



**Pine Mountain
Property Owners Assoc., Inc.**

Board of Directors Instructional Guidelines

Contains Policies, Procedures,
References and Guidelines for
Pine Mountain POA, Inc.
Board of Directors

This document is to be used as guidelines and training
For all Pine Mountain Board of Directors
Information contained within are extracts from Pine Mountain's Governing
Documents and research sources for the protection of the board.

Approved
by
Pine Mountain POA, Inc.
Board of Directors

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Overview

Mission: Pine Mountain Property Owners Association, Inc. (PMPOA) is a non-profit organization dedicated to the safety and well-being of all property owners while offering a uniquely challenging, family oriented, golf experience to all guests and members.

The Pine Mountain POA, Inc. Board of Directors Instructional Guidelines have been developed to provide general guidelines about the duties and responsibilities for Pine Mountain's Board of Directors. It's a guide to assist you in becoming familiar with, among others, job requirements, understanding of your basic duty to the board and the association, your fiduciary responsibility and requirements while being a board member.

It is imperative that each board member becomes very familiar with all of Pine Mountain POA, Inc.'s governing documents, legal requirements, employee obligations, maintaining set standards, providing unquestionable financial and meeting reports and understanding all the operations of PMPOA.

Please note: This document is consolidated from materials voted on during previous board meetings, Pine Mountain Articles of Incorporation, Covenants and Restrictions and By-Laws. It also contains excerpts from our governing North Carolina Governing Statutes 47F and 55A (with references to specific paragraphs for referrals). This consolidated guide was created to ensure continuity, cohesiveness and the understanding of a board's responsibilities to the association and property owners of Pine Mountain POA, Inc.

A great deal becomes at risk when key players abuse their position and do not conduct themselves in a professional business matter when the health and well-being of others is at stake. Any violation, not taken seriously and dealt with appropriately can become detrimental to the whole community and should be reported immediately by anyone with any accurate knowledge of an unauthorized act or behavior.

Board of Director Requirements

Complying with Governing Documents and State Law

Each board member is responsible for knowing the requirements and sanctions of the community's governing documents and state laws that apply. For North Carolina home owner association communities, the governing statutes are 47f and 55a.

Maintaining the Common Areas

One of the main functions of Pine Mountain POA is to repair and maintain all common areas and association owned buildings, infrastructure and equipment. The key task is to prioritize all identified tasks and decide on how and when various maintenance tasks are to be performed. This requires a familiar knowledge of the association's property and what is needed.

It would be ideal to create, update and maintain a strategic plan that included goals and objectives that would extend out to include a 5-year plan. This plan would help identify scheduled routine maintenance, pre-planned repair, emergency expenditures (if needed) and the prevention of unnecessary replacements and over spending.

Managing Budgets and Assessments

Pine Mountain's governing documents require an annual assessment by the month of January each year. In order to create the annual assessment, it is necessary to determine the necessary expenses and costs of operations, salaries, administration and maintaining a reasonable reserve for emergencies.

Quarterly and monthly dues are equated by dividing the annual budget among and between all property owners in a reasonable way that does not negatively affect the property values within the community.

Assessment Collection

It is the board's duty and responsibility to ensure all property owners pay their fair share of the expenses in maintaining our community because if they do not, those expenses are moved to neighbors that do pay their fair share. This action is, of course, unacceptable. Therefore, it is the board's responsibility to take action to compel payment through notices, liens, foreclosures and/or garnishing wages or bank accounts of delinquent owners.

Pine Mountain POA, Inc. policy to collect all unpaid assessments is identified within the Collections Policy maintained at the office. This policy should be reviewed annually, by the board, to ensure the policy is maintained in an up-to-date manner with notices and procedures.

Responsibilities

The board of directors is a collective group of people that represents the Pine Mountain POA Association – as a whole. The representation is not only to the property and contents of PMPOA but also to the property owners. Therefore, it is the board's responsibility to pursue claims and rights with respect to

the entire property, such as filing claims, tax relief, dealing with third parties, contractors and real property rights.

The board is responsible for keeping governing documents up-to-date through amendments and supplements, maintaining easements, licenses, insurance, board meeting minutes, contracts, leases, agreements, current list of all property owners, election ballots and proxies, and an itemized accounting of all budgetary receipts and expenditures.

In other words: the basic duty, fiduciary duty and responsibilities of PMPOA's Board of Directors are not to be taken lightly.

The affairs of the Association shall be managed by a board of 5-7 directors, who must be members of the Corporation. A change in the number of directors shall be made only by amendment to these By-Laws. Directors are elected for a term of two (2) years and shall remain in office until their respective successors are elected and qualified; directors will be elected under staggered terms so that half the directors shall rotate off the board each year. Any vacancy occurring in the board of directors may be filled at any meeting of the board of directors by the affirmative vote of a majority of the remaining directors. Any director appointed to fill a vacancy, based on the next highest number of ballot votes, shall serve as such until the next election. No director will serve more than two (2) consecutive terms.

Any Board Director that misses three (3) monthly Board meetings in one (1) year will automatically be removed from the Board.

Any Member who loses some or all of their Membership rights and/or privileges due to becoming delinquent cannot serve on the Board of Directors.

The Board of Directors will not include more than one person from the same immediate family. For purposes of this Section, "immediate family" shall be defined as persons within one degree of kinship to each other, by blood or marriage or cohabitation.

Professional Conduct

In general, directors and committee members must conduct all dealings with vendors and employees with honesty and fairness, and safeguard information that belongs to the association.

1. Self-Dealing. Self-dealing occurs when directors or committee members make decisions that materially benefit themselves or their relatives at the expense of the association. "Relatives" include a person's spouse, parents, siblings, children, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law and anyone who shares the person's residence. Benefits include money, privileges, special benefits, gifts or other item of value. Accordingly, no director or committee member may:
 - a. solicit or receive any compensation from the association for serving on the board or any committee,
 - b. make promises to vendors unless with prior approval from the board,

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- c. solicit or receive, any gift, gratuity, favor, entertainment, loan, or any other thing of value for themselves or their relatives from a person or company who is seeking a business or financial relationship with the association,
 - d. seek preferential treatment for themselves or their relatives,
 - e. use association property, services, equipment or business for the gain or benefit of themselves or their relatives, except as is provided for all members of the association.
2. Confidential Information. Directors and committee members are responsible for protecting the association's confidential information. As such they may not use confidential information for the benefit of themselves or their relatives. Except when disclosure is duly authorized or legally mandated, no director or committee member may disclose confidential information.
Confidential information includes, without limitation:
 - a. private personal information of fellow directors and committee members,
 - b. private personnel information of the association's employees,
 - c. disciplinary actions against members of the association,
 - d. assessment collection information against members of the association, and
 - e. legal disputes in which the association is or may be involved--directors may not discuss such matters with persons not on the board without the prior approval of the association's legal counsel. Failure to follow these restrictions could constitute a breach of the attorney-client privilege and loss of confidential information.
3. Misrepresentation. Directors and committee members may not knowingly misrepresent facts. All association data, records and reports must be accurate and truthful and prepared in a proper manner.
4. Interaction with Employees. To ensure efficient management operations, avoid conflicting instructions from the board to management and avoid potential liability, committee members and directors shall observe the following guidelines:
 - a. The president of the board shall serve as liaison between the board and management and provide direction on day to day matters.
 - b. Except for the president, committee members and directors may not give direction to management, employees or vendors.
 - c. Directors may not contact management after hours unless there is an emergency representing a threat of harm to persons or property.
 - d. If directors or committee members are contacted by employees with complaints, the employees shall be instructed to contact management or the board as a whole.
 - e. No director may threaten or retaliate against an employee who brings information to the board regarding improper actions of a director or committee member.
 - f. Directors and committee members are prohibited from harassing or threatening employees, vendors, directors, committee members, and owners, whether verbally, physically or otherwise.
5. Proper Decorum. Directors and committee members are obligated to act with proper decorum. Although they may disagree with the opinions of others on the board or committee, they must act with respect and dignity and not make personal attacks on others. Accordingly, directors and committee members must focus on issues, not personalities and conduct themselves with

courtesy toward each other and toward employees, managing agents, vendors and members of the association. Directors shall act in accordance with board decisions and shall not act unilaterally or contrary to the board's decisions.

Standards: - General Standards (of conduct) for Directors. (pulled from 55a-8-30)

1. A director shall discharge his duties as a director, including his duties as a member of a committee:
 - a. In good faith;
 - b. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - c. In a manner the director reasonably believes to be in the best interest of the corporation.
2. In discharging his duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
3. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
4. Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within their professional or expert competence; or
5. A committee of the board of which he is not a member if the director reasonably believes the committee merits confidence.
6. A director is not entitled to the benefit of subsection (b) of this section if he has actual knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.
7. A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.
8. A director's personal liability for monetary damages for breach of a duty as a director may be limited or eliminated only to the extent provided in GS 55A-8-60 (*Immunity*) or permitted in GS 55A-2-02(b)(4) (*Articles of Incorporation*) and a director may be entitled to indemnification against liability and expenses pursuant to Part 5 of Article 8 of this Chapter.
9. A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property.

Code of Ethics

Goal: To establish a set of principles and practices of the Pine Mountain Board of Directors that will set parameters and provide guidance and direction for board conduct and decision-making.

Code: Members of the Board of Directors of the Pine Mountain are committed to observing and promoting the highest standards of ethical conduct in the performance of their responsibilities on the board of Pine Mountain. Board members pledge to accept this code as a minimum guideline for ethical conduct and shall:

Accountability

- Faithfully abide by the Articles of Incorporation, by-laws and policies of Pine Mountain.
- Exercise reasonable care, good faith and due diligence in organizational affairs.
- Fully disclose, at the earliest opportunity, information that may result in a perceived or actual conflict of interest.
- Fully disclose, at the earliest opportunity, information of fact that would have significance in board decision-making.
- Remain accountable for prudent fiscal management to association members, the board, and nonprofit sector, and where applicable, to government and funding bodies.

Professional Excellence

- Maintain a professional level of courtesy, respect, and objectivity in all Pine Mountain activities
- Strive to uphold those practices and assist other Pine Mountain members of the board in upholding the highest standards of conduct

Personal Gain

- 8. Exercise the powers invested for the good of all members of the organization rather than for his or her personal benefit, or that of the nonprofit they represent.

Equal Opportunity

- Ensure the right of all association members to appropriate and effective services without discrimination on the basis of geography, political, religious, or socio-economical characteristics of the state or region represented.
- Ensure the right of all association members to appropriate and effective services without discrimination on the basis of the organization's volunteer or staff make-up in respect to gender, sexual orientation, national origin, race, religion, age, political affiliation or disability, in accordance with all applicable legal and regulatory requirements.

Confidential Information

- Respect the confidentiality of sensitive information known due to board service.

Collaboration and Cooperation

- 12. Respect the diversity of opinions as expressed or acted upon by the Pine Mountain board, committees and membership, and formally register dissent as appropriate.
- 13. Promote collaboration, cooperation, and partnership among association members.

Duties

The basic duty of the board is to uniformly enforce all the governing documents against property owners that do not comply or violate the rules. It is the responsibility of the board to reasonably interpret the

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governing documents and to create and adopt rules, policies, and guidelines to regulate procedures to explain and administer the enforcement of our association's basic rules.

The duty is not to punish any violator but to encourage property owners to reasonably relate to the severity of a violation. The board should first try informal approaches through phone calls, emails, letters to obtain compliance and if these actions are unreceptive then an increase to the severity of the consequences must be made. If the violation threatens the safety of any person or property – do not hesitate to contact local law enforcement.

The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Unit for each assessment period at least 30 days in advance of the commencement of the assessment period and shall, at that time, prepare a roster of the units and assessments applicable which shall be kept in the office of the association and shall be open to inspection by any owner. Written notice of the assessment shall be sent to every owner subject thereto.

The Association shall, upon demand at any time, furnish to any owner liable for the assessment a certificate in writing signed by an officer of the association, setting forth whether said assessments have been paid. A certificate showing payment shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Fiduciary Duty

The board members owe a fiduciary duty to the property owners to manage and operate the association by exercising prudent business judgment in making decisions while operating and/or managing the association. Business judgement involves making rational, informed decisions in good faith. The board must strictly follow the law and governing documents while applying and enforcing them in a fair and uniform manner. Through obtaining and considering all relevant facts and circumstances, various options need to be identified and made available to the board and be carefully weighed so a decision on the course of action would result in the community's best interest for both the association and the property owners.

Board members cannot act out of passion or prejudice, personal self-interest or gain or through revenge or other negative motivations. As a board, we have access to legal representation to assist in preparations to any legal situation before a decision must be made. Use this system – but use it wisely.

Power of the Board of Directors

1. To call special meetings of the members whenever it deems necessary, and it shall call a meeting at any time upon written request of the members, as provided in Article XIII, Section 2 of Pine Mountain's By-Laws.
2. To appoint and remove, at pleasure, all officer, agents, and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond

as it may deem expedient. Nothing contained in these By-Laws shall be construed to prohibit the employment of any member, Officer, or Director of the Association in any capacity whatsoever. Such duties are announced at the start of each new term and may be delegated by the Directors to a specific Director who shall report his actions to the Board of Directors from time to time.

3. To establish, levy and assess, and collect the assessments or charges as provided in the Declaration.
4. To adopt and publish rules and regulations governing the use of the Common Properties and the personal conduct of the members, associate members, invitees, guests and others thereon. The publishing of said rules and regulations as currently existing and with any future additions or modifications otherwise, shall be so recorded on a separate sheet identifying adopted rules and regulations, and said sheet shall be placed with these By-Laws as a "loose" sheet for current application.
5. To exercise, for the Association, all powers, duties and authority vested in or delegated to this Association, except those reserved to members in the Declaration or the Articles of Incorporation.
6. Employ independent contractors or such other employees as they deem necessary and to prescribe their duties.

Liability of Board Members

Directors and officers may be sued individually for acts or errors they commit while serving the corporation. These individuals may be held personally liable for such acts. If a director or officer is found liable for a wrongful act, his or her personal assets may be used to pay damages to the plaintiff.

Liability usually falls into three categories: 1) corporate (state), 2) federal (IRS) and, 3) general liability. Let's take a closer look at each:

Corporate liability: Board members are the legal, governing body of a nonprofit corporation. They collectively represent the organization and its interests. Each nonprofit corporation is incorporated in a particular state, according to that state's corporate law. Board members are responsible to make sure the corporation follows state law and that it follows its bylaws. It is not terribly uncommon to hear of court cases involving other board members, or members of the public, accusing the organization of not abiding by its bylaws. And, if the corporation is an employer, the board members have a fiduciary responsibility to ensure that employment taxes and related things are properly handled.

Federal liability: Fiduciary liability carries over into the federal arena. In addition to fiduciary issues, the IRS also holds the board accountable for operating under the regulations and limitations of Section 501(c) of the Internal Revenue Code. This means that your board is responsible for ensuring your organization's programs are (and continue to be) operated for exclusively tax-exempt purposes. While there are no fines associated with falling short of the mark, your board doesn't want to be tagged as the

ones responsible for causing the organization to lose its tax-exempt status. Your board members are also directly responsible for setting appropriate compensation arrangements at arms-length. The IRS can and will hold individual board members personally liable if they find what they consider excessive compensation, particularly if not set at arms-length. Under Intermediate Sanctions, these penalties can be substantial.

General liability: This involves issues like gross negligence. Board members can be held liable for bad things they didn't take steps to prevent or eliminate. Examples include not screening childcare workers or not fixing that faulty handrail on the stairway of your facility.

Board of Directors Job Titles & Descriptions

Officers: The officers shall be a President, a Vice-President, a Secretary and a Treasurer. One person may hold two offices: the offices of President and Treasurer may be held by the same person and the offices of Secretary and Vice President may be held by the same person. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine. The Officers shall be chosen by majority vote of Directors.

President: The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board of Directors are carried out, and sign all notes, leases, mortgages and deeds.

- Calls special meetings when/if necessary
- Works in partnership with the association office to ensure board resolutions are carried out
- May appoint all committee chairs and recommend who will serve on the committees
- Prepares meeting agendas
- Oversees employees and contractors
- Acts as a spokesperson for the organization

Vice President: The Vice-President designated by the Board, shall perform all the duties of the President in their absence.

- Attends all board meetings and functions
- Stays informed on all association's services, policies and governing practices
- Review agenda and supporting documentation prior to all meetings
- Follow conflict-of-interest and confidentiality practices
- Assist the board in carrying out its fiduciary responsibilities, such as reviewing the organization's annual financial statements and audits.

Secretary: The Secretary of the Board of Directors, shall record the votes and keep the minutes of all proceedings in a book or digital storage to be kept for that purpose. The Secretary shall record for purpose of attendance the names of all attending Members and Associate Members of the Association.

- Attends all meetings
- Ensures the safety and accuracy of all board records
- Reviews board meeting minutes
- Assumes the responsibility of the president in the absence of the board president and vice president.
- Provides notice of all meetings of the board if notice is required.

If the Secretary is not present at a meeting, the directors present should appoint an Acting Secretary from those present.

Treasurer: The Treasurer shall provide oversight to the Secretary of the Association in all banking matters of the Association and shall disburse such funds as directed by the Board of Directors; provided, however, that a resolution of the Board of Directors shall not be necessary for disbursements made in the ordinary course of business conducted within the limits of a budget adopted by the Board. The Treasurer shall sign all checks and notes of the Association, provided that such notes shall also be signed by the President or a Vice-President.

The Treasurer shall keep proper books of account and cause an annual audit of the Association books to be made at the completion of each fiscal year. He or she shall prepare an Annual Budget and an Annual Balance Sheet Statement, and the budget and balance sheet statements shall be presented to the Membership at its regular Annual Meeting.

- Attends all meetings
- Maintains knowledge of the association and personal commitment to the organization's goals and objectives
- Understand financial accounting
- Serve as the Chair to the Budget Committee if one exists
- Works with the association's office to ensure that appropriate financial reports are made available to the board in a timely manner.

Meetings

It's important to create a standardized meeting routine so everyone that attends is familiar with the following expectations:

- Attendance
- Meeting starts on time
- Recommend the meeting not last more than 90 minutes
- Be organized – have an agenda and stick to it

- Open the floor for discussions and concerns at the end in a Town Hall Discussion – need to hear from our members

Regular Board Meetings:

1. A regular meeting of the Board of Directors shall be held monthly. Date, time and location of regular Board of Directors meetings will be announced at the start of each new term.
2. Notice of such regular meeting is not required. If the day for the regular meeting shall fall upon a holiday, the meeting shall be held at the same hour on the first day following which is not a holiday, and no notice thereof need be given.
3. Special meetings of the Board of Directors shall be held when called by an officer of the Association or by any two directors at date and time which would result in a quorum.
4. The transaction of any business at any meeting of the Board of Directors, however called and wherever held, shall be as valid as though made at a meeting duly held after regular call and notice of a quorum is present, provided that either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to the conduct of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records and made a part of the minutes of the meeting.
5. A simple majority of the Board of Directors shall constitute a quorum thereof.

Special Board Meetings or Working Board Meetings

A special meeting is a separate meeting of the board held at a time different from its regularly scheduled meeting. These meetings are called to allow the board to consider voting on emergency or important issues that arise between regular meetings and cannot wait.

Special meetings require a notice be given a certain time in advance of the meeting with date, time and location. Only items identified on the Special Board Meeting agenda can be voted on. Other topics may come up for further discussion, but no vote can be filed.

Working Board Meetings are a great way to discuss matters that would under normal circumstances take too long during a normal monthly board meeting. This allows for the freedom of open discussion without formalities otherwise required. They are great to discuss strategy, possible problems, research current issues, discuss the pros and cons of matters at hand and create a workable solution prior to the next official board meeting.

Meeting Agenda

An agenda is an order of business or plan in which the items of business are to be considered within a board meeting. Agendas keep the board focused and maintain an orderly and efficient manner of conducting business.

Suggested Agenda:

- Call the meeting to order

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- Attendance (Roll Call)
- Minutes from previous meeting
- Financial Report
- Old Business (status reports)
- New Business
- Committee Reports (written reports are to be submitted and a verbal overview is provided from the Chair of that committee)
- Town Hall Discussion
- Adjourn

Voting in a Board Meeting:

Requirement of a Quorum: In order for the Board to take any action, there must be a quorum of directors' present. A quorum is the minimum number, as set forth in the bylaws and declarations, of directors present for the organization to take action officially. The usual rule is that a majority of directors then in office constitutes a quorum. A majority is fifty percent (50%) of the Board plus one (1). For example, if there are ten (10) directors on the Board, the Board meeting will meet the quorum requirement if six (6) directors are present.

How to Vote

With respect to voting on a motion, the President calls for the directors to vote "yes," "no," or "abstain." A vote can be done by voice, show of hands, speaker phone (as long as both sides can hear and speak to each other), or roll call.

Without a Vote

Certain actions may be taken, or a motion may be passed by common assent of the directors. If the President thinks there is no opposition, he or she may say something like: "If there is no objection, the motion shall be passed by the consent of the directors." The directors then show agreement by remaining silent. If anyone objects a vote must be taken. This is helpful when there is a non-controversial or routine matter before the Board, such as a motion to approve the minutes of the prior Board meeting. In such case, the matter can be handled quickly and fairly by posing two simple questions to the Board: (1) "Are there any corrections or additions to the report/minutes?" [if so, make the changes agreed upon], then: (2) "If there are no objections [pause to allow possible comments or objections], the report/minutes is/are approved. "

Who Can Vote?

All active board of director members may vote at a board of directors meeting. Every director, including the President, may vote, except where conflict of interest rules require a director to abstain from the vote. As a general rule, a director with a conflict should not vote on an interested party transaction. Thus, a vote will pass only if a majority (quorum) of the disinterested directors approve of the motion.

When voting...

It is very important to be specific and clear about what the directors are voting on. Accordingly, it may be a good idea for certain motions to contain very specific wording, and even to be put in writing for all the directors to read before voting. The President should restate the motion, including any amendments, before a vote is taken.

Committees

Committees of the Board. 55A-8-25. (Extract)

1. Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee shall have two or more members, who serve at the pleasure of the board.
2. The creation of a committee and appointment of members to it shall be approved by the greater of:
 - a. A majority of all the directors in office when the action is taken; or
 - b. The number of directors required by the articles of incorporation or bylaws to take action under GS 55A-8-24 (Quorum and Voting).
3. GS 55A-8-20 (Regular and special meetings), 55A-8-21 (Action without meeting), 55A-8-22 (Notice of meetings), 55A-8-23 (Waiver of notice), and 55A-8-24 (Quorum and Voting), which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members as well.
4. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee of the board may exercise the board's authority under GS 55A-8-01 (Requirement for and duties of board).
5. A committee of the board shall not, however:
 - a. Authorize distributions;
 - b. Recommend to members or approve dissolution, merger or the sale, pledge, or transfer of all or substantially all of the corporation's assets;
 - c. Elect, appoint or remove directors, or fill vacancies on the board of directors or on any of its committees; or
 - d. Adopt, amend, or repeal the articles of incorporation or bylaws.
6. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in GS 55A-8-30 (General standards for directors).

Pine Mountain Standing Committees: (Permanent Committees per PM By-Laws)

Pine Mountain By-Laws, Article XII, Committees:

The Standing Committee of the Association shall be:

- The Nominations Committee

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- The Recreation Committee
- The Construction and Maintenance Committee
- The Environmental Control Committee
- The Publicity Committee
- The Audit Committee

Unless otherwise provided herein, each committee shall consist of a Chairman and two or more members, and shall include a member of the Board of Directors. The committees shall be appointed by the Board of Directors prior to each annual meeting to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each such annual meeting. The Board of Directors may appoint such other committees as it deems desirable.

The Nominations Committee shall have the duties and functions described in Article VIII.

The Recreation Committee shall advise the Board of Directors on all matters pertaining to the recreational programs and activities of the Association, and shall perform such other functions as the Board, in its discretion, determines.

The Construction and Maintenance Committee shall advise the Board of Directors on all matters pertaining to the construction, maintenance, repair or improvement of the Common Properties of the Association, and shall perform such other functions as the Board, in its discretion, determines.

The Environmental Control Committee shall have the duties and functions described in Part 4 of the Declaration and other provisions thereof. It shall be alert for any proposals, programs, or activities which may adversely affect the residential value and integrity of the PM Properties and shall advise the Board of Directors regarding Association action on such matters.

The Publicity Committee shall inform the members of all activities and functions of the Association and shall, after consulting the Board of Directors, make such public releases and announcements as are in the best interest of the Association.

The Audit Committee shall supervise the annual audit of the Association's books, and approve the annual budget and balance sheet statement to be presented to the membership at its regular annual meeting as provided in Article XI, Section 8. The treasurer shall be an ex-officio member of the Committee.

With the exception of the Nominations Committee and the Environmental Control Committee, each committee shall have power to appoint a sub-committee from among its membership and may delegate to any such sub-committee any of its powers, duties, and functions.

It shall be the duty of each committee to receive complaints from members and associate members on any matter involving Association functions, duties, and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, director, or officer of the Association as is further concerned with the matter presented.

Employees – Board of Directors Responsibility as Management

All employees of Pine Mountain POA Inc. are the responsibility of the Board of Directors. Through the process of maintaining quality employees, maintaining job descriptions, job placement, maintaining employee personnel records, policies on all aspects of their employment, please refer to the Pine Mountain Employee Handbook for references.

Election Process – Board of Directors

The nomination and election of the Board of Directors shall be as follows:

1. Election of the Board of Directors shall be by electronic or written ballot as hereinafter provided, and pursuant to both Article III and Article IV of the Pine Mountain POA By-Laws.
2. Nominations for election to the Board of Directors shall be made by a Nominating Committee which shall be one of the Standing Committees of the Association. The President shall have authority to appoint and replace members of this committee as it is necessary.
3. The Nominating Committee shall consist of three (3) Members in good standing and one (1) Member of the Nominating Committee shall be designated by the Board of Directors as Chairman. The Nominating Committee shall be appointed as soon as the Board of Directors shall deem appropriate and shall serve until a successor Nominating committee shall be appointed by the Board of Directors.
4. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Nominations shall be placed on an electronic or written ballot as provided in Section 5, Article VIII, and shall be made in advance of the time fixed in Section 5, Article VIII, for the mailing of such ballots to voting members. Accompanying the ballot shall be a description of each candidate containing a short resume and the benefits they can provide as a board director.
5. All elections to the Board of Directors shall be made on written ballot which shall:
 - a. Describe the vacancies to be filled
 - b. Set forth the names of those nominated by the Nominating Committee for such vacancies.
 - c. A box to the left of the name of the candidate is to be marked with an "X" to identify a vote "for." Such ballot shall be prepared and sent out by the Secretary of the Association to the eligible voting Members at least ten (10) days in advance of the date designated by the Board of Directors as the date for the election. The date of the election shall be prior to the date of the Annual Meeting and the term of office of a Director shall be for two (2) years. The term shall expire upon the date of the Annual Meeting. No Director will serve more than two (2) consecutive terms.
6. Director's Resignation. The date a Director resigns from the Board can become effective immediately upon communication unless the resignation sets forth a different effective date. Remaining Board Directors will select a successor through a qualifying procedure:
 - a. Must qualify as a Member in Good Standing.
 - b. Provide a short resume and the benefits they can provide as a Board Director.

- c. Accept the position until the next election.
7. Each eligible voting member shall receive one (1) ballot to be sent to the voting member by the Secretary of the Association. The ballot must be signed by the voting member. It shall be the responsibility of the Secretary to code or otherwise identify the ballots so as to prevent duplication or reproduction of the ballots.
8. Upon receipt of each ballot returned, the Secretary of the Association shall place same in a safe place, and upon the date designated by the Board of Directors as the date of the election, shall open the ballots and count same in the presence of any Member of Pine Mountain and two non-incumbent Directors appointed by the Board of Directors who, with the President, shall constitute the Election Committee. In the event the current President is an Incumbent then the Board shall name a Chairman, other than the President, for the Elections Committee. The results of the Election shall be publicly posted within twenty-four (24) hours at the Pine Mountain POA Office and shall be placed in the records at the next following Pine Mountain POA Board of Directors meeting. In the event two or more persons have been nominated for a vacancy, the person receiving the greater number of affirmative votes shall be declared elected. In the event only one person shall have been nominated for a vacancy, such person shall be declared elected upon the counting of the ballots, unless a person receives a greater number of "write-in" votes. To qualify as a write-in vote, the person must be a Member in Good Standing. A "write-in" vote or votes shall be deemed a proper nomination and an affirmative vote for the person designated on the ballot and shall be counted in any election of Directors.

Term of Office: Terms of Directors Generally. (55A-8-05)

1. The articles of incorporation or bylaws may specify the terms of directors. In the absence of a contrary provision in the articles of incorporation or bylaws, the term of each director shall be one year, and directors may serve successive terms.
2. A decrease in the number of directors or term of office does not shorten an incumbent director's term.
3. Except as provided in the articles of incorporation or bylaws:
 - a. The term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and
 - b. The term of a director filling any other vacancy expires at the end of the unexpired term that such director is filling.
4. Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed and qualifies, or until there is a decrease in the number of directors.

Removal of a Board Member

1. If at any time a board member no longer qualifies as a "Member in Good Standing", s/he will automatically be removed from the board.
2. Any board member that misses three (3) monthly board meetings will be automatically removed from the board.

3. Any board member that breaches their fiduciary duty to the association will be removed.
4. Any board member that refuses to abide by their confidentiality statement will be removed.
5. Any board member that refuses to abide by their agreement to serve will be removed.
6. Any board member that refuses to act in good faith and abide by their duties as a board member in good standing will be removed.
7. Through special member's meeting with the agenda to remove one or more board member from position.

Resignation of Directors. (55A-8-07)

1. A director may resign at any time by communicating his resignation to the board of directors, its presiding officer, or to the corporation.
2. A resignation is effective when it is communicated unless the notice specifies a later effective date or subsequent event upon which it will become effective.

Resignation and removal of officers. (55A-8-43)

1. An officer may resign at any time by communicating his resignation to the corporation. A resignation is effective when it is communicated unless it specified in writing a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.
2. A board of directors may remove any officer at any time with or without cause.

Removal of Designated or Appointed Directors. (55A-8-09)

1. A designated director may be removed by an amendment to the articles of incorporation or bylaws deleting or changing the provision containing the designation.
2. Except as otherwise provided in the articles of incorporation or bylaws:
 - a. An appointed director may be removed with or without cause by the person appointing the director;
 - b. The person removing the director shall do so by giving written notice of the removal to the director and to the corporation; and
 - c. A removal is effective when the notice is effective unless the notice specifies a future effective date.
3. Notwithstanding any other provision of this section, the articles of incorporation or bylaws may provide that directors appointed after the effective date of such provision shall be removed automatically for missing a specified number of board meetings.

Removal of Directors Elected by members or Directors. (55A-8-08)

1. The members may remove one or more directors elected by them with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

Pine Mountain Board of Director Guidelines

2. If a director is elected by a class, chapter or other organizational unit, or by region or other geographic grouping, the director may be removed only by that class, chapter, unit, or grouping.
3. Except as provided in subsection (i) of this section, a director may be removed under subsection (a) or (b) of this section, only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.
4. If cumulative voting is authorized, a director shall not be removed:
 - a. If the number of votes; or
 - b. If the director was elected by a class, chapter, unit, or grouping of members, the number of votes of that class, chapter, unit, or grouping;
 - c. Sufficient to elect the director under cumulative voting, if an election were then being held, is voted against the director's removal.
5. A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director.
6. In computing whether a director is protected from removal under subsection (b) through (d) of this section it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.
7. An entire board of directors may be removed under subsections (a) through (e) of this section.
8. A majority of the directors then in office or such greater number as is set forth in the articles of incorporation or bylaws may, subject to any limitation in the articles of incorporation or bylaws, remove any director elected by the board of directors; provided, however, that a director elected by the board to fill the vacancy of a director elected by the members may be removed by the members, but not the board.
9. *Notwithstanding any other provision of this section, if, at the beginning of a director's term on the board of directors, the articles of incorporation or bylaws provide that the director may be removed by the board for missing a specified number of board meetings. The director may be removed only if a majority of the directors then in office vote for the removal.*
10. Notwithstanding any other provision of this section, the articles of incorporation or bylaws may provide that directors elected after the effective date of such provision shall be removed automatically for missing a specified number of board meetings.
11. The articles of incorporation may:
 - a. Limit the application of this section in the case of a charitable or religious corporation; and
 - b. Set forth the vote and procedures by which the board of directors or any person may remove with or without cause a director elected by the members or the board.

Fill Vacant Board Seats:

Vacancy on board. (55A-8-11)

1. Unless the articles of incorporation or bylaws provide otherwise, and except as provided in subsections (b) and (c) of this section (NCGS 55A), if a vacancy occurs on a board of directors, including, without limitation, a vacancy resulting from an increase in the number of directors or

from the failure by the members to elect the full authorized number of directors, the vacancy may be filled:

- a. By the members entitled to vote for directors, if any, or if the vacant office was held by a director elected by a class, chapter or other organizational unit, or by region or other geographic grouping, by the members of that class, chapter, unit, or grouping;
 - b. By the board of directors; or
 - c. If the directors remaining in the office constitute fewer than a quorum of the board, by the affirmative vote of a majority of all the directors, or by the sole director, remaining in office.
2. Unless the Articles of Incorporation or Bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.
 3. If a vacant office was held by a designated director, the vacancy shall be filled only as provided in the articles of incorporation or bylaws.
 4. A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under GS 55A-08-07(b) (*Resignation of directors*) or otherwise) may be filled before the vacancy occurs by the new director shall not take office until the vacancy occurs.

Summary of Governing Documents:

A quick overview of Pine Mountain POA, Inc.'s governing documents:

- Articles of Incorporation – filed with the NC Secretary of State.
- Covenants & Restrictions (C&Rs) – filed with Burke County Courthouse. Provides direction to property.
- By-Laws – not filed anywhere and created by and approved by the Board of Directors. Any changes cannot counteract or contradict either the Articles of Incorporation or the C&Rs. Provides direction on the community's people and their actions (Board of Directors, Members, assessments, dues, voting, etc.)
- NC GS 47F – North Carolina Governing Statutes that govern single-family communities or planned communities and townhomes.
- NC GS 55A – North Carolina Governing Statutes that govern non-profit organizations
- Robert's Rules of Order – provides guidance to managing meetings and assemblies of members.

Board of Directors Training

Each year PMPOA undergoes an election process that may change a few of the board members to several board members. This action does not ensure the members leaving the board will train the new members of the board, preventing the amount of valuable information from being passed on and reducing time loss associated with unnecessary work effort on new members to 'catch-up.'

Each year, during the Annual Membership Meeting held the second Saturday of June the new board is put into position with their first official meeting being held in July. It is crucial to set aside time between these two meetings for a transition to occur.

Full disclosure will be presented of:

- Recently closed projects
- Ongoing projects – calendar of events
- Copies of reports, finances, minutes
- Association's assessments and accountability
- Training and understanding of new board position with duties and responsibilities
- Signing of all required documents (Agreement to Serve on the Board, Code of Ethics, bank records, employee records – if applicable, etc.)
- Understanding of all employees and their job descriptions
- Review Pine Mountain's website for updates/changes
- Review all promotional materials
- Receive a copy or be aware of the location to all governing documents, policies, procedures and guidelines.
- Have a working knowledge of all governing documents, policies, procedures and guidelines prior to the next official board meeting.

If it is not feasible or possible that all the conditions above can be obtained within the scheduled month, a dedicated training session should be established to ensure everyone is aware and fully understands how to continue the efforts of the exiting board members.

Meeting Training Section

Meeting Style – Formal or Informal?

As with most business meetings for many small organizations, Board meetings for small non-profit organizations generally operate informally. Directors frequently kick around an idea, get everyone's input, and then try to reach a consensus on how to handle a particular matter. Informal proceedings are perfectly acceptable most of the time. The key to effective yet informal meetings is to make sure everyone is encouraged to participate. If someone has not contributed to the conversation, the President could ask that person what he or she thinks about the issue. Otherwise, a couple of people

may do all of the talking, and then those same people assume that what they have expressed represents the views of everyone.

Here are two important ideas to keep in mind in determining how formal you may want to be, or need to be, in running a meeting of the Board:

1. Make sure that any final actions taken are read aloud to the group and then recorded in the minutes, even if the directors are unanimous in their decision. For example, if the Board agreed that Mary should look into having the organization create a standard for the exterior lighting, then the President should say aloud something like: "So, are we all agreed that Mary should find out about exterior lighting and get back to us?" In this case, the Board has not really taken any action that authorizes the organization to do something. Instead, the Board has simply asked Mary to do some research and report back. Having heard this, a director may say: "You know, we're not going to meet again for three months and many people want to change their lights now. I move that Mary be authorized, in her discretion, to work with management and the President and, if possible, submit an interim lighting standard that both Mary and the President agree upon on behalf of the organization." Notice that this motion takes the discussion in a different direction and does propose that the Board take action. This motion, whether passed by unanimous consent or by a majority vote of the directors, must be recorded in the minutes for the meeting.
2. Some situations call for proceedings that are formal. Here are some examples:
 - a. Electing or removing directors or officers of the Board.
 - b. Where you need a resolution to give to another party as proof of authorization to take a particular action - for example, to authorize the organization to open a bank account, purchase real property or to dispose of any asset of the organization.
 - c. Adopting or modifying the annual budget.
 - d. Personnel matters - i.e., hiring or firing decisions, changing employee benefits, etc.
 - e. Any time a subject is controversial - using some form of parliamentary - type procedure helps to ensure that the will of the majority viewpoint controls, while at the same time helping to ensure that all viewpoints are heard and treated fairly.
 - f. Where time is limited - for example, if there are numerous items on the agenda that actually require Board action and several people want to speak about one or more of the matters. In this case, the President may want to set time limits for discussing individual items. Any Board member always has the right to object to setting those limits, thus bringing the issue of time limits to the Board for a vote.

A motion is a proposal that the Board take a particular action regarding the current agenda item at a meeting (or a particular action regarding an issue closely related to the agenda item currently being discussed at the meeting). There can be more than one motion for any item on the agenda, and if there is an issue that is not on the agenda, then generally a director must first move to put the item on the agenda (and that motion must be passed) before the Board can discuss and take action on that issue at the meeting.

Any Board Member Can Make a Motion

A motion may be made by any voting director of the Board, even one who is not in favor of the motion. When a director makes a motion, it means that the director supports a discussion about and/or a vote on the motion, not necessarily that the director is in favor of (or will vote to pass) the motion.

How to Make and Second a Motion

A director makes a motion by saying something like: "I move to" or "I move that". As long as the directors are clear about what is being discussed and what action the director is suggesting, these rules do not require that a director use any specific wording to make a motion. However, the President can ask a director to clarify his or her motion. Also, any director can move to have a motion put in writing. At any time during discussion of an item, a director may make a motion on the item currently being discussed. Some motions, in order to be considered for debate, require the support of one person in addition to the person who made the motion (the

"movant"). This requirement is called a "second," and serves to ensure that only those matters/motions that have the support of multiple directors are debated at the meeting. If a motion requires a second, another director seconds the motion by saying something like: "I second the motion," or "Second." When a director seconds a motion, it means that the director supports discussion about or a vote on the motion, not necessarily that the director is in favor of (or will vote to pass) the motion.

When Does a Motion Pass or Fail?

The more common method works as follows: If there are ten (10) directors on the Board, the Board meeting will meet the quorum requirement if six (6) directors are present. For a motion to pass, at least four (4) for the six (6) directors present at the meeting must vote in favor of the motion. If the motion receives three (3) votes or less, then the motion fails.

A vote to "abstain," while counted towards the quorum, reduces the number of votes needed to constitute a majority. For instance, where six (6) directors are present and there are three (3) votes to pass, two (2) to not pass and one (1) to abstain, the motion passes. Note how, if that abstaining director instead had voted to not pass, the motion would have failed with only three (3) "pass" voters, lacking a majority. Thus, the one abstention shifted the majority requirement from "four out of six" to "three out of five."

Most Motions Are Debatable

Most motions are debatable, that is, all directors have the right to state their opinion about the motion. A motion that is not debatable goes straight to a vote or action without discussion.

How to Debate a Motion

An open discussion is basically an open conversation among the directors, with the directors having the right to talk about and discuss the current agenda item for as long as desired. We suggest that open

discussion be the general rule for your Board meetings. The President may decide on his or her own, or any director may move, to limit discussion of a particular item to a specific amount of time or to a particular number of speakers in favor of and opposed to the motion. A limited discussion is most useful for: (a) items that are so controversial that they are best discussed in a tightly controlled format; or (b) items that have already been fully discussed but the directors want a last chance to quickly state their positions before a vote is taken. The directors may override the President's decision by passing a motion to either limit or extend discussion. Some organizations may use a more formal mode of conducting business, by alternately recognizing speakers in favor of the motion and those opposed to the motion. Regardless, in all discussions, whether formal or informal, the President should limit discussion to the subject matter of the item. If a director brings up matters unrelated to the motion being considered, the President on his or her own initiative, or by a director requesting a "point of order" from the President, may rule the director out of order, effectively limiting discussion to the motion under consideration. Discussion ends when the directors pass a motion taking action on an item in a way that addresses it conclusively for that meeting.

Amending Motions

If a more formal approach is adopted by your Board, you should be aware that while a motion is being discussed, a director may move to amend the motion itself. The Board needs to discuss which motions are amendable and set forth on how the procedures for a motion is to be amended. However, amendments must be germane to the subject presented in the motion that is currently being discussed. The Chair/President makes the determination whether an amendment is sufficiently related to the subject of the motion to be allowed.

Announcing the Result of the Motion: The President should announce the result and the effect of the motion. Additionally, the Secretary should be sure to record the result of each vote. For example, after the Board votes to pass a motion to table the second item on the Board's agenda for that meeting, the President should say something like "The motion to table item number 2 on the agenda has passed. That item is tabled. The Board will now discuss item number 3 on the agenda." When an item is "tabled," it means that the item will no longer be addressed and the meeting will move on. An item that has been tabled can be addressed again at the same meeting only after a motion to take up the tabled item has been passed. The Secretary should record the result of the motion in the minutes.

Conflict of Interest

Director Conflict of Interest. (55A-8-31)

1. A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:
 - a. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee authorized, approved, or ratified the transaction;

- b. The material facts of the transaction and the director's interest were disclosed or known to the members entitled to vote and they authorized, approved, or ratified the transaction; or
 - c. The transaction was fair to the corporation.
2. For purposes of this section, a director of the corporation has an indirect interest in a transaction if:
 - a. Another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction; or
 - b. Another entity of which he is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.
3. For purposes of subdivision (a)(1) of this section, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction shall not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with direct or indirect interest in the transaction does not affect the validity of any action taken under subdivision (a)(1) of this section if the transaction is otherwise authorized, approved, or ratified as provided in that subdivision.
4. For purposes of subdivision (a)(2) of this section, a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subdivision (b)(1) of this section, shall not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subdivision (a)(2) of this section. The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this Chapter. A majority of the votes, whether or not present, that are entitled to be cast in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.
5. The articles of incorporation, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

What Is a Conflict?

A conflict of interest arises whenever the interests of the organization are potentially at odds with the business or personal interests of a director or officer. The director or officer involved is known as the "interested" party. A director's or officer's business or personal interests may encompass members of his or her family or other organizations with which the director or officer may be involved. For instance, the Board might be considering engaging in a transaction with an entity with which a director or officer is affiliated in some way. Examples would include the purchase, use, or lease of a piece of property in which a director has a financial interest, or obtaining consulting services offered by a director or a

director's family member. A conflict situation is frequently referred to as an "interested party transaction."

Other examples of potential conflicts include:

- An interested party owns, controls, or works for a business that will do work for the non-profit organization.
- An interested party's family member owns property that the non-profit organization will use, rent, or purchase.
- A person who is both a director and an employee of the non-profit organization is an interested party. In such a situation, any decisions made by the Board about personnel and staffing create a potential conflict.

Decision-Making When a Conflict Is Apparent

Interested party transactions are not uncommon and are generally acceptable so long as the transaction is in the best interests of the organization and the Board's decision to enter into the transaction is made in an objective and informed manner. When such transactions are not conducted in an appropriate manner, the organization and the directors open themselves to potential lawsuits and public mistrust. Either situation is clearly undesirable. Accordingly, when a conflict of interest does exist, the first step the Board should take to protect itself from even the appearance of impropriety is to require the interested director or officer to more fully disclose his or her interest in the transaction to the Board. Generally, full disclosure consists of making the Board aware of all material facts of the transaction and of the nature of the director's or officer's interest involved. Second, interested directors may not vote on the interested transaction. The Board should excuse the interested director or officer from that portion of the meeting when discussing or voting on the conflicted transaction takes place to ensure that the Board's consideration of the interested party transaction reflects a negotiation at "arm's length." The interested party transaction must be approved by a majority of the disinterested directors, and such approval should be specifically noted in the Board's minutes.

Other actions may also be taken by the Board to ensure objective and informed judgment. For instance, the Board could establish a system of competitive bids to ensure that the organization receives a fair value in the transaction. Any or all of these and other actions together help to insulate the Board from even the appearance of impropriety.

In general, directors and committee members must conduct all dealings with vendors and employees with honesty and fairness, and safeguard information that belongs to the association.

1. **Self-Dealing.** Self-dealing occurs when directors or committee members make decisions that materially benefit themselves or their relatives at the expense of the association. "Relatives" include a person's spouse, parents, siblings, children, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law and anyone who shares the person's residence. Benefits include money, privileges, special benefits, gifts or other item of value. Accordingly, no director or committee member may:

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- a. solicit or receive any compensation from the association for serving on the board or any committee,
 - b. make promises to vendors unless with prior approval from the board,
 - c. solicit or receive, any gift, gratuity, favor, entertainment, loan, or any other thing of value for themselves or their relatives from a person or company who is seeking a business or financial relationship with the association,
 - d. seek preferential treatment for themselves or their relatives,
 - e. use association property, services, equipment or business for the gain or benefit of themselves or their relatives, except as is provided for all members of the association.
2. Confidential Information. Directors and committee members are responsible for protecting the association's confidential information. As such they may not use confidential information for the benefit of themselves or their relatives. Except when disclosure is duly authorized or legally mandated, no director or committee member may disclose confidential information. Confidential information includes, without limitation:
- a. private personal information of fellow directors and committee members,
 - b. private personnel information of the association's employees,
 - c. disciplinary actions against members of the association,
 - d. assessment collection information against members of the association, and
 - e. legal disputes in which the association is or may be involved--directors may not discuss such matters with persons not on the board without the prior approval of the association's legal counsel. Failure to follow these restrictions could constitute a breach of the attorney-client privilege and loss of confidential information.
3. Misrepresentation. Directors and committee members may not knowingly misrepresent facts. All association data, records and reports must be accurate and truthful and prepared in a proper manner.
4. Interaction with Employees. To ensure efficient management operations, avoid conflicting instructions from the board to management and avoid potential liability, committee members and directors shall observe the following guidelines:
- a. The president of the board shall serve as liaison between the board and management and provide direction on day to day matters.
 - b. Except for the president, committee members and directors may not give direction to management, employees or vendors.
 - c. Directors may not contact management after hours unless there is an emergency representing a threat of harm to persons or property.
 - d. If directors or committee members are contacted by employees with complaints, the employees shall be instructed to contact management or the board as a whole.
 - e. No director may threaten or retaliate against an employee who brings information to the board regarding improper actions of a director or committee member.
 - f. Directors and committee members are prohibited from harassing or threatening employees, vendors, directors, committee members, and owners, whether verbally, physically or otherwise.

5. Proper Decorum. Directors and committee members are obligated to act with proper decorum. Although they may disagree with the opinions of others on the board or committee, they must act with respect and dignity and not make personal attacks on others. Accordingly, directors and committee members must focus on issues, not personalities and conduct themselves with courtesy toward each other and toward employees, managing agents, vendors and members of the association. Directors shall act in accordance with board decisions and shall not act unilaterally or contrary to the board's decisions.

Conflicts of Interest – Examples of Liability Issues

No man is allowed to be a judge in his own cause because his interest would certainly bias his judgment and, not improbably, corrupt his integrity. – James Madison (4th President, Federalist Paper #10)

Conflicts of interest occur when a board member's decisions are influenced by his/her personal interests rather than the interests of the association, which can lead to breaches of their fiduciary duties.

Moreover, the director loses the protections of the Business Judgment Rule:

An exception to the presumption afforded by the business judgment rule ... is that it does not shield actions taken without reasonable inquiry, with improper motives, or as a result of a conflict of interest. (Berg & Berg Enterprises, LLC v. Boyle (2009) 178 Cal.App.4th 1020, 1045-1046.)

Example. A board member votes to award a roofing contract to a company owned by the director or the director's spouse, brother, son, granddaughter, etc. The award of the contract results in a personal benefit to the director. Such contracts are voidable.

Not a Conflict. Oftentimes board members vote on matters that result in a benefit to them that is not a conflict of interest because the matter also benefits the membership as a whole. For example, if a board member votes to add security patrols to the development, there is no conflict of interest since the benefit he receives from the patrol is same benefit received by all members of the association.

Potential Liability. Conflicts or potential conflicts of interest, however, do not necessarily create personal liability if:

1. Full Disclosure. The interested director makes full disclosure of the conflict.
2. No Influence on Vote. The interested director should leave the room so remaining directors can discuss the issue fully and freely and take vote without the interested director.
3. Just & Reasonable. Even if the director makes full disclosure and avoids influencing the vote, the transaction must be fair and reasonable as to the association at the time it is authorized, approved or ratified. (Corp. Code §7233; Corp. Code §310.)

Regardless of whether he has a material financial interest, a director "may not make decisions for the association that benefit their own interests at the expense of the association and its members." Raven's Cove Townhomes, Inc. v. Knappe Development Co. (1981) 114 Cal.App.3d 783. A director who breaches the basic fiduciary duties are liable to the Association. (Id.) Where a director finds himself in a position

to vote on a matter in which he has a personal interest, he should be recused.

Recusal. Interested directors may be counted in determining the presence of a quorum at a meeting of the board or a committee thereof which authorizes, approves or ratifies a contract or transaction. (Corp. Code §7234.) However, directors must recuse themselves from discussion and voting on issues in which they have a direct personal or pecuniary interest not common to other members of the board. (Robert's Rules, 11th ed., p. 407.)

...no person can, at one and the same time, faithfully serve two masters representing diverse or inconsistent interests with respect to the service to be performed. The principle has always been one of the essential attributes of every rational system of positive law, even reaching to private contractual transactions, whereby there are created between individuals trust or fiduciary relations. (*Stockton Plumbing & Supply Co. v. Wheeler* (1924) 68 Cal. App. 592, 601-2.)

Burden Shifts. If the interested director makes full disclosures and recuses himself and if a disinterested majority of directors approves the proposal of the interested director, the burden of proof falls to the person challenging the transaction. (Harvey v. The Landing HOA.)

Problems. Even when a director recuses himself, associations should avoid contracting with companies where a director has a financial interest. Such arrangements are fraught with peril both politically and legally.

1. Political Problems. At election time, owners may accuse the board member of reaping secret profits, taking advantage of his or her position on the board, doing shoddy work, etc. and demand his/her ouster.
2. Legal Problems. If the work by the interested director's company is defective, the board faces the unpleasant prospect of making legal demands on a fellow board member. At the same time, they face political problems with the membership for having given the fellow director the contract in the first place.

Agreement to Serve on Pine Mountain POA, Inc.

Board of Directors

I agree to serve on the board of directors for Pine Mountain Property Owners Association, Inc. (PMPOA), and I also agree to be guided by the following principles:

- To attend and participate in all meetings and communications to the best of my ability to be present.
- To respect parliamentary procedure at all meetings; to refrain from speaking out of turn; and to participate in a business-like manner.
- To maintain confidentiality with respect to the board's meetings, including any related discussions or other communications.
- To accept the board's decisions even if I disagree, because I understand there may not be unanimous support for every action taken by the board.
- To promote the goals and interests of PMPOA in a constructive manner, and not to create unnecessary conflict among the property owners.
- To disclose to the board on the meeting minutes any conflicts of interests.
- To do my best to ensure that PMPOA's finances are well managed.
- To uniformly enforce all governing documents.
- To place the best interests of PMPOA above my personal interests.
- To resign from the Board if I find I can no longer maintain this agreement to serve.

Signature

Date

Print Name

Code of Ethics for Board Members

Goal: To establish a set of principles and practices of the Pine Mountain Board of Directors that will set parameters and provide guidance and direction for board conduct and decision-making.

Code: Members of the Board of Directors of the Pine Mountain are committed to observing and promoting the highest standards of ethical conduct in the performance of their responsibilities on the board of Pine Mountain. Board members pledge to accept this code as a minimum guideline for ethical conduct and shall:

Accountability

1. Faithfully abide by the Articles of Incorporation, by-laws and policies of Pine Mountain.
2. Exercise reasonable care, good faith and due diligence in organizational affairs.
3. Fully disclose, at the earliest opportunity, information that may result in a perceived or actual conflict of interest.
4. Fully disclose, at the earliest opportunity, information of fact that would have significance in board decision-making.
5. Remain accountable for prudent fiscal management to association members, the board, and nonprofit sector, and where applicable, to government and funding bodies.

Professional Excellence

6. Maintain a professional level of courtesy, respect, and objectivity in all Pine Mountain activities
7. Strive to uphold those practices and assist other Pine Mountain members of the board in upholding the highest standards of conduct

Personal Gain

8. Exercise the powers invested for the good of all members of the organization rather than for his or her personal benefit, or that of the nonprofit they represent.

Equal Opportunity

9. Ensure the right of all association members to appropriate and effective services without discrimination on the basis of geography, political, religious, or socio-economical characteristics of the state or region represented.
10. Ensure the right of all association members to appropriate and effective services without discrimination on the basis of the organization's

volunteer or staff make-up in respect to gender, sexual orientation, national origin, race, religion, age, political affiliation or disability, in accordance with all applicable legal and regulatory requirements.

Confidential Information

11. Respect the confidentiality of sensitive information known due to board service.

Collaboration and Cooperation

12. Respect the diversity of opinions as expressed or acted upon by the Pine Mountain board, committees and membership, and formally register dissent as appropriate.

13. Promote collaboration, cooperation, and partnership among association members.

Approved: Pine Mountain Board of Directors, November 7, 2017

Board Signatures

Name:

Signature:
