

The By-Laws & Resolutions Advisory Committee
December 17, 2021
Microsoft Teams

Present: Chair Jim Trummel and Committee members Lora Pangratz, Keith Kaiser, Steve Jacobs, and Bob Hillegass. Also, present were Director Colette Horn, committee liaison and Josh Davis, OPA Marketing and Public Relations Director. Chair Jim Trummel called the meeting to order at 1:12 PM.

The agenda was approved

The minutes of the December 3, 2021 meeting were approved.

PUBLIC COMMENTS: None.

UNFINISHED BUSINESS

The chair reviewed the purposes of the By-laws Review Status and By-laws Proposals documents each dated 12/13/2021 and previously distributed. The By-laws Proposal document contains the current proposal for each topic being considered by the Committee. Both documents will be updated for every Committee meeting. The By-laws Review Status will continue to indicate the action required for each topic being considered. The 12/13/2021 By-laws Review Status is attached to these minutes. The By-laws Proposals document is not attached because of its length.

Search Committee: The chair reported that the Board of Directors, at the December 11, 2021 regular meeting, determined that the Search Committee is to be continued. The Board recommended that By-laws and Resolutions consider making the Search Committee a standing committee rather than appointed annually. Proposals based on Board guidance are to be discussed at the next Committee meeting.

Expansion of Board Candidate Criteria Charging Document (Section 5.02(a): This a request from the Board for the Committee to consider additional criteria for candidates (see attached Charging Document). Keith Kaiser led the discussion using an information summary that he had previously circulated (see attached HOA Resources). After discussions, it was decided that Steve Jacobs and Keith would collaborate on a proposal for a response to the Board to be reviewed at the next Committee meeting.

Associate Member Talking Points: This refers to a tentative plan to address this By-laws topic at a Board meeting. During the discussion of the Talking Points draft (attached) the chair expressed concerns that the topic may not be favorably received at the Board level and may not have general support of committee chairs. This was based on comments at the Executive Council meeting the previous night. Colette Horn will determine what interest the Board has in pursuing this topic for a By-laws amendment.

Due to time constraints, the Committee did not proceed with a further review of By-laws proposals.

NEW BUSINESS

The next meeting was scheduled for January 7, 2022 at 1:00 PM on Microsoft Teams.

The meeting was adjourned at 3:28 PM.

as of 12/13/2013

By-laws Review Status

The following sections for review and proposal are from the By-laws Work Group

Sections/pages	Purpose of Proposal	Status
3.01(c) & 5.02(a) page 1	Clarify voting eligibility	A draft was accepted at 12/3/2021 committee meeting
3.04 and 4.07(a) page 1	To provide increased certainty as to who is eligible to vote or sign petitions	These sections will not be revised. However, the eligible to vote is clarified in revisions accompanying 3.01(c) and 5.02(a)
4.03, 4.07(c)(2) and 4.07(c)(3) pages 2 & 3	To clarify the meaning of "maximum number of votes"	Draft dated 12/8/2021 is ready for review
4.04(b) & (c) page 4	The proposal is to add members' meetings notice provisions from charter	Draft dated 12/13/2021 is ready for review
4.08(c) page 5	To require a minimum number of votes be cast for approval of a referendum	Draft dated 12/13/2021 is ready for review
5.02(b) page 6	To determine the future of the Search Committee	Draft proposal is to be prepared based on Board discussion at the 12/11/2021 Board meeting
5.02(c) page 6	To revise board candidate application going to the Search Committee	Same as 5.02(b) Search Committee
5.10 page 7	To clarify requirements for Informal Action by making direct reference to Code	Draft dated 12/8/2021 is ready for review
5.11 page 8	To revise Board member amenity privileges	Draft dated 12/7/2021 is ready for review
5.13(h) page 9	To consider if there is a conflict between this provision and ARC authority in DRs	Input from counsel has not been received.

as of 12/13/2021

By-laws Review Status

Sections/pages	Purpose of Proposal	Status
5.14(e) & (f), 8.04(b), & 9.02(c) pages 10 & 11	To determine how to identify source references in the by-laws	Draft dated 12/7/2021 is ready for review
6.06(a)(6) page 12	To add a duty to the list of duties for the president	A proposal will not be prepared

The following proposals have been received from outside the Work Group and By-laws and Resolutions

10.02 page 13	To allow associate members of OPA to be committee members.	This topic is tentatively scheduled for a Board discussion at a January 2022 meeting of the Board
5.12(a)(4) page 14	To make it easier for association members to remove a director	A proposal will not be prepared
4.07(a) and 5.14(l) page 15	Insert references to a petition that has been certified as valid by the Secretary	Draft dated 12/12/2021 is ready for review

The following Advisory Committee Charge Documents have been received from the Board of Directors

5.02(a)	Provide a clarification of the meaning of "owner of record"	This is subject to further review by counsel with no current action at the Committee level
5.02(a) and 3.01(c) page 1	Clarify whether the 35 day provision of 3.01(c) applies to candidate eligibility	A draft was accepted at the 12/3/2021 Committee meeting. This item is the same as in the topics from the Work Group.
5.12(c)	Discuss meaning of "cause" and merits of resolution containing a code of ethics which can be used as a reference for "cause"	This is subject to further review by the Board. No current action at the Committee level

as of 12/13/2021

By-laws Review Status

5.02(a)	Recommendations for expansion of candidate criteria in 5.02(a)	Topic to be an agenda item for 12/17/2021 Committee meeting
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Note: Pages numbers in the left column refer to the page(s) in the By-laws Proposals document. That document contains the current proposal for the topic.

ATTACHMENT 2

OPA Board/Advisory Committee Charging Document

Request for Performance by: ☐ Board
☒ Bylaws and Resolutions ☐ Advisory Committee

Date: 12/3/2021

Submitted By: OPA Board Liaison, Colette Horn

For Inclusion in Meeting to be Held on: _____, 20____

Request: ☒ The Board requests the Bylaws and Resolutions ☐ Advisory Committee to:
☐ The _____ Advisory Committee requests the Board to:

Give a recommendation to the board regarding the expansion of criteria to be a candidate for the Board of Directors elections per Section 5.02(c) of our bylaws.

Background: (Explain the environment of why the Board/Committee wants and/or needs the actions performed)

Presently Section 5.02(c) references only property ownership status and eligibility to vote status as requirements for becoming a candidate for a Board election. The board wishes to have consideration given to additional criteria.

Discussion: (Topics for discussion by the Board/Committee to assure full understanding of what is expected)

Other homeowners' associations provide personal characteristics as well as association membership characteristics as requirements to serve on their board of directors. The board wishes the committee to research this and determine what the industry standard for these qualifications seems to be and give a recommendation for possible enhancement of the OPA qualification requirements.

Committee Chair: _____ Date: _____

Board Liaison: _____ Date: _____

Board Secretary: _____ Date: _____

HOA Resources

Issues related to eligibility of Board candidates

<https://www.pdsaz.com/who-can-serve-on-the-hoa-board/>
<https://www.socalenterprise.com/2021/07/21/4-qualifications-you-need-to-serve-on-an-hoa-board/>
<https://findhoalaw.com/director-qualifications/>
<https://www.jimersonfirm.com/blog/2016/01/who-may-serve-on-the-board-of-directors-for-florida-condominium-associations/>
<https://www.hoaleader.com/public/Residency-Requirements-for-Your-HOA-Board-of-Directors-Pros-and-Cons.cfm>
<https://homeownercpa.solutions/is-a-trustee-or-beneficiary-of-a-trust-eligible-to-run-and-or-serve-on-an-associations-board-of-directors/>
<https://www.naplesnews.com/story/money/real-estate/2017/01/07/can-serve-board-if-my-name-not-deed/95953930/>
<https://www.fsresidential.com/florida/news-events/articles/florida-board-member-requirements/>
<https://www.lawyers.com/legal-info/real-estate/homeowners-association-law/homeowners-association-boards-rights-and-duties.html>

A review of the above, revealed a number of considerations commonly used by other HOAs and States related to Board Candidate eligibility. Some common themes:

1. Living in the community vice just ownership
 - a. Property owners who do not live in the community are effectively investors, who will have a financial incentive when determining issues before the board as opposed to a motivation for an improved quality of life in their neighborhood or on their street.
 - b. Members of trusts or LLCs could be eligible regardless of percentage of ownership, if the property is their primary residence
 - c. Board Candidate must be a property owner (percentage of which not important) and have lived at the property as their primary residence for 3 years preceding the election and agree to continue living there during their tenure on the board.
2. Spouses not allowed to serve on the board at the same time
3. Co-owners not allowed to serve on the board at the same time
4. Someone previously removed from the board not allowed to serve again
5. Convicted felons not allowed to serve
6. Someone in litigation with community not allowed to serve
7. Long term renters with proxy vote may be allowed to serve
8. To ensure all board members are up to speed on applicable regulations:
 - a. Complete a certification course within 90 days of being elected. The course is a mix of in-person and online material, and remains valid as long as you are a continuous member of your board. If you leave and become re-elected, you'll have to take the course again.
 - b. Alternative to the education course: Submit a letter to the secretary of the board stating that you have read all community governing documents, agree to uphold them, and honor the fiduciary responsibility to all association members. Understanding the rules

and regulations regarding meetings and membership access to records is critical for newly appointed board members.

Draft Talking Points

Date: xxxxx

Associate Members as Committee members Section 10.02

Background

During the Executive Council meeting May 26, 2021 there were comments to the effect that committee member recruitment could be enhanced if Associate Members of the Association were allowed to be committee members. The chair of By-laws and Resolutions agreed to add the topic to the ongoing review of the By-laws.

Associate membership is established in Article SIXTH, paragraph 7 of the Association Charter. The primary difference between a member and associate member is that an associate member cannot vote in Association governance matters. Section 10.01 of the By-laws limits committee membership to voting members of the Association. Implementation of the suggestion to allow associate members to be committee members would require amendments to the By-laws and Resolution C-01 (Committee General).

Discussion at By-laws and Resolutions Committee Meetings

Concern was expressed regarding a potential conflict of the interests of the owner of the property and the interests of an Associate Member residing at the property. A means would have to be developed to authorize the Associate Member to not only participate in a committee, but also act in the capacity of the owner. The possibility of using a proxy approach was discussed. It is recognized that the current By-laws provisions limit proxies to voting on issues at a members' meeting.

The Committee discussion was expanded from committee membership to a discussion of authorization for an associate member to act for the owner of the property. This would include determining the extent to which an owner could formally authorize an Associate Member to act in place of the owner and the means by which this authorization would be conveyed to the Associate Member and informed to the Association.

Options: The following options were discussed:

- a. Pursue an option of only permitting Associate Members to participate in committees. This would require a By-laws amendment and resolution provisions (likely in C-01) implementing the scope of such participation.
- b. Pursue an option of an expanded authority, granted by the owner (perhaps in the form of a proxy), to allow an Associate Member to act for the owner. This would require a By-laws amendment as well as determining the means of implementing the authorization and its content, possibly in a resolution.
- c. Determine that the expansion of Associate Member rights to be committee members, or further, to act for owners, is an undesirable alteration of Association governance.
- d. Communicate the range of opportunities currently available for community participation by Associate Members. This could be done in a manner that is periodic rather than one time.

The By-laws and Resolutions committee requests guidance as to whether any of the options that would implement some form of Associate Member participation should be pursued.

Jim Trummel

Chair

By-laws and Resolutions Advisory Committee

file: AssociateMembersBOD