

MEMORANDUM

TO: Crowley Ranch Reserve Owners' Association, Inc.

FROM: Lauren C. Holmes, Orten Cavanagh Holmes & Hunt, LLC

DATE: October 19, 2022

SUBJECT: Summary of Voting Provisions and Amendment Requirements

Orten Cavanagh Holmes & Hunt, LLC is legal counsel to Crowley Ranch Reserve Owners' Association, Inc. We have been asked to prepare a memorandum outlining (i) items that Owners vote upon and items that the Board votes upon; (ii) the procedure to amend the declaration (covenants), articles of incorporation, and bylaws; and (iii) the number of votes each Parcel is permitted to cast.

Voting – Matters Decided by the Board and Matters Decided by the Owners

Board Decisions

Pursuant to Article III, Section 3.1 of the First Restatement of Declarations of Covenants, Conditions, and Restrictions for Crowley Ranch Reserve Phases I, II, III, and IV (“Declaration”), the Board acts in all matters regarding the governance of the Association unless the Declaration or law requires a Member vote. This is consistent with the general law regarding corporations. The Declaration includes several provisions regarding Board or Association authority (which is exercised through the Board), such as:

1. Appoint the ACC (Section 8.2)
2. Final approval for variances the ACC may grant (Section 8.4)
3. Final decision if Owner appeals an ACC decision (Section 8.9)
4. Adopt rules and regulations (Section 9.2h and Colorado law)
5. Designate certain areas as special wildlife and fishing areas (Section 9.2j)
6. Determine whether to permit a lease term of less than one month in a particular case (Section 9.2n)
7. Determine the budget/annual assessments, subject to owner ratification (Section 7.7 and Colorado law)

In addition, although not specifically noted in the Declaration or other documents, the Board also acts on the Association's behalf to handle the following types of day-to-day operational matters:

1. Selecting service providers and professional services and entering into such contracts
2. Determining violations and steps to take to enforce restrictions
3. Selecting insurance
4. Determining how and when to provide maintenance
5. Determining when additional expertise is needed

Pursuant to the Bylaws, the Board of Directors elects/removes the officers and has the authority to amend Bylaws that were not adopted by the Members of the Association. The Board also fills vacancies on the Board unless the vacancy is caused by an owner vote to remove a director, in which case the owners elect a successor director.

Please note that this is not an exhaustive list.

Owner Decisions

As noted above, the Board acts for the Association unless a matter is specifically reserved for a vote of the Owners/Members. Pursuant to Article II, Section 9 of the Bylaws, unless another provision requires otherwise, matters requiring owner approval will be approved based on a majority of the votes cast. This is consistent with Colorado law.

Matters specifically reserved for the Owners/Members are:

1. Elect the directors (Bylaws, Article II, Section 9) – This requires a plurality of the votes cast; a plurality avoids the need for runoff elections.
2. Remove the directors (Bylaws, Article III, Section 14) – Please note that the voting requirement set forth in this section is contrary to state law. In order to remove a director from office, 67% of all persons present and entitled to vote at a duly called meeting must approve the removal.
3. Elect a successor if there is a successful vote to remove a director (Bylaws, Article III, Section 14) – This requires a plurality of the votes cast.
4. Amend the Bylaws (Bylaws, Article XII, Section 2)
5. Certain financial decisions:
 - (a) According to Article VII, Section 7.7 of the Declaration, an increase of more than 5% of the previous base assessment requires the approval of 75% of the votes of the Members voting in person or by proxy.
 - (b) According to Article VII, Section 7.8 of the Declaration, a special assessment requires the approval of a majority of Members voting in person or by proxy.
 - (c) It is unclear to us why the increase in the annual assessment requires a higher percentage to approve than a special assessment. Neither of these approval

requirements is required by Colorado law, which only requires a ratification process rather than an affirmative vote.

- (d) The Declaration does not incorporate the budget ratification procedure required by Colorado law. In reading only the governing documents, it would seem that owners only vote on a budget if the annual assessment is to be increased more than 5% or if there is a special assessment. Pursuant to Colorado law, once the Board adopts a proposed budget, it must call a Member meeting to discuss the budget. Quorum is not required for this meeting. Unless a majority of *all* owners veto the budget, the budget is deemed to be approved. The Association needs to follow this procedure for any annual assessment budget in which there is not an increase of 5% or more. If there is an increase of 5% or more, Section 7.7 is to be followed.
6. Amend the Declaration (Article XIV, renumbered to Article XV in the Second Amendment)
 7. Amend the Articles of Incorporation (Colorado law)

Article II, Section 14 of the Bylaws purports to allow Members to vote to remove other members by a majority vote of the entire membership. Since Membership is linked to the ownership of a Parcel, we do not believe Members have the authority to remove Members.

Amendment Procedure/Voting Requirements

Declaration

Article XIV (renumbered as Article XV) states that the Declaration may be amended with the approval of 67% of the Owners. C.R.S. Section 38-33.3-217(1)(a)(I) states that a declaration “may be amended only by the affirmative vote or agreement of unit owners of units to which more than fifty percent of the votes in the association are allocated or any larger percentage, not to exceed sixty-seven percent, that the declaration specifies.” The amendment requirement is based on the units to which the votes are allocated as opposed to the number of owners a community may have. Therefore, in order to amend the Declaration, the owners of 67% of the Parcels must approve the amendment.

An association can choose to seek an amendment outside of a meeting by obtaining the written consent of the Owners or by voting at a meeting called for that purpose. If an association seeks written consent outside of a meeting, the association must receive the written consent from 67% of the Parcels within 60 days. Most associations find this difficult to achieve and seek to obtain approval at a member meeting because it allows for more flexibility. Unlike the written consent process, a member meeting can be continued to another date and properly drafted directed proxies will remain valid for those continued meetings, up to 11 months. This allows the association more than just 60 days in which to obtain enough owner participation to know whether the proposed amendment will be adopted or will fail.

I have not been provided with a copy of the proposed amendment but have been advised that it related to UTVs. Based upon the information we have been given regarding the recently proposed Declaration amendment, it does not appear that it was approved by owners of 67% of the Parcels.

Articles of Incorporation

As the Articles of Incorporation are silent regarding amendment, we defer to the statutory requirement. The Articles of Incorporation may be amended with the approval of a majority of Members present and voting, in person or by proxy, at a regular or special meeting, at which a quorum is present.

Bylaws

Pursuant to Article XII, Section 2, Members may amend the Bylaws. The approval requirement is established in Article II, Section 9 of the Bylaws. In order to amend the Bylaws, the Association must obtain a majority of the votes cast at a meeting of Members duly called at which a quorum is present. This is consistent with state law.

Differing Approval Requirements for Governing Documents

The Declaration, Articles of Incorporation, and Bylaws serve different purposes and each has a different amendment requirement based on Colorado law. The Declaration binds the real estate and restricts its use, so it requires the highest level of approval to change. The Articles and Bylaws are both corporate documents governing the day-to-day corporate operations. Both are intended to be more nimble than a declaration, so have a lesser amendment requirement.

Apathy – Court Petition Process to Approve a Declaration Amendment

If an association cannot obtain the requisite owner consent, Colorado law permits a court petition procedure to approve amendments to the Declaration. This procedure does not apply to amendments to the Articles of Incorporation or to the Bylaws.

The statutory requirements for court approval include the following:

- The association must obtain approval by at least half of the owners required under the existing Declaration to amend the Declaration (*e.g.*, if the Declaration requires consent of 67% of the units for amendments, the association would have to obtain approval of the proposed Declaration by at least 33.5% of the units).
- The association must send at least two notices to the members and hold at least one meeting to discuss the proposed amendments.

- Not more than 33% of the owners, 33% of the mortgagees (if mortgagee consent is required), the declarant (however, if the declarant no longer exists, this would be unnecessary), Federal Housing Administration (“FHA”) and the Veterans Administration (“VA”) (if they are entitled to vote on amendments in your community) object to the proposed amendments as evidenced by written objections filed with the district court.

This procedure is meant to address apathy rather than opposition to an amendment. If enough owners have voted against an amendment, there would be no reason to seek a court petition.

Number of Votes per Parcel/Owner

Based on the time frames set forth in Article VI, Section 6.2 of the Declaration, Class B membership has expired so all Members are now Class A Members. Section 6.2a states:

Parcel owners may cast a maximum of two votes per [P]arcel. In the case of multiple owners, the two votes allocated to each [P]arcel may be split. Entities other than individuals owning [P]arcels shall designate in writing to the Secretary the person(s) entitled to cast votes on the behalf of such entity.

Each Parcel is allocated two votes for the Parcel, regardless of the number of persons who are titled owners of that Parcel. If more than one person is a titled owner of a Parcel, and those owners do not agree on how to cast the two votes, they can each cast one vote for the Parcel. This will often have the effect of cancelling that Parcel’s vote. For instance, an amendment to the Declaration requires the approval of owners of 67% of the Parcels. If a specific Parcel casts one vote in favor of the amendment and one vote against, that Parcel has not approved the amendment. The Association will need to be careful when split votes are cast to ensure that the proper approval is obtained for a particular action that requires approval.

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