

Deputy Clerk BDURR
#2

**Fountain Lakes Community Association, Inc
Amended and Restated Bylaws**

**Note: Substantial revision of the declaration. For present text see
existing declaration.**

2020

NOTE: SUBSTANTIAL AMENDMENTS
OF ENTIRE BYLAWS. FOR ORIGINAL TEXT
SEE ORIGINAL BYLAWS.

**Amended and Restated Bylaws of
Fountain Lakes Community Association, Inc.**

Section 1. **Identification of Corporation.** These are Bylaws of Fountain Lakes Homeowners Association, Inc., a Florida corporation not for profit, which was originally incorporated under the same name on August 28, 1987, hereinafter the "Association." The corporation is organized under the laws of Florida as a community association for the purpose of operating a residential community. All prior Bylaws, if any, are hereby revoked and superseded in their entirety.

- 1.1 **Principal Office.** The Principal Office shall be 22201 Fountain Lakes Blvd., Suite 1, Estero FL 33928 or as listed with the Florida Department of Corporations.
- 1.2 **Seal.** The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "corporation not for profit". The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required.
- 1.3 **Fiscal Year.** The fiscal year of the corporation shall be the calendar year unless otherwise modified by the Board.

Section 2. **Members.** The members of the Association are the record owners of legal title to the Lots. In the case of a residential Lot subject to an agreement for deed, the purchaser in possession shall be deemed the owner of the residential Lot solely for purposes of determining use rights.

- 2.1 **Change of Membership.** A change in membership shall become effective after all the following events have occurred.
 - (A) Recording in the Public Records of a Deed or other instrument evidencing legal title to the Lot in the member.
 - (B) Delivery to the Association of a copy of the recorded deed or other instrument evidencing title.
 - (C) Designation, in writing, of a primary owner, which is required when title to a Lot is held in the name of two (2) or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.
- 2.2 **Voting Interests.** The members of the Association are entitled to one (1) vote for each residential Lot owned by them. The total number of possible votes (the voting interests) of the Association is the total number of residential Lots in Fountain Lakes is 900. The vote of a residential Lot is not divisible. The right to vote may be suspended for non-payment of any monetary amounts that are delinquent in excess of 90 days. If a residential Lot is owned by one (1) natural person, the right to vote shall be established by the record title to the residential Lot. If a residential Lot is owned jointly by two (2) or more natural persons, that residential Lot's vote may be cast by anyone (1) of the record owners. If two (2) or more owners of a residential Lot do not agree among themselves how their one (1) shall be cast on any issue, that vote shall not be counted for any purpose. If the owner of a residential Lot is other than a natural person, the vote of that residential Lot shall be cast by the residential Lot's primary owner. All votes must be cast by an Owner or primary owner.
- 2.3 **Approval or Disapproval of Matters.** Whenever the decision or approval of a residential Lot owner is required upon any matter, whether or not the subject of an Association meeting, the decision or other response may be expressed by any person authorized to cast the vote of the residential Lot at an Association meeting, as stated in Section 2.2 above, unless the joinder of all record owners is specifically required.
- 2.4 **Change of Membership.** A change of membership in the Association shall be established by the new member's membership becoming effective as provided for in Section 2.1 above. At that time the membership of the prior owner shall be terminated automatically.
- 2.5 **Termination of Membership.** The termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the

Association during the period of his membership, nor does it impair any rights or remedies the Association may have against any former owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

Section 3. **Board of Directors.** The administration of the affairs of the Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles and Bylaws, shall be exercised by the Board, subject to approval or consent of the residential owners only when such is specifically required.

- 3.1. **Number and terms of Directors.** The Number and terms of Directors which shall constitute the whole Board of Directors shall be seven (7). All Directors shall be elected for a staggered term of two (2) years each. Director's term will end at the annual election at which his or her successor is to be duly elected, unless he or she sooner resigns or is recalled.
- 3.2. **Qualifications.** Each Director must be a residential Lot owner or primary owner or the spouse of a residential Lot owner. In the case of a Lot owned by a corporation, any officer is eligible for election to the Board of Directors. If a Lot is owned by a partnership, any partner is eligible to be a Director. If a Lot is held in trust, the trustee, grantor or settlor of the trust, or any one of the beneficial owners residing in the Lot is eligible to be elected to the Board of Directors.
- 3.3. **Nominations and Elections.** Nominations for election to the Board of Directors shall be made in writing at least forty (40) days in advance of the day of election. At such election the members may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration and these Bylaws. The persons receiving the largest number of votes shall be elected, except that a run-off shall be held to break a tie vote. Cumulative voting and proxy voting in elections is not permitted.
- 3.4. **Removal of Directors.** Any Director may be removed, with or without cause, by a majority vote of the total voting interests of the community, by a written agreement, or at a meeting called for that purpose. An Officer may also be removed at any time by a majority vote of the Board of Directors. If a special meeting is called by ten percent (10%) of the resident voting interests for the purpose of recall, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose, with certification of the necessary signatures. The meeting must be held not less than fourteen (14) days nor more than sixty (60) days from the date that notice of the meeting is given. If removal is affected by written agreement, the vacancy or vacancies shall be filled as provided by law. If removal is affected at a meeting, any vacancies created thereby shall be filled by the members at the same meeting. Any Director who is removed from office is not eligible to stand again for election to the Board until the next annual election and must turn over to the Association within seventy-two (72) hours any and all records and other property of the corporation in his or her possession. If a Director who is removed does not relinquish his office or turn over records as required, the Circuit Court in the county where the Association has its principal office may summarily order the Director to relinquish his office and turn over corporate records upon application of any member. In any such action, the prevailing party shall be entitled to recover its attorney fees and costs.

Section 4. **Officers of the Corporation.** Executive Officers of the Corporation shall be the President, the Vice President, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board.

- 4.1 The Board may, from time to time, elect such other officers and assistant officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Corporation including the formation of committees as needed.
- 4.2 One person may not hold any two offices simultaneously except where the functions of such offices are incompatible, but no person shall hold the office of the President and any of the following offices simultaneously: Vice President, Secretary, or Assistant Secretary.
- 4.3 The President shall be the chief executive officer of the Corporation. He or she shall have all of the powers and duties which are usually vested in the office of the President of an Association or a Corporation not-for-profit including, but not limited to, the power to appoint such committees at such times from among the Members as he or she may in their discretion determine appropriate to assist in the conduct of the affairs of the Corporation. If in attendance, the President shall preside at all meetings of the Board.
- 4.4 In the absence or disability of the President, a Vice President shall exercise the powers and perform the

- duties of the President. The Vice President(s) shall also generally assist the President and exercise such other powers and duties as shall be prescribed by the Board. In the event there shall be more than one Vice President elected by the Board, then they shall be designated First, Second, etc. and shall exercise the powers and perform the duties of the Presidency in such orders of designation.
- 4.5 The Secretary shall keep the minutes of all meetings of the Board and its Members, which minutes shall be kept in a business-like manner and be available for inspection by the members and directors at reasonable times. He or she have the seal of the Corporation and shall duly affix same only as directed to do so. He or she shall be the custodian of corporate records of the Corporation, except those of the Treasurer, and shall perform all of the duty's incident to the office of Secretary of the Corporation as may be required by the Board or the President. The Assistant Secretary if any, shall perform the duties of the Secretary when the Secretary is absent, and shall assist the Secretary under the supervision of the Secretary. The duties of the Secretary and Assistant Secretary to the extent permitted by law may be delegated and performed by other Directors.
- 4.6 The Treasurer shall have custody of all the monies of the Corporation, including funds, securities and evidence of indebtedness. He or she shall keep the assessments and accounts of the Members and shall keep the books of the Corporation in accordance with good accounting practices and shall perform all of the duty's incident to the office of the Treasurer. The Assistant Treasurer, if any, shall perform the duties of the Treasurer under the supervision on of the Treasurer. The duties of the Treasurer or Assistant Treasurer to the extent permitted by law may be delegated to and performed by a managing agent or a managing company.
- 4.7 Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses related to the proper discharge of their respective duties.
- 4.8 **Notice to Owners.** Meetings of the Board of Directors shall be open to members except for meetings in regards to personnel discussions and meetings between the Board and its attorney with respect to proposed or pending litigation where the discussion would otherwise be governed by the attorney-client privilege, and notices of all Board meetings, together, shall be posted conspicuously in the community at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. Owners may speak on all agenda items for up to three minutes. Owners may only speak on non-agenda items with the permission of the Board. Notice of any Board meeting at which rules affecting the use of a Lot or Special Assessments are to be considered shall specifically contain a statement that rules or Special Assessments will be considered and the nature of the rule or Assessments and shall be mailed, delivered or electronically transmitted and posted at least fourteen (14) days in advance.
- 4.9 **Other Meetings.** Meetings of the Board may be held at such time and place as shall be determined from time to time by the President, or in his or her absence, a Vice-President, or by a majority of the Directors at any time. It shall be the duty of the Directors, the President, or a Vice-President, to call such a meeting whenever so requested by the Association Members constituting at least twenty percent (20%) or more of the total voting interests. Notice of meetings shall be given to each Director by the Secretary at least two (2) days prior to the time fixed for the meeting.
- 4.10 **Quorum of Directors.** A quorum at a Board meeting shall be attained by the presence in person of a majority of all Directors. Directors may participate in any meeting of the Board, or meeting of an executive or other committee, by means of a conference telephone call or similar communicative arrangement whereby all person's present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person at a meeting.
- 4.11 **Vote Required.** The acts approved by a majority of those Directors present and voting at a meeting at which a quorum has been attained shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the governing documents or by applicable statutes. A Director who is present at a meeting of the Board is deemed to have voted in favor of every action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes of each meeting. Directors may not vote by proxy or secret ballot at Board meetings, except that secret ballots maybe used for the appointment or removal of a Directors.

- 4.12 **The Presiding Officer.** The President of the Association, or in his absence, the Vice- President, is the presiding officer at all meetings of the Board. If neither officer is present, the presiding officer shall be selected by majority vote of the Directors present.
- 4.13 **Organizational Meeting.** The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors, at such place and time as may fixed and announced by the Directors at the annual meeting at which they were elected. The Organizational meeting may be held immediately after the adjournment of the annual Association meeting.
- 4.14 **Emergency Powers.** The Board of Directors may exercise the emergency powers authorized by Sections 617.0207, 617.0303, and 720.316 Florida Statutes, as amended from time to time hereafter.
- 4.15 **Fiduciary Duty.** Each member of the Board of Directors and each officer of the Association have a fiduciary relationship with the members of the Association. This fiduciary relationship imposes obligations of trust and confidence in favor of the Association and its members. It requires each member of the Board to act in good faith and in a manner he or she believes to be in the best interests of the members of the Association. It means the Board members must exercise the care and diligence of an ordinarily prudent person when acting for the community, and it requires each of them to act within the scope of their authority. Directors and officers of the Association must devote enough time and effort to the performance of their duties to ensure that they are reasonably and faithfully carried out on behalf of the Association. This shall include thoroughly reviewing and having a complete understanding of the Declaration and Covenants and Bylaws of the community. The fact that the Association is a corporation not for profit, or that the members of the Board are volunteers and unpaid, does not relieve them from the standards of trust and responsibility that the fiduciary relationship requires. When confronted with an issue involving special expertise such as a question of law, building or construction matters, insurance or accounting questions, or other similar issues, the law also contemplates that the Board of Directors or an officer will seek the appropriate advice of a professional considered competent in the field and rely upon that advice provided.

Section 5. **Annual Meeting.** There shall be an annual meeting of the members held in the First Quarter of each calendar year. The annual meeting shall be held in Lee County, Florida, at a time and place designated by the Board of Directors, for the purpose of electing Directors and transacting any other business duly authorized to be transacted by the members.

- 5.1 **Special Members' Meetings.** Special members' meetings must be held whenever called by the President, or in his absence, the Vice-President, or by a majority of the Directors, and may also be called by members having at least twenty percent (20%) of the member voting interests. The business at any special meeting shall be limited only to the items specified in the notice of meeting.
- 5.2 **Notice Meetings: Waiver of Notice.** Notices of all members' meetings must state the date, time and place of the meeting. Notice of special meetings must include a description of the purpose or purposes for which the meeting is called. The notice must be mailed to each member at the member's address as it appears on the books of the Association or may be furnished by personal delivery or electronic transmission. The members are responsible for providing the Association with any change of address. The notice must be mailed, electronically transmitted or hand delivered at least fourteen (14) days prior to the date of the meeting. The notice shall also be posted at the office. If ownership of a residential Lot is transferred after notice has been mailed or transmitted, no separate notice to the new owner is required. Attendance at any meeting by a member constitutes waiver of notice by that member, unless the member objects to the lack of notice at the beginning of the meeting. A member may also waive notice of any meeting at any time by written waiver.
- 5.3 **Quorum.** A quorum at members' meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least thirty percent (30%) of the votes of the total voting interests.
- 5.4 **Vote Required.** The acts approved by a majority of the votes cast by eligible voters at a meeting of the members at which a quorum has been attained shall be binding upon all residential Lot owners for all purposes, except where a different number of votes is expressly required by law or by any provision of the governing documents.
- 5.5 **Proxy Voting.** Members may cast their votes at a meeting in person or by proxy. A proxy shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting. No

proxy shall be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the residential Lot, specify the date, time and place of the meeting for which it is given, and the original or a copy must be delivered to the Secretary by the appointed time of the meeting or adjournment thereof. No proxy shall be valid if it names more than one (1) person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy. Holders of proxies must be members.

5.6 **Adjourned Meetings.** Any duly called meeting of the members may be adjourned to be reconvened later by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. When a meeting is so adjourned it shall not be necessary to give further notice of the time and place of its continuance if such are announced at the meeting being adjourned. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted when the meeting is reconvened, but only if a quorum is present.

5.7 **Order of Business.** The order of business at members' meetings shall be substantially as follows:

- 5.7.1 Call of the roll or determination of quorum
- 5.7.2 Reading or disposal of minutes of last members' meeting
- 5.7.3 Reports of Officers
- 5.7.4 Reports of Committees
- 5.7.5 Unfinished Business
- 5.7.6 New Business
- 5.7.7 Election of Directors (annual meeting only)
- 5.7.8 Adjournment

5.8 **Minutes.** Minutes of all meetings of the members meetings and of the Board of Director meetings shall be kept in a businesslike manner, available for inspection by members or their authorized representatives at all reasonable times. Minutes must be reduced to written form within forty-five (45) days after the meeting.

5.9 **Parliamentary Rules.** Roberts' Rules of Order (latest edition) may guide the conduct of the Association meetings when not in conflict with the law, with the Declaration, or with the Articles or Bylaws. The presiding officer may appoint a Parliamentarian whose decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting shall be deemed abandoned.

Section 6. **Fiscal Management, Accounting and Budget.**

6.1 The individual unit assessment shall be provided as specified in the Declarations and Protective Covenants.

6.2 **Assessments; Installments.** The regular annual Assessment based on an adopted budget shall be payable quarterly on the first day of January, April, July and October of each year unless otherwise modified by the Board and payable to the Neighborhood Sub Associations. Written notice of the annual Assessment shall be sent to the owners of each Lot prior to the annual payment being due, but failure to send (or receive) such notice does not excuse the obligation to pay. If an annual budget for a new fiscal year has not been adopted, or if notice of any increase has not been made at the time the payment is due, it shall be presumed that the amount of such installment is the same as the last annual payment, and payments shall be continued at such rate until a budget is adopted and new annual Assessments are calculated, at which time an appropriate adjustment shall be added to or subtracted from each Lot's payment due. Any Assessments which are not paid when due shall be delinquent. If the Assessment is not paid within ten (10) days after the due date shall accrue interest from the due date at the highest rate allowed by law and shall incur a late fee in the highest amount allowed by law.

6.3 **Special Assessments.** Special Assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted or non-recurring expenses, or for such other purposes as are authorized by the Declaration and these Bylaws. Special Assessments are due on the day specified in the resolution of the Board approving such Assessment. The notice of any Board meeting at which a Special Assessment will be considered shall be given as provided in Section 5.2 above; and the notice to the owners

- that the Assessment has been levied must contain a statement of the purpose(s) of the Assessment.
- 6.4 The depository of the Corporation shall be such bank or banks as shall be designated by the Board in which the monies of the Corporation shall be deposited. Withdrawal of monies from such account shall be only by checks signed by such persons as are authorized by the Board.
- 6.5 **Financial Reporting and Audits.** The Association shall maintain financial records and reporting in a manner consistent with F.S. 720.303(7) and its subparts.
- 6.6 The Association shall, provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member.
- 6.7 **Accounts and Accounting Procedures.** The financial and accounting records of the Community Association must be kept according to good accounting practices. All financial and accounting records shall be maintained for a period of at least seven (7) years. The financial and accounting records must include:
- (A) Accurate, itemized, and detailed records of all receipts and expenditures.
 - (B) A current account and a period of statement of the account of each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
 - (C) All tax returns, financial statements, and financial reports of the Community Association.
 - (D) Any other records that identify, measure, record or communicate financial information.
- 6.8 **Application of Payments and Commingling of Funds.** All monies collected by the Community Association may be commingled for investment purposes only in a single fund or divided into two or more funds as determined by the Board of Directors. The books and records of the Community Association shall be kept in conformity to general accepted accounting principles and the audit.

Section 7. **Rules and Regulations; Use Restrictions.** The Board of Directors may, from time to time, adopt and amend administrative Rules and Regulations governing the use, maintenance, management and control of the Common Areas, the Lots and the operation of the Association. Copies of such Rules and Regulations shall be furnished to each residential Lot Owner.

Section 8. **Compliance and Default-Remedies.** In addition to the remedies provided in the Declaration, the following shall apply:

- 8.1 **Fines and Suspensions.** The Board of Directors may levy fines and/or suspensions against members, or members' tenants or guests, or both, who commit violations of Chapters 617 or 720, Florida Statutes, the provisions of the governing documents, or the rules and regulations, or who condone such violations by their family members, guests or lessees. Fines shall be in amounts deemed necessary by the Board to deter future violations, but in no event shall any single fine exceed \$200.00 per violation per day with each day of the same violation constituting a continuing violation allowing another fine of up to \$200.00. The maximum fine for a continuing violation shall be \$5,000.00. As allowed by law fines shall be secured by a lien on the Owner's Lot. Suspensions of the use of Common Areas, facilities and common non-essential services (e.g. bulk cable tv and/or internet) may be imposed for a reasonable period of time to deter future violations. The procedure for imposing fines or suspending use rights shall be as follows:
- 8.2 **Notice.** The party against whom the fine and/or suspension is sought to be levied or imposed shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days, and the notice shall include
- (A) a statement of the date, time and place of the hearing.
 - (B) a short and plain statement of the specific facts giving rise to the alleged violation(s); and
 - (C) the amounts of any proposed fine and/or possible use rights of Common Areas or facilities to be suspended.
- 8.3 **Hearing.** A hearing is only available if requested. At the hearing the party against whom the fine and/or suspensions may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and to review,

challenge, and respond to any evidence or testimony presented by the Association. The hearing shall be conducted before a panel of three (3) residential Lot Owners appointed by the Board none of whom may then be serving as Directors or officers, or who are employees of the Association, or the spouse, parent, child, brother or sister of an officer, director or employee. If the committee, by majority vote, does not agree with the proposed fine and/or suspension, it may not be levied or imposed. If the committee agrees with the proposed fine and/or suspensions, the Board of Directors shall levy same. Suspensions and Fines without Hearing. The foregoing notwithstanding, as provided in 720.305(2)(b), Florida Statutes, no prior notice or opportunity for a hearing is required for the imposition of a fine or suspension upon any member because of the failure of the member to pay Assessments or other charges when due.

- 8.4 **Correction of Health and Safety Hazards.** Any violations of the Association rules which creates conditions of the property which are deemed by the Board of Directors to be a hazard to the public health or safety may be dealt with immediately as an emergency matter by the Association, and the cost thereof shall be charged to the Lot Owner.

Section 9. **Amendment to Bylaws.** Amendments to these Bylaws shall be proposed and adopted in the following manner.

- 9.1 **Proposal.** Amendments to these Bylaws shall be proposed by a majority of the Board of Directors or upon petition of twenty-five percent (25%) of the voting interests and shall be submitted to a vote of the members not later than the next annual meeting.
- 9.2 **Vote Required.** Except as otherwise required by Florida law or as provided elsewhere in these Bylaws, these Bylaws may be amended if the proposed amendment is approved by the affirmative vote of at least two-thirds (2/3rds.) of the voting interests present and voting, in person or by proxy, at a duly called meeting of the members of the Association.
- 9.3 **Effective Date.** An amendment shall become effective upon the recording of a copy in the Public Records of Lee County, Florida with the same formalities as are required in the Declaration for recording amendments to the Declaration.

Section 10. **Miscellaneous.**

- 10.1 **Severability.** If any portion of these Bylaws is void or become unenforceable, the remaining provisions shall remain in full force and effect
- 10.2 **Conflict.** If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration of Covenants, Conditions, Restrictions and Easements, or the Association's Articles of Incorporation, the provisions of the Declaration or Articles of Incorporation shall prevail over the provisions of these Bylaws.