



November 9, 2021

Chateau Chaparral Owners Association
c/o Treasurer
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Re: *Chateau Chaparral Owners Association/Board questions*
Our File No. 1059.0001

Dear Members of the Board:

1. *What are the legal differences between Resolutions, Rules & Regulations and Policies (or are Policies just another term for R&R)?*

Rules are adopted by the Board and relate to expanding or explaining provisions contained in the Declaration such as a rule relating to pets in the community or for architectural criteria.

Policies are adopted by the Board and reflect the philosophy of the community such as the philosophy on enforcement of covenants.

Resolutions are a record of Board action. They can be numbered sequentially and act as meeting minutes so you can refer back to them for clarity.

2. *Do you give warnings before fining, what are the fines, how long does somebody have to cure a violation?*

While you are not required to give warnings, you must always provide notice and an opportunity for a hearing. Meaning, you can fine on a first offense after notice and an opportunity for a hearing. Currently your enforcement policy states that you may fine on the first offense but the Owner has 30 days to cure or request a hearing.

3. *I know that the whole membership votes on By-Law changes but who votes on new Resolutions? Is it just the Board or does the whole membership get involved?*

The Board is empowered to vote on rules, regulations, policies and resolutions. The Association should adopt a policy regarding how to adopt policies, but the statute lets you fill in the "how" on your own, such as giving an Owner notice and a period to comment, how long a comment period and where the policy is posted.

4. *Rules & Regulations are their own separate document. Who has the authority to add or change a corporation's R&R? Is it just the Board or does the whole membership get involved?*

This is a Board vote pursuant to the duly adopted policy regarding adoption of policies and rules.

5. *Depending on what the answer was to Question 1, I would ask the same question as #4 about Policies.*

Policies are the philosophy of the Board such as, what is your philosophy concerning reserves? Do you have a reserve account? How is it funded? These are adopted by the Board.

Board of Directors
Chateau Chaparral Owners Association
November 9, 2021

6. *Can the Board reveal all our legal costs to the membership? I specifically want to focus on members that have challenged the Board where we then have to ask for a legal opinion/ruling. As you know, we have had several in the last 2 years or more. In addition, some members have asked to see what those decisions were. How far do we go?*

Yes, there is no prohibition against posting the reason for certain expenses. If you are going to name a particular person however, please understand the potential for division in the community and further harassment from the Owner.

7. *If a member does challenge and is ruled against them, why can we not then bill the member for the attorney's cost? I think it would soon deter those members that do ask for a ruling when in fact it is unfounded and we pay the costs?*

You can bill for attorney costs if it is the Owner's misconduct that caused the fee.

8. *When a member elects to go to arbitration, how long do they have to retain an arbitrator and get the process completed?*

The Association's policy regarding alternative disputes provides that Owners must appeal negative decisions to an arbitrator. While it does not specify a required time, as the Association requires the violation be corrected within 30 days, this timeframe can be carried forward. However, I would recommend revising this policy to put forth a specific timeframe.

9. *When a member joins us for our weekly work session and we get to a point where we must discuss issues concerning an individual member (such as deciding whether to get a judgment against a member, or members who are in arrears, etc.) can we ask those who are attending, but are not Board members, to leave on the basis of privacy?*

A work session is a meeting of the Association's Board in which no decisions are made. If the Board elects to move into an executive session to discuss matters requiring confidentiality, it may do so at the meeting.

10. *When conducting a Board mtg or a General Mtg (both business meetings), is a member allowed to interrupt and/or hold up the Board's vote on a motion or another other matter of discussion? We need to be clear that the Board is having a discussion on a motion and/or a vote. We need to be in control of this action. We lose control and cannot move forward. How best to handle this?*

No, the Association may adopt a policy stating when a person may talk or address the Board, which is required to be allowed prior to a Board vote. However, if a person chooses not to adhere to the rule, the Owner may be removed from the meeting, or the meeting adjourned and reconvened at a later time.

11. *It is my contention that this has caused some serious hindrances to our ability to operate, since the passing of portions of HB21-1229. As ours are technically bathhouses with showers, how do we handle that matter?*

We have been recommending making bathrooms unisex and putting locks on the doors. This way, they can be used by single persons at once to avoid a situation in which an Owner identifies as one sex but is biologically a different sex.

12. *When an Owner writes a message or email to a Board member, what can be done about the member who writes inflammatory, accusatory, sexual or messages containing the "f" word and the like, directly calling us names, making false statements, and even sending it out to the public on occasion?*

If sent to the public, the individual that is the subject of the email may have a claim for defamation. If the email contains a threat of violence, it should be referred to law enforcement.

Board of Directors
Chateau Chaparral Owners Association
November 9, 2021

13. *What can be done if anything to limit the amount of lots a person can own?*

This would require an amendment to the Declaration.

14. *What is the law for audio and or videotaping a person? Under what conditions is it permitted?*

Colorado is a single person consent recording state. So long as one person consents, a person can record a conversation. However, the Association may adopt rules prohibiting taping of meetings or use of recording equipment in or around the Common Elements.

15. *What can be done for the members who continually pay their fines for having a messy lot full of debris or the parent who continually speeds throughout the park at a high rate of speed with a six year old child who is unprotected (no helmets or pads) and the parent is inebriated or possibly under the influence of other substances?*

As to the person paying the fines, the Association has a right to obtain a court order requiring the Owner to clean up the lot. As to the child, unfortunately, the Association is not the police. You can as a citizen, not as a Board member, request a wellness check on the child but you can't fine for this event.

16. *Condo Dec revisions and replacements and who should be responsible? Cost? Time? What is status of previous attempts to revamp the Dec?*

Any amendments to the Condominium Declaration must be paid for and done by the Board. A full re-write of all governing documents, including Bylaws, Declaration and Articles would be all in approximately \$15,000.

17. *Permit requirements from the county and CCOA's responsibility to insure compliance, member's responsibility to follow up, retrospective penalties for CCOA or member and does the infraction remain with the current property Owner and/or lot and still face penalty by the county if not resolved? Cease and desist if no county permit obtained?*

The permit requirement is a county requirement. The Board may issue authorizations to proceed with work however, the county is the only entity that may issue a permit.

18. *Can CCOA in fact regulate how many properties a member can own?*

Not without an amendment to the Declaration.

19. *Can a corporation (LLC for example) be listed as the member on the deed? Who is then allowed to vote, run for office and therefore meet the criteria for a "member" in good standing per our bylaws.*

A corporation may own a unit. It is a legal entity. The LLC or corporate entity must establish who can vote on behalf of the LLC or corporation. This is usually done through a statement of authority recorded in Chaffee County.

20. *Can a Sergeant at Arms be appointed to the Board permanently? What is the procedure to have a disruptive party removed?*

Yes, however, I do not recommend anyone other than law enforcement attempt to remove someone from the meeting. In the event of a disruptive Owner, the Board may adjourn the meeting to a later time.

21. *How much involvement should the Board have in resolving property line disputes with members applying for project authorizations?*

Board of Directors
Chateau Chaparral Owners Association
November 9, 2021

The Board does not necessarily need to resolve property line disputes. However, it should not approve any request for an improvement beyond the current setbacks. This will avoid future disputes. If Owners are claiming an encroachment, resolving that should be done by the Owners.

22. *If a member owns adjoining properties, can they legally connect the lots by way of a connecting deck, walkway or a fence?*

No, not without going through an amendment to the property lines and asking the county to waive set back requirements. This would also require approval from the Board of Directors and potentially the Owners through an amendment to the condominium map.

23. *Review the mandate regarding unisex bathrooms for members/guests.*

As discussed above, we recommend the Association convert the bathrooms to unisex bathrooms and put locks on the doors.

24. *Members that have occupants in their unit and are suspected renters, but are allowed to occupy for an unlimited time as a relative/guest per bylaws. Bylaws state no rentals of units; only vacant lots may be rented.*

This is very difficult to prove but if you can establish that these are long term occupants that are not related to the Owner, you can enforce the covenants against them by means of fines.

25. *In regards to the By-Laws. Are they within reasonable scope for an hoa?*

The Bylaws contain provisions which are not typical in a normal community such as provisions relating to arbitration and how they are amended. However, these Bylaws are a combination of both the requirements of the nonprofit act as well as the condominium act. I do recommend they be amended.

"The purpose of Bylaws is to provide communities with clear communication on how exactly the Board members that preside over them are held accountable while in their positions."

26. *Is the attorney's council ONLY for the 7 board members or is the attorney available to the 306 investors/owners for council? Does he have a fiduciary responsibility to the board AS WELL AS the 306 members?*

This office represents the corporate entity that is Chateau Chaparral. We do not represent any Board member or Owner.

27. *The county Sheriff once told my Dad " It is not our job to enforce your (CCOA) bylaws." How does the CCOA hold anyone accountable in a county court for any of the bylaws?*

The sheriff is not responsible to enforce the provisions of the Declaration or of the community. However, county courts have original jurisdiction in civil suits to enforce the provisions upon the Association filing a complaint for relief or an Owner may file a lawsuit in their own name.

28. *The Building and Zoning department made the statement that they are "responsible for all county citizens and county statutes." How does this again apply to CCOA?*

It doesn't. The Association is not a policing entity and may not enforce county code. Similar to the question above, the county will not enforce private covenants within the community. The county enforces county requirements and the Association enforces the private covenants.

Board of Directors
Chateau Chaparral Owners Association
November 9, 2021

29. *What is the attorney's long term view regarding the "CCOA vs The County" situation. How do they come together? Is it the council of the attorney to "fly under the radar of the county?"*

While at one point we did advise not to let the county into the community and attempt to keep the status quo. However, as the county has become more involved in the community and is well aware of the condition of the community, we fully recommend the Association cooperate with the county to the extent possible on everything moving forward. We should work to continue to improve our relationship with the county while cooperating with them and encouraging compliance.

30. *If a contractor performs a job incorrectly and without a county permit, does the insurance of the contractor pay for the issues they caused?*

It would be contingent upon the terms and conditions of the contractor agreement. However, in normal situations, yes, the contractor would be required to pay for their damages

31. *And if a Board member requests counsel from the attorney regarding a matter, does it fall on the Board member to pay for the council should the member be incorrect? Wasn't there an issue with a trailer that was taken off a lot and the Association was in the wrong and the Association ended up paying thousands of dollars? Should the specific person who decided to fight have been liable? Just trying to understand that question.*

Any Board member may contact our office at the Association's expense. We do encourage a single point of contact however, to make sure that the Association protects its budget and legal expenditures. Additionally, if an individual Board member does reach out for consultation, we will copy the entire Board as each Board member is required to share all information it receives with all other Board members.

32. *vii. An Association is not obligated to compile or synthesize information (from the CCOA Records Management Policy). Is the portion of the policy still applicable? If so, please provide clarification as to what this means.*

Yes, it is still applicable and yes, it still applies. What it means is you as a Board don't need to compile information – meaning, if a records request asks: "Please provide me all information and costs related to legal services over the last 10 years," you do not need to compile the information. You can respond with all financials and let them figure it out. Also, you need not explain what certain information means.

33. *Does the vote for the budget at the announced meeting have to be a mailout ballot since the Bylaws state, "Votes for the Budget shall be taken by secret ballot."?*

ARTICLE II VOTING, QUORUM, MAJORITY OF OWNERS, PROXY 1. VOTING - Voting shall be based upon one vote per unit. A member must be in good standing as stated in Articles VII and VIII, Section I, of this document to be eligible to vote. Votes for positions on the Board of Managers shall be taken by secret ballot. **Votes for the Budget shall be taken by secret ballot.**

The portion in red was added in July. A member insists that this must be a mailout ballot rather than simply using a secret ballot at the meeting at which the budget is put out to the membership for a veto. Her reasoning is that historically other items, such as voting for the Board and Bylaw changes, are done through a mail out ballot. A mail out ballot for the Board election has been the common practice, but done so at the discretion of the Board and not required under the Bylaws. The ballot for the Bylaws (outlined in Article I, Section 4, Bylaw Revisions) is required to be a mail out ballot.

I disagree with the statement that the budget must be a mail out ballot. Specifically because C.R.S. 38-33.3-303(4) provides as follows:

Board of Directors
Chateau Chaparral Owners Association
November 9, 2021

- (I) Within ninety days after adoption of a proposed budget for the common interest community, the executive board shall mail, by first-class mail, or otherwise deliver, including posting the proposed budget on the association's website, a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider the budget. The meeting must occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the bylaws. The executive board shall give notice to the unit owners of the meeting as allowed for in the bylaws.
- (II) Unless the **declaration requires otherwise**, the budget proposed by the executive board **does not require approval from the unit owners and it will be deemed approved by the unit owners in the absence of a veto at the noticed meeting by a majority of all unit owners**, or if permitted in the declaration, a majority of a class of unit owners, or any larger percentage specified in the declaration, whether or not a quorum is present. If the proposed budget is vetoed, the periodic budget last proposed by the executive board and not vetoed by the unit owners must be continued until a subsequent budget proposed by the executive board is not vetoed by the unit owners. (emphasis provided).

As you can see from the above, two things are required, (1) that the Association call a meeting to discuss the budget and (2) that the budget must be rejected at the meeting. As your Bylaws require a vote by secret ballot, to harmonize these two provisions, the budget must be discussed at a meeting and voted on, at that meeting by secret ballot. Unless the budget is rejected by a majority of all Owners in the community, at that meeting, the budget is deemed approved.

Sincerely,



David A. Firmin
Altitude Community Law P.C.