

REVIEW OF RESTATED BYLAWS

Submitted by Tom Boren - December 3, 2010

While there were a lot of areas to which one could take exception, following are those which I feel definitely need to be addressed.

Article I - General

§ 1 NAME - There was no formal HOA before, merely a voluntary, and nebulous, organization. The bylaws that are being amended are actually those of PWI, a heretofore separate organization, focused only on recreation. Is incorporating "HOA" and the implied scope of that entity, permissible under applicable laws or ordinances? I have seen nothing in the proposed bylaws that involve more traditional HOA powers, i.e., maintaining yards, placement of garbage cans, etc. However, if the new bylaws are enacted incorporating this reference, the stage could be set for an expansion of "powers" that were not expressed or understood at the time of passage/acceptance by the membership.

§ 2 APPLICABILITY - In one sentence, this section states that the "Declaration" has been filed, yet, in the last sentence, it states filing has not yet taken place. This should be clarified. Has the Declaration been filed, or not?

§ 6 VOTING - 1st PARAGRAPH - The sentence that begins at the end of line 4, with the words, "Each vote, . . .", seems to be incomplete. Maybe it's just the wording.

Sentence midway through beginning, "no person shall be eligible to vote," and further referencing delinquency needs a phrase added to the effect that delinquency has in fact occurred. As worded, a mere bookkeeping error could result in a member losing their rights and privileges. There should be some protection of privileges while any dispute is being rectified.

2nd PARAGRAPH - It would be helpful to provide a brief definition of the types of memberships listed in this entire section, preferably before, or as part of, the first paragraph. While more detailed definitions are provide in Appendix A of the "Declaration," I think a better understanding of the different types should be included early on.

§ 8 PURPOSE - I think it would be beneficial to include a brief "indication" of what types of "matters" are to be found in the "Act" and the "Code." Since the Declaration is being made available, each person can review that document to see what "matters" are being empowered to the Board.

ARTICLE II

§ 4 WAIVER OF NOTICE - I have read a lot of technical and consumer type legal documents over the years and, despite, or because of, all the verbiage this is one of the most ambiguous passages I have ever seen. Spell out in plain language what it means. Get rid of all the twists and turns.

ARTICLE III -Board of Directors

SECTION A - Composition and Selection

§ 3 REMOVAL OF MEMBERS OF THE BOARD . . . - It appears that the Board gets a better break on delinquency than the rest of the members do. Thirty days for members (See Article 1, section 2) - 60 days for the Board. Let's even it out. One for all and all for one!

§ 5 COMPENSATION - Gifts for the Board? We had this occur indirectly in the past with Board members giving themselves a discount on membership. That was not well accepted by the membership when it came to light. While that represented more money than what would be allowed by this section, I'm not sure it's a good idea. Certainly the membership could approve such an expenditure at any time but I wonder if this "solicitation" is such a good idea.

SECTION B - Meetings

§ 5 OPEN MEETINGS - This is totally contrary to the 25 year history of the association. Arbitrarily closing the meetings is not the way to go. Granted, the lack of member participation can result in de facto closed meetings but that should not be the option of the Board except for the specific exceptions cited in the section.

SECTION C - Powers and Duties

§ 1 (f) I have a real problem with monetary fines. There have been too many instances of HOAs abusing or misapplying such powers. If such power were to be bestowed there should be limits applied.

§1 (k) Two issues - 1) What services would fall into this category and, 2) what cost would be chargeable to "specific" members rather than the membership as a whole. Explanatory examples should be given.

§1 (m) REAL RED FLAG!! Just read the papers. Management companies are continually in the news for Draconian application of rules. Case in point - the "ParkAtlanta" management company. If you have several hundred members (think Peachtree Station, CC of the South, etc.), with a large pool, multiple tennis courts requiring regular maintenance (clay courts), etc. then you have a different situation. We are not so big as to justify arbitrary assignment to a management company by the Board.

§2 MANAGEMENT AGENT - See comments above [§1 (m)].

§ 3 BORROWING - No problem, in general, but there are a couple of issues. First, that borrowing can be undertaken for "any Association purpose." This wording leaves open the decision as to whether a given project serves an "Association purpose." Yes, there is a requirement for a majority membership vote but that only kicks in if the cost exceeds \$10,000.00. That is the second issue. We are too small to allow a board to authorize a debt for "any Association purpose" of

\$9,999.99, or less, without membership approval. The cap should be lowered to \$5,000.00 until "X" membership level is reached. I would not object to a reasonable proviso addressing unexpected maintenance issues or compliance with revised local ordinances.

ARTICLE IV - Officers

- § 1 DESIGNATION - Just out of curiosity, what is the purpose of allowing the V-P to hold more than one office?
- § 7 TREASURER - Last sentence allows the Treasurer to, apparently arbitrarily without Board or membership approval, delegate responsibilities to a management agent. This would likely incur additional cost to the association without membership concurrence. Refer to my earlier comment regarding management companies.

ARTICLE V - Rule Making and Enforcement

- § 2 FINING AND SUSPENSION PROCEDURE - Again, provides the Board with 60 days grace for delinquency whereas members are only afforded a 30 day period. Same objection as before.
- § 2 FINING AND SUSPENSION PROCEDURE - SUBPARAGRAPHS (a) and (b) - In their totality, these two provisions seem to be way too severe for a small association. The wording, especially referring to "violation" would seem to be more applicable to a traditional HOA whereby there are typically restrictions regarding such things as lawn maintenance, exterior structure treatments, installing flag poles, fence heights, etc., etc., etc. Since the association structure, at least at present, is focused on the singular goal of eventually getting all properties to include mandatory membership to support the recreation area, I suggest that Article V be revised and toned-down considerably.

ARTICLE VI - Miscellaneous

- § 7 CONFLICTS - That whole paragraph is one sentence!!! It gives the appearance that someone is trying to make the whole issue inscrutable. Way too many twists and turns. Re-write and clarify.
- § 8 AMENDMENT - Pretty much the same comments about § 7 but at least in this section you can mostly follow the train of thought.

In conclusion, as a general statement I think there is way too much legal CYA included in the proposed amendment. I will forward my comments on the "Declaration" under separate cover. As alluded to earlier, we are small and do not have a large infrastructure to maintain. Additionally, we have no room for property growth and therefore, do not have to prepare for supporting and managing a considerably larger infrastructure. The only growth we will, hopefully, encounter is "permanent" members.

Beyond the specific issues on which I have commented above, I would suggest that the proposal be re-written for both clarity and length. I am sure that most of the terminology

came from a package of software and, therefore, helped to hold down our cost for the documents but the whole picture seems to be more appropriate for a much larger facility.

Thanks,

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