

# 9

## Homeowners' Associations

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## **I. [9.1] INTRODUCTION**

In Illinois, a residential community subject to a declaration, other than a condominium, sharing common interests, requiring owners to pay an assessment for maintenance, and governed by an association is called a homeowners' association. The residences may be referred to as dwellings or units and may be attached to other dwellings or detached. The owners customarily own their own lot, and there are common areas owned by the association for the use and benefit of the owners or members. The homeowners' association typically is responsible for administration and maintenance of the common areas, which are funded by the assessments levied against the members. The covenants usually are recorded with bylaws and are the governing documents of the association. Since most homeowners' associations are incorporated as not-for-profit corporations, they are also governed by the General Not For Profit Corporation Act of 1986 (NFPCA), 805 ILCS 105/101.01, *et seq.*, and other relevant statutes.

## **II. LEGAL BASIS OF THE HOMEOWNERS' ASSOCIATION**

### **A. [9.2] Creating a Homeowners' Association**

In the initial stage, a developer will submit a site plan for the development of homes that will be subject to a recorded declaration of covenants and bylaws. The resulting homeowners' association is a mandatory or involuntary association as membership is appurtenant to lot ownership. There are also voluntary associations in which the covenants and/or bylaws are not recorded; however, they are beyond the scope of this chapter.

Frequently, the new development will be submitted as a planned unit development (PUD) to the local zoning authorities. A PUD is, in fact, a common name for a homeowners' association, but it is actually a misnomer since a PUD is a special zoning class.

Once approved by the local governmental authorities, development commences, and at some point the developer will record covenants against all of the lots and the common areas. An astute developer generally will exempt itself from paying any assessments and defer turning over control of the association until all of the lots are sold.

The developer generally will file incorporation papers for setting up a not-for-profit corporation and subject the association to the General Not For Profit Corporation Act.

At that point, established in the bylaws, a board of directors is elected in accordance with the bylaws and §107.05 of the NFPCA, 805 ILCS 105/107.05.

### **B. [9.3] Turnover**

Sections 18.5(c) – 18.5(h) of the Condominium Property Act, 765 ILCS 605/18.5(c) – 605/18.5(h), are also applicable to homeowners' associations (also referred to as community associations). Section §18.5(f)(2) requires the developer to turn over control of the association to the owners not later than the earlier to occur of three years after the recording of the declaration or 60 days after the sale of 75 percent of the units. (It is worth noting that this is a controversial

provision since §18.5 is entitled “Master Associations”; however, §18.5(j) makes it applicable to common interest communities as well.)

### **C. [9.4] Declaration of Restrictive Covenants (Declaration)**

The underlying governing document of a homeowners’ association is the declaration of restrictive covenants. This document is recorded in the office of the recorder of the county wherein the property is located, submitting the designated common areas and the lots to the declaration’s covenants. The covenants are the rules governing the maintenance responsibility as well as architectural and aesthetic guidelines. The bylaws, discussed in §§9.5 – 9.13 below, address association governance.

Typical provisions contained in the declaration are

1. landscaping and lot maintenance;
2. architectural control over additions and improvements;
3. retention/detention;
4. collection of assessments;
5. remedies;
6. monuments;
7. private roads;
8. recreational facilities;
9. party wall agreements
10. real estate taxes;
11. insurance;
12. loans;
13. amendments; and
14. dissolution.

The author generally refers to these as the “rules of property.”

## **D. Bylaws**

### **1. [9.5] In General**

The bylaws are drafted in accordance with the provisions of the General Not For Profit Corporation Act. However, there are some areas in the NFPCA that are not association-specific and that must be filled in by the drafter. Also, in a number of instances the NFPCA defers to the bylaws, so, again, the drafter must be more precise in the definitions of terminology used.

In drafting the bylaws for the new association, consideration must be given to the developer's conception of the new community, particular nuances of the property itself, and state-of-the-art references to principles established in new cases and statutes.

### **2. Contents of Bylaws**

#### *a. [9.6] Purpose and Powers*

The homeowners' association is an organization established to administer and maintain the common areas, and in some instances the lots, and to preserve and protect property values. See the sample bylaws in §9.22 below. The powers are those that are granted under the General Not For Profit Corporation Act.

Powers typically include the right to sue and be sued, to purchase and lease property, to borrow money, to invest funds, and most important to indemnify directors and officers.

#### *b. [9.7] Establishment of a Registered Agent*

Generally, the developer names himself or herself, an employee, or a lawyer as registered agent. This agency role should be transferred to the association attorney immediately upon turnover of control to a board elected by the owners.

#### *c. [9.8] Qualification for Membership*

Owners are members of the homeowners' association, and in most instances membership is a prerequisite for serving on the board, but, unlike condominium associations, not always.

#### *d. [9.9] Meetings*

Bylaws provisions must include dates and procedures for both board of directors' meetings and owners' meetings, including elections, notices, proxies, quorum, number of directors, replacement and removal, etc. Voting rights are established for individual members, members who share ownership interests, and entities such as corporations and trusts that own units.

#### *e. [9.10] Proxies*

Though not permitted for directors (805 ILCS 105/108.05(d)), proxies are provided for in membership votes (805 ILCS 105/107.50). A member entitled to vote may vote in person or, unless the articles of incorporation or bylaws explicitly prohibit, by proxy executed in writing by the member or by that member's duly authorized attorney-in-fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Unless otherwise prohibited by the articles of incorporation or the bylaws, the election of directors, officers, or

representatives by members may be conducted by mail, e-mail, or any other electronic means as set forth in 805 ILCS 105/107.10(a).

*f. [9.11] Board of Directors*

The powers and duties of the board should be spelled out in the bylaws; for example, hiring and firing employees and agents; maintaining the amenities required under the declaration; preparing, adopting, and enforcing rules and regulations; adopting an annual budget and collecting assessments; appointing committees; keeping the books and records current, etc. Board meetings at which business is being conducted must be open to the members upon no less than 48 hours written notice, unless a waiver is on file. 805 ILCS 105/108.21. Section 108.21 provides:

**Meetings of the board of directors of a not-for-profit homeowners association or residential cooperative not-for-profit corporation shall be open to any member, except for the portion of any meeting held (i) to discuss litigation when an action against or on behalf of the corporation has been filed and is pending in a court or administrative tribunal, or when the board of directors finds that such an action is probable or imminent, (ii) to consider information regarding appointment, employment or dismissal of an employee, or (iii) to discuss violations of rules and regulations of the corporation. Any member may record by tape, film or other means the proceedings at such meetings or portions thereof required to be open by this Section. The board may prescribe reasonable rules and regulations to govern the right to make such recordings. Notice of such meetings shall be mailed or delivered at least 48 hours prior thereto, unless a written waiver of such notice is signed by the person or persons entitled to such notice pursuant to the articles of incorporation, bylaws, other instrument before the meeting is convened. Copies of notices of meetings of the board of directors shall be posted in entranceways, elevators, or other conspicuous places at least 48 hours prior to the meeting of the board of directors. If there is no common entranceway for 7 or more units, the board of directors may designate one or more locations in the proximity of such units where the notices of meetings shall be posted. For purposes of this Section, “meeting of the board of directors” means any gathering of a quorum of the members of the board of directors held for the purpose of discussing business of the homeowners association or cooperative. The provisions of this Section shall apply to any homeowners association or residential cooperative situated in the State of Illinois regardless of where it may be incorporated.**

If compensation for serving on the board is authorized, it must be expressly stated and generally requires the consent of the membership.

A method of removing directors must be established as well as a method of replacing directors who have been removed or have resigned; otherwise, 805 ILCS 105/108.35 applies.

When a developer fails or refuses to turn over control of a homeowners’ association by the earlier of three years from the recording of the declaration or 60 days after the sale of 75 percent of the units, 765 ILCS 605/18.5(f) establishes procedures for a “forced turnover.”

Electing the board generally is no different than in any other not-for-profit corporation in which the members get to vote. The exception is the first election. Similar to a condominium election, the first board is elected via transition of control of the association from the developer to a board elected by the members. Although 805 ILCS 105/107.15 provides for notice of an owners' meeting not less than 5 nor more than 60 days in advance, most association bylaws follow the less restrictive "not less than 10 nor more than 30 days" rule.

Generally, a candidate's application accompanies the notice with a proxy form and application to be returned by a date certain. The meeting is conducted in accordance with the rules of parliamentary procedure adapted from ROBERT'S RULES OF ORDER. When proxies are permitted and cumulative voting is proscribed, it must be specified in the bylaws. Votes are tabulated on a one-vote-per-home rule (per capita) as opposed to a percentage-of-ownership rule (as in a condominium). Terms of office are specified in the bylaws, although the best practice is staggered terms.

*g. [9.12] Officers*

Generally, the officers of an association are the president, treasurer, secretary, and one or more vice-presidents. The officers are elected by the directors and may be removed by a simple majority unless otherwise specified in the bylaws. The powers and duties of the officers, as agents of the association, are those that are expressly granted by the board of directors and the bylaws.

*h. [9.13] Committees*

805 ILCS 105/108.40 states:

**(a) If the articles of incorporation or bylaws so provide, a majority of the directors may create one or more committees and appoint directors or such other persons as the board designates, to serve on the committee or committees. Each committee shall have two or more directors, a majority of its membership shall be directors, and all committee members shall serve at the pleasure of the board. However, committees appointed by the board or otherwise authorized by the bylaws relating to the election, nomination, qualification, or credentials of directors or other committees involved in the process of electing directors may be composed entirely of non-directors.**

**(b) Unless the appointment by the board of directors requires a greater number, a majority of any committee shall constitute a quorum, and a majority of committee members present and voting at a meeting at which a quorum is present is necessary for committee action. A committee may act by unanimous consent in writing without a meeting and, subject to the provisions of the bylaws or action by the board of directors, the committee by majority vote of its members shall determine the time and place of meetings and the notice required therefor.**

**(c) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under Section 108.05 of this Act; provided, however, a committee may not:**

**(1) Adopt a plan for the distribution of the assets of the corporation, or for dissolution;**

**(2) Approve or recommend to members any act this Act requires to be approved by members, except that committees appointed by the board or otherwise authorized by the bylaws relating to the election, nomination, qualification, or credentials of directors or other committees involved in the process of electing directors may make recommendations to the members relating to electing directors;**

**(3) Fill vacancies on the board or on any of its committees;**

**(4) Elect, appoint or remove any officer or director or member of any committee, or fix the compensation of any member of a committee;**

**(5) Adopt, amend, or repeal the bylaws or the articles of incorporation;**

**(6) Adopt a plan of merger or adopt a plan of consolidation with another corporation, or authorize the sale, lease, exchange or mortgage of all or substantially all of the property or assets of the corporation; or**

**(7) Amend, alter, repeal or take action inconsistent with any resolution or action of the board of directors when the resolution or action of the board of directors provides by its terms that it shall not be amended, altered or repealed by action of a committee.**

**(d) The board of directors may create and appoint persons to a commission, advisory body or other such body which may or may not have directors as members, which body may not act on behalf of the corporation or bind it to any action but may make recommendations to the board of directors or to the officers.**

The bylaws generally provide for the appointment of committees. The General Not For Profit Corporation Act distinguishes between committees and commissions. 805 ILCS 105/108.40. A committee is required to have two directors as members and has independent authority, whereas a commission is always acting under color of the authority of the board of directors and is merely a recommending body and therefore does not require any directors as members.

However, the term “committee” has become common parlance for “commission,” and most homeowners’ associations operate with the commission format.

There are standing committees, such as landscaping, buildings and grounds, social, rules enforcement, architectural control, and finance committees, and committees with a specific, one-time charge such as nominating, budget, or rules committees. Of course, the board can always add or select a “special committee” or subcommittee for special projects such as decorating, document revisions, etc.

The committee chairperson is selected by the board president with the advice and consent of the board, and committee members are volunteers unless membership is somehow restricted.

### **III. [9.14] INSURANCE**

All lot or unit owners in a homeowners' association must provide their own property, casualty, and liability insurance for their own dwellings. The only exception is when the governing documents empower the board to purchase a master policy that also insures the dwellings in the same manner of a condominium. The board of the homeowners' association must, however, purchase property, casualty, and liability insurance for the common areas, especially when there are recreational facilities. In addition, the board also must acquire directors' and officers' liability insurance, notwithstanding the indemnification provisions contained in the General Not For Profit Corporation Act and most declarations.

### **IV. [9.15] REAL ESTATE TAXES**

Each lot in a homeowners' association is individually assessed and taxed even when the housing is attached. The common areas are conveyed to the association by the developer at the time of turnover and/or after the lots have been sold. Once the association acquires title in its own name, the lots can be reclassified for taxation purposes as essentially tax exempt (\$1 per parcel per year per 35 ILCS 200/10-35).

Until the lots are conveyed, however, the lots are assessed and taxed to the developer as the owner.

The owners can vote to empower the board to seek relief from individual lot real estate taxes. However, unlike a condominium, in which the board is empowered to seek relief without owner approval since all units are included, an individual lot owner in a homeowners' association could opt out.

### **V. [9.16] FINANCES**

805 ILCS 105/107.75 states:

**(a) Each corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office a record giving the names and addresses of its members entitled to vote. Any voting member shall have the right to examine, in person or by agent, at any reasonable time or times, the corporation's books and records of account and minutes, and to make extracts therefrom, but only for a proper purpose. In order to exercise this right, a voting member must make written demand upon the corporation, stating with particularity the records sought to be examined and the purpose therefor. If the corporation refuses examination, the voting member may file suit in the circuit court of the county in which either the registered agent or principal office of the corporation is located to compel by mandamus or otherwise such examination as may be proper. If a voting**

**member seeks to examine books or records of account the burden of proof is upon the voting member to establish a proper purpose. If the purpose is to examine minutes, the burden of proof is upon the corporation to establish that the voting member does not have a proper purpose.**

**(b) A residential cooperative not-for-profit corporation containing 50 or more single family units with individual unit legal descriptions based upon a recorded plat of a subdivision and located in a county with a population between 780,000 and 3,000,000 shall keep an accurate and complete account of all transfers of membership and shall, on a quarterly basis, record all transfers of membership with the county clerk of the county in which the residential cooperative is located. Additionally, a list of all transfers of membership shall be available for inspection by any member of the corporation.**

The lifeblood of an association is its primary revenue source, assessments. Each year the board adopts an annual operating budget that also provides for an allocation for reserves for either capital expenditures or contingencies. The financial management of the association is the responsibility of the board of directors; however, most associations hire a professional property manager to collect the assessments, pay the bills, and in general keep the books and records of the association. There are remedies available to the board for collecting delinquent assessments, including liens, lawsuits, eviction, and foreclosure.

The board of directors is obligated to establish a policy and enforce it. However, the day-to-day status is the responsibility of the manager, working in conjunction with legal counsel.

Some associations that manage only a limited amount of property as common areas can assess annually, while an association that has extensive landscaping and maintenance responsibilities may find it necessary to assess quarterly or even monthly. A buyer always must be educated as to whether he or she is buying into a limited or full maintenance-type community.

At the end of each year, each member should be furnished with a copy of the statement of financial condition of the association from the previous year, and a diligent board should have an independent audit of the books and records conducted annually or at least biennially.

The board of directors is the keeper of the books and records, and even though it may choose to hire a manager to maintain them on a daily basis, it is ultimately the board that is liable. All homeowners' association members have a legal right to examine the books and records upon reasonable notice and during normal business hours. The General Not For Profit Corporation Act defers to the bylaws as to what records are available.

## **VI. [9.17] AMENDMENTS**

The homeowners' association's operating documents can be amended, revised, or updated subject to the restrictions stated therein. The rules and regulations can be amended by the board of directors since it is the board that initially adopts them.

The bylaws and the covenants can be amended by the procedures set forth in the documents themselves. The General Not For Profit Corporation Act establishes a requirement of a two-thirds majority of the members present at an annual or special meeting (805 ILCS 105/110.20), but defers to the organizational documents, which typically will have a more restrictive procedure.

The declaration is a covenant running with the land, so in order to be valid, it must be recorded. However, this requirement is not imposed on either bylaws or rules unless so specified in the document itself. Sometimes the articles of incorporation need to be amended, such as when an association changes its name, and an amendment must be adopted by the board and registered with the Office of the Secretary of State before it can be recorded.

## **VII. [9.18] REMOVAL OF DIRECTORS AND OFFICERS**

Since the directors are elected by the members, unless otherwise specified in the operating documents, they may be removed only by action of the members. A director may be removed at a special meeting of members, subject to notice, by a vote of two thirds of the members present in person or by proxy. An officer who is elected by a majority of the directors can also be removed by a majority vote of the directors. 805 ILCS 105/108.35.

## **VIII. [9.19] LIABILITY**

Directors and officers generally are indemnified for their actions as directors while acting within the scope of their authority. Under 805 ILCS 105/108.70, no director “shall be liable, and no cause of action can be brought for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such director,” unless the director is paid more than \$25,000 per year for his or her duties as director, or “the act or omission involved willful or wanton conduct.” 805 ILCS 105/108.70(b). Even though compatible provisions almost always appear in declarations or bylaws, all boards should also maintain directors’ and officers’ liability insurance. Even though individual directors are to be indemnified and defended, the defense costs alone could bankrupt an association even if the director were found to have no liability.

## **IX. [9.20] MERGER AND CONSOLIDATION**

Sometimes a homeowners’ association may find the need to merge with another association; for example, when two adjoining phases established by the developer as two separate entities have all interests compatible and duplicate fees are being paid for many services. Merger and consolidation are governed by 805 ILCS 105/111.05, *et seq.* The appropriate resolutions and articles of merger and consolidation must be executed. When the documents are deficient in establishing a procedure, the Not For Profit Corporation Act provides that two thirds of the members voting in person or by proxy at a special meeting can authorize a merger. 805 ILCS 105/111.20.

## **X. [9.21] PROPERTY MANAGERS**

The licensing of all managers of community associations shall commence on or about January 1, 2011, or within 12 months of the adoption of rules for licensing by the Department of Professional Regulation and Licensing, pursuant to the Community Association Manager Licensing and Disciplinary Act, 225 ILCS 427/1, *et seq.* Until this new statute was enacted, no license was required. Section 18.7 of the Condominium Property Act, 765 ILCS 605/18.7, provides for Standards for Community Association Managers, but it is self-enforcing.

## **XI. [9.22] APPENDIX — SAMPLE BYLAWS**

**BYLAWS FOR  
\_\_\_\_\_ ASSOCIATION  
an Illinois Not-for-Profit Corporation**

**ARTICLE I  
NAME OF CORPORATION**

**1.01 NAME:** The name of this corporation is \_\_\_\_\_ ASSOCIATION.

**ARTICLE II  
PURPOSE AND POWERS**

**2.01 PURPOSES:** The purposes of this Association are to act on behalf of its members collectively, as their governing body with respect to the preservation, care, maintenance, replacement, improvement, enhancement, operation, and administration of both real and personal property and for the promotion of the health, safety, and welfare of the members of the Association, all on a not-for-profit basis. These Bylaws are attached as Exhibit \_\_\_ to the Declaration of \_\_\_\_\_ Association (Declaration). All terms used herein shall have the meanings set forth in the Declaration.

**2.02 POWERS:** The Association shall have and exercise all powers as are now or may hereafter be granted by the General Not For Profit Corporation Act of the State of Illinois (Act), the Declaration, and these Bylaws.

**2.03 PERSONAL APPLICATION:** All present or future Owners, tenants, future tenants, and their agents and employees, and any other person that might use the facilities of the Townhome Property in any manner, shall be subject to the provisions of the Declaration and these Bylaws. The acquisition or rental of a Townhome Unit or the act of occupancy of a Townhome Unit will signify that the Declaration and these Bylaws are accepted and ratified and will be complied with.

**2.04 INCORPORATION OF PROVISIONS OF THE ACT:** These Bylaws shall be deemed to incorporate and include any provisions that are specifically required by the Act from time to time to be included in the Bylaws, including, without limitation, those provisions required in Section \_\_\_ of the Act.

**ARTICLE III  
OFFICES**

**3.01 REGISTERED OFFICE:** The Association shall have and continuously maintain in this state a registered office and a registered agent whose office is identical with such registered office and may have other offices within or without the State of Illinois as the Board may from time to time determine.

**3.02 PRINCIPAL OFFICE:** The Association's principal office shall be maintained on the Parcel or at the office of the managing agent engaged by the Association.

#### **ARTICLE IV MEETINGS OF MEMBERS**

**4.01 VOTING RIGHTS:** The Association shall have one class of membership. There shall be one individual with respect to each Townhome Unit who shall be entitled to vote at any meeting of the Owners (Voting Member). If the Owner of a Townhome Unit is one individual, then such individual shall be the Voting Member. If the Record ownership of a Townhome Unit shall be in more than one individual or if the Owner is a trustee, corporation, partnership, or other legal entity, then the Voting Member shall be designated by the Owner or Owners in writing to the Board, and if in the case of multiple individual Owners no designation is given, then the Board may, at its election, recognize an individual Owner of the Townhome Unit as the Voting Member for such Townhome Unit. Any or all Owners may be present at any meeting of the Owners, but the voting rights shall be vested exclusively in the Voting Members; provided, however, that a Voting Member may vote either in person or by proxy executed in writing by the Voting Member or his or her duly authorized attorney-in-fact and filed with the Secretary before the meeting. No proxy shall be valid after 11 months from the date of its execution. Each Voting Member shall have one vote for each Townhome Unit that he or she represents. No Voting Member may present more than \_\_\_\_ proxies at any time.

**4.02 PLACE OF MEETING; QUORUM:** Meetings of the Owners shall be held on the Townhome Property or at such other place in the County in which the Townhome Property is located and convenient to the Owners as may be designated in any notice of a meeting. All meetings shall be conducted in accordance with the rules and provisions set forth in ROBERT'S RULES OF ORDER, as from time to time published. Voting Members holding 20 percent of the votes, represented in person or by proxy, shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the Voting Members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption of any matter voted on by the Voting Members, unless a greater proportion is required by the Act, the Declaration, or these Bylaws. The affirmative vote of 75 percent of the votes entitled to be cast shall be required for the following actions: (a) merger or consolidation of the Association; and (b) sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, of the property and assets of the Association. The affirmative vote of 75 percent of the votes entitled to be cast shall be required for the purchase or sale of land or of Townhome Units on behalf of all Owners.

**4.03 ANNUAL MEETINGS:** There shall be an annual meeting of the Owners on the [number] [day of the week] of [month] of each year at \_\_\_\_ p.m. or at such other time and/or date as shall be designated by the Board.

**4.04 SPECIAL MEETINGS:** Special meetings of the owners may be called at any time for the purpose of considering matters that, by the terms of the Declaration, require the approval of all or some of the Voting Members or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by the President, a majority of the Board, or by Voting Members representing at least 20 percent of the votes.

**4.05 NOTICE OF MEMBERSHIP MEETINGS:** Written notice of any membership meeting shall be mailed or personally delivered and posted conspicuously on the Townhome Property, giving owners not less than 10 nor more than 30 days notice of the time, place, and purpose of the meeting.

## **ARTICLE V BOARD OF DIRECTORS**

**5.01 IN GENERAL:** The affairs of the Association and the direction and administration of the Property shall be vested in the Board, which shall consist of \_\_\_\_ persons (the Directors). The Board shall have all of the powers granted to it under the Declaration, these Bylaws, and the General Not For Profit Corporation Act of the State of Illinois.

**5.02 ELECTION:** At each election for members of the Board, each Voting Member for each Townhome Unit that he or she represents shall be entitled to the number of votes equal to the number of Directors to be elected and cumulative voting shall be permitted; provided that a Resident who is a contract purchaser of a Townhome Unit from a contract seller other than the Declarant shall have the right to vote for Directors unless such contract seller expressly retains such right in writing. At the first annual meeting of the Owners after these Amended and Restated Bylaws become effective, a full Board of Directors shall be elected and the two candidates receiving the highest number of votes shall each be elected to a two-year term, and the one candidate receiving the next highest number of votes shall be elected to a one-year term. At each subsequent annual meeting Directors shall be elected to replace those directors whose terms expire, and each such Director shall serve a two-year term. Each Director shall serve until his or her term expires or is terminated or until his or her successor shall have been elected and qualified. A Director may succeed himself or herself in office.

**5.03 ANNUAL MEETINGS:** The Board shall hold an annual meeting within ten days after the annual meeting of the Owners on [date] at such place as shall be fixed by the Directors at the annual meeting of the Owners, for the purpose of electing officers and such other purposes as the Board deems appropriate.

**5.04 REGULAR MEETINGS:** Regular meetings of the Board shall be held at such time and place as shall be determined at the annual meeting or from time to time by a majority of the Directors; provided that not less than four such meetings shall be held during each fiscal year.

**5.05 SPECIAL MEETINGS:** Special meetings of the Board may be called by the President or by at least one third of the Directors then serving.

**5.06 NOTICE OF BOARD MEETINGS:** Notice of each meeting of the Board shall be mailed or personally delivered to each Director at least 48 hours prior to the meeting, and notice of any meeting of the Board concerning the adoption of the proposed annual budget or any increase or establishment of an assessment shall be given to each owner in the same manner as provided in Section 4.05 of these Bylaws, unless a written waiver of such notice is signed by the person or persons entitled to such notice before the meeting is convened. Notice of each meeting of the Board shall also be conspicuously posted on the Townhome Property at least 48 hours prior to the meeting.

**5.07 OPEN MEETINGS:** Each meeting of the Board, to the extent required by law, shall be open to any Owner and, if required under the Act, notice of such meeting shall be mailed or personally delivered and posted conspicuously on the Townhome Property at least 48 hours prior thereto, unless a written waiver of such notice is signed by the person or persons entitled to such notice before the meeting is convened. The Board may adopt reasonable rules governing the conduct of Owners who attend meetings, and Owners who do not comply with such rules may be removed from the meeting.

**5.08 QUORUM:** A majority of the Directors serving from time to time shall constitute a quorum for the election of officers and for the transaction of business at any meeting of the Board. Except as otherwise expressly provided herein or in the Declaration, any action may be taken upon the affirmative vote of a majority of the Directors present at a meeting at which a quorum is present.

**5.09 COMPENSATION/REIMBURSEMENT FOR EXPENSES:** No Director shall be compensated by the Association for services rendered to the Association, except as expressly provided in a resolution duly adopted by the Voting Members. Upon the presentation of receipts or other appropriate documentation, a Director shall be reimbursed by the Association for reasonable out-of-pocket expenses incurred in the course of the performance of his or her duties as a Director.

**5.10 REMOVAL OR RESIGNATION OF DIRECTOR:** Any Director may be removed from office, with or without cause, by action of the Voting Members at any annual meeting or at a special meeting called for such purpose. Any Director whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting. Any Director may resign at any time by submitting his or her written resignation to the Board. Any Director may be removed by agreement between the remaining two Directors if he or she misses three consecutive meetings without good cause shown. If a Director ceases to be an owner or a Voting Member, he or she shall be deemed to have resigned as of the date of such cessation. A successor to fill the unexpired term of a Director who resigns or is removed may be appointed by both of the remaining Directors at any regular meeting or at any special meeting called for such purpose, and any successor so appointed shall serve the balance of his or her predecessor's term.

**5.11 POWERS AND DUTIES OF THE BOARD:** The Board shall have all of the powers and duties granted to it or imposed on it by the Act, the Declaration, and these Bylaws, including, without limitation, the following powers and duties:

- (a) Subject to the provisions of Section \_\_\_\_ of the Declaration, to engage the services of a manager or managing agent to assist the Association in performing and providing such services as the Association is required to provide to its members under the Declaration;
- (b) To provide for the designation, hiring, and removal of such employees and such other personnel, including attorneys and accountants, as the Board may, in its discretion, deem necessary or proper for the effective administration of the Association;
- (c) To provide for any maintenance, repair, alteration, addition, improvement, or replacement of the Common Elements for which the Association is responsible under the Declaration and these Bylaws;
- (d) To estimate and provide each Owner with an annual budget as provided for in the Declaration;
- (e) To set, give notice of, and collect assessments from the Owners as provided in the Declaration;
- (f) To pay the Common Expenses;
- (g) To adopt rules and regulations as provided in the Declaration;
- (h) To delegate the exercise of its power to committees appointed pursuant to Section 7.01 of these Bylaws;
- (i) To own, convey, encumber, lease, or otherwise deal with Townhome Units or other real property conveyed to or purchased by the Association; and
- (j) To keep detailed, accurate records of the receipts and expenditures affecting the use and operation of the Townhome Property.

## **ARTICLE VI OFFICERS**

**6.01 OFFICERS:** The officers of the Association shall be a President, a Secretary, a Treasurer, and such assistants to such officers as the Board may deem appropriate. All officers shall be elected at each annual meeting of the Board and shall hold office at the discretion of the Board. Officers may succeed themselves in office. The President, Secretary, and Treasurer shall be Directors. The Board may appoint a Recording Secretary for purposes of taking minutes of the Board and Owners' meetings, who need not be either a Director or an Owner.

**6.02 VACANCY OF OFFICE:** Any officer may be removed at any meeting of the Board by the affirmative vote of the majority of the Directors in office, either with or without cause, and any vacancy in any office may be filled by the Board at any meeting thereof.

**6.03 POWERS OF OFFICERS:** The respective officers of the Association shall have such powers and duties as are from time to time prescribed by the Board and as are usually vested in such officers of an Illinois not-for-profit Corporation, including, without limitation, the following:

- (a) The President shall be the Chief Executive Officer of the Association and shall preside at all meetings of the Owners and at all meetings of the Board and shall execute amendments to the Declaration and these Bylaws, as provided for in the Act, the Declaration, and these Bylaws;
- (b) The Secretary shall keep minutes of all meetings of the Owners and of the Board, shall have custody of the corporate seal of the Association, shall have charge of such other books, papers, and documents as the Board may prescribe, and shall be responsible for giving and receiving all notices to be given to or by the Association under the Act, the Declaration, or these Bylaws; and
- (c) The Treasurer shall be responsible for Association funds and securities and for keeping full and accurate accounts of all receipts and disbursements in the Association's books of account kept for such purpose and shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board.

**6.04 OFFICERS' COMPENSATION:** The officers shall receive no compensation for their services except as expressly provided by a resolution duly adopted by the Voting Members.

## **ARTICLE VII COMMITTEES DESIGNATED BY BOARD**

**7.01 BOARD COMMITTEES:** The Board, by resolution adopted by a majority of the Directors in office, may designate one or more committees, each of which shall consist of two or more Directors, which committees, to the extent consistent with law and as provided in said resolution, shall have and exercise the authority of the Board in the management of the Association; but the designation of such committees and delegation thereto of authority shall not operate to relieve the Board, or any individual Director, of any responsibility imposed on it or him or her by law.

**7.02 SPECIAL COMMITTEES:** Other committees not having and exercising the authority of the Board in the management of the Association may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, the members of each such committee shall be Owners and the President of the Association shall appoint the members thereof. Any member thereof may be removed by the person or persons authorized to appoint such member whenever in their judgment the best interests of the Association shall be served by such removal.

**7.03 TERM:** Each member of a committee shall continue as such until the next annual meeting of the Board and until his or her successor is appointed, unless the committee shall be sooner terminated, unless such member shall be removed from such committee, or unless such member shall cease to qualify as a member thereof.

**7.04 CHAIRMAN:** One member of each committee shall be appointed chairperson.

**7.05 VACANCIES:** Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

**7.06 QUORUM:** Unless otherwise provided in the resolution of the Board designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

**7.07 RULES:** Each committee may adopt rules for its own government not inconsistent with the Declaration, these Bylaws, or rules adopted by the Board.

#### **ARTICLE VIII INSTRUMENTS, CHECKS, DEPOSITS, AND FUNDS**

**8.01 EXECUTION OF INSTRUMENTS:** The Board may authorize any officer(s) or agent(s) of the Association, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument (including amendments to the Declaration or these Bylaws that must be executed by the Association) in the name of and on behalf of the Association, and such authority may be general or confined to specific instances. In the absence of any such authorization by the Board, any such contract or instrument shall be executed by the President and attested to by the Secretary of the Association.

**8.02 PAYMENTS:** All checks, drafts, vouchers, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Association shall be signed by such officer(s) or agent(s) of the Association, and in such manner, as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board, such instruments shall be signed by the Treasurer and countersigned by the President of the Association.

**8.03 BANK ACCOUNTS:** All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board shall elect.

**8.04 SPECIAL RECEIPTS:** The Board may accept on behalf of the Association any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Association.

#### **ARTICLE IX FISCAL MANAGEMENT**

**9.01 FISCAL YEAR:** The fiscal year of the Association shall be determined by the Board and may be changed from time to time as the Board deems advisable.

**9.02 ANNUAL STATEMENT:** Within a reasonable time after the close of each fiscal year the Board shall furnish each Owner with an itemized accounting of the Common Expenses for such fiscal year actually incurred or paid, together with an indication of which portion of the Common Expenses were incurred or paid for capital expenditures or repairs or the payment of real estate taxes, and with a tabulation of the amounts collected pursuant to the Annual Assessment budget, and showing the net excess or deficit of income over expenditures plus reserves.

**9.03 ASSESSMENT PROCEDURE:** Annual assessments and special assessments shall be made and collected as provided in Article \_\_\_\_ of the Declaration, and the provisions of Article \_\_\_\_ are incorporated herein by reference.

#### **ARTICLE X BOOKS AND RECORDS**

The Association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, the Board, and committees having any of the authority of the Board, and shall keep at the registered or principal office of the Association a record giving the names and addresses of the members. All books and records of the Association may be inspected by any Owner, or his or her agent, mortgagee, or attorney, for any proper purpose at any reasonable time.

#### **ARTICLE XI SEAL**

The Board may provide for a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the Association and the words "Corporate Seal, Illinois."

#### **ARTICLE XII AMENDMENTS**

These Bylaws may be amended or modified at any time, or from time to time in the same manner as provided in Section \_\_\_\_ of the Declaration; provided that no provision of these Bylaws may be amended or modified so as to conflict with the provisions of the Declaration or the Act. No amendment to these Bylaws shall become effective until Recorded.

\_\_\_\_\_ Association  
By: \_\_\_\_\_