



ZELMANSKI, DANNER & FIORITTO, PLLC

Experienced Condominium & HOA Attorneys

VILLAGE OF HICKORY POINTE HOMEOWNERS ASSOCIATION, INC.

A GUIDE TO THE PROPOSED AMENDMENTS

GENERAL REVISIONS

The Board of Directors is proposing comprehensive updates, improvements, and amendments to your Association's Declaration of Covenants, Conditions, Restrictions and Bylaws. These two documents are the foundation your Association's governance.

The Board is proposing the vast majority of these changes because they constitute improvements from an objective perspective over your existing documents. These amendments include changes and updates that would be in the interest of any homeowners' association with existing documents similar to your own.

Since the majority of the proposed updates to your Declaration are objectively preferable to the text contained in your existing document, they will be submitted to the Owners for a vote as a single ballot item.

The proposed "objective" amendments to your Declaration and Bylaws are numerous. The text has been updated in keeping with recent revisions to various Michigan statutes that apply to Michigan homeowners' associations, such as the Michigan Nonprofit Corporation Act. The new text is now gender-neutral throughout. Some sections have been relocated for better organization and "flow." Any previous text considered illegal or unenforceable has been deleted. All of the changes included in the previous six amendments to your Declaration are now consolidated in the Amended Declaration. Text mentioning the "Declarant" (i.e., your Developer) has been deleted throughout where possible. We have also added text covering a number of important topics that your existing documents do not cover, and eliminated any typographical errors that we identified.

One major change of note is that your Bylaws are no longer a separate document – they are now contained within the Declaration itself. This is preferred in that the former Bylaws were not recorded with the Register Deeds (Michigan law does not require corporate Bylaws to be recorded or filed with any Michigan agency); thus, Owners and potential buyers have no notice of what your Bylaws contain. Also, separate Bylaws

can be lost or misplaced. Incorporating your Bylaws into the Declaration ensures that everyone will be on notice of (and have ready access to) this important part of your governing documents.

Many changes have been made to incorporate the Association’s potential use of new communication technologies as permitted by the 2015 revisions to the Nonprofit Corporation Act. **In addition, the Board has proposed new revisions to better handle Association functions during “catastrophic events,” such as the COVID-19 Pandemic.** All of these changes will benefit your Association as a whole.

A few of the changes are being proposed from a more “subjective” perspective (i.e., changes that you are not technically “required” to make in any legal sense, but which the Board nevertheless feels are in the membership’s best interests). The Board is proposing these changes so that your documents are customized to better fit the current needs and practices of the Membership. All such proposed changes will be noted throughout the remainder of this *Guide*.

Overall, we have attempted to *modernize, improve, and customize* your documents to better suit the current needs and desires of your membership.

We suggest you further consult the new *Table of Contents* and this *Guide* as you study the proposed amendments to your governing documents.

The following is an itemized summary of the material amendments being proposed to your Declaration of Covenants, Conditions and Restrictions, and Bylaws (the terms of which are now included in the Declaration):

RECITALS

- All references to the “Developer” and development of the Subdivision have been deleted where appropriate.
- References have been added to the previous six amendments to the Declaration which have been made to date.

ARTICLE I - DEFINITIONS

- Section 1.7 – the final number of Lots is now identified as 258.
- Section 1.8 – the definitions of “Member” and “Owner” have been consolidated, as they are synonymous.
- Section 1.10 – the Plats for all 4 Subdivisions (with recording information) are now specifically identified.
- Obsolete references to “Phases” have been deleted.
- Section 1.14 – “Subdivision” now includes all 4 Subdivisions.

ARTICLE II – PROPERTY SUBJECT TO THIS DECLARATION

- The “Exhibit A” has been consolidated to contain the legal descriptions for all 4 Subdivisions.
- Text regarding the Hickory Pointe Drainage District, which was included in one of the previous 6 amendments, is now included within this Article of the Declaration.

ARTICLE III – HOMEOWNERS ASSOCIATION

- Text from Articles I (Section 2) and II (Sections 2-12) of the old corporate Bylaws are now incorporated as Sections 3.02-3.08 and 3.10-3.12. Bylaws Art. 3, Sec. 21 added as 3.13. Obsolete action without meeting text (Bylaws, Art. II, Sec. 13) has been deleted.
- Section 3.05 – individuals in default/delinquent cannot vote.
- Section 3.06 – Annual meetings in May. **This Section has been revised to address what happens when a “Catastrophic Event” such as COVID-19 occurs.**
- Section 3.08 – Notice of meetings by email/text now permitted. Meetings may be held by means of “remote communication.”
- Sec. 3.13 – “Shrinking quorum” provision added – if quorum is not met, quorum at next meeting is 10%. Enables Association to take action more easily and avoid quorum issues.
- Sec. 3.10 – specifies who has right to vote if a lot has multiple owners. Tracks Nonprofit Corporation Act. Voting by proxy is no longer prohibited. The Association now has more flexibility to take action by “written ballot.”
- Sec. 3.14 – Chair may alter agenda of meetings, per revised Nonprofit Corporation Act.
- Sec. 3.18 - Association no longer has separate corporate Bylaws.
- Sec. 3.19 – Sets forth detailed rules and procedures that would apply to meetings held by “remote communication,” per the revised Nonprofit Corporation Act. **New provisions added in light of COVID-19 for greater flexibility.**
- Sec. 3.20 – Improved text regarding the Association’s ability to take actions without a meeting (e.g., via written ballot). Such votes may be cast via “electronic transmission.”
- Sec. 3.21 – **Brand-new Section defines, “Catastrophic Events” and emergency powers that the Board has to protect the interests of the Association and its members.**
- Sec. 3.22 – New Section defines “Electronic Transmission.” Any document required to be “in writing” may be transmitted electronically.

ARTICLE IV – BOARD OF DIRECTORS

- Sec. 4.01 – A member must be in “Good Standing” to be elected/appointed to the Board, and must be a resident within the Subdivision.
- Sec. 4.02 – Directors must serve without compensation.
- Old language regarding Developer’s control of the Board has been removed.
- Sec. 4.03 (o) – 60% member approval is now required for any special assessment where the borrowing related thereto exceeds 60% of the budgeted gross expenses (instead of 50%) of the Association for that fiscal year. No mortgaging of Common Area without 60% approval (instead of 51%).
- Sec. 4.05 – **see new provisions regarding existing Board continuing to serve during a “Catastrophic Event.”**
- Sec. 4.06 – Directors who fail to attend meetings, pay assessments, or who violate the Declaration cannot continue to serve on the Board.
- Sec. 4.09 and .10 – now allows notice for Board meetings to be served electronically. Board members may vote by email for unanimous decisions. Directors may also participate in meetings via remote communication.

- Sec. 4.16 – Executive sessions. The Board may vote to close all or part of Board meetings to the membership. Open Meetings Act does not apply.
- Sec. 4.17 – new text tracks revised Nonprofit Corporation Act regarding a Board member’s duty to disclose conflicts of interest.

ARTICLE V – OFFICERS

- Relocated from corporate Bylaws, Article IV. The officers’ roles and duties are described in this Article.
- Directors elect the officers each year. A person may not hold more than one officership at a time.
- Sec. 5.01 - Officers cannot be compensated, but may be reimbursed for expenses.
- Sec. 5.03 – Board members can vote to remove another Board member from his or her “officership”, but they cannot remove a member from the Board entirely. Only the membership may vote to recall a Board member. This is often a point of confusion among Boards.
- Sec. 5.04-.07 – the roles of each officer are now expressly described.
- Section 5.10 – Officers may now use e-signatures to the extent permitted by law.

ARTICLE VI – COMMON AREAS

- Formerly Article IV.
- Sec. 6.02 – language of previous amendments is now incorporated.
- Developer language has been removed.
- Sec. 6.05 – Drainage Easement & Natural Area text added per previous amendments.

ARTICLE VII – COVENANTS FOR MAINTENANCE AND CAPITAL CHARGES

- Formerly contained in Article V.
- Sec. 7.03, 7.04 - Note the differences between “Annual” and “Special” assessments. Old language regarding Developer has been removed. Interest now begins to accrue automatically 60 days after notice of assessment is sent to owner and assessment goes unpaid.
- Sec. 7.03 (a) – the 25% limit on Board’s power to increase assessments from year-to-year has been removed; this could hamper the Board’s power to raise the funds it needs to fulfill its legal duties.
- Sec. 7.03 (b) – Note the \$25.00 per month late charge and new application of payments language.
- Sec. 7.04 (a) – Special assessments must be approved by 60% of members eligible to vote (not 75%). The erroneous “votes cast” language has been deleted.
- Sec. 7.04 (b) – quorum is now 25% instead of 90% of eligible members for a meeting to vote on special assessment.
- Sec. 7.05 – 15% interest rate is illegal; this has been reduced to 7%.
- Sec. 7.07 – obsolete exemptions from assessments for Developer have been removed.
- Sec. 7.09 – Association may now take action 30 days after assessment goes unpaid instead of 60 days. Note the various consequences of non-payment of assessments.

ARTICLE VIII – GENERAL RESTRICTIONS

- Sec. 8.01 – New sheds are prohibited, but existing sheds are grandfathered.
- Sec. 8.08 – Home offices are no longer prohibited.
- Sec. 8.09 - Additional rules regarding pet ownership have been added (owners are responsible for their animals and the damage they might cause).
- Sec. 8.14 – Owners must maintain the trees on their own Lots and remove/replace dead trees within a reasonable time with trees of similar kind and quality.
- Sec. 8.19 – Perimeter fences are prohibited unless they were approved in writing by Developer/Board prior to recording of this Amended Declaration. Note the Association’s remedies in an enforcement action over fences.
- Sec. 8.22 – Hot tubs and whirlpools only permitted if on owner’s deck or below the owner’s second-story deck.
- Sec. 8.24 – amended to allow satellite/television/radio dishes and antennas to the extent that the FCC “OTARD” rules apply.
- Sec. 8.25 – wood trim must be kept free of mold and rot.

ARTICLE IX – ARCHITECTURAL CONTROLS

- Sec. 9.01 – Amended to clarify that failure to comply with the Article will subject the Owner to fines and other legal remedies under Article X.
- Sec. 9.03 – Developer language has been removed. A member must be in “good standing” in order to be eligible to serve on the “ACC.”

ARTICLE X - REMEDIES

- All of the Association’s legal remedies are now consolidated in this single Article.
- Sec. 10.01 - The Association’s lien and foreclosure remedies are stated in more detail.
- Sec. 10.02 – The Association’s right to impose fines for violations is now included, as well as the procedure the Association must follow for the imposition of fines. A fine schedule is included.

ARTICLE XI – FINANCE & RECORDS

- Formerly contained in Article III and VI of the Bylaws.
- Sec. 11.02 - The Association is required to keep detailed books and records and to send financial statements to the Owners each year. Qualified, independent auditors (who must be *certified public accountants*) must either perform a review or audit at least once every two years. The members can also vote to compel the Board to do a review or audit in any year.
- Sec. 11.03 (a) - owners have a right to inspect the Association’s books, records, financial statements and contracts during reasonable working hours. The revised Nonprofit Corporation Act regarding a member’s right to inspect the books and records is also referenced.

ARTICLE XII – INDEMNIFICATION AND INSURANCE

- Language has been added granting important indemnification protections to your Directors and Officers. These liability protections are important to protect your volunteer Directors and Officers while they are acting on the Association's behalf.
- The Association must carry liability insurance for your Directors and Officers. The Association may indemnify Directors and Officers if the insurance coverage turns out to be inadequate.

ARTICLE XIII – GENERAL PROVISIONS

- Section 13.01 – Future amendments will only require 66 and 2/3% Owner approval, not 75%.
- Section 13.02 – the Declaration will run from 30 years from the date of the original Declaration's recording (instead of 20 years) and may be terminated with the approval of 2/3 of the Owners (instead of 75%).
- Sec. 13.06 – Notices may be given electronically per the Nonprofit Corporation Act.
- Former Section 8.09 regarding the Assignment of the Developer's rights to the Association has been deleted (these rights have already been assigned to the Association)

IN CLOSING...

Your Declaration of Covenants, Conditions and Restrictions is a binding contract between all of the Owners in the Subdivisions and the Association. The above changes are intended to improve, modernize, and customize the Declaration to better suit the needs and wants of the entire community. As circumstances change over the time, future amendments may become appropriate to best serve the evolving needs and interests of the membership.