

# **GREAT OAK FARM**

## **DOCUMENT OVERLAY**

### **AN OUTLINE OF THE IMPACT OF THE AMENDMENTS TO THE COMMON INTEREST OWNERSHIP ACT**

Prepared on February 19, 2016



## INTRODUCTION

This overlay reflects the changes made to the Connecticut Common Interest Ownership Act, commonly referred to as "CIOA," beginning in 2009 by Public Act 09-225, followed by Public Act 10-186, Public Act 11-195, Public Act 12-113, Public Act 13-156, Public Act 13-289, Public Act 14-215, and most recently Public Act 15-211 all of which amended CIOA. These amendments are collectively referred as the "CIOA Amendments."

The contents of this overlay reflect the interpretation of the CIOA Amendments as of the date the overlay was prepared. These may be affected by future amendments to CIOA, as well as by court decisions interpreting and applying its provisions. While we always try to alert our association clients to any changes in the law that may affect them, we do not plan to update this overlay each time the law changes.

Some parts of CIOA were amended prior to 2009. This overlay does not reflect these prior amendments or their effect on your community. It is intended solely to show how your documents have been affected by the CIOA Amendments.

Some of the CIOA Amendments supersede provisions which are currently in your documents. This means that if there is a conflict between your documents and CIOA, as it has been amended, you must follow CIOA and not your documents.

Some of the CIOA Amendments create new rights and duties or require the association and the Homesite Lot Owners to follow new or additional procedures. These apply to your association even though they are not mentioned in your documents.

This overlay follows the numbering system used in your documents. Whenever an existing provision of your documents has been modified or superseded by the CIOA Amendments, we have set out the number and title of that provision in your documents, followed by a summary of the new requirements contained in the CIOA Amendments. Wherever the CIOA Amendments have created a new requirement which is not in your documents, we have set out a summary of the requirement under the article or section of your existing documents that most closely relates to the new requirement.

Where one of the CIOA Amendments affects several portions of your documents, we have set out the requirements of the amendment in the location or locations where we believe they will be most useful, and have included cross-references to these provisions in the other portions of your documents that are affected by that particular amendment.

Wherever possible, we have included a reference to the applicable section of CIOA as amended by the CIOA Amendments at the end of each of our comments.

We have tried to identify all of the provisions of your documents that are affected by the CIOA Amendments. It is possible, however, that some of these amendments may also affect other provisions of your documents as they apply in certain situations and to certain activities. If you have any questions concerning the requirements of any provision of your documents or how these provisions are affected by the CIOA Amendments generally, by other provisions of CIOA, or by other statutes, please feel free to contact us.

This overlay is not an amendment to the governing documents of your association. It need not be approved by a vote of the Homesite Lot Owners, nor recorded on the land records of the town in which your community was created. It is instead designed to be a tool to assist your association in interpreting the governing documents against the Amendments.

We recommend providing the Homesite Lot Owners in your community with a copy of the overlay so that they will understand why the association may, at times, have to adjust its operations in order to comply with CIOA. We also recommend providing a copy of the overlay with the governing documents whenever the association issues a resale certificate and to whomever requests a copy of the governing documents.

Your association may want to amend its documents to incorporate the changes made by the CIOA Amendments. It may also want to prepare one or more charts or matrixes, showing the requirements for maintenance, governing procedures, insurance and other matters. We are available to assist you in any of these activities.

## **DOCUMENTS REVIEWED**

Included with this overlay is a copy of the documents we have reviewed and to which the overlay refers. We have made a marginal notation on the documents next to each provision that is commented on in the overlay.

The following is a list of the documents we have reviewed:

- The amended and restated declaration of your community, including amendments, if any, recorded through August 21, 2015. Copies of these are attached and include the following:
  - The amended and restated declaration of Great Oak Farm by the Great Oak Farm Homeowners Association, Inc. dated August 13, 2008 and recorded on August 21, 2008 in Volume 1560 at Page 107 of the Monroe Land Records.
- The bylaws of your association and amendments, if any, recorded through August 21, 2015. Copies of these are attached and include the following:

- The bylaws of the Great Oak Farm Homeowners Association, Inc. dated August 13, 2008 and recorded on August 21, 2008 in Volume 1560 at Page 149 of the Monroe Land Records.
- The rules of your association as listed on your website (<http://greateoakfarm.com/great-oak-farm-rules/>). Copies of these are attached and include the following:
  - The Great Oak Farm Rules, printed on August 24, 2015.

You have represented to us that these reflect your rules as of August 24, 2015.

## DECLARATION

### **Declaration, Section 7.1 - Use and Occupancy Restrictions.**

- *Subsection 7.1(c) may establish maintenance standards as described in Subsection 47-257(e) of CIOA. It should be disclosed in resale certificates [47-270(a)(17)].*
  - *See also the comment to Declaration Section 14.2 concerning the assessment of common expenses related to failure to observe maintenance standards.*
- *See the comment to Declaration Section 15.2 concerning religious displays.*

### **Declaration, Section 10.5 - Consent of Holders of Security Rights.**

- *See comment to Declaration Section 13.4 concerning mortgagee consent required.*

### **Declaration, Article XI - Amendments to Bylaws.**

- *See comment to Declaration Article XX concerning board limitations.*

### **Declaration, Section 13.4 - Prior Consent Required.**

*Notwithstanding* the requirements of this section:

- The holder of a security interest required to consent to any amendment to the declaration or bylaws is deemed to have given that consent if the association has not received a refusal to consent 45 days after the association has delivered notice of the proposed amendment to the holder of the interest or mails the notice to the holder by certified mail, return receipt requested [*Subsection 47-236(i)*].
- The association may rely on the last recorded security interest of record in delivering or mailing notice to the holder of that interest [*Subsection 47-236(i)*].
- An amendment to the declaration that affects the priority of a security interest held by a mortgage holder or the ability of that holder to foreclose its security interest may not be adopted without that holder's consent in a written communication which is forwarded to the association either in the original or in electronic form [*Subsection 47-236(i)*].

**Declaration, Section 14.2 - Common Expenses Attributable to Fewer than All Homesite Lots.**

*In addition to* the provisions of Subsection 14.2(d):

- If any common expense is caused by:
  - the willful misconduct;
  - the gross negligence; or
  - the failure to comply with the written maintenance standard promulgated by the association

of any Homesite Lot Owner or tenant or of a guest or invitee of a Homesite Lot Owner or tenant, the association may, after notice and hearing, assess the portion of that common expense in excess of any insurance proceeds received by the association under its insurance policy, whether that portion results from the application of a deductible or otherwise, exclusively against that owner's Homesite Lot [Subsection 47-257(e)]. *The terms "willful misconduct" and "gross negligence" have particular legal significance. Do not attempt to determine whether a certain action falls under these terms without the assistance of knowledgeable legal counsel.*

*If your association wishes to adopt and promulgate written maintenance standards in addition to those standards that may already exist in your documents, consult with a knowledgeable attorney before you do to ensure that the standards, and the way in which they are adopted and publicized, meet the requirements of your documents and CIOA. If you would like us to assist you with this, please let us know. We have identified provisions in your documents that may create a written maintenance standard promulgated by the association in the comments following those provisions.*

**Declaration, Section 14.3 - Lien.**

*In addition to* the requirements of this section:

- The amount of the association's lien that is prior to first mortgages is an amount equal to nine months' of common charges plus reasonable attorney's fees and costs, but not including late fees, interest, and fines [Subsection 47-258(b)].
- The association may not commence an action to foreclose its lien against a Homesite Lot, unless [Subsection 47-258(m)]:

- The Homesite Lot Owner owes an amount equal to at least two months of common expense assessments based on the most recently adopted budget;
- The association has made demand for payment of the amount in a written communication;
- The board either has voted to commence the foreclosure specifically against that Homesite Lot or has adopted a standard policy that provides for foreclosure against that Homesite Lot; and
- The association has sent a copy of the demand for payment and notice of intent to foreclose to the holders of the first and second mortgages on the Homesite Lot at least 60 days before commencing a foreclosure. (*This notice is typically prepared and sent by the attorney handling the association's collection and foreclosure matters.*)
  - The notice must provide the holders of first and second mortgages with information concerning to whom they can submit payment, if they chose to do so on behalf of the Homesite Lot Owner.
  - The association may rely on the land records in identifying the holders of mortgages and their mailing addresses. If the holder of a first or second mortgage has a foreclosure pending against the Homesite Lot at the time the association is giving notice, the association should instead send the notice to the attorney appearing for the holder of the mortgage in that foreclosure.
  - Notice is deemed given when sent.

*Notwithstanding* the provisions of this section:

- Proceedings to enforce the association's lien must be instituted within three years after the full amount of the assessments becomes due [*Subsection 47-258(e)*].

**Declaration, Section 14.4 - Budget Adoption and Ratification.**

*In addition to* the requirements of this section:

- The budget or the summary must include [*Subsection 47-261e(a)*]:
  - A statement of the amount to be contributed to the reserves during the fiscal year or a statement that no contributions are being made;

- A statement of the current balance in the association's reserves; and
- A statement of the basis on which any reserves are calculated and funded.
- *Many associations find it to be more efficient to provide a complete copy of the budget, including notes, rather than just a summary.*
- The vote to approve or reject the budget may be taken either at a meeting of the Homesite Lot Owners or by a vote without a meeting. *See the comment to Bylaws Section 3.8 concerning votes taken without a meeting.*
- *See the comments to Bylaws Section 3.5 concerning when notice of the meeting is to be given.*

**Declaration, Section 14.5 - Ratification of Special Assessments.**

*Notwithstanding* the provisions of this section:

- The standard for when a vote must be taken on a special assessment has changed. If the total of all non-budgeted assessments during the current calendar year, including the assessment just adopted by the board, exceeds 15% of the current annual budget, the current special assessment must be ratified by the Homesite Lot Owners in the same manner as a budget under Declaration Section 14.4 **as modified by this overlay**, even if the current special assessment by itself is less than 15% of the current budget [*Subsection 47-261e(b)*].
- The board may determine, by a two-thirds vote, that a non-budgeted assessment is necessary to respond to an emergency [*Subsection 47-261e(b)*]. *This may require two board resolutions, one that declares an emergency and one that adopts the assessment.*
  - The special assessment is effective immediately in accordance with the terms of the board resolution without a vote of the Homesite Lot Owners.
  - The board must promptly provide notice of the emergency assessment to all Homesite Lot Owners.
  - The board may spend the funds raised by the emergency special assessment only for the purposes described in the vote.



## Declaration, Section 15.2 - Adoption of Rules.

*Notwithstanding* the requirements of this section:

- The association may not prohibit display, on a Homesite Lot or on a limited common element adjoining a Homesite Lot, of the flag of this state, or signs regarding candidates for public or association office or ballot questions, but the association may adopt rules governing the time, place, size, number and manner of those displays [*Subsection 47-261b(d)*].
- Any rule regulating the flag of the United States must be consistent with federal law [*Subsection 47-261b(d)*].
- Homesite Lot Owners may peacefully assemble on the common elements to consider matters related to the common interest community, but the association may adopt rules governing the time, place and manner of those assemblies [*Subsection 47-261b(e)*].
- An association's internal business operating procedures need not be adopted as rules [*Subsection 47-261b(g)*].
- All of the rules must be reasonable [*Subsection 47-261b(h)*]. In determining reasonableness, a court will look at the following factors:
  - Whether the association had the authority to adopt the rule under Connecticut law or its governing documents; and
  - Whether the rule is based on reasoned decision-making, or is arbitrary and capricious. In other words, if an owner challenged a rule in court, the association would be required show that it considered the issue and had reasons for adopting the rule in question.
- *When the board considers adopting or amending a rule, it must follow the procedures set out in the comments to Declaration Section 18.1 of this overlay.*
- No document provision or rule may prohibit or hinder the owner, lessee or sublessee of a Homesite Lot from attaching to an entry door or entry door frame of such Homesite Lot an object the display of which is motivated by observance of a religious practice or sincerely held religious belief. However, the association may adopt or enforce a document provision that, to the extent allowed by the first amendment to the United States Constitution and section 3 of the first article of the Constitution of the state, prohibits the display or affixing of an item on an

entry door or entry door frame to the owner's, lessee's or sublessee's Homesite Lot when such item: [*Subsection 47-230a*]

- Threatens the public health or safety;
- Hinders the opening and closing of an entry door;
- Violates any federal, state or local law;
- Contains graphics, language or any display that is obscene or otherwise patently offensive;
- Individually or in combination with each other item displayed or affixed on an entry door frame has a total size greater than twenty-five square inches; or
- Individually or in combination with each other item displayed or affixed on an entry door has a total size greater than four square feet.

**Declaration, Article XVI - Insurance.**

*In addition to* the requirements of this article:

- The association is required to carry fidelity insurance for anyone who either handles or is responsible for funds held or administered by the association, whether or not they receive compensation for their services. The insurance policy should name the association as the insured and should cover the maximum funds that will be in the custody of the association or its manager at any time while the policy is in force, and in no event less than the sum of three months' assessments plus reserve funds [*Subsection 47-255(a)(4)*].

**Declaration, Section 17.1 - Duty to Repair or Restore.**

- *See comment to Declaration Section 14.2 concerning common expenses attributable to fewer than all Homesite Lots.*

**Declaration, Section 18.1 - Right to Notice and Comment.**

*Notwithstanding* the requirements of this section:

- Notice of a proposal to adopt or amend a rule must be given at least 10 days before the meeting at which the board will receive comments and vote [*Subsection 47-261b(a)*].

- The association must give notice to the Homesite Lot Owners in compliance with Bylaws Section 8.1 **as modified by this overlay**.
- The notice must contain [*Subsection 47-261b(a)*]:
  - The text of the proposed change or amendment or of the provision being repealed;
  - The board’s intention to adopt the proposed change or amendment; and
  - The date on which the board will act on the proposed change or amendment, after considering any comments from owners.
- Before the board votes it must receive and consider any comments submitted by the Homesite Lot Owners or made during the comment period [*Subsection 47-261b(a)(2)*].
- Following the adoption of an amendment or change, the association must notify the owners of its action and provide them with a copy of the amendment or change [*Subsection 47-261b(b)*].
- Notices of other proposed actions to which this section applies must be given at least five days before the meeting at which the board will receive comments and vote [*Subsection 47-250(b)(5)*].

**Declaration, Section 18.2 - Right to Notice and Hearing.**

*Notwithstanding* the requirements of this section:

- Before the association brings an action or institutes a proceeding against a Homesite Lot Owner, it must schedule a hearing before the board [*Subsection 47-278(c)*].
  - The hearing must be held at a regular or special meeting of the board.
  - The association must give notice to the Homesite Lot Owner at least 10 business days before the hearing.
  - The notice to the Homesite Lot Owner must be in writing and be sent by certified mail, return receipt requested, and by regular mail. It must include:

- A statement of the nature of the claim against the Homesite Lot Owner, and
- The date, time, and place of the hearing.
- At the hearing, the Homesite Lot Owner shall have the right to give oral or written testimony, either personally or through a representative.
- The board must consider the testimony of the Homesite Lot Owner before voting on whether to take action.
- The board must make a decision on whether to take action and notify the Homesite Lot Owner within 30 days of the hearing by a written notice sent certified mail, return receipt requested, and by regular mail.
- Unless the board meeting at which the hearing will be held is included in a schedule given to the Homesite Lot Owners, the secretary or other officer specified in the bylaws must give notice of the board meeting to each director and to each Homesite Lot Owner [*Subsection 47-250(b)(5)*].
  - *See comments to Sections 2.8 and 2.9 of the Bylaws concerning notice of board meetings.*
- The foregoing requirements for notice and hearing do not apply to an action brought by the association against a Homesite Lot Owner to foreclose a lien or to prevent immediate and irreparable harm. *Do not attempt to determine whether a certain situation falls under the immediate and irreparable harm category without the assistance a knowledgeable attorney.*
- *The hearing procedure required by Subsection 47-278(c) may not apply to all of the situations covered by this section of your declaration. Nevertheless we recommend that you follow the procedures required by Subsection 47-278(c) whenever you hold a hearing. This way you will avoid any technical challenges to your decision later on.*
- A Homesite Lot Owner seeking to enforce a right granted or obligation imposed by CIOA or the documents against the association or against another Homesite Lot Owner, may submit a written request to the association for a hearing before the board [*Subsection 47-278(d)*].
  - This provision does not apply to claims made by or against the declarant.

- The request for a hearing must be in writing and include a statement of the nature of the claim against the association or another Homesite Lot Owner.
- Within 30 days of receiving the request, the association must set a date for a hearing. The hearing must be scheduled on a date not more than 45 days after the association receives the request.
- The hearing must be held at a regular or special meeting of the board.
- The association must give notice to the requesting Homesite Lot Owner at least 10 business days prior to the hearing.
- The notice must be in writing and be sent by certified mail, return receipt requested, and by regular mail. It must include the date, time, and place of the hearing.
- *If the Homesite Lot Owner who requests the hearing is seeking to enforce a right against another Homesite Lot Owner, Subsection 47-278(d) does not require that the association give notice to the other Homesite Lot Owner or permit the other Homesite Lot Owner to participate in the hearing. Nevertheless, in many cases, the association will want to give notice of the hearing to the other unit owner and invite him or her to participate. That way, the board will have an opportunity to hear both sides of the story before it makes a decision and, if it decides to take action against the other Homesite Lot Owner, it will not have to call and hold another hearing before it acts.*
- The board must make a decision and notify the requesting Homesite Lot Owner within 30 days of the hearing by a written notice sent certified mail, return receipt requested, and by regular mail.
- Unless the board meeting at which the hearing will be held is included in a schedule given to the Homesite Lot Owners, the secretary or other officer specified in the bylaws must give notice of the board meeting to each director and to each Homesite Lot Owner [*Subsection 47-250(b)(5)*].
- *See comments to Sections 2.8 and 2.9 of the Bylaws concerning notice of board meetings.*

**Declaration, Section 19.1 - Access.**

*Notwithstanding* anything contained in this section or anything else contained in the declaration or bylaws:

- Meetings of the board or of a committee authorized to act for the association must be open to Homesite Lot Owners and to any person whom a Homesite Lot Owner designates as his or her personal representative, except when the board meets in executive session [*Subsection 47-250(b)(1)*].

**Declaration, Section 19.2 - Notice.**

*Notwithstanding* anything contained in this section:

- *See comments to Bylaws Sections 2.8, 2.9, and 8.1 concerning the giving of notice.*

**Declaration, Section 19.3 - Executive Sessions.**

*Notwithstanding* anything contained in this section or anything else contained in the declaration or bylaws:

- The board and any committees authorized to act for the association may hold an executive session only during a regular or special meeting [*Subsection 47-250(b)(1)*].
- The board or a committee authorized to act for the association may meet in executive session only to do the following [*Subsection 47-250(b)(1)*]:
  - Consult with the association's attorney about legal matters;
  - Discuss existing or potential litigation, mediation, arbitration, or administrative proceedings;
  - Discuss labor or personnel matters;
  - Discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or

- Prevent public knowledge of the matter to be discussed if the board or committee determines that public knowledge would violate the privacy of any person.
- No final vote or action may be taken during an executive session [*Subsection 47-250(b)(1)*].

**Declaration, Article XX - Executive Board.**

*Notwithstanding* the requirements of this section:

- The board may fill a vacancy in its membership only for the shorter of [*Subsection 47-245(b)(3)*]:
  - Until the next regularly scheduled election of directors; or
  - Until the end of the term of the vacant directorship.

**Declaration, Article XXI - Maintenance, Repair, and Replacement.**

- *Sections 21.2, 21.3, 21.4, and 21.6 may establish maintenance standards as described in Subsection 47-257(e) of CIOA. They should be disclosed in resale certificates [47-270(a)(17)].*
  - *See also the comment to Declaration Section 14.2 concerning the assessment of common expenses related to failure to observe maintenance standards.*

**Declaration, Section 21.8 - Repairs Resulting from Negligence.**

- *See comments to Declaration Section 14.2 concerning repairs resulting from negligence.*

**Declaration, Article XXII - Right to Assign Future Income.**

*Notwithstanding* the requirements of this article:

- The association must give all Homesite Lot Owners written notice of the terms of any loan the association enters into, whether or not the loan is secured by a pledge of future common charges [*Subsection 47-261e(d)*].

- The notice must set out the amount and terms of the loan and the estimated effect of the loan on any common expense assessment, including special assessments.
- The Homesite Lot Owners must be given an opportunity to submit written comments to the board concerning the loan.
- The notice must be sent at least 14 days before the loan closes and in sufficient time to allow the board to consider any comments from the Homesite Lot Owners.

**Declaration, Section 24.1 - Required Approvals. Architectural Review Board; and Section 24.2 - Exterior Appearance.**

- *See the comments to Declaration Section 15.2 concerning adoption of rules regulating flags, signs, and religious displays.*

**Declaration, Section 24.9 - Violations.**

- *See the comments to Declaration Section 18.2 concerning notice and hearing.*

**Declaration, Section 25.3 - Waiver.**

- *See the comments to Bylaws Section 2.2 concerning the board enforcing a right or compromising a claim.*



## BYLAWS

### Bylaws, Section 2.2 - Powers and Duties.

*In addition to* the requirements of this section:

- The board must promptly provide notice to the Homesite Lot Owners of legal proceedings in which the association is a party [*Subsection 47-244(c)*]. Legal proceedings include lawsuits in which the association is a plaintiff or defendant and administrative proceedings, such as complaints filed with the Connecticut Commission on Human Rights and Opportunities or applications before a local planning and zoning commission. However, the association is not required to give notice of the following types of proceedings:
  - Actions to enforce the rules of the association. *This exclusion does not extend to actions to enforce the declaration or bylaws.*
  - Foreclosures brought by the association to collect unpaid common charges.
  - Foreclosures brought by the holder of a mortgage on a Homesite Lot.
- The board has the power to decide whether enforcement action is necessary and when to compromise claims [*Subsection 47-244(g)*].
  - The board has no duty to take enforcement action if it determines that:
    - The association's legal position does not justify further action [*Subsection 47-244(g)(1)*];
    - The covenant, restriction or rule at issue either is inconsistent with applicable law, or a court is likely to conclude that it is inconsistent with law [*Subsection 47-244(g)(2)*];
    - Even though a violation may exist or may have occurred, it is not so material that a reasonable person would object or it does not justify expending association resources [*Subsection 47-244(g)(3)*];  
or
    - It is not in the association's best interest to take action [*Subsection 47-244(g)(4)*].

- The board’s decision not to pursue enforcement under one set of circumstances does not prevent the board from taking action under another set of circumstances [*Subsection 47-244(h)*].
  - If the association decides not to act in one case, it is not forever barred from taking action in a later case [*Subsection 47-244(h)*].
- The board may not be arbitrary or capricious in taking enforcement action [*Subsection 47-244(h)*].
  - There must be some factor that distinguishes one set of circumstances from another, which led to the board taking action in one case but not the other.
  - The minutes of the meeting at which an association decides whether to take action or compromise a claim, or the written resolution itself, should set forth the reasons on which the board based its decision.
  - If the association is facing or has faced a similar situation in which it reached a different decision of whether to proceed, then the resolution should set out what distinguishes the two situations from each other.
- The board may suspend any right or privilege of a Homesite Lot Owner who fails to pay an assessment, but may not [*Subsection 47-244(a)(19)*]:
  - Deny a Homesite Lot Owner or other occupant access to the owner’s Homesite Lot or its limited common elements;
  - Suspend a Homesite Lot Owner’s right to vote or participate in meetings of the association;
  - Prevent a Homesite Lot Owner from seeking election as a director or officer of the association; or
  - Withhold services provided to a Homesite Lot or a Homesite Lot Owner by the association if the effect of withholding the service would be to endanger the health, safety or property of any person.
- *See comment to Declaration Section 15.2 concerning the adoption of rules.*

*Notwithstanding* the provisions of Subsection 2.2(u):

- Whenever a committee is authorized to act for the association, as opposed to making recommendations to the board, that committee's meetings are subject to the same requirements as are board meetings [*Subsection 47-250(b)*].

*Notwithstanding* the provisions of Subsection 2.2(v):

- See comment to Declaration Section 14.5 concerning the ratification of special assessments.

**Bylaws, Section 2.3 - Standard of Care.**

*Notwithstanding* the requirements of this section:

- Officers and members of the board not appointed by a declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized under Chapter 602 of the Connecticut General Statutes, [The Connecticut Revised Nonstock Corporation Act] and are subject to the conflict of interest rules governing directors and officers under Chapter 602. The standards of care and loyalty described in this section apply regardless of the form in which the association is organized [*Subsection 47-245(a)*].
- No person shall provide or offer to any director or a person seeking election as a director, and no director or person seeking election as a director shall accept, any item of value based on any understanding that the vote, official action or judgment of such director or person seeking election would be or has been influenced thereby [*Subsection 47-245(j)*].

**Bylaws, Section 2.5 - Manager.**

*Notwithstanding* the requirements of this section:

- No manager shall campaign for any person seeking election as a director [*Subsection 47-245(k)*].

**Bylaws, Section 2.6 - Removal of Members of the Executive Board.**

*Notwithstanding* the requirements of this section:

- A director elected by the Homesite Lot Owners may be removed with or without cause if the number of votes cast in favor of removal exceeds the number of votes

cast in opposition to removal. The vote may be taken either at a meeting or by ballot without a meeting [*Section 47-261d(a)*].

- *See comment to Bylaws Section 3.8 concerning votes taken without a meeting.*
- If the vote is taken at a meeting, the director being considered for removal must have a reasonable opportunity to speak before the vote is taken. If the vote is taken by ballot without a meeting, the director being considered for removal must be given a reasonable opportunity to deliver information to the Homesite Lot Owners as provided in Subsection 47-252(d) of CIOA [*Section 47-261d(b)*].
- The Homesite Lot Owners may not consider whether to remove a director unless that subject was listed in the notice of meeting [*Section 47-261d(a)*].
- *Section 47-261d contains additional provisions relating to associations where the officers are elected by the Homesite Lot Owners, rather than by the executive board. Since your documents do not permit the direct election of officers by the Homesite Lot Owners, these provisions do not apply.*

**Bylaws, Section 2.7 - Vacancies.**

- *See the comment to Declaration Article XX concerning how vacancies on the board are to be filled.*

**Bylaws, Section 2.8 - Organizational Meeting; and Section 2.9 - Meetings.**

*In addition to* the requirements of these sections:

- The board must meet at least two times per year [*Subsection 47-250(b)(3)*].
- The board may meet by telephonic, video or other conferencing process if the following occur [*Subsection 47-250(b)(7)*]:
  - The notice of the meeting must state the conferencing process to be used and provide information explaining how Homesite Lot Owners may participate in the conference directly or by meeting at a central location or conference connection; and
  - The process provides all Homesite Lot Owners the opportunity to hear or perceive the discussion and comment on any matter affecting the common interest community or the association during Homesite Lot Owner comment periods.

- *If you are not familiar with the legal and technical procedures for holding meetings by teleconference, do not attempt this without advice.*
- Instead of meeting, the board may act by not less than two-thirds consent of all board members as documented in a record authenticated by its members, noting the consent or nonconsent of each board member. The secretary must promptly give notice to all Homesite Lot Owners of any action taken by not less than two-thirds consent of all board members [*Subsection 47-250(b)(9)*].
- *See comments to Bylaws Section 2.15 concerning board actions without a meeting.*

***Notwithstanding*** the requirements of these sections:

- Unless a meeting of the board or a committee authorized to act for the association is included in a schedule given to the Homesite Lot Owners, the secretary or other officer specified in the bylaws must give notice of each board meeting to each director and to each Homesite Lot Owner [*Subsection 47-250(b)(5)*].
  - *A committee is authorized to act for the association when it can exercise one or more of the powers listed in Bylaws Section 2.2 or Section 47-244 of CIOA. A committee is not authorized to act for the association if it only makes recommendations to the board or implements decisions made by the board.*
  - The notice must be given at least five days before the meeting and state the time, date, place and agenda of the meeting.
  - If, at the meeting, the board will vote on a change in the rules, additional notice must be given. *See comment to Declaration Section 18.1 concerning procedures for adopting or amending a rule.*
  - If a schedule of meetings has already been distributed to the Homesite Lot Owners, the association must make copies of the meeting agenda reasonably available to Homesite Lot Owners who wish to obtain it at least 48 hours prior to a meeting.
- If any materials are distributed to the board or a committee authorized to act for the association before the meeting, the board or committee must at the same time make copies of those materials reasonably available to Homesite Lot Owners. This requirement excludes copies of unapproved minutes and materials that are to be considered in executive session [*Subsection 47-250(b)(6)*]. *The statute does*

*not state what the association must do to make copies “reasonably available to Homesite Lot Owners.” We recommend that the association make extra copies which can be picked up by the Homesite Lot Owners at the community and also mail or email copies to Homesite Lot Owners who request them.*

- *At each board meeting, or a meeting of a committee authorized to act for the association, the board or committee shall provide a reasonable opportunity for Homesite Lot Owners to comment regarding any matter affecting the common interest community and the association [Subsection 47-250(b)(4)]. The board can adopt reasonable rules and procedures prohibiting Homesite Lot Owners from interrupting the regular conduct of business and the time of other speakers, setting reasonable limits on the number of speakers at any one meeting and the repetitiveness of Homesite Lot Owner comments, and limiting the total time the Homesite Lot Owner comment period may consume during any one meeting.*
- *See the comments to Declaration Sections 19.1 and 19.3 concerning open meetings and executive sessions.*

#### **Bylaws, Section 2.11 - Waiver of Notice.**

*Notwithstanding* the requirements of this section:

- *A director may waive notice to himself or herself only. A director may not waive notice of a board meeting to Homesite Lot Owners [Subsection 47-250(b)(5)].*

#### **Bylaws, Section 2.12 - Quorum of Board Members.**

*Notwithstanding* the requirements of this section:

- *A quorum of the board is present for purposes of determining the validity of any action taken at a meeting of the board only if individuals entitled to cast a majority of the votes on that board are present at the time a vote regarding that action is taken [Subsection 47-251(b)].*
- *If a quorum is present when a vote is taken, the affirmative vote of a majority of the directors present is the act of the board unless a greater vote is required by the declaration or bylaws [Subsection 47-251(b)].*

#### **Bylaws, Section 2.13 - Fidelity Bonds.**

- *See the comments to Declaration Article XVI concerning fidelity insurance.*

## **Bylaws, Section 2.15 - Consent to Corporate Action.**

*Notwithstanding* the requirements of this section:

- CIOA was amended in 2015 to permit boards to act without holding a meeting provided at least two-thirds of all directors consent to an action [*Subsection 47-250(b)(9)*].
- If the board decides to act without a meeting by not less than two-thirds consent rather than by unanimous consent, then it should do the following:
  - At the direction of the president, or, in the absence or unavailability of the president, the vice president, the secretary shall give a notice to all of the directors that contains:
    - A statement of the action or actions proposed to be approved by the directors without a meeting;
    - A request that each director indicate consent or nonconsent to each action in a writing or electronic communication authenticated by such director;
    - A deadline by which such authenticated written or electronic communications must be received; and
    - An address or addresses, electronic or otherwise, to which such written or electronic communications must be sent.
  - Upon the passing of the deadline, the secretary shall file the following with the minutes of the board:
    - A copy of the notice, together with proof of the giving of the notice;
    - The written or electronic communications containing the authenticated consents of those directors who consented to one or more of the proposed actions;
    - Any other communications received from the directors in response to the notice, including, but not limited to, any responses from directors who did not consent to one or more of the proposed actions; and

- The names of those directors who did not respond to the notice.
- If, by the deadline set out in the notice, the association has received written or electronic communications containing the authenticated consents of at least two-thirds of all of the directors to one or more of the proposed actions, then such consents shall constitute the approval of the board of such action or actions with the same force and effect as if the action consented to had been adopted at a meeting.

*In addition to* the requirements of this section:

- If the board acts by not less than two-thirds consent of all board members, the secretary must promptly give notice to all Homesite Lot Owners of the action [*Subsection 47-250(b)(9)*].
- The board may not act without a meeting on any matter for which notice and comment is required until the association has given at least 10 days advance notice of the proposed action to the Homesite Lot Owners as required by the notice and comment provisions of Declaration Section 18.1 **as modified by this overlay**, and has circulated any comments it receives to all of the directors at or before the time when they are asked to consent to the action.
- The board may not act without a meeting on any matter for which notice and hearing is required until the association has given at least 10 business days advance notice of the hearing and held the hearing during a regular or special meeting of the board as required by the notice and hearing provisions of Declaration Section 18.2 **as modified by this overlay**.

**Bylaws, Section 3.1 - Annual Meeting.**

*In addition to* the requirements of this section:

- Homesite Lot Owners shall be given a reasonable opportunity at any Homesite Lot Owners' meeting to comment regarding any matter affecting the common interest community or the association. This Homesite Lot Owner right to comment is not limited to the items on the agenda of the meeting. Ordinarily, it can be best accomplished by a separate Homesite Lot Owner comment period [*Subsection 47-250(a)(4)*]. *The association may adopt reasonable rules and procedures prohibiting Homesite Lot Owners from interrupting the regular conduct of business and the time of other speakers, setting reasonable limits on the number of speakers at any one meeting and the repetitiveness of Homesite Lot Owner comments, and limiting the total time the Homesite Lot Owner comment period may consume during any one meeting.*



**Bylaws, Section 3.2 - Budget Meeting.**

- *See the comment to Bylaws Section 3.1. This applies to budget meetings as well.*

**Bylaws, Section 3.4 - Special Meetings.**

- *See the comment to Bylaws Section 3.1. This applies to special meetings as well.*

*Notwithstanding* the requirements of this section:

- Homesite Lot Owners having at least 20% of the votes in the association may request that the secretary call a special meeting [*Subsection 47-250(a)(2)*].
- *See comment to Bylaws Section 3.5 concerning Homesite Lot Owners giving notice if the association secretary fails to act.*
- Only matters described in the meeting notice may be considered at a special meeting [*Subsection 47-250(a)(2)*].

**Bylaws, Section 3.5 - Notice of Meetings.**

*In addition to* the requirements of this section:

- If the association does not notify Homesite Lot Owners of a special meeting within 15 days after the required number or percentage of Homesite Lot Owners request the secretary to do so, the requesting Homesite Lot Owners may directly notify all the Homesite Lot Owners of the meeting [*Subsection 47-250(a)(2)*].
- *See the comments to Bylaws Section 8.1 concerning notice to Homesite Lot Owners.*

**Bylaws, Section 3.7 - Order of Business.**

*In addition to* the agenda items listed in this section:

- The agenda must include a Homesite Lot Owner comment period. *See the comment to Bylaws Section 3.1 concerning how the Homesite Lot Owner comment period must be conducted* [*Subsection 47-250(a)(4)*].

**Bylaws, Section 3.8 - Voting.**

- *CIOA has been amended to permit associations to conduct a vote of the Homesite Lot Owners without a meeting. While twenty percent of the Homesite Lot Owners*

*can call a meeting, only the board can call for a vote without a meeting. This vote can be taken either by paper ballot or by electronic ballot. While CIOA permits votes to be taken without a meeting, it does not contain all of the rules and procedures needed to conduct such a vote. Neither does it require that any vote be taken without a meeting. For this reason, we do not recommend that any association conduct a vote without a meeting unless it first amends its bylaws or otherwise establishes the necessary procedures for conducting the vote [Subsection 47-252(d)].*

***Notwithstanding*** the requirements of this section or any other provisions of the declaration or bylaws:

- The association may not suspend a Homesite Lot Owner's right to vote, to participate in meetings or to run for or hold office because the Homesite Lot Owner is not current in his or her common charges or other payments owed to the association [Subsection 47-244(a)(19)].

**Bylaws, Subsection 3.8(a)**

***In addition to*** the requirements of this subsection:

- This provision now also applies to votes of the Homesite Lot Owners without a meeting. If only one of several owners of a Homesite Lot is present at a meeting of the association or participating in the vote without a meeting, that owner is entitled to cast all the votes allocated to that Homesite Lot. If more than one of the owners are present at a meeting of the association or participating in the vote without a meeting, the votes allocated to that Homesite Lot may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise [Subsection 47-252(b)].

**Bylaws, Subsection 3.8(b)**

***Notwithstanding*** the requirements of this subsection:

- A single person may not cast votes representing more than 15% of the total votes in the association pursuant to undirected proxies [Subsection 47-252(c)(7)]. *An undirected proxy is a proxy that does not include any directions to the proxy holder concerning how the Homesite Lot Owner wants the proxy holder to vote. However, the bylaws can be amended to eliminate this restriction.*
- The association is permitted to provide Homesite Lot Owners with directed or undirected proxy forms if it so desires. The association may also provide for a

default proxy holder in the event the Homesite Lot Owner does not designate a holder.

**Bylaws, Subsection 3.8(d)**

*Notwithstanding* the requirements of this subsection:

- Votes allocated to a Homesite Lot owned by the association shall be cast in any vote of the Homesite Lot Owners in the same proportion as the votes cast on the matter by Homesite Lot Owners other than the association [*Subsection 47-252(g)*]. *This requirement is of significance only in connection with votes to amend the declaration, to reject the budget, to approve a borrowing, or other votes measured against the total voting power of the association. In these situations, seek advice of counsel.*

**Bylaws, Section 4.2 - Election of Officers.**

- *CIOA has been amended to permit the Homesite Lot Owners to elect officers but only if the declaration or bylaws provides for such an election. If the governing documents are amended to provide for the election of officers by Homesite Lot Owners, the officers shall be elected by a plurality of the votes cast by the Homesite Lot Owners. Otherwise, the officers are elected by the board [Subsection 47-245(f) and 47-252(b)(4)].*

**Bylaws, Section 4.9 - Resale Certificates and Statements of Unpaid Assessments.**

*Notwithstanding* the requirements of this section:

- The fee for furnishing a resale certificate may not exceed \$125 plus:
  - If the association furnishes paper copies of documents, five cents per page furnished; or
  - If the association furnishes electronic copies of documents, ten dollars for all of the electronic copies [*Subsection 47-270(b)(1)*].
- The amendments to CIOA have added several requirements to what must be included in a resale certificate and they are listed below [*Subsection 47-270(a)*]. *If you need help preparing an updated form resale certificate, please contact us.*
  - A statement of the amount of any reserves for capital expenditures [*Subsection 47-270(a)(5)*].

- A list of any pending suits or administrative proceedings in which the association is a party. This new requirement includes any pending foreclosures brought by the association or any other holder of a lien against the Homesite Lot. However, it does not include other types of collections [*Subsection 47-270(a)(7)*].
- If the association has adopted a list of standard fixtures, improvements and betterments that are covered by the association's insurance, the copy of the list must be included in the resale certificate [*Subsection 47-270(a)(8)*].
- A statement disclosing the number of Homesite Lots whose owners are at least 60 days' delinquent in paying their common charges on a specified date within 60 days of the date the certificate is issued [*Subsection 47-270(a)(14)*].
- A statement disclosing the number of foreclosures filed by the association during the past 12 months [*Subsection 47-270(a)(15)*].
- A statement disclosing the number of foreclosures filed by the association which are still pending as of a specified date. That date must be within 60 days of the issuance of the resale certificate [*Subsection 47-270(a)(15)*].
- A statement disclosing the most recent fiscal period within the five years preceding the date on which the certificate is being furnished for which an independent certified public accountant reported on a financial statement, and whether such report on a financial statement was a compilation, review, or audit [*Subsection 47-270(a)(16)*].
- Any established maintenance standards adopted by the association [*Subsection 47-270(a)(17)*]. *See comments to Declaration Section 14.2 concerning common charges attributable to fewer than all Homesite Lots.*

**Bylaws, Article V - Operation of the Property.**

- *See the comments to Declaration Section 18.2 concerning notice and hearing.*

**Bylaws, Section 7.1 - Records and Audits.**

***In addition to*** the requirements of this section:

- *See the list of records that the association must maintain set out in the comments to Bylaws Section 7.3.*

*Notwithstanding* the requirements of this section:

- The minutes of each board meeting shall contain a record of how each director cast his or her vote on any final action proposed to be taken by the board, unless such action was approved either by unanimous consent of the board or without objection by any director [*Subsection 47-250(b)(8)*].
- *See comments to Bylaws Section 7.2 concerning examination of records.*

**Bylaws, Section 7.2 - Examination.**

*In addition to* the requirements of this section:

- Except as discussed below, all records retained by the association must be available for examination and copying by a Homesite Lot Owner or the owner's agent.
- As an alternative to having the records available during normal business hours, the association may make them available at a time and location that is mutually convenient to it and the Homesite Lot Owner [*Subsection 47-260(b)(1)*].
- Examination of records must be permitted upon reasonable notice, which means five days' notice in a written or electronic communication that identifies the specific records of the association that the Homesite Lot Owner is requesting [*Subsection 47-260(b)(2)*].
- The association has no obligation to compile or create information in response to a request by a Homesite Lot Owner for the inspection and copying of its records [*Subsection 47-260(g)*].
- Any information that the association provides in response to a request by a Homesite Lot Owner for the inspection and copying of its records may not be used for commercial purposes [*Subsection 47-260(h)*].

*Notwithstanding* the requirements of this section:

- The association must withhold its records from inspection and copying to the extent that they concern the following matters: [*Subsection 47-260(c)*]
  - Personal information, which means information capable of being associated with a particular individual through one or more identifiers, including, but not limited to, a Social Security number, a driver's license number, a state identification card number, an account number, a credit or

debit card number, a passport number, an alien registration number or a health insurance identification number, and does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records or widely distributed media.

- Personnel, salary, and medical records relating to any specific individual, unless the individual agrees to waive the records' protection from disclosure to the requesting Homesite Lot Owner.
- Information whose disclosure would violate any law, including but not limited to, CIOA as amended.
- The association may withhold the following records from inspection and copying that concern the following matters [*Subsection 47-260(d)*]:
  - Contracts, leases, and other commercial transactions for the purchase of goods or services that are under current negotiation;
  - Existing or potential litigation or mediation, arbitration, or administrative proceedings;
  - Existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for the enforcement of the declaration, bylaws, or rules;
  - Communications with the association's attorney that are protected by the attorney-client privilege or the attorney work-product doctrine; in other words, confidential communications between the attorney and the association for the provision of legal advice and documents prepared by the attorney for the association in connection with existing or potential lawsuits involving the association;
  - Records of an executive session of the board; and
  - Files and records for individual Homesite Lots other than the Homesite Lot of the requesting Homesite Lot Owner.
- *The association should consider adopting a policy concerning the inspection of the foregoing records.*

- The association may charge a reasonable fee for providing copies of any records and for supervising the Homesite Lot Owner's inspection of the records [*Subsection 47-260(e)*].
- The right to copy records includes the right to receive copies by photocopying or other means, including copies sent by electronic transmission if the association has the capability to send copies in this way and the Homesite Lot Owner requests that they be sent in this way [*Subsection 47-260(f)*].

**Bylaws, Section 7.3 - Statutory Records.**

*In addition to* the requirements of this section, the association must keep the following records:

- Detailed records of receipts and expenditures affecting the operation and administration of the association and other appropriate accounting records [*Subsection 47-260(a)(1)*].
- Minutes of meetings of the association's Homesite Lot Owners and board, a record of all actions taken by the Homesite Lot Owners or board without a meeting and a record of all actions taken by a committee in place of the board on behalf of the association. Minutes of meetings of the board in executive session are optional [*Subsection 47-260(a)(2)*].
- The names of Homesite Lot Owners in a form that permits the association to prepare a list of the names of all owners and the addresses at which the association communicates with them, in alphabetical order showing the number of votes each owner is entitled to cast [*Subsection 47-260(a)(3)*].
- The association's original or restated organizational documents, the association's bylaws and all amendments to them, and all rules of the association that are currently in effect [*Subsection 47-260(a)(4)*].
- All financial statements and tax returns of the association for the past three years [*Subsection 47-260(a)(5)*].
- A list of the names and addresses of the association's current directors and officers [*Subsection 47-260(a)(6)*].
- The association's most recent annual report that was delivered to the Secretary of the State [*Subsection 47-260(a)(7)*].

- A record of the existence of any pending lawsuits or administrative proceedings in which the association is a party [*Subsection 47-260(a)(8) and Subsection 47-270(a)(7)*].
- If the association must insure the Homesite Lots and decides to exclude from coverage certain improvements or betterments installed in the Homesite Lots by the Homesite Lot Owners, the schedule of standard fixtures, improvements, and betterments in the Homesite Lots that are covered by the association's insurance [*Subsection 47-260(a)(8) and Subsection 47-270(a)(8)*].
- A record of all foreclosure actions brought by the association within the previous 12 months [*Subsection 47-260(a)(8) and Subsection 47-270(a)(15)*].
- Any Homesite Lot maintenance standards adopted by the association under Subsection 47-257(e) of the Common Interest Ownership Act [*Subsection 47-260(a)(8) and Subsection 47-270(a)(17)*].
- Copies of current contracts to which the association is a party [*Subsection 47-260(a)(9)*].
- Records of actions by the board or a committee to approve or deny any requests by Homesite Lot Owners for design or architectural approval from the association [*Subsection 47-260(a)(10)*].
- Ballots, proxies, and other records relating to voting by Homesite Lot Owners, for a period of one year after the election, action, or vote to which they relate [*Subsection 47-260(a)(11)*].

**Bylaws, Section 7.4 - Form Resale Certificate.**

*In addition to* the disclosures previously required by Subsection 47-270(a) of the Act:

- *The CIOA Amendments have changed what must be included in resale certificates. See comments to Bylaws Section 4.9 concerning resale certificates. If you need help preparing an updated form resale certificate, please contact us.*

**Bylaws, Article VIII - Miscellaneous**

*In addition to* the requirements of this article:

- Meetings of the association (Homesite Lot Owner meetings) shall be conducted in accordance with the most recent edition of *Robert's Rules of Order Newly Revised*, unless (1) the declaration, bylaws, or other law requires that the



association follow a different procedure or (2) Homesite Lot Owners casting two-thirds of the votes allocated to owners present at the meeting may act to suspend those rules [*Subsection 47-250(c)*].

### **Bylaws, Section 8.1 - Notices.**

*Notwithstanding* the requirements of this section:

- If a Homesite Lot Owner furnishes the association with a mailing address that is not the Homesite Lot, the association should send notices to that address rather than the Homesite Lot. These notices can be given by hand delivery, U.S. mail with postage paid, or commercially reasonable delivery service [*Subsection 47-261c(a)*].
- If the Homesite Lot Owner furnishes the association with an electronic (e-mail or fax) address, the association may give notice to the Homesite Lot Owner by electronic means at the electronic address [*Subsection 47-261c(a)*].
  - *We recommend the use of a form in which the Homesite Lot Owner designates his or her electronic address, agrees to receive notices from the association by electronic means only, and agrees to notify the association of changes to his or her electronic address.*
  - *Electronic notice may not be used for hearings held under Subsection 47-278(c) or (d) of CIOA. There are separate and different requirements for notice of hearings before the association brings an action or institutes a proceeding against a Homesite Lot Owner and notices of hearings held at the request of a Homesite Lot Owner seeking to enforce the documents or CIOA. See the comments to Declaration Section 18.2.*
- Notices are effective when sent [*Subsection 47-261c(b)*].

### **Bylaws, Section 8.3 - Waiver.**

- *See the comments to Bylaws Section 2.2 concerning the board enforcing a right or compromising a claim.*

### **Bylaws, Section 8.5 - Amendments.**

- *See the comment to Declaration Article XX concerning board limitations.*

## RULES

### Rules, General, Section 1.

- *This section may establish maintenance standards as described in Subsection 47-257(e) of CIOA. It should be disclosed in resale certificates [47-270(a)(17)].*
  - *See also the comment to Declaration Section 14.2 concerning the assessment of common expenses related to failure to observe maintenance standards.*