

Waterview Property Owner's Association (POA), Inc.

Amended and Restated Declaration of Covenants, Conditions and Restrictions

Frequently Asked Questions

January 20, 2025, Annual Meeting

Do the Amended and Restated Declaration of Covenants and Restrictions give the Board too much overreach and control? Was this a power grab by the Board?

The Board worked considerable hours on these documents with assistance and guidance from their attorney to bring a balanced declaration which would allow owners to continue improvements to their property while allowing procedural safeguards to prevent situations such as the ongoing DEP violations from occurring in the future. The entire revision of the declaration was guided with these goals in mind. The intention was indeed to update the documents to conform with the new laws and NOT to infringe on owners' rights.

The following is a quote from the Waterview POA attorney, Ben Bartlett at Association Legal Services

www.associationlegalservices.com: "I do want to note that any insinuation that these documents are any sort of power grab or control method by the current Board is misplaced. I have spoken at length with each board member and can assure wholeheartedly their commitment to balance, fairness, and prosperity within the Waterview community. I do not in any capacity believe any members of the current Board have nefarious or ulterior motives for the passage of this revised declaration."

Why does the ACC have 45 days to approve an application as stated in Section 5, but the ECC has 60 days as referenced in Section 10?

Administratively, there is a rationale behind the ECC having a longer timeline. The ACC is mainly responsible for internal approvals regarding improvements to the home and plat. The ECC's "jurisdiction" is broader, and may involve review and collaboration with the requirements of other state agencies, such as the DEP. With that in mind, a longer timeline provides more flexibility for these processes to play out.

Why is owner approval not required for Special Assessments as referenced in Section 8?

Florida law allows an HOA to levy special assessments if the authority is clearly granted in its governing documents. If the governing documents explicitly state that special assessments for certain purposes (like repair and reconstruction) do not require owner approval, this provision is enforceable. While the bylaws may state that voting is required regarding special assessments, the declaration is higher in the order of priority/authority than the bylaws and may prescribe a different procedure in certain contexts. In this context, the Board may levy a special assessment without owner approval in the event of an insurance deficiency. Owners are still protected by the procedural safeguards afforded by statute regarding special assessments (notice, opportunity to attend meetings and be heard), but the ultimate vote is left to the Board in the insurance context. This is a typical provision found in HOAs statewide and is a necessary update that allows the POA to deal with the practical realities of the recent natural disasters plaguing Florida by allowing the Board to take swift action when insurance is deficient.

Section 9 allows the Board to dictate the number of animals for an owner as well as their size and type. Will the Board now ban big dogs or other animals that can be a pleasant part of our community? What about allowing electronic

fences?

This provision does not purport to ban any big dogs or other animals; rather, it gives the Board the authority to do so if necessary and there has been no discussion of banning any animals nor enacting rules and regulations to that effect. This provision serves to give the Association the ability to respond to situations involving animals causing disruption. It's important for the Association to be able to act swiftly in these situations. Regarding electronic wireless fences, that is a good candidate for amendment if the community would like that included in the future.

The following is a quote from the Waterview POA attorney, Ben Bartlett at Association Legal Services

www.associationlegalservices.com: "This is a common provision in associations statewide and for good reasons. *It is not unusual to require leashes when pets are outdoors. It is the law in most areas that pets must be kept on a leash as leashes protect the owner's dog, other dogs, and other people from potential harm.*"

Does Section 9 ban parking on vacant lots?

This provision does not ban parking on vacant lots but rather requires permission from the Board to do so. The full provision states that "Parking is not permitted on vacant Lots, *unless* specific written permission is given by the Board." Thus, it is still possible to park vehicles on vacant lots provided the Board approves. Board approval is a smart policy to implement as a practical matter, otherwise, the community runs the risk of vacant lots becoming overrun with vehicles. In addition, a limitation on parking on vacant lots is required to allow accessibility to the Greenbelt and homes by emergency services.

Is the Board allowed by law to tow or boot a vehicle on private property without prior notice as referenced in Section 9?

This rule aligns with Florida Statute 715.07, which governs towing from private property. While the Association has the authority to enforce parking restrictions, including towing or booting vehicles, it must comply with specific legal requirements. Florida law mandates that clearly visible signage be posted at all entrances to the property, stating the towing policy, contact information for the towing company, and enforcement hours. Without proper signage, towing or booting would be unlawful. Section 9.6 gives authority to post these signs. Additionally, any towing or booting must be performed by a licensed and insured towing company, as required by the statute. The towing company is also obligated to notify local law enforcement within 30 minutes of towing a vehicle and provide the location of the towed vehicle. While prior notice to the vehicle owner is not required under Florida law if proper signage is in place, the Association must still adhere to all procedural requirements outlined in the statute.

The following is a quote from the Waterview POA attorney, Ben Bartlett at Association Legal Services

www.associationlegalservices.com: "The Association is committed to ensuring that its enforcement of parking restrictions fully complies with legal standards, including proper signage and the use of licensed professionals."

Section 9.12 allows the Board to mandate a standard model, style and color for hurricane shutters. Is this allowed under the law?

The Board expressed much concern over this requirement from the Florida Statutes, specifically section 720.3035(6). The language is from this statute and must remain. The Board's adopted model, style, and color is also allowed to be broad and all encompassing. The Board may also allow for multiple styles, colors, and models. The rule is that the Board needs to adopt and approve a model, style, and color, but there is much leeway as to what that looks like. The purpose is to ensure uniformity while still complying with applicable building codes, which prioritize safety and protection during storms. As with all the governing documents, input and suggestions from the community are always welcome.

The following is a quote from the Waterview POA attorney, Ben Bartlett at Association Legal Services

www.associationlegalservices.com: "I believe that the Board will work to adopt specifications that provide adequate protection and flexibility for owners."

Section 9 Rules & Regulations allows the Board to create and amend, governing and restricting the use and maintenance of lots without a vote. Isn't this going too far?

The Board is already permitted to do this under the current declaration (see Article IX, Section 14). It allows the Board to enact supplemental rules and regulations to clarify what is listed in the governing documents.

The following is a quote from the Waterview POA attorney, Ben Bartlett at Association Legal Services

www.associationlegalservices.com: "Almost all HOAs have this. To clarify, it doesn't allow the Board to amend the Declaration, Bylaws, or Articles without a vote. Nothing in these rules and regulations can supersede what is in the Declaration or the statutes. The ability to promulgate rules and regulations helps the Board to manage evolving community needs without requiring a formal amendment to the governing documents, making them an essential tool for maintaining order and harmony in the community."

Why did the Board feel it was necessary to Amend and Restate the Declaration? It seems to be overreach.

The following is a quote from the Waterview POA attorney, Ben Bartlett at Association Legal Services

www.associationlegalservices.com: "I want to again state that the implementation of this new declaration is an overwhelmingly positive benefit to your community. The current CC&Rs lack coherence and readability to the point where they aren't practical for use. It has led to numerous DEP violations and state of lawlessness which ultimately puts each member of the association on the hook for serious financial liability, and in the case of some environmental destruction, criminal penalties [] None of the "new" rules in the revised declaration purport to infringe on the "rights" of owners; rather, they are intended to insulate each owner and the association from liability, while giving the association the ability to swiftly address issues which may arise. None of the new rules are unusual or an overreach in terms of what other communities are doing, and all are lawful.

Overall, as I've told the board, it remains my advice that this declaration be voted on and approved. It would be an enormous quality of life improvement for the Association and the community."