

WHY WE NEED TO AMEND GOVERNANCE DOCUMENTS

Having looked at the Governing Documents that control the operation of the BCLOA, and what it takes to amend the Bylaws and the Declaration, this article addresses why the members of the BCLOA need to pull together and amend both the Bylaws and the Declaration.

The Bylaws need to be amended to conform to some changes in the Colorado Revised Nonprofit Corporation Act, and to address issues like how to handle a tied vote for a Director's position, something that occurred for the first time in 2015. The defined terms in the Bylaws do not match the defined terms in the Declaration. This can easily be fixed. *The present Bylaws do not provide for indemnification of Board members, something that was added when Colorado revised its Nonprofit Act. An indemnity provision, which is standard in almost all nonprofit corporation Bylaws amended or prepared after 1995 eliminates the concerns of many people who are hesitant to serve on the Board of a nonprofit entity. The Bylaws contain a confusing staggered term- of-office chart that makes no sense and is not needed. We can easily explain the 2-1- rotation of directors that has been followed for many years by referencing how many directors are elected in odd and **even** years. The Bylaws have not adequately explained how officers are elected and when. This can be explained using the practice that has existed for many years.* The Bylaw Article related to Committees is silent regarding the Architectural Committee and its relationship the Board. The Article can be conformed to match the Declaration and also provide for the standing committees that have existed for decades: Water Committee, Nomination Committee, and Scholarship Committee. These and other minor changes can be made without rewriting the entire Bylaws, and **it will only take a majority of those who attend the annual meeting or by proxy (once a quorum is reached) to make these changes.**

The Declaration and Bylaws are recorded documents and control our rights and responsibilities as property owners. A majority of *all members eligible to vote* needs to approve any revisions. While the Bylaws can be amended on a piece meal basis, the Board believes that the Declaration needs to be restated in order to make it understandable. The Declaration, as it exists today, is outdated, and parts of it have been superseded by state law. Like it or not, the BCLOA is subject to many provisions of the Colorado Common Ownership Interest Act (CCIOA). If you were buying a lot in Bear Creek, the current Declaration does not adequately describe the rights and limitations of property owners or the BCLOA Board. So many changes need to be made to properly "disclose" how our community is currently governed, as a seller you would have to hand potential buyers a copy of the CCIOA and ask them to figure it out themselves. Additionally the Declaration has been amended four times and re-platted nine times; but to know this, one needs to have a title search conducted.

In 2012, a Committee, Chaired by Janice Oldham, *and including Larry Tatum, and Herb Bohannon*, prepared a Draft Restated Declaration *to which was appended a new set of Architectural Standards*. The Restated Draft involved a tremendous amount of time and effort and it was done in a good faith attempt to accomplish these goals:

1. Bring the BCLOA into conformity with those sections of the CCIOA that apply to the BCLOA, some of which are now unenforceable as a matter of public policy, and create a document that conforms to current form and content used in similar documents;
2. Organize the Declaration in a more understandable way, so that members and potential purchasers (and their real estate agents) can understand it and be better informed;
3. Incorporate some of the customs, practices, and policies that have existed for decades in the manner in which the BCLOA Board and the Architectural Committee have operated;
4. Address conflicts within the original Declaration, the Bylaws some, but not all of which can be fixed by amending the Bylaws; and
5. Because times have changed, create a document that reflects the interests of the current property owners. Even the approach taken by the Bear Creek Developer changed after 1991, as can be seen by comparing our Declaration with the Sheep Creek Declaration filed in 1999, which was coincidentally the first year that a BCLOA elected a Board made up of lot purchasers and not officers of the Bear Creek Land Company.

Before it completed its work in 2011, the Committee conducted a survey, and while the number of respondents was low (37), those that did respond indicated some strong preferences. A majority wanted to continue the election of officers as it has been done. A huge majority wanted to continue the practice of electing the AC, but stated they preferred staggered terms.

The problem with a comprehensive change like the one proposed in 2012 is that it is hard to tell what is being deleted that was in the original Declaration, what new provisions are being added, and **why** provisions were deleted and added. In hindsight, it might have been better to provide an annotated version of the Draft Restated Declaration that explained why provisions were being revised, added or deleted. In fact, **the bulk of the Draft Restated Declaration contained many provisions from the existing Declaration.**

There were also some problems with the 2012 Proposed Declaration. It did not specifically provide for the Architectural Committee to be elected, as it has been since 1992. *It included a new and comprehensive set of Architectural Standards. These new standards not only enhanced and explained the basic standards in the 1991 Declaration, they also incorporated some Conejos County Building Code requirements that did not exist in 1991. The current Board believes the Restated Declaration does not have to include or incorporate a new set of Architectural*

Standards. The set issued in 2006 have been adequately serving the needs of the BCLOA and its members.

Although the Colorado Nonprofit Corporation Act and the CCIOA allow the Board to adopt Rules and Regulations, and the Board has done this consistently for 30 years, the governing documents may be more precise.

The Board believes we need a broader base of input from the members by engaging more groups of stake holders in the drafting and critiquing of the proposed Declaration. The most logical stake holders would be those who own lots but have no home in Bear Creek, part-time summer residents, and full or almost-full-time residents.

The current Board believes what was begun in 2012 needs to be completed. The Board asks that each member of the BCLOA approach the process with an open mind, and your current Board hopes that many of you will become involved. *The Board solicits your active participation on committees to revise both the Bylaws and the Declaration, a process that may take until the annual meeting in 2017 to complete.*

The Board proposes that two committees be formed. One Committee will address changes to the Bylaws, along the lines outlined at the start of this article. The other committee will work on a Restate Declaration of Covenants using the Restate Declaration prepared in 2012 as a starting point. If we don't get at least 8 volunteers, we may have to form just a single committee.

*Even if you do not want to serve on one of the committees, **please send the Board your comments on this article and let us know what you agree or disagree with, or any additional ideas you might have.***