

GOVERNANCE 101: An Overview

This is the first in a series of articles explaining the two Colorado statutes and the four corporate documents that control the governance of the Bear Creek Land Owners Association, or as it is commonly referred to, the **BCLOA**.

It is important to remember as this series of articles is read, that the BCLOA is both a nonprofit corporation organized under and subject to the laws of Colorado, and a homeowner's association which makes it subject, in part, to the Colorado Common Interest Ownership Act (**CCIOA**).

In July 1991 the BCLOA was incorporated under articles 20 through 29 the Colorado Nonprofit Corporation Act, which was repealed in total and replaced in 2011 with the *Colorado Revised Nonprofit Corporation Act (CRNCA)*. Section 7-137-101 of the CRNCA states that its articles 121 to 137 apply to any Colorado nonprofit corporation that was in existence on June 30, 1998. Thus, the CRNCA applies to the BCLOA. After the CRNCA became effective, many Colorado nonprofit corporations restated or revised their Articles of Incorporation and amended their Bylaws to conform to the new law. The BCLOA has not. Our Articles of Incorporation remain as they were written in 1991, and the Bylaws were last revised in 2000. Where our Articles of Incorporation and Bylaws are silent, the CRNCA will apply to *matters related to the operation of the nonprofit corporation and the Bylaws under which the BCLOA operate*.

Around the time that the BCLOA was created, the Colorado Legislature passed the CCIOA, but this statute was not effective until July 1, 1992. Because our association was created one year earlier, certain provisions of the CCIOA apply to the BCLOA *and others do not*. Those that do apply will be the subject of a separate article in this series. Since 1992, the CCIOA has been amended on many occasions, and some but not all of those amendments apply to the BCLOA. The BCLOA can, but to date has not, *elected* to be subject to all of the provisions of the CCIOA.

The stated purpose of the CCIOA was to “make more effective and efficient the operation of homeowner associations” and “to give more specific delineation to the organizational structure of homeowner associations and to standardize association operations.” At the time, condominium associations were springing up all over, and the only guidance in Colorado in this complex area of legal relationships was a “smattering of court decisions and the Colorado Condominium Ownership Act.” See *The Colorado Common Interest Ownership Act*, 21 the Colorado Lawyer 645 (April 1992), a publication of the Colorado Bar Association.

To determine the statutory powers, limitations and responsibilities of the Board of the BCLOA, one must look primarily to the Colorado Revised Nonprofit Corporation Act. The Colorado Common Interest Ownership Act imposes operational requirements on the BCLOA Board, and, as will be explained later in this series of articles, the BCLOA Board is compliance with those requirements.

On July 12, 1991 the Bear Creek Land Company (developer) prepared and filed Articles of Incorporation and Bylaws, both of which can be found in the Governance Section of the BCLOA website. The original Board of Directors of the BCLOA were Michael and Wayne Quinlan, Shirley and William Hamilton, and Gary Robins, although by July of 1993 the Hamiltons and Gary Robins had been replaced by lot purchasers Ted Hand and Herb Bohannon who were elected by the membership at the Annual Meeting, July 19, 1993. Along with the nonprofit organizational documents, the developer also recorded in the property records of Conejos County a document called the *Declaration of Covenants, Restrictions, Easements, Charges and Liens for Bear Creek, A Conejos County Subdivision*, which will be referred to as the **Declaration**. (The Declaration is essentially a real estate document, governed by the real property laws of Colorado as they existed in 1991. The stated purpose of the Declaration of Covenants was “...to create on the property a Residential Subdivision community with open spaces and other common facilities for the benefit of said community (Bear Creek).” The Partners of the Bear Creek

Land Company were to exercise control over the development "... until such time as the Common Property is conveyed to said Homeowner's Association, at which time the Homeowners Association will exercise such powers"(sic). The bulk of the common areas were conveyed to the BCLOA in September 1998, and completed by the Annual meeting held in 1999; but the Bear Creek Land Company still owns Lots 164 and 165. The first Board comprised solely of Bear Creek Lot owners was elected at the Annual Meeting in 1997. Since 1998, efforts made to amend the Declaration have not succeeded.

The Declaration was unilaterally amended by the Bear Creek Land Company three times prior to 1998. The impact of these amendments will be the subject of a separate article. In the last twenty-five years, the Declaration has never been amended by owners who purchased their lots from the Bear Creek Land Company.

Thus, the Declaration gave the Bear Creek Land Company the right to control the development, operation, maintenance and administration of the BCLOA and the enforcement of the Declaration of Covenants. In 1992, before any Bear Creek lot purchasers served on the Board, the Bear Creek Land Company amended the Declaration to create the three-person Architectural Committee, and retained the right to appoint two of the three members. Twenty four years later the Board of the BCLOA is operating under what are outdated and often ambiguous governance documents, parts of which have been superseded by the changes made by the Colorado Legislature in the CRNCA and the CCIOA, changes which could not have been foreseen by the original members of the Bear Creek Land Company.

There is a third set of documents which impact the governance of our association - plats recorded at the time the Declaration is recorded. It is not uncommon for a court to review annotations contained on official recorded plats and construe them as authorizing or limiting certain aspects of an association's operation. For instance, plats define or describe easements for power, drainage, and

fishing. The Bear Creek property has been re-platted a number of times as new phases were added to the subdivision. These, of course, are not reflected in the original Declaration.

In conclusion, to understand the BCLOA Governance documents one needs to have access to the CRNCA, the CCIOA, as well as the BCLOA Articles of Incorporation, Bylaws, the Declaration of Covenants, The Declaration Amendments, and perhaps the plats, many of which predate the CCIOA and the CRNCA and are outdated. We will look next at what it takes for the BCLOA to amend its Bylaws and Declaration. Other articles in this series will look at changes that need to be made to the Bylaws and the Declaration.