

# Recommendations for Amendments to the MCSHA By-Laws Summer, 2016

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## Article II Principal Office

### **CURRENT LANGUAGE:**

2.A. The principal office of the Association is located at 801 West Monterey Street, Orland, California 95963, or at such other place as may be designated by the Board.

### **RECOMMENDED CHANGE:**

*2.A. The principal office of the Association is the address of the then-current president of the Board of Directors, with notice to all members.*

### **RATIONALE:**

MCSHA does not have a separate office. The president of the Board of Directors is a logical person to contact at his or her address.

### **OPINION OF COUNSEL:**

Counsel agrees and suggested the recommended language.

**Article III Definitions**

**CURRENT LANGUAGE:**

3.A.3 Directors Quorum - Directors “Quorum” shall mean and refer to five (5) Directors.

**RECOMMENDED CHANGE:**

3.A.3 Directors Quorum. - Directors “Quorum” shall mean and refer to four (4) Directors.

**RATIONALE:**

The primary advantage to a 4 person quorum is that face-to-face meetings are easier to put together. The 5-member quorum has been a significant impediment to the Board conducting its business. By moving to a four-person quorum, the decision making process does not change. A majority of Board members present is still required to pass a motion. Examination of the possible number of votes needed to pass a motion shows only one additional possibility with the suggested change: with a four-person quorum and four Board members in attendance, a motion could be carried with three votes. However, the three votes needed is identical to the number of votes needed with a five member quorum present and with five members present under the current language. The Board has historically attempted to schedule meetings when the greatest number of members could be present. Any concern regarding the one additional possibility is far outweighed by the ability of the Board to better schedule meetings.

|                       | <u>Members Present</u> | <u>Majority Votes Needed to Pass a Motion</u> |
|-----------------------|------------------------|---|
| Quorum of 5 Directors | 7                      | 4   |
|                       | 6                      | 4   |
|                       | 5                      | 3   |
| Quorum of 4 Directors | 7                      | 4   |
|                       | 6                      | 4   |
|                       | 5                      | 3   |
|                       | 4                      | 3   |

**OPINION OF COUNSEL:**

Counsel agrees that the Board can make this change if it wishes.

## Article V Meetings of the Members

### 5.A. Place of Annual or Special Membership Meetings.

**CURRENT LANGUAGE:**

2) In the absence of a site selection by the Board, the Annual or Special Membership Meetings shall be held at the principal office of the Association.

**RECOMMENDED CHANGE:**

Delete.

**RATIONALE:**

In Article 2, A., we are changing the principal office of the Association to the mailing address of the current president of the Board.

**OPINION OF COUNSEL:**

Counsel agrees.

### 5.B. Annual Membership Meetings.

**CURRENT LANGUAGE:**

1) The first Annual Membership Meeting shall be held within six (6) months after the closing and Recording of the sale of a fee interest in the first (1st) Lot.

**RECOMMENDED CHANGE:**

Delete.

**RATIONALE:**

This is language from the inception of the Association and is now obsolete.

**OPINION OF COUNSEL:**

Counsel agrees.

## 5.B. Annual Membership Meetings.

### **CURRENT LANGUAGE:**

2) Thereafter the Annual Membership Meeting shall be held each year on the Wednesday immediately preceding the anniversary date of the first (1st) Annual Membership Meeting, at eight o'clock a.m. (8:00 a.m.), or at such other date or time as may be fixed by the Board, but in no event shall an Annual Membership Meeting be held less than once each calendar year.

### **RECOMMENDED CHANGE:**

2) The Annual Membership Meeting shall be held each year on the first Saturday in July at ten o'clock a.m. (10:00 a.m.), or at such other date or time as may be fixed by the Board, but in no event shall an Annual Membership Meeting be held less than once each calendar year.

### **Rationale:**

Historically, the Annual Membership Meeting has been held on the first Saturday in July at 10:00 a.m. This change reflects that practice, and ensures that an Annual Membership Meeting be held at least once per year.

### **OPINION OF COUNSEL:**

Counsel agrees.

## 5.B. Annual Membership Meetings.

### **CURRENT LANGUAGE:**

3) If the scheduled date of the Annual Membership Meeting falls on a legal holiday, the Annual Membership Meeting shall be held at the same time on the next business day.

### **RECOMMENDED CHANGE:**

Delete.

### **RATIONALE:**

Historically, the Annual Membership Meeting has been held on the first Saturday in July at 10:00 a.m. regardless of when the legal holiday falls, followed on Sunday by the annual Volunteer Fire Department Pancake Breakfast. In 2009 and 2015, the Fourth of July fell on Saturday and the Annual Membership Meeting was held. This simply brings the By-Laws in line with our practice.

### **OPINION OF COUNSEL:**

Counsel agrees.

#### **5.D. Notice of Annual and Special Membership Meetings.**

##### **CURRENT LANGUAGE:**

4) If Directors are to be elected at an Annual or Special Membership Meeting, the Membership Meeting Notice for any such meeting shall include the names of all those who have been nominated at the time the Membership Meeting Notice is given.

##### **RECOMMENDED CHANGE:**

4) If Directors are to be elected at an Annual or Special Membership Meeting, the Membership Meeting Notice for any such meeting shall include the names of all those who have been nominated, to the extent known, and the number of positions that are to be filled.

##### **RATIONALE:**

This is a minor change in language that adds “the number of positions that are to be filled.”

##### **OPINION OF COUNSEL:**

Counsel agrees. Counsel advised to add: “names of all those who have been nominated, to the extent known, and the”.

#### **5.D. Notice of Annual and Special Membership Meetings.**

##### **CURRENT LANGUAGE:**

7) Notwithstanding the foregoing, at any Annual Membership Meeting where the Membership Quorum requirement is less than one-third (1/3) of the total voting power of the Association and the Members holding less than one-third (1/3) of such voting power actually attended, even though the Members in attendance constitute a Membership Quorum, the Members may only vote on those matters for which a Membership Meeting Notice has been given.

##### **RECOMMENDED CHANGE:**

Delete.

##### **RATIONALE:**

This is obsolete language that is no longer applicable.

##### **OPINION OF COUNSEL:**

Counsel agrees.

## 5.E. Special Notice Requirements.

### **CURRENT LANGUAGE:**

1) Approval by the Members of any of the following proposals, other than by unanimous approval of those Members entitled to vote, shall not be valid unless the general nature of any such proposal was stated in the Membership Meeting Notice for the meeting at which such approval was given or in any written waiver of such Membership Meeting Notice:

(SKIP TO F)

f) Approving a plan of distribution of assets of the Association, other than money, which is not in accordance with the liquidation rights of any class of Members.

(1) This requirement is applicable only if the Association is in the process of winding up and there is more than one (1) class of Membership in the Association that is outstanding at the time any such plan was approved.

### **RECOMMENDED CHANGE:**

Delete: (1) This requirement is applicable only if the Association is in the process of winding up and there is more than one (1) class of Membership in the Association that is outstanding at the time any such plan was approved.

### **RATIONALE:**

This language is obsolete. The different classes of Membership no longer exist.

### **OPINION OF COUNSEL:**

Counsel agrees.

## 5.F. Exemptions from Special Meeting Notice.

### **CURRENT LANGUAGE:**

- 1) The transactions at any Annual or Special Membership Meeting, however called or noticed and wherever held, shall be valid if:
  - a) A Membership Quorum was present at any such Annual or Special Membership Meeting either in person or by proxy; and
  - b) Either before or after such Annual or Special Membership Meeting, each Member entitled to vote, who was not present in person or by proxy, has signed either a written waiver of a Membership Meeting Notice, a consent to the holding of such Annual or Special Membership Meeting or an approval of the minutes of such Annual or Special Membership Meeting.
    - (1) Such a waiver of a Membership Meeting Notice, consent, or approval need not specify either the business to be transacted or the purpose of any such Annual or Special Membership Meeting, except that if action is taken or proposed to be taken for approval of any of those matters specified in the provisions of Section 5.E. of the Bylaws, which is entitled, "Special Notice Requirements," the waiver of such a Membership Meeting Notice, a consent, or an approval shall state the general nature of the proposal.
    - (2) All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of such Annual or Special Membership Meeting.
- 2) Attendance of a Member at any Annual or Special Membership Meeting shall also constitute a waiver of a Membership Meeting Notice of such meeting, unless a Member objects at the beginning of such Annual or Special Membership Meeting to the transaction of any business for the reason that such Annual or Special Membership Meeting was not appropriately called, noticed, or convened.
- 3) Also, attendance at any Annual or Special Membership Meeting is not a waiver of any right to object to the consideration of a matter that is required to be included in the Membership Meeting Notice of such Annual or Special Membership Meeting, but was not so included, if that objection is expressly made at such Annual or Special Membership Meeting.

### **RECOMMENDED CHANGE:**

Delete.

### **RATIONALE:**

This is unnecessary and does not reflect current and historic practice.

### **OPINION OF COUNSEL:**

Counsel agrees. Comment from counsel: "Based on your past experience (business is done at the annual meeting) this can be deleted."

## 5.G Membership and Record Date.

### **CURRENT LANGUAGE:**

1) For the purpose of determining a Member (“Member of Record”) who is entitled to a notice of any Annual or Special Membership Meeting, who is entitled to vote, or to exercise any other rights in respect to any lawful action taken at such Annual or Special Membership Meeting, the Board shall fix, in advance, a Record Date as follows:

a) The Record Date for a notice of an Annual or Special Membership Meeting shall not be more than ninety (90) nor less than ten (10) days before the date of any such Annual or Special Membership Meeting;

b) The Record Date for voting at any Annual or Special Membership Meeting shall not be more than sixty (60) days before the date of an Annual or Special Membership Meeting at which any such vote is to be cast or before the date on which the first (1st) request for a Member’s written consent is mailed or solicited, whichever is applicable; and

c.) If the Board fixes no Record Date, the Record Date shall be determined in accordance with the provisions of California Corporations Code section 7611, or any compatible superseding statutes. A person holding a Membership as of the close of business on the Record Date shall be a Member of Record.

### **RECOMMENDED CHANGE:**

*Replace (a) and (b) with: The Record Date for a notice of an Annual or Special Membership Meeting shall be ten (10) days before the date of the mailing or other publication of the notice of any such Annual or Special Membership Meeting.*

### **RATIONALE:**

This language is confusing.

### **OPINION OF COUNSEL:**

Counsel agrees. Counsel recommended this change and new language.



## 5.H Adjournment of Membership Meetings.

### **CURRENT LANGUAGE:**

- 1) Any Annual or Special Membership Meeting, (“Original Meeting”) whether or not a Membership Quorum is present, may be adjourned (“Adjournment Meeting”) from time to time for any reason, by a vote of the Members representing a majority of the voting power of the Members present at the Original Meeting, either in person or by proxy, to another time not less than five (5) days nor more than thirty (30) days from the date of the Original Meeting.
- 2) If the date, time, and place of the Adjourned Meeting is announced prior to such adjournment, no additional Membership Meeting Notice of the Adjourned Meeting is required.
  - a) However, if the new date, time, and place of the Adjourned Meeting is set after such adjournment, a Membership Meeting Notice for the Adjourned Meeting shall be given to the Members.
- 3.) Any business that might have been transacted at the Original Meeting may be transacted at the Adjourned Meeting.
- 4) In the absence of a Membership Quorum no business may be transacted at such Annual or Special Membership Meeting other than to adjourn such Annual or Special Membership Meeting to another time.
- 5) If an Annual or Special Membership Meeting is adjourned because a Membership Quorum is not present, the Membership Quorum requirement at the adjourned Annual or Special Membership Meeting shall be twenty-five percent (25%) of the total voting power of all the Members.
- 6) The Members present at a duly called or held Annual or Special Membership Meeting at which a Membership Quorum is originally present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members from such meeting to leave less than a Membership Quorum.
  - a) Provided that, any action taken at such Annual or special Membership Meeting other than adjournment, and subject to the provisions of Subsections 5.D.3) through 7), inclusive, above, as well as any provision of the Governing Documents that require a greater or lesser percentage of the voting power of any class of the Members in order to take affirmative or negative action under such provision, is approved by no less than a majority of the Members, either in person or by proxy, which are required to constitute a Membership Quorum.

### **RECOMMENDED CHANGE:**

Delete.

### **RATIONALE:**

This section is confusing and makes references to obsolete language: “voting power of any class of members.”

### **OPINION OF COUNSEL:**

Counsel agrees and commented; “Based on past experience, this is not necessary. If a matter did not conclude at the annual meeting, a new notice could be mailed of the adjourned meeting.”

## 5.1.1.a,b,c,d,e, and f. Special Membership Quorum Requirements

### **CURRENT LANGUAGE:**

1) The following Special Membership Quorum requirements must be satisfied in order to take valid action on such matters at any meeting of the Members or by a written consent:

- a) The Membership Quorum requirement for a valid action by the votes or written consents of the Members on any of those items listed in the provisions of Section 5.16 of the Declaration, which is entitled, **“LIMITATIONS ON AUTHORITY OF THE BOARD OR THE ASSOCIATION,”** shall be fifty-one percent (51%) of the voting power of the Association that resides in Members other than the Declarant.
- b) The Membership Quorum requirement for a valid action by the votes or written consents of the Members to the acquisition of or the cancelation of, whichever is applicable, an earthquake endorsement to an Association maintained insurance policy shall be fifty-one percent (51%) of the voting power of the Association that resides in Members other than the Declarant.
- c) The Membership Quorum requirement for a valid action by the votes or written consents of the Members to increase the Regular Assessment for any Fiscal Year to more than one hundred and twenty percent (120%) of the Regular Assessment for the prior Fiscal Year shall be fifty-one percent (51%) of the voting power of the Association that resides in Members other than the Declarant.
- d) The Membership Quorum requirement for a valid action by the votes or written consents of the Members of the sale of all or any portion of the Common Area under the threat of condemnation shall be fifty-one percent (51%) of the voting power of the Association that resides in Members other than the Declarant.
- e) The Membership Quorum requirement for a valid action by the votes or written consents of the Members to an increase or decrease, as the case may be, in the number of authorized members of the Architectural Committee shall be fifty-one percent (51%) of the voting power of the Association that resides in Members other than the Declarant.
- f) The Membership Quorum requirement for a valid action by the votes or written consents of the Members to amend the provisions of the Declaration shall be fifty-one percent (51%) of the voting power of the Association that resides in Members other than the Declarant.

### **RECOMMENDED CHANGE:**

*From sections a,b,c,d,e,f, delete “other than the Declarant.”*

### **RATIONALE:**

Declarant refers to the Mill Creek LLC which is now defunct.

### **OPINION OF COUNSEL:**

Counsel agrees.

## 5.J.9.g and g.1 PROXY

### **CURRENT LANGUAGE:**

g) Approving a plan of distribution of the Association's assets, other than money, which is not in accordance with the liquidation rights of any class of Members.

(1) This Subsection 5.J.9) g). will only be applicable if the Association is in the process of winding up and there is more than one (1) class of Membership outstanding at the time.

### **RECOMMENDED CHANGE:**

*In g) delete "of any class". Delete all of (1).*

### **RATIONALE:**

Both of these refer to "class of members" and "class of Membership." Throughout our revisions, we have eliminated these references.

### **OPINION OF COUNSEL:**

Counsel agrees.

## Article VI Election and Term of Office of the Members of the Board of Directors

### 6.B. Nomination of Director Candidates.

#### **CURRENT LANGUAGE:**

- 1) Except for the initial Directors selected by the incorporators or the Members as provided for in Section 6.C. of the Bylaws, which is entitled, "Election of Directors," nomination for election to the Board shall be made by a nominating committee consisting of three (3) persons.
  - a) A chairman, who shall be a Director, and two (2) other persons who may either be Members or for as long as it is appropriate, representatives of the Declarant.
  - b) The Director member of a nominating committee shall be appointed by the Board to serve for a period of one (1) year and vacancies shall be filled by the Board.
- 2) A nominating committee may make as many nominations as it desires, but not less than the number of Director positions to be filled.

#### **RECOMMENDED CHANGE:**

*Delete 6.B, 1 and 2. Substitute the following language: Nomination for election to the Board shall be made by a nominating committee consisting of at least two persons, appointed by the President of the Board, at least one of whom is a Director.*

#### **RATIONALE:**

This is dated language referring to "the Declarant." More importantly, the same purpose can be achieved by the much more simple and understandable process in RECOMMENDED CHANGE language.

#### **OPINION OF COUNSEL:**

Counsel agrees.

## 6.B. Nomination of Director Candidates.

### **CURRENT LANGUAGE:**

5) Without the written authorization of the Board, no Association funds may be expended to support a nominee for Director if there are more nominees than can be selected.

### **RECOMMENDED CHANGE:**

Delete.

### **RATIONALE:**

We see no need for this section.

### **OPINION OF COUNSEL:**

Counsel agrees.

## 6.C. Election of Directors

### **CURRENT LANGUAGE:**

- 1) The initial Directors shall be appointed by the incorporator or elected by the Members, whichever is appropriate, as soon as practical after the incorporation of the Association, and shall hold office until the first (1st) Annual Membership Meeting to occur following such appointment or election.
- 2) At the first (1st) Annual Membership Meeting, the appropriate number of Members shall elect the Directors to fill all of the positions on the Board.

### **RECOMMENDED CHANGE:**

Delete.

### **RATIONALE:**

This is startup language that is obsolete.

### **OPINION OF COUNSEL:**

Counsel agrees.

## 6.C. ELECTION OF DIRECTORS

### **CURRENT LANGUAGE:**

4.) Subject to the provisions regarding Special Elected Directors in the Provisions of Section 6.E. of the Bylaws, which is entitled "**Special Elected Directors**," the term of office for each member of the Board of Director positions shall be two years.

### **RECOMMENDED CHANGE:**

*6.C.4) Subject to the provisions regarding Special Elected Directors in the Provisions of Section 6.E. of the Bylaws, which is entitled "**Special Elected Directors**," the term of office for each member of the Board of Director positions shall be four years.*

### **RATIONALE:**

The Board believes that increasing the term of office will assist in the merger of the two Boards.

### **OPINION OF COUNSEL:**

Counsel agrees this can be done.

## 6.D Cumulative Voting

### **CURRENT LANGUAGE:**

- 1) The election of Directors may be by cumulative voting as described herein, provided that, a Director candidate's name has been placed in nomination prior to the voting to elect Directors and a notice is given at the meeting where such election of Directors is to take place, prior to such voting, of the Owner's intention to cumulate votes.
- 2) If any Owner has given a notice of it, his, her or their intention to cumulate its, his, her or their vote, then all of the Owners shall have the right to cumulate their votes for Director candidates at the meeting where such notice was given.
- 3) Under cumulative voting, each voting Owner, either in person or by proxy, may give a single candidate the number of votes equal to the number of Directors to be elected at the meeting where the cumulative voting is to take place, multiplied by the number of votes the voting Owner is entitled to exercise under the provisions of the Governing Documents, or the voting Owner may distribute these cumulated votes among any two (2) or more candidates as the voting Owner desires.
- 4) The candidates for Director receiving the highest number of votes up to the number of Directors to be elected, shall be elected.
- 5) Unless the entire Board is removed by a vote of the Owners, an individual Director may not be removed prior to the expiration of his or her term if the votes against removal would have been sufficient to elect that Director if cast cumulatively at an election in which the same total number of votes were cast and all Directors authorized at the time of the most recent election of that Director were being elected.
- 6) These cumulative voting provisions do not apply to the election of Special Elected Directors as provided for in the provisions of Section 6.E. of the Bylaws, which is entitled "Special Elected Directors"

### **RECOMMENDED CHANGE:**

Delete.

### **RATIONALE:**

This is dated and obsolete language. All other references to cumulative voting have been or are being deleted.

### **OPINION OF COUNSEL:**

Counsel agrees.

## 6.E. Special Elected Directors

### **CURRENT LANGUAGE:**

- 1) As long as the majority of the voting power of the Association resides in the Declarant, no less than one (1) of the Directors shall be elected by the Members other than the Declarant.
- 2) If Members are unable to elect one (1) Director by the exercise of cumulative voting or otherwise, the number of positions necessary to meet such a requirement shall be filled by a nominee who shall be elected by the Members other than the Declarant.
- 3) Nominations for the Special Elected Directors may be made by any Member, other than Declarant, by submitting a written nomination, prior to the Annual or Special Membership Meeting at which such Director is to be elected, to the Secretary or by placing a name in nomination at such Annual or Special Membership Meeting prior to any vote for the election of such Special Director having been taken.
- 4) A Special Elected Director may be removed from the Board prior to the expiration of his or her term only by the vote or written assent of a majority of the Members other than the Declarant.
- 5) In case of the death, resignation, or removal of a Special Elected Director, a successor shall be elected by the Members, other than the Declarant, to hold office for the unexpired term of his or her predecessor or until a successor has been elected and qualified, whichever is the first to occur.
- 6) Except as may otherwise be provided for in the provisions of this ARTICLE VI, the Declaration, the Articles, and/or the Bylaws, which are applicable to Directors, including, but not limited to, their election, removal, rights, and duties, shall also apply to Special Elected Directors.

### **RECOMMENDED CHANGE:**

*Delete.*

### **RATIONALE:**

This is dated and obsolete language.

### **OPINION OF COUNSEL:**

Counsel agrees.



#### 6.F.1. Director Vacancies

**CURRENT LANGUAGE:**

c) The removal of a Director by the vote of the Members, provided that, if applicable, the vote for removal satisfies the requirements contained in the cumulative voting and/or Special Elected Directors provision of Section 6.D. of the Bylaws, which is entitled, "Cumulative Voting," and Section 6.E. of the Bylaws, which is entitled, "Special Elected Directors;"

**RECOMMENDED CHANGE:**

*Delete.*

**RATIONALE:**

This is dated and obsolete language.

**OPINION OF COUNSEL:**

Counsel agrees.

#### 6.H. TERM LIMITS

**CURRENT LANGUAGE:**

The proposed language is new.

**RECOMMENDED CHANGE:**

*Directors may serve no more than two (2) consecutive terms.*

**RATIONALE:**

**OPINION OF COUNSEL:**

Counsel agrees this can be done. Counsel also advises, "Unless this might pose a hardship if there are no owners interested in serving. You could add: no more than two (2) consecutive terms unless this limitation would result in an unfilled vacated position."

## Article VII Meetings of the Directors

### 7.A. Place of Board Meetings.

**CURRENT LANGUAGE:**

2) In the absence of any designation or notice, meetings shall be held at the principal office of the Association.

**RECOMMENDED CHANGE:**

Delete.

**RATIONALE:**

This language is unnecessary. The Board should have the ability to designate the place where it will meet.

**OPINION OF COUNSEL:**

Counsel agrees.

### 7.B. Regular Board Meeting

**CURRENT LANGUAGE:**

2) If a regular Board Meeting falls on a legal holiday, such Board Meeting shall be held at the same time on the next business day.

**RECOMMENDED CHANGE:**

Delete.

**RATIONALE:**

Board meetings are set at the discretion of the Board while conforming to other requirements in 7.B. This is restrictive and unnecessary.

**OPINION OF COUNSEL:**

Counsel agrees.

## **7.B. Regular Board Meetings.**

### **CURRENT LANGUAGE:**

3) Notice of the time and place of any regular Board Meeting shall be posted at a prominent place or places within the Common Area.

- a) If the Common Area is unsuitable for the posting of such notice, the Board shall communicate the notice of the time and place of such Board Meeting by any means it deems appropriate

### **RECOMMENDED CHANGE:**

*3) Notice of the time and place of any regular Board Meeting shall be posted on the Association website and within the Mill Creek Development.*

### **RATIONALE:**

Historically, notices have been posted on the bulletin board at the Mill Creek Resort. The Mill Creek Resort is not “within the Common Area,” but it is “within the Mill Creek Development.” There is no appropriate place “within the Common Area” for the posting of notices. The addition of posting on the Association website is logical and appropriate. The proposed language is simpler and more clear.

### **OPINION OF COUNSEL:**

Counsel agrees.

## **7.F. Action Taken Without a Board Meeting**

### **CURRENT LANGUAGE:**

4) An explanation of any actions so approved shall be posted at a prominent place or places within the Common Area.

- a) However, if the Common Area, for whatever reasons, is unsuitable for the posting of such a notice, the Board shall communicate such notice by any means it deems appropriate, within three (3) days after the written consents of all of the Directors have been obtained.

### **RECOMMENDED CHANGE:**

*4) An explanation of any actions so approved shall be posted on the Association website and within the Mill Creek development.” Delete a).*

### **RATIONALE:**

This is to coincide with the same recommended change in 7.B.3.

### **OPINION OF COUNSEL:**

Counsel agrees.

## 7.G Waiver of Notice of a Board Meeting.

### **CURRENT LANGUAGE:**

- 1) Notice of a Board Meeting need not be given to any Director who, either before or after such Board Meeting, signs a waiver of such notice, a written consent to the holding of such Board Meeting, or an approval of the minutes of such Board Meeting
- 2) Any such waiver of notice or consent need not specify the purpose of the Board Meeting.
- 3) All such waivers, consents and approvals shall be filed with the Association's records or made a part of the minutes of the appropriate Board Meetings.
- 4) Notice of a Board Meeting need not be given to any Director who attends such Board Meeting and does not protest, before or at the commencement of such Board Meeting, the lack of notice of such Board Meeting to him or her.

### **RECOMMENDED CHANGE:**

*Delete.*

### **RATIONALE:**

This obsolete language appears to be "boiler plate" and inapplicable.

### **OPINION OF COUNSEL:**

Counsel asked whether this has ever occurred. To the best of our knowledge, it has not. Counsel agrees.

## 7.H. Minutes of a Board Meeting.

### **CURRENT LANGUAGE:**

- 1) The minutes that are proposed for adoption, which are marked to indicate draft status, or a summary of the minutes of any Board Meeting, other than an executive session, shall be made available to every Member within thirty (30) days of such Board Meeting.

### **RECOMMENDED CHANGE:**

*1) The minutes proposed for adoption, which are marked to indicate draft status, or a summary of the minutes of any Board Meeting, other than an executive session, shall be made available to every Member within thirty (30) days of such Board Meeting and will be posted on the Association website.*

### **RATIONALE:**

Adding the posting to "the Association website" coincides with the recommended changes to 7.B.3 and 7.F.4.

### **OPINION OF COUNSEL:**

Counsel agrees.

## 7.I. Notice to Members of A Board Meeting.

### **CURRENT LANGUAGE:**

2) Such a notice may be given by posting the notice in a prominent place or places within the Common Area, by mail or personal delivery of the notice to each Lot in the Development, or by a newsletter or similar means of communication.

### **RECOMMENDED CHANGE:**

*Notice of the time and place of any regular Board Meeting shall be posted on the Association website and within the Mill Creek Development.*

### **RATIONALE:**

Similar to 7.B.3., historically, notices have been posted on the bulletin board at the Mill Creek Resort. The Mill Creek Resort is not “within the Common Area.” There is no appropriate place “within the Common Area” for the posting of notices. The Mill Creek Resort is “within the Mill Creek Development.” The addition of posting on the Association website is logical and appropriate.

### **OPINION OF COUNSEL:**

Counsel agrees.

## Article IX Officers and Their Duties

### 9.F. Duties

### **CURRENT LANGUAGE:**

1) c) (1) The Secretary shall keep or cause to be kept, at the Association’s principal office, the following:

### **RECOMMENDED CHANGE:**

*Delete: “at the Association’s principal office”*

### **RATIONALE:**

The “Association’s principal office” is now the address of the president of the Board.

### **OPINION OF COUNSEL:**

Counsel agrees.

## 9.F. Duties

### **CURRENT LANGUAGE:**

1) c) (1) (a) The Secretary shall keep or cause to be kept, at the Association's principal office, the following:

(a) A book of the minutes of all of the meetings, proceedings and actions of the Board, of any committee of the Board or of the Members.

### **RECOMMENDED CHANGE:**

Add to (a) Those minutes shall be kept either in written form or in any other form capable of being converted into clearly legible tangible form or in any combination of the foregoing.

### **RATIONALE:**

The minutes are now kept electronically.

### **OPINION OF COUNSEL:**

Counsel agrees. Counsel suggested the additional language.

## Article XI Amendments

### 11.C Amendment Restrictions

#### **CURRENT LANGUAGE:**

1) Notwithstanding the amendment requirements contained in the provisions of Sections 11.A. and 11.B., of the Bylaws, which are entitled, "Amending the Bylaws," and "Amending the Articles," respectively, the percentage of the voting power of the Association or of the Members other than the Declarant necessary to amend a specific clause or provision in the Bylaws or of the Articles, shall not be other than the prescribed percentage of the affirmative votes required for any action to be taken under such clause or provision and, if applicable, any amendment to the provisions of the Articles and/or the Bylaws shall satisfy the requirements of the provisions of the California Business and Professions Code section 11018.7, or any compatible superseding statutes.

#### **RECOMMENDED CHANGES:**

Delete.

#### **RATIONALE:**

This language is obsolete. It refers to the Declarant, the now defunct Mill Creek LLC.

#### **OPINION OF COUNSEL:**

Counsel agrees and comments: "This can be deleted as the original sub divider is long gone."

