

COMPILATION OF COMMENTS ON 2ND DRAFT OF AMENDMENTS TO FPOA GOVERNING DOCUMENTS EMAILED AS OF 5/7/2012.

ARTICLES OF INCORPORATION

Article 8 Principal Office and Registered Agent

1. Can this be generalized so that this document doesn't have to be amended each year thus generating more attorney fees? Remove the person's name and point the reference to the Co Secretary of State's office where the annual filing needs to be done anyway. (rs)

Article 9 Board of Directors

1. A board of only 3 to 5 people is too small for a 300+ member organization. Suggest minimum number be 7 to 9. (ajm)

Article 10 Amendment

1. Owner approval requirements too low. No action should be taken that affects property without a 67% vote of all members. (ajm)
2. This is not acceptable. Rogue groups could affect unwanted change literally at any time—much like how many members feel about all of these changes now! (rs)

BY LAWS

Article 4 Meetings of Members

4.2 (b) Budget Meetings

1. Add other ways to conduct meetings, i.e. internet. (rs)

4.2 (c)

1. Notice for the meeting should extend from 10 to 20 days. (rs)

4.4 Notice of Meetings

1. Leave notification period at 30 days. Many owners are out of county or state and need time to make arrangements to attend meetings. (ajm)
2. Notification should be at least 20 days before. (rs)

4.6 Quorum of Members

1. 20% of membership is not enough for a quorum. With 300 owners, this means that 30 owners can make changes that affect all of us. In light of the restructuring of governance of the subdivision,, we need at least 30% of the membership as a quorum. It is easy enough to do electronic polls of owners for votes that affect members and their property. One-fifth of the membership is not enough representation. (ajm)
2. Rogue group could affect unwanted change. Why would a notice of new date, time and place not need to be given if meeting is adjourned? (rs)

4.13 Acceptance or Rejection of Individual Votes

1. What about a period of time to prove the validity of the signature/proxy?

Article 5 Board

5.1 Board Number

1. Five members are not enough. Five people (1.6% of the ownership) cannot be permitted to act for 300. A quorum of three board members who can levy assessments, enforce fines and liens, and take on debt is not a fair or workable situation for this subdivision. (ajm)
2. "...Board of Directors which shall consist of five members...) Is this in conflict with Article 9 of the Articles of Inc.? (rs)

5.7 Compensation

1. Is this a bit open-ended? Do you want to pay for my gas to travel from Denver to Fairplay and back just because I'm a Board member? What if I'm in Phoenix on business and need to come back for a Board meeting? (rs)

Article 6 Meetings of Directors

6.4 Location of Meetings and Open Meetings

1. Why would meetings be held in the Denver Metro area? (rs)

6.7 Proxies for Board Meetings

1. Will proxies have to describe what is being voted upon? (rs)

Article 7 Powers and Duties of the Board of Directors

7.1 (i) Powers and Duties

1. Too broad a power. Need some checks and balances. Suggest adding "in accordance with the approved FPOA budget or other actions approved by the Board and distributed in advance to the members" (dw)

7.2 Managing Agent

1. Gives too much power to the managing agent. A manager cannot be allowed to change governing documents, set the budget, get the HOA into litigation, buy or sell assets or real estate, or take out loans. Please delete for the managing agent the following powers assigned to the Board in Section 7.1: (b), (c), (g), (i), (j), (k). (ajm)

Article 10 Books and Records

10.3 Examination

1. Does a written policy exist re: confidential documents? Can I get a list of all members and their contact information? (rs)

Article 11 Amendments

11.1 Bylaw Amendments

1. Vote of a majority of members present or a majority of board members is insufficient protection for the owners. Bylaws should not be amended without a vote of two-thirds of the members, following notice to all owners. (ajm)
2. Rogue groups could affect unwanted change. (rs)

Certification of ByLaws

1. Should require 67% of members voting to ratify new Bylaws—not proposed 1/5th of a quorum.

COVENANTS

Article 2 Name and Description of Property/Easements

2.3 Owners' Easements of Enjoyment

1. Why is 2.3(c) necessary? (rs)

2.6 Easements for the Association

1. Easements have already been established. Any necessary new easements should be sold *only* by a willing lot owner. (joc)
2. Too broad. Opens the door for the BOD to trespass at any time. Additionally, "reasonable notice" is not defined. (rs)

Article 3 The Association

3.3 and 3.4 Authority of the Association and Managing Agent

1. Section 3.3 states that the board is responsible for actions of the manager while Section 3.4 states that the board is not responsible. The board should definitely be responsible. (ajm)
2. Managing agent must carry their own insurance that protects the HOA. (rs)

3.6 Education and Training

1. Delete this provision which seems to permit homeowner dues to be used for individual owners. (ajm)
2. Providing education and training opportunities for Owners, residents and occupants, opens the door for the attorneys to earn additional fees. This is unnecessary. Funding and supporting education and training for officers and directors should be supported. (rs)

Article 4 Assessments of Common Expenses

4.1 Creation of Lien

1. Only the board, not the manager should be allowed to charge owners. (ajm)

4.3, 4.4, 4.5 Annual, Special and Supplemental Assessments

1. Because the board can levy several types of assessments, we absolutely need more owner input. The board must consist of more members, and there should be a provision that states that any increases in current assessments, or any new assessments over \$100 per lot must be approved by 67% of the members of the association. In no case should a majority of five board members have the power to assess owners multiple times for varying assessments. (ajm)
2. Simplify 4.5 by stating that only costs associated with remedying a violation (after due process and notice has been served) will be charged. Can't think of any instances where, as in sections a and b, an improvement needs to be done, nor of any other expenditures or charges beyond remedy and fines. (joc)
3. 4.5(a) is completely open-ended, and gives too much authority to the BOD to assess expenses to a land owner without giving the owner the opportunity to cure the issue. (rs)
4. 4.5(d) is too broad. (rs)

4.6 Working Capital

1. Why has this been added? (joc)

4.8 Effect of Non-Payment

1. Foreclosing on an owner is too much power for the HOA. (ajm)
2. Don't understand why this had been added? Why would association want to buy land? (joc)
3. 4.8(a) is too open. A percent limit needs to be set here. What is "reasonable"? (rs)

4.10 Borrowing

1. Suggest a cap on borrowing – perhaps not to exceed a certain percentage of annual dues. (dm)
2. What does this provision mean? (joc)
3. Remove or use language that would allow for a vote of members. (gt)

Article 5 Covenants and Restrictions on Use, Alienation and Occupancy

5.1 Flexible application of the Subsequent Covenants and Restrictions

1. Covenants should be reasonable and enforceable once agreed on and changed. Exceptions should not be made to give the board flexibility in deciding what they want to enforce. (joc)
2. This sounds like “limitations and restrictions” could be applied to “Joe” but waived for “Sam”. “circumstances” should be clearly defined so it would be applied equally to everyone. (gt)

5.3 Use/Occupancy

1. Prohibits all short term rentals or B&Bs. Too restrictive for a subdivision of this size where many of the homes are vacation homes. (ajm)
2. Garage sale, estate sale, snow removal or other service signs are all prohibited? What is “reasonable and customary” in part (c) of this paragraph? (rs)

5.4 Leasing and Occupancy

1. Does this refer to an owner leasing a vacant lot? Can’t think of any circumstances of this. (joc)

5.5 Maintenance of Lots and Improvements

1. Eliminate “replace” in 4th line of this paragraph. (joc)

5.6 Residence and Building Size and Location

1. Make sure these are consistent with county regulations. (joc)

5.7 Restrictions on Pets

1. Don’t believe in dog breed restrictions. However no dog should be allowed to live outdoors—it’s cruel, disturbs wildlife, and encourages barking. (joc)
2. This has changed significantly from Article 22 of original Declaration. "Domestic Animals" no longer is in the language, only "a reasonable number of horses (as determined by the Board)". What if someone wanted a goat? It should not be determined solely by the Board what a "reasonable number" should be. And, why would Sacramento Creek have anything to say about it as long as water were hauled in for "Domestic animals", thereby not violating the water decree? I also do not think the Board should have sole discretion on declaring any pet as a "danger" nor be able to declare any breed to be dangerous. Will the Board all be experts on breeds and animal behavior so as to be qualified to make such a decision? Don't blame an animal for the way certain people have trained them. Put a clause in there to keep out the people who train their animals to be dangerous. The only thing I agree with in this paragraph is the picking up of feces from common areas and the hold harmless clause. I have been impressed since living in Foxtail because everyone I see has their dogs on leash, complying with original Article 22. I see no need to model this after some Front Range subdivision.
3. “Feces left by Pets upon the Common Area must be removed promptly by the owner of the Pet ...” Does this include horses? Can the common area be defined as roadways too? Does the management company watch, patrol, and pick up as well? Who does the DNA testing? (rs)

5.8 Antennae

1. This entire section is ABSOLUTELY unacceptable. There is sufficient tree cover to limit the sight of any other antennae structure. The FCC issued ruling PRB-1 in 1985 giving HOAs guidelines for antennae structure. This section restricts anyone with the interest in Amateur Radio from constructing and using antennae structures needed to adequately transmit and receive signals. Amateur radio has been a vital resource for emergency communications and public events – Mosquito Pass mule races as an example. (rs)

5.9 Tanks

1. This provision is not necessary. (ajm)
2. Will the ACC (ARC) approve the screen to hide a tank, or sit on it for 45 days so it is denied. Does this mean the 5 gal portable propane tank for my BBQ grill needs a screen? Where did this come from? Another front range HOA thing? (gt)
3. This is burdensome and not clear as to what screening is needed. And why should this even be an issue? (rs)

5.11 Vehicular Parking, Storage and Repairs

1. We all know we can't wash cars, as it would violate the water decree. The rest of this paragraph not allowing me to repair my vehicles outside a garage would produce undue hardship to me (and others) as I do not have a garage and would be forced to pay someone to do the repairs with money I may not have. Is this another front range HOA thing? (gt)
2. This is not reasonable and too restrictive. (rs)
3. 5.11(e) may not be possible due to the limited access of parts and supplies. Revise. Not sure how many areas are paved in our community. (rs)
4. 5.11(f) Does this really need to be documented? Where do fire lanes exist in the community? (rs)
5. 5.11(h) Isn't this the Sheriff's responsibility?

5.14 No Annoying Lights, Sounds or Odors

1. What about burglar alarms, motion lights and security lighting? (rs)

5.15 No Hazardous Activities

1. Firearms – what if owner is protecting family or property? No campfires or firepits? Too restrictive. (rs)

5.17 Outbuildings and Temporary Structures

1. This unduly restricts the use of my property. The inability to have people stay in tents, in trailers, not be able to build a tree house or simple vantage point is unacceptable. (rs)

5.19 Trash Removal Restriction

1. Why not have bear-proof dumpsters placed in a common location instead of having everyone buy their own containers for \$200 to \$900 per bin? (rs)

5.20 Prohibition of Marijuana Distribution and Growing

1. If someone has the proper licence/prescription and is within Colorado Law, who are we to say they can't do it in their own home, at least for their own use. It could also be done per section 5.3 as "undetectable and non-disruptive". A "Dispensary" of course, would not fit our County Zoning Regulations. In my opinion, we do not need additional rules and regulations which go above and beyond State or County Laws. (gt)

5.23 Culverts

1. This seems obvious. Why is it in here? (rs)

5.24 Clearing of Trees

1. Does this really need to be specified? (rs)

5.26 Rules and Regulations

1. Because the Covenants give the board power to adopt Rules and Regulations, owners should be able to review and vote on such documents, with 67% necessary to pass for adoption or amendment. (ajm)
2. It scares me to think that a 3-5 person Board could make up whatever rules and regs they want and impose whatever fines they think are appropriate. Things like this should be a voting matter of the owners. (gt)

5.29 Use of the Words Foxtail Pines and Foxtail Pines Owners Association

1. Why? What risk exists? (rs)

Article 7 Architectural Review

7.2 (b) Acknowledgement of Owners

1. "Immediately" should be replaced with some sort of reasonable time frame. (gt)

7.2 (h)

1. What does "toll the statute of limitations" mean? (gt)

7.3 Architectural Criteria

1. "...conformity and harmony of the exterior appearance of structures with neighboring structures, and conformity with the specification and purposes..." Guidelines need to be established and clearly spelled out. Board should not be reimbursed for plan reviews. (joc)

7.5 Architectural Guidelines

1. Must be approved by 67% of the membership, not the architectural committee.
2. Change "the Committee may propose" to "The Committee shall establish guidelines, approved by the BOD". (joc)

7.6 Reply and Communication

1. Suggest reply takes no more than 30 days. 45 days is too long a period. (dm, joc, rs)
2. If committee does not reply, request shall be deemed APPROVED. (dm, gt, rs)

7.8 Commencement and Completion of Construction

1. 2.5 months is not long enough for completion of construction of a house. (pb, ajm)
2. This should be in line with the duration of the required building permit. Please keep in mind an owner has the right to do his own work if he chooses to under a homeowner's permit. To impose such a short deadline would force one to subcontract all the work, increasing costs to a point he/she may not be able to afford the project, and be so rushed that the quality desired might not be achieved. (gt)

7.11 Waivers

1. A decision made should set a precedent for future decisions, or there will be not consistency in the decisions. (gt)

Article 8 Insurance/Condemnation

8.1 Insurance on the Lots

1. I understand why a mortgage company requires insurance. I don't understand how an HOA can require this. If an owner owns their property outright, and chooses to be "self-insured"It should be the owner's choice. (gt)

2. The issue of "sufficient" insurance has not been addressed. If a property is insured, but under insured, a burned structure could remain an eyesore for years. Section 8.17 doesn't regulate the time frame except for using the term "promptly". Nevertheless, who is going to "police" this requirement? (rs)

This looks like a lot of coverage, and therefore expense. What does the association carry now, what new coverage is proposed, how much will new policies cost? (ajm)

8.8 Misc Terms Governing Insurance Carried by the Association

1. 8.8(e) NO. This is the sole responsibility of the manager or managing agent. (rs)

8.11 Annual Insurance Review

1. Add that premiums are reviewed to make sure they are reasonable and competitive. (rs)

Article 9 General Provisions

9.1 (b) (v)

1. When I bought property here, I verified compliance with Park County Building Dept for proper inspections and C.O. of the home. I did not verify approval of FPOA ACC. If there is no record of approval, the language in this section sounds like I could be required to remove my house. Am I understanding this correctly? (gt)

9.1 (b) (vii)

1. The board should not levy assessments to cover costs incurred by the association to bring a lot into compliance. This means that owners in compliance will be penalized for those not in compliance. (ajm)

9.7 Interpretation

1. "The Board of Directors shall have the authority to interpret the meaning of any provision contained in this Declaration." So this entire document is subjective and the definitive language it contains can be warped by personal opinions? (gt)

OTHER COMMENTS

1. Should there be any language about fire mitigation and/or control of infectious diseases or pests (i.e. Pine Beetle)? (joc)

2. I bought property here and chose to live here because of the relatively non-restrictive covenants. I fell these documents in general would give too much sole discretionary power to the Board, imposes and allows future impositions upon my personal freedoms and the enjoyment of my property in Foxtail Pines. (gt)

3. Except for the water rights issues, this document looks like it belongs in Highlands Ranch, or a similar suburb on the Front Range, where HOAs are out of control, not here in Foxtail Pines! Please consider that people are generally in favor of smaller government these days and we here in Foxtail don't need further "government" and more rules and regulations imposed upon us. (gt)

4. Part of Section 18 of the original Declarations states - "The Association will not create an unreasonable burden, requirement or cost for property owners in the development, except as required by the decree (water decree) in case number W-8480-77." What I have pointed out above (and will point out in more comments later), and most of the new additions in the Second Draft would impose "unreasonable burdens, requirements and cost for the property owners in the development". It has already cost us \$19,000 in legal fees for last year, if I read the Treasurer's report correctly, which must be the reason our HOA dues doubled this year. How much more before this is over? We could be buying more fish for the pond, road improvements/dust control.....This entire proposed document seems to be in violation of the intention of the original documents, per the sentence above from section 18 of original docs, which are currently to be followed. (gt)

5. At the end the recitals of all (3) documents, it is clearly stated that the original documents will be thrown out and replaced by these new documents. I think the "car" analogy in the newsletter is slightly misleading and should read something like this: We could repair our old car and get many more miles out of it, but we want to have it towed to a junkyard and crushed, at the Member's(Owner's) expense, and buy a new car, with all the features of the cars on the front range, except the bluegrass requirements (as they already have our water, so we can't grow anything). The Members/Owners will make the payments and pay maintenance costs of the new vehicle which may not hold up to the rough roads here that we cannot afford to improve, since we spent all that money on the salesman(lawyers).

I believe these new documents create unreasonable burdens, requirements, and costs (in direct conflict with section 18 of our original declarations) not only to the Owners, but also imposes undue responsibilities to the Board to enforce all this. Current covenants have not been enforced, how will the new ones be dealt with? Will we need to hire some sort of "covenant cop" to write violations to us, increasing costs further? And then we will all be fined, and interest added if we cannot pay whatever the Board decides the fines and interest rate will be? (I have seen nothing in the docs that would put a limit on fines or interest). Then liens will be placed on all our properties. I am all for "Maintaining Foxtail Pines as a community of the highest quality and value....." but, who would want to buy into a community where many of the lots have liens on them?

To the Board, I am not trying to fault any of you, I do believe you have the best interest of the community in mind. But could it be you have been swayed by the excitement of the ride provided by the new "driver" (lawyers) of our car? I still don't think Foxtail Pines needs to keep up with front range HOA's. It's not our style here.

I see nothing in the new documents similar to the part of original section 18 that talks about not creating unreasonable burdens, requirements or cost to the owners. I think this is an important and meaningful clause which should be kept. (gt)

6. A proxy template and copies of Roberts Rules should be posted on the website. (rs)

7. I hope you are serious regarding the enforcement of the covenants. We have been staring at a trailer parked on a lot in front of our property for years. Also, the lot in front of us has been under "construction for years. They have a backhoe parked on the lot and it's probably not operational.

8. We wish to make our opposition to the Second Draft known, and considered. It was our interpretation that the firm HS was hired to being the FPOA Governing Docs current with State Law. It appears however that the changes proposed in the second draft seek to make FP into a "Planned Community" that one might find on the Front Range , or other Metro area, most certainly not a subdivision that has been historically ranch land, rural and semi-rural. Many of the changes over reach what we fees to be appropriate for FP, and we will submit specifics as a later time. It appears that FPOA is intended to become an enforcement body for a myriad of aspects, such as building codes, State water laws, Park County Land Use regs, etc. I don't wish to support, financially or in any other way, such an enforcement body. Also, based on the second draft, it appears that we the Owners would need to permanently enlist legal assistance. This is unacceptable. It was not our impression that things in FP were so broken. Complaints have been voiced about lack of participation in the governing process. This lack of passion in governance tells me that we, among others, prefer to engage other aspects of life in this most wonderful mountainous area. We don't see that increasing/multiplying governance responsibilities is appropriate for FPOA, which is put forth by the second draft. Our position is that governance and intervention into personal and individual lives must be kept to a minimum, which is certainly not what's put forth in the second draft. We would be far more supportive of a minimal enforcement body to monitor for violations, and to make the appropriate referrals to State and County enforcement agencies. (dn, jh)