a management company.

Dues, Fees and Charges
This provision describes the club’s policies regarding dues, fees and charges. For equity member-owned clubs, this provision should state that dues, fees and charges are subject to change from time to time at the sole discretion of the board. For non-equity private clubs, this provision should grant the discretion to determine dues, fees and charges to the owner and/or manager. The membership documents should avoid placing caps or limitations on the amounts of dues increases and should provide the right to implement spending, food and beverage, or usage minimums.

Assessments
This provision advises members whether they are subject to assessment for operating deficits or capital improvements or replacements. The provision should state who is responsible for the payment of assessments and how the amount of the assessment is determined. For example, members of equity member-owned clubs are generally subject to assessment; the assessment for operating deficits is generally paid by all equity members in proportion to their dues. Only equity members who are entitled to use the golf course will pay assessments for golf course improvements. If more than one category of membership has golf course privileges, a category of membership that has a better advance tee time reservation privilege might pay a higher percentage of the assessment than members who have an inferior privilege. These issues should all be addressed in the membership documents.

Amendment of Membership Plan Documents
The membership documents will allow for the amendment of the various membership documents and will specify the requirements for amendment. It is important that members strictly comply with the formalities for amendment set forth in the membership documents to avoid challenge from a member who may be adversely
affected by the amendment. Generally, the only membership documents that may not be subject to amendment are the existing Membership Agreements.

**Member and Director Meetings**

The Bylaws will set forth the requirements for member meetings and board of director meetings, including requirements that a certain number of meetings each year will be held, quorum requirements and any voting requirements for passage of any action.

**Resignation of Membership**

Membership documents should provide procedures for resignation and resale or reissuance of membership. The provision should specify a resigned member’s obligation to continue to pay dues and right to use the club facilities after resignation.

**Death of Member**

The membership documents should state whether the membership is transferred to a spouse, an adult child or an heir in the event of a death of a member and whether the transferee is subject to the approval of the club and/or must pay a transfer or additional membership fee.

**Acknowledgment of Membership Rights**

A club should consider and disclose in the membership documents all membership obligations and all qualifications and restrictions on membership rights. For example, the membership documents should state that by applying for membership, the member agrees to be bound by the membership documents and comply with the Rules and Regulations governing the club. The club should reserve the right to establish rules governing access, sign-up privileges, reservation systems and allocation of golf tee times and other reservation times to provide the utmost playing pleasure for all members. Non-member owned clubs will want to have a very strong acknowledgement provision giving the club even broader rights to terminate the membership program, sell the club, convert the club to a member-owned club and modify the membership program, provided that members’ refund rights are not adversely affected. In addition, the membership documents of non-member owned clubs should clearly state that membership provides only a revocable license to use the club facilities and provides no ownership or equity rights whatsoever.
Tax Consequences of Membership

Membership documents should disclose any adverse tax consequences of acquiring a membership and should specifically recommend that the member consult his or her own tax advisor with respect to the tax consequences applicable to the particular member.

Government Requirements

It is important that the club’s local counsel be consulted regarding compliance requirements with any state statutes or local ordinances. For example, many states have anti-discrimination statutes to which the club may be subject. In addition, depending on the structure of the membership offering, the offering may be subject to state and federal securities laws.

In addition, club managers should consult with the club's regular tax advisor to make sure that the club is in compliance with applicable provisions of the Internal Revenue Code, wage and hour laws, sales tax matters and other state tax requirements.
Chapter 3
Common Issues and Problems Facing Clubs

Membership Documents as Problem-Solver or Problem-Creator

The importance of membership documents is apparent when a member asks a club manager a question or issue related to his or her membership. The club manager and the member should always turn to the membership documents for the answer. When the club manager finds the answer to the question or issue in the membership documents and the answer is clear, the club manager can direct the member to the appropriate section.

Even if the member does not like the answer, he or she should be satisfied that the question has been answered and will generally accept the answer because it is in “black and white” in the membership documents. The member understands that the membership documents govern the club and the membership.

The reaction is quite different when the answer to the question is not apparent or clear in the membership documents. The club manager may give the member an answer that makes sense to the club manager, defer the question to the Board of Directors or
appropriate member committee, or tell the member that the club manager will call the club’s legal counsel for a clarification. The member may not be totally satisfied with any of these responses even if the club manager tells the member what he or she wants to hear. The member will wonder whether it is the correct answer because it was not clear from the membership documents. The member will not be happy in having the question or issue deferred to the board of directors, member committee or legal counsel because of the uncertainty of the response and the delay in getting a resolution to the problem.

Well-crafted membership documents eliminate many potential member problems because they clearly define the rights and privileges granted through club membership.

**Facility Use Privileges**

The provisions governing a member’s use privileges should be straightforward and clearly written. Otherwise, problems may arise. The following are examples of questions about facility use issues that have arisen:

- *Associate Membership.* A member-owned club has an Associate Membership category. The membership documents permit an associate member to play the golf course without having to pay green fees on weekdays only. The associate member may only use the golf course on weekend and holiday mornings as a guest of a full golf member. Dues for the associate member are about 70% of the dues for the full golf member.
  - The question that arose is, “Can associate members play in Saturday member tournaments?”
  - The answer is, “The associate member may golf in Saturday member tournaments; however, the guest fee will apply since the Associate member may only golf as the guest of a full golf member on Saturdays.”
  - The membership documents should be clarified to either state that (i) associate members are eligible to participate in member tournaments held on weekdays, or (ii) associate members are eligible to participate in all member tournaments at the club, regardless of the day of the week they are held.

- *Dining Membership.* A member-owned club had a non-equity Dining Membership category, which entitled the dining members to use the dining and social facilities of the club.
• The question that arose is, “Are dining members entitled to participate in social events and functions at the club?”
• If the membership documents stated that the dining members are entitled to use the “dining and social facilities” of the club, the first step is to determine if “dining and social facilities” are defined. Generally, memberships that provide access to social facilities provide the right to participate in social events such as dances, pool events and card games.
• The membership documents should be clarified to either state that (i) dining members are eligible to use only the dining facilities of the club, or (ii) dining members are eligible to use the dining and social facilities of the club, including participation in all member social events and card games.

**Advance Sign-up Privilege**

The privilege to reserve a starting time or court time in advance often varies by membership category. For example, full golf members may have the privilege of reserving a starting time six days in advance; whereas, a social or sports member may be able to reserve a starting time only three days in advance.

If the club uses a computerized starting time reservation system, it must be able to compute the various starting time rights of members of different categories. In addition, the club can establish limits on the number of starting time reservations a member may have in the system at one time.

**Inactive Members**

Clubs are often approached by members who would like to suspend their membership privileges or their golf playing privileges due to illness, temporary job transfer, economic hardship or other extenuating circumstances, and stop paying dues or reduce their dues to a lower category level during the period. Membership documents vary in addressing this issue. Some membership documents do not address it at all; other documents specifically provide for inactive status for specified reasons; and often, the membership documents give the board of directors general discretion to permit a member to become inactive in cases of hardship.

A club can have significant financial problems if it permits members to suspend or reduce their dues obligation during inactive periods. The other members are forced to cover the shortfall resulting from the absence of the dues revenue from the inactive...
members. This situation is especially acute when a club has a cap on the number of members and the inactive members are counted toward the cap.

If the club wants to permit inactive status, it is recommended that the membership documents be worded so that situations where inactive status may be granted are very limited. In addition, the club may charge a maintenance fee during any period of inactive status. The documents should clearly state that the member and his or her family have no privileges during the period of inactive status, and that an individual member may have only one period of inactive status during the life of the membership. There should also be a pre-established limit on the length of the period of inactive status.

**Resigned Members’ Privileges and Obligations**

It is a common practice to require a resigned member to continue to pay dues while maintaining use privileges until the resigned membership is reissued. However, this policy can raise a number of issues. For example, this type of provision may have the effect of encouraging people to resign their memberships well in advance of an anticipated move in order to gain a priority position on the seller’s waiting list to have the membership reissued. The problem can be exacerbated if the club allows a member to voluntarily “pass” on relinquishing the membership if the member reaches the top of the waiting list before he or she wants to stop using the club facilities.

On the other hand, stopping the resigned members’ use privileges and dues obligation immediately upon resignation can result in a significant operating budget shortfall if many members resign their memberships concurrently or unexpectedly. A provision stopping the resigned members’ use privileges and requiring resigned members to continue to pay dues until the membership is reissued discourages members from resigning solely to get priority on the waiting list. It also allows the club to continue to derive dues revenue from resigned members. However, resigned members may object to this provision.

In drafting or amending this provision, a club must seriously consider the consequences of the provision in light of the club’s circumstances and how these provisions relate to the club’s other policies regarding resignation. Clubs should consider making resignations irrevocable and requiring a membership to be reissued once it reaches the top of the seller’s waiting list.
Definition of Spouse and Family

A club that has spouse or family privileges should have provisions in the membership documents that clearly define the persons who are allowed usage privileges under the membership. Issues that should be covered include:

- Unmarried couples (heterosexual couples and same-sex couples)
- Adult siblings living with one another or an aged parent living with an adult child
- Stepchildren
- Children of a non-custodial parent member
- Young adult children attending school on a full or part-time basis
- Grandchildren who live with guardian grandparents

A well-crafted provision should either answer the specific issues or give the club general power to establish policies to address these issues. If the club is establishing policies to address these questions or is handling them on a case-by-case basis, it is important to handle these matters on a consistent basis, to avoid legal challenges.

Guest Use Restrictions

Often, a club will restrict the number of times that guests may use the club facilities; i.e., guests may not use the golf course more than six times per membership year. A non-member may try to get around the restriction by being the guest of more than one member. It is recommended that the membership documents specifically limit the total number of times a particular non-member may use the club facilities as the guest of any member.

Corporate Membership Restrictions

There are two general types of corporate memberships. First, there is the corporate membership with multiple users. One corporation or business is the member, but the corporation or business is entitled to designate three or four individuals who will have full membership privileges. The other type of corporate membership entitles the corporation or entity to designate only one individual as a beneficial user of the membership. The latter type of corporate membership often permits an individual to own the membership in the name of the business entity for tax or other reasons.

If the club desires or has obtained tax-exempt status as a “social club” under Section 501(c) (7) of the Internal Revenue Code, the club should consult with its counsel or accountant in determining the characteristics of the corporate membership program.
The Internal Revenue Service distinguishes between “corporate memberships” and “corporate sponsor members.” The Internal Revenue Service treats income received from corporate members, in contrast to corporate sponsor members, as non-member income, which is subject to the 15% limitation on non-member income applicable to tax-exempt social clubs.

A corporate membership program can allow a club to target the businessperson’s market, which will help to generate dues and fee revenue for the club. Another advantage for the club is the fact that the corporate entity and the designees are jointly and severally liable for the dues and charges incurred under the membership.

If the corporate membership permits three or four designated users, the club often charges the three or four corporate membership designees lower dues and/or a lower membership price than if the designated users had obtained separate individual memberships. In addition, the corporate member is often permitted to change the designated users on a periodic basis. The downside of a corporate membership program is that a group of people may decide to form a corporation to share a corporate membership and change designated users every year among the group. In addition, the corporate member may designate customers or even friends of the owner as users under the membership, which eliminates these people as prospects for individual memberships.

A club can do several things to prevent this type of abuse. First, the membership document provision for the corporate membership should specifically be limited to actual, bona fide business entities and limit designated users to owners, officers, directors and full-time employees of the business entity.

It is also recommended that the membership documents give the club the power to require the corporate membership to submit such forms and information to evidence the business purpose of the entity and designated user’s relationship to the business entity. The club should require that all proposed designated users of a corporate membership be approved in accordance with the club’s regular selection and admissions process.

**Revenue Generation Options**

Clubs often consider different options to increase revenue so that the club can limit dues increases for members. These options include corporate outings, banquet functions, reciprocal privileges and annual and seasonal memberships.
These programs are often very controversial. Any non-member use of the club facilities can jeopardize a club’s “private club” status, subjecting the club to compliance with state and federal public accommodation laws. In addition, as discussed above, non-member income is subject to a limit of 15% in order for the club to maintain its tax-exempt status. Furthermore, there will always be a group of members who disapprove of these programs because they make the club less private and may adversely affect the members’ ability to reserve a desired time to use the club facilities. If a club is considering these types of revenue generation options, the membership documents should specifically permit them.

**Divorce or Separation of Members**

Clubs face a number of issues when a married member divorces or separates. One spouse may advise the club that the other spouse can’t use the club facilities or that he or she will not be responsible for the other spouse’s fees or charges. Both spouses may insist on full use privileges.

It is recommended that the membership documents be very clear that both spouses are jointly liable for dues, fees and charges incurred under the membership. The membership documents should state how ownership of a membership is determined upon divorce of a member. Generally, club membership documents provide that the membership will be retained by the spouse who is listed as the “primary member” or “applicant” on the membership application, or the person who is listed as the “member” on the membership certificate or membership agreement. However, the court that has jurisdiction over the divorce may disregard this provision and award the membership to the other spouse, especially if the membership grants spouse or family privileges. The club must honor a court’s award of a membership.

**Installment Payment Plans for Joining Fee**

A number of issues arise when a club permits a member to pay the required joining fee in installments:

- *What happens if the member does not pay the full joining fee?* One must consult the membership documents, the Membership Agreement and a local attorney for the remedies available under state law. The remedies may include:
  - Action for the balance due;
  - Foreclosure on lien;
• Termination of membership and retention of amount paid as liquidated damages, if permitted under state law; and
• Lien on membership and recovery when membership terminates.

• Can a member who has not yet paid the full amount exercise voting privileges? Membership documents should state that certain membership rights, such as voting rights and the right to proceeds upon dissolution, do not vest until the full amount of the joining fee is paid. It is very possible that this may be implied from the membership documents, even if not specifically stated. A club is not generally required to deliver the membership certificate until the member has paid the joining fee in full.

Dues Increases

The club’s policy regarding dues increases should be clearly explained in the membership documents. Generally, the membership documents give the governing board great latitude in establishing dues for the various categories of membership. If a dues increase for one membership category is proportionately greater than for other categories at the same club, the members in the disproportionately affected category may be able to claim that the dues increase was arbitrary and capricious. If the decision to make the dues increase was made by the board, the disproportionately affected members may attempt to claim that the board members breached their fiduciary duty to such members.

Prohibition on Assessment

Membership documents should clearly explain the club’s policy regarding assessments. Generally, members of developer-owned or third-party-owned clubs are not subject to assessment without a member vote and approval. Clubs may not use other means to “assess” their members, such as increasing dues temporarily to pay for capital repairs and replacements.

Members of member-owned clubs are subject to assessment for operating shortfalls and capital repairs and improvements. Assessments are generally pro-rated based on membership category and no member vote is required.

Clubs often finance the costs of capital repairs, replacements or improvements with long-term loans. Dues increases may be necessary to pay debt service on such loans;
therefore, it is recommended that the members vote to approve financing capital repairs, replacements or improvements with a loan, even if the membership documents do not specifically require a member vote for loans. Incurring a debt obligation to finance a capital repair, replacement or improvement is similar enough to an assessment that a court would likely view a member vote as necessary.

Discipline of Members

It is very important that grounds for a club taking disciplinary action against a member and the procedures for disciplinary action are detailed in the Membership Plan, Bylaws or Rules and Regulations. Disciplinary action by a club against a member is one of the most common sources of litigation for clubs. The provision should specify the effect of any suspension or termination of membership on the dues obligation and any right to a return of the membership initiation fee or deposit. If a member whose membership has been terminated is entitled to a refund of the membership deposit, the provision should state whether that refund will be made immediately after the termination or after the membership is resold to a new member.

In general, clubs should give the member a full opportunity to be heard at the disciplinary hearing, even if the membership documents do not require it. Some courts have held that clubs must give the member due process before imposing a disciplinary sanction against the member. At a minimum, the club should permit the member to attend a disciplinary hearing and listen to all evidence presented against the member, and give the member an opportunity to state his or her case. If the club is a member-owned nonprofit corporation, state law should be consulted regarding due process requirements.

Reserves for Capital Repairs and Replacements

Membership documents differ on requirements for reserves for capital repairs and replacements. Membership documents may establish a specific reserve requirement of “reasonable reserves” or may state no reserve requirement at all.

Do members have recourse against a developer if there are insufficient reserves at turnover of the club to the members or against the member-elected governing board if the board does not provide for sufficient reserves? Whether members have recourse against the developer for insufficient reserves at turnover depends on the written agree-
ment between the club and the developer. The members would probably not have legal recourse against the governing board after turnover for insufficient reserves if there is no requirement in the membership documents for reserves.

Nomination of Members to Governing Board

The Bylaws of a member-owned club should provide details for the procedure regarding the nomination of candidates to the governing board by a nominating committee. However, often a club’s membership documents are silent on the issue, or do not provide enough specific information. The following are examples of questions that have arisen regarding nomination of candidates to the governing board:

- Is the nominating committee required to send a letter inviting members to express interest in candidacy?
- Can a nominating committee nominate only one candidate per seat when more candidates have expressed interest in candidacy?
- Can the nominating committee nominate one of the members of the nominating committee for candidacy?
- Can a member’s spouse be nominated for candidacy?

It is best for the membership documents to be specific in exactly how candidates are nominated to avoid these issues. In the absence of specific provisions addressing these issues, the nominating committee should be given wide latitude to select qualified individuals for candidacy, especially when the members have the option to submit petitions adding additional candidates.

Board and Committee Operation

Although membership documents often omit information about board meeting procedure and etiquette, frequently the Bylaws require the club’s board to follow Robert’s Rules of Order with regard to its meetings. If the membership documents are silent in this regard, the board or committee will have considerable latitude in determining how it functions.

An exception to this area may be the disciplinary hearing. As indicated above, courts and state law generally require the discipline committee or board, as applicable, to give the member who is subject to the disciplinary action due process. Formal procedures for presentation of evidence and questioning of witnesses should be established and followed consistently. These procedures do not need to be the equivalent of court proce-
dures, but should ensure that the board or committee has heard and considered all cred-
ible, available evidence and given the member a reasonable opportunity to respond to
the evidence against him or her.

**Amendment of Membership Documents**

Membership documents generally include a provision stating how they can be
amended. Certain amendments often require approval by the members. Even in the
absence of such a provision, it is recommended that any material change in the
membership documents be approved by a vote of the members.

A question often arises as to whether a specific change requires a member vote. Minor
rules changes do not require a member vote. Material changes do require a member
vote. For example, a governing board does not require member approval to change the
hours of operation of a particular facility or rules of play of the golf course, but would
require a member vote to eliminate family privileges. A question of whether a vote is
required is often a difficult one because some may consider a change insignificant,
whereas other members may view it as material. It is better for a governing board to
obtain a member vote if there is any question as to whether a change affects the material
rights or privileges of any group of members.

There are some amendments to membership document provisions that cannot be made,
even with the approval of the members, because the change would affect a contract right
of a member or group of members. For example, a club that has a sports membership
category that entitles the sports member to play golf upon payment of greens fees, prob-
able cannot amend the membership documents to eliminate golf privileges for existing
sports members. Similarly, if a club amends the provision governing the priority for
waiting list for reissuing resigned memberships, it must grandfather in those members
who are already on the waiting list, or obtain their approval through a member vote.

**Arbitration of Disputes with Members**

Clubs will engage in litigation with a member or members from time to time for various
reasons. A member may sue the club because the club has reduced their joining fee
refund by an amount owed by the member to the club, which the member disputes. A
member group may challenge the club’s ability to amend a membership document
provision. A member may sue the club for terminating or suspending their membership.
Litigation with members can be a costly endeavor.
Many clubs are adding a provision in the membership documents for mandatory, binding arbitration of disputes with members. The arbitration can provide an effective forum for resolution of disputes, which reduces the litigation costs for both the club and the member. It is important that the arbitration provision ensure that the arbitrators have experience in club matters.

Resolution of Issues that Membership Documents Do Not Address

The foregoing discussion of various issues raised by the membership documents illustrates that often the membership documents do not address every situation or problem faced by a general manager. The discussion gives suggestions on how to resolve specific issues when the membership documents do not provide a specific answer. However, the general manager will likely face many other issues that are not specifically answered by the membership documents. The following are guidelines on how to resolve these issues.

First, if there is a threat of litigation or a significant risk of litigation, immediately consult an attorney. Clubs often delay consulting with an attorney to save legal expense. However, consulting with an attorney early may save the club legal fees in the future because the attorney may avert litigations by writing a letter or providing specific advice.

Second, the membership documents often suggest an answer to a question, even when there is no specific provision. For example, a member of one club claimed that he had the right to sell his membership to whomever he wanted at whatever price he wanted because the membership documents contained no specific prohibition on transfer. However, there were many provisions in the membership documents that would have no meaning if members were able to sell their membership on the open market. There were provisions governing approval of new members and provisions permitting transfer of a membership to family members upon the death of a member in certain instances, all of which suggested a general prohibition on transfer. Courts follow a general contract principle that documents must be read in a way to give all provisions meaning.

Third, courts often look to legislative history in interpreting statutes. Clubs can do the same thing with the membership documents. Clubs often keep much information about
how and why specific Membership Plan provisions, Bylaws and Rules were amended. Minutes of meetings, committee reports, letters to members explaining why amendments were made and interviews with members who were involved in the drafting or amending of a particular provision can be very helpful to interpret the provision.

Fourth, a general manager or board will often be faced with a question that does not involve a threat of litigation, but for which there is no clear answer, either express or suggested, in the membership documents or in the written history of the club. In such cases, the general manager or board should be guided by common sense or follow common industry practice. If the same issue arises recurrently, the club should take care to deal with it consistently and should amend the membership documents to address the issue clearly.