

Adopting and Administering Rules Bylaws and Declaration Provisions

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Overview

- Levels of Authority
- Adopting Rules
- Amending the Bylaws
- Amending the Declaration
- Questions

Levels of Authority

- Governing Law (“Organic” Acts; Corporate Law; Common Law [e.g., Agency])
- Declaration
 - Plat/Articles of Incorporation/Maintenance Agreements
- Bylaws
 - Roberts Rules of Order/Procedural Rules
 - Budgets/Reserve Studies & Maintenance Plans
- Rules and Regulations
 - Board Resolutions
 - Budgets/Reserve Studies & Maintenance Plans
- Committee Decisions

Levels of Authority – cont'd



Constitution & Statutes



Declaration
and Bylaws
(Recorded)



Rules & Resolutions

Rules and Enforcement - Oregon

- Association may adopt rules for the operation and use of the common property [ORS 94.635(15)]
 - Bylaws set process
 - Must provide for notice and opportunity to be heard if the rules will terminate access/use of common property or impose fines for violations [ORS 94.630(1)(m)-(n)]
 - Must adopt and mail any fine schedule to each owner prior to imposing fines

Rules and Enforcement – cont'd

- Failures to comply may be enforced by:
 - Fines
 - Termination of Access/Use of Common Property
- Generally fines will be treated as unpaid assessments
 - Allows for lien claim against owner property [ORS 94.709]
 - Can pursue as ordinary action for money judgment w/o waiving lien rights
- Alternative Resolution
 - Association must offer mediation before suing [ORS 94.630(4)]
 - Association may use a 'Permit' as a means to selectively allow a technical violation [ORS 94.630(3)].

Adopting a Rule

- Usually by a Board Resolution
 - Bylaws may require member ratification vote or other process
 - Committees are good way to develop draft
- Seek Owner Input on Contentious Issues
 - Do we really need this rule?
 - Is there a better approach we haven't thought of?
- Resolution Contents
 - Reason for the rule
 - Board's source of authority to regulate
 - Process by which rules are adopted
 - Text of the rule
 - Effective Date
- Issue copy of new rule to every member

Declaration Amendments

HOMEOWNERS ASSOCIATIONS (PUDs)

- Oregon Planned Community Act (PCA):
 - Amendment requires at least 75% or greater approval (if in declaration) of total votes in the PUD required. ORS 94.590(1)(a).
 - Cannot limit special Declarant rights without consent of Declarant. ORS 94.590(1)(b)(A)
 - Cannot change the boundary of any lot or any restrictions on alienation/use adopted in the initial declaration unless owners of the affected lots unanimously consent. ORS 94.590(1)(b)(B)
 - Cannot change method of determining liability for common expenses or method of determining voting rights of any lot unless owners of the affected lots unanimously consent. ORS 94.590(1)(b)(B)
 - Board of Directors may, upon resolution, file a restated declaration to collect all previous amendments into one document, without further owner action, but cannot make changes at the same time.

The Bylaws - Oregon

- Bylaws cannot require greater than an affirmative majority of votes
- If bylaw duplicates a declaration element, an amendment must meet declaration amendment requirements (i.e., minimum 75%)

Bylaws Oregon: Required elements

- Initial meeting
- Transitional advisory committee
- Turnover meeting
- Annual meetings
- Board elections and terms
- Board meetings
- Officer selections
- Budget
- Maintenance and repair program
- Initial employment contracts for maintenance and repair
- Collection of common expenses
- Insurance coverage
- Annual financial statements
- Methods for adopting administrative rules and regulations governing common property
- Method to amend the bylaws

Board Meetings - Oregon

- Most meetings must be open to owners [ORS 94.640; ORS 100.420(1)]
- Executive session [closed] meetings may be for purpose of:
 - consultation with counsel
 - personnel matters
 - negotiation of third party contracts
 - discussion of collection of unpaid assessments

Questions?



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CONSTRUCTION DEFECT
AND
HOMEOWNER ASSOCIATION ATTORNEYS