

# Office of the Manufactured Housing Ombudsperson (“MHO”) Model Home Owners Association Bylaws

## NOTES AND DISCLAIMER:

Until December 2019, the Delaware Code included draft bylaws for home owners seeking to form home owners associations in their manufactured home communities. The bylaws were located at 25 *Del. C.* § 7026(c) and were prefaced by the following statement:

The following model bylaws comply with the requisites of this section and may be used by a home owner association. The model bylaws below are intended as a model and home owner associations are not required to adopt the model bylaws. However, to comply with this section, the bylaws of the home owner association must address the substantive topics included as articles in the model bylaws (such as: name and location, corporate seal, members, etc.):

The model bylaws are reproduced here for the convenience of persons seeking to form home owners associations in manufactured home communities. The present text is identical to the text from the Code with the following exceptions:

1. The MHO has **highlighted in yellow** places where substantive information needs to be added to the bylaws.
2. Minor formatting changes have been made to make the bylaws more readable.
3. Page numbers have been added to the bottom right corner of each page.

The model bylaws are reproduced here as a courtesy. The MHO will make reasonable efforts to keep the model bylaws current, and the dates of revisions will be included in this cover page. Despite any such efforts, **the MHO cannot and does not make any guarantees as to whether these bylaws are consistent with current Delaware Law.** Persons interested in forming an HOA should check the current version of the Delaware Code or consult with a lawyer prior to using these model bylaws.

## MODEL BYLAWS

OF

[INSERT COMMUNITY NAME] HOME OWNERS ASSOCIATION

### ARTICLE I NAME AND LOCATION

The name of the corporation is "[INSERT COMMUNITY NAME] HOME OWNERS ASSOCIATION", hereinafter referred to as the "Association".

The principal office of the Association is located at the home of the acting President of the Association, but meetings of members and directors may be held at places designated by the Board of Directors within the State of Delaware, [NAME OF COUNTY] County, where the manufactured home community is located.

The name and address of the Association's registered agent in the State of Delaware is as set forth in the Certificate of Incorporation.

### ARTICLE II CORPORATE SEAL

The corporate seal shall have inscribed thereon the name of the Association and the year of its incorporation.

### ARTICLE III MEMBERS

Section 1. General Membership. The owner or owners of each home in the community are entitled to membership in the home owners association. In order to become a member in good standing the home owner must pay the annual dues set by the board of directors. Members in good standing are entitled to cast a vote or votes as provided by the Certificate of Incorporation for the Association and these bylaws. The owner or owners of each home are collectively entitled to one vote in all matters.

Section 2. Special Membership for Exercising Right of First Offer. Each home owner of each home site, as defined in the record plan of the community on tax parcel maps, for as long as the owner is and remains as such, is automatically a special member of the Association. At all meetings of the Association concerning the exercise of the right of first offer by the

Association, the owner or owners of each home are entitled collectively to cast the vote or votes provided for by the Certificate of Incorporation for the Association and in these bylaws. The vote or votes may be cast in person or by proxy. The owner or owners of each home are collectively entitled to one vote on all matters. If more than one person holds an interest in a home, all persons holding an interest are members of the Association, and the vote for the home is to be exercised as they among themselves determine; but in no event may more than one (1) total vote be cast with respect to the home.

#### ARTICLE IV MEETING OF MEMBERS

Section 1. First Meeting of the Members. The first meeting of the Members shall be called by the initial Board of Directors for the purpose of nominating and electing a Board of Directors consisting of the owners of the community's homes. The initial Board of Directors shall send each home owner notice of the meeting at least [INSERT NUMBER] days before the meeting. The notice shall specify the place, day, and hour of the meeting and shall state that the purpose of the meeting is to nominate and elect a new Board of Directors. Nominations shall be accepted by the initial Board of Directors in any form up and until the time of the election. A list of nominations, including the offices in which the nominee is interested, shall be prepared by the initial Board of Directors. Elections shall be by ballot, by plurality vote. Notwithstanding any contrary provision in the governing documents, quorum requirements for nomination and election of the first Board of Directors consisting of home owners are satisfied if the meeting is properly noticed in conformance with this section.

Section 2. Annual Meeting of the Members. The members of the Association shall meet at least once each year, which means a period of 12 consecutive months, at a time and place established by the Directors, for the purpose of nominating and electing a Board of Directors, or replacements thereto, and conducting other business that may come before the meeting. Members of the Board of Directors must be members of the Association. Nominations may be by proxy received by the Board of Directors prior to the election of the Directors, and may also be made at the meeting. A list of nominations, including the offices in which the nominee is interested, shall be prepared by the Board of Directors. The Board of Directors shall oversee the election. A Director shall remain in office until his or her replacement is elected. Elections shall be by ballot, by plurality vote.

Section 3. Special meetings. Special meetings of the members may be called at any time by the President, and must be called upon a request in writing or by the vote of the majority of the Directors, or at the request in writing of six (6) or more members of the Association.

Section 4. Notice of meetings. Written notice of each meeting of the members of the Association must be given by, or at the direction of, the secretary or the person authorized to call the meeting. Notice must be mailed, postage prepaid, or delivered by hand at least [INSERT NUMBER] days before the meeting to each member entitled to vote at the meeting, addressed to the member's address last appearing on the books of the Association, or supplied by the member to the Association for the purpose of notice. The notice shall specify the place, day, and hour of the meeting and, in the case of a special meeting, the purpose of the meeting. No change in the time or place of a meeting for the election of Directors, as fixed by these Bylaws, may be made within the [INSERT NUMBER] days immediately before the day on which the election is to be held. In case of any change in the time or place for an election of Directors, notice must be given in person to each member entitled to vote, or be mailed to the member's last known post office address, at least [INSERT NUMBER] days before the election is held.

Section 5. List of members. The Secretary shall prepare a complete alphabetical list of members entitled to vote. The list must be open for examination by any member at the principal office of the Association and the place of election for [INSERT NUMBER] days prior to the election.

Section 6. Proxies. Each member entitled to vote is, at every meeting of the members, entitled to vote in person or by proxy, in writing and signed by the member; but no proxy may be voted after one (1) year from its date, unless it specifically provides for a longer period. A proxy is revocable at any time, and shall automatically cease upon conveyance of the home. The right to vote by proxy is subject to the right of the Board of Directors to close the transfer books or to fix a record date for voting members as hereinafter provided; and, if the Directors do not exercise this right, no vote may be cast at an election for Directors by anyone who has become a member of the Association within [INSERT NUMBER] days of the election. Only one (1) vote may be cast with respect to each home in the Community. If joint owners are unable to agree among themselves about how to vote on any given matter, they lose their right to vote on the matter, in accordance with Article II, Section 2 of these Bylaws.

Section 7. Quorum. At a noticed meeting of members entitled to cast votes, or of proxies entitled to cast votes, 33% of the total votes constitute a quorum for any action, except as otherwise provided in the Certificate of Incorporation or in these Bylaws. If, however, a quorum is not present at a meeting, the members entitled to vote have the power to adjourn the meeting, without notice other than announcement at the meeting, until a quorum is present.

#### ARTICLE V BOARD OF DIRECTORS: SELECTION; TERM OF OFFICE

Section 1. Number. The property and business of the Association shall be managed and controlled by its Board of Directors, consisting of three (3) or more Directors, not to exceed [INSERT NUMBER]. Except for the initial Board of Directors, Directors must be members of the Association.

Section 2. Election. At the first meeting of the members, as set forth above, the members shall elect the Directors for a one (1) year term. The Directors shall hold office until the next annual election and until their successors are elected and qualify.

Section 3. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of the death, resignation, or removal of a Director, a successor shall be selected by the remaining members of the Board, though less than a quorum, by majority vote, and shall serve for the remainder of the unexpired term of the Director's predecessor.

Section 4. Compensation. A Director may not receive compensation for any service rendered to the Association. However, a Director may be reimbursed for actual expenses incurred in the performance of his or her duties.

Section 5. Action taken without a meeting. Directors have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved has the same effect as though taken at a meeting of the Directors.

#### ARTICLE VI MEETING OF DIRECTORS

Section 1. Regular meetings. After each annual election of Directors, the newly elected Directors shall meet for the purpose of organization, the election of officers, and the transaction of other business, at a place and time fixed by the members at the annual meeting. If a majority of the Directors are present at that place and time, no prior notice of the meeting is required to be given to the Directors. The place and time of the meeting may also be fixed by written consent of the Directors.

Section 2. Special meetings. Meetings of the Directors may be called by the President on [INSERT NUMBER] days notice in writing or on [INSERT NUMBER] days notice by telephone to each Director, and shall be called by the President in like manner on the written request of two (2) Directors. A majority of the Directors shall constitute a quorum, but a smaller number may adjourn from time to time, without further notice, until a quorum is secured.

## ARTICLE VII POWERS AND DUTIES OF THE BOARD

Section 1. Powers. The Board of Directors has the power to:

- (a) Exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these Bylaws or the Certificate of Incorporation;
- (b) Declare the office of a member of the Board of Directors to be vacant if the member is absent from three (3) consecutive regular meetings of the Board of Directors;
- (c) Employ a manager, an independent contractor, or other employees as the Board considers necessary, and to prescribe their duties;
- (d) Close the membership rolls of the Association for a period not exceeding [INSERT NUMBER] days preceding the date of any meeting of members; and
- (e) Negotiate the purchase of the community on behalf of the homeowners when authorized by a vote of the special membership.

Section 2. Duties. The Board of Directors has the duty to:

- (a) Cause to be kept a complete record of all of its acts and corporate affairs, and to present a statement of its acts and corporate affairs to the members at the annual meeting of the members or at any special meeting when the statement is requested in writing by five (5) or more members of the Association;
- (b) Supervise all officers, agents, and employees of the Association, and to see that their duties are properly performed;
- (c) Procure and maintain adequate liability and other insurance considered necessary or desirable in connection with the services to be performed by the Association under these Bylaws;
- (d) Cause all officers, employees, or independent contractors having fiscal responsibilities to be bonded, as the Board considers appropriate; and
- (e) Perform other duties as provided in these Bylaws.

#### ARTICLE VIII COMMITTEES

The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate committees that the Board considers necessary or desirable. Each committee shall consist of one (1) or more of the Directors of the Board of Directors and other member(s) of the Association as designated by the Board of Directors in the resolution. Committees shall meet at stated times or on notice to all by any of their own number. They shall adopt their own rules of procedure. A majority of committee members constitutes a quorum; the affirmative vote of a majority of the whole committee is necessary in every case. A committee has and may exercise the powers of the Board of Directors to the extent provided in the resolution that establishes it.

#### ARTICLE IX OFFICERS OF THE ASSOCIATION

The officers of the Association are a president, one or more vice-presidents, a secretary, a treasurer, and other officers that may, from time to time, be chosen by the Board of Directors. The president and vice-presidents must be chosen from among the Directors. The officers of the Association hold office until their successors are chosen and qualify in their stead. An officer chosen or appointed by the Board of Directors may be removed with or without cause

at any time by the affirmative vote of a majority of the whole Board of Directors. If the office of an officer becomes vacant for any reason, the vacancy must be filled by the affirmative vote of a majority of the whole Board of Directors.

Section 1. Duties of the President. The President is the chief executive officer of the Association. The President has the duty to preside at all meetings of the members and Directors; to have general and active management of the business of the Association; to see that all orders and resolutions of the Board of Directors are carried into effect; to execute all agreements and other instruments in the name of the Association and to affix the corporate seal thereto when authorized by the Board of Directors.

The President oversees the general supervision and direction of the other officers of the Association to ensure that their duties are properly performed.

The President shall submit a report of the operations of the Association for the year to the Directors at their meeting next preceding the annual meeting of the members, and to the members at their annual meeting.

The President is an ex-officio member of all committees and has the general duties and powers of supervision and management usually vested in the office of the president of a corporation.

Section 2. Vice-President. The Vice-President or Vice-Presidents, in the order designated by the Board of Directors, are vested with all the powers and are required to perform all the duties of the President in the President's absence or disability, and shall perform other duties that may be prescribed by the Board of Directors.

Section 3. President Pro Tempore. In the absence or disability of the President and the Vice-Presidents, the Board may appoint from their own number a president pro tempore.

Section 4. Secretary. The Secretary or a designee shall attend all meetings of the Association, the Board of Directors, and all committee meetings. The Secretary acts as clerk of these meetings and shall record all of the proceedings of the meetings in a book kept for that purpose. The Secretary shall give proper notice of meetings of members and Directors, and shall perform other duties that are assigned to the Secretary by the President or the Board of Directors.



Section 5. Treasurer. The Treasurer has custody of the funds and securities of the Association, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association. The Treasurer shall deposit all monies and other valuable effects in the name and to the credit of the Association in the depositories designated by the Board of Directors.

The Treasurer shall disburse the funds of the Association as may be ordered by the Board or President, taking proper vouchers for these disbursements, and shall render to the President and Directors, whenever they may require it, an account of all the Treasurer's transactions as Treasurer and of the financial condition of the Association; and at the regular meeting of the Board next preceding the annual members' meeting, a like report for the preceding year.

The Treasurer shall keep an account of the members of record in the manner and subject to whatever regulations that the Board of Directors may prescribe.

The Treasurer shall give the Association a bond, if required in writing by the Board of Directors, in sum and in form and with corporate security satisfactory to the Board for the faithful performance of the duties of the Treasurer's office and for the restoration to the Association, in case of the Treasurer's death, resignation, or removal from office, of all books, papers, vouchers, money, and other property of whatever kind in the Treasurer's possession and belonging to the Association. The bond and security must, if required, be provided at the Association's expense. The Treasurer shall perform other duties that the Board of Directors may from time to time prescribe or require.

Section 6. Delegation of duties. In case of the absence or disability of any officer of the Association or for any other reason considered sufficient by the majority of the Board of Directors, the Board may temporarily delegate the officer's powers or duties to any other officer or to any Director.

#### ARTICLE X BOOKS AND RECORDS

The books, records and papers of the Association are subject to inspection by any member. The Certificate of Incorporation and the Bylaws of the Association are available for inspection by any member at the principal office of the Association. Copies may be purchased at a reasonable cost, to be determined by the Board of Directors, to defray copying and administrative costs, but not to exceed five dollars (\$5.00) for both documents.

## ARTICLE XI ASSOCIATION PAYMENTS

All checks, drafts, or orders for the payment of money must be signed by the President and the Treasurer, or by such other officer or officers as the members of the Association may approve.

## ARTICLE XII MEMBERS OF RECORD

The Association is entitled to treat the title holder or holders of record of any home as members in fact of the Association, and accordingly are not bound to recognize any equitable or other claim to or interest in such home or memberships on the part of any other person, whether or not it has express or other notice thereof, save as expressly provided by the laws of Delaware.

## ARTICLE XIII FISCAL YEAR

The fiscal year of the Association begins on the first day of January of each year.

## ARTICLE XIV AMENDMENT

Section 1. Amendment. These Bylaws may be amended, altered, repealed, or added to at any regular meeting of the members or at any special meeting called for that purpose, by affirmative vote of the majority of the members of the Association.

## ARTICLE XV INCORPORATED BY REFERENCE

All of the terms, conditions, matters, and information contained and more fully set forth in the Certificate of Incorporation and the Bylaws are incorporated by reference.

## ARTICLE XVI MISCELLANEOUS

All reference herein to the masculine is deemed to include the feminine or neuter genders, and vice versa, as appropriate. All reference herein to the singular is deemed to include the plural, and vice versa, as appropriate.

IN WITNESS WHEREOF, the undersigned, being all of the Directors of the Association, have hereunto set their hands this \_\_\_\_ day of \_\_\_\_, 20\_\_ .

Witness:

\_\_\_\_\_

\_\_\_\_\_, Director

\_\_\_\_\_

\_\_\_\_\_, Director

\_\_\_\_\_

\_\_\_\_\_, Director

### CERTIFICATION

I, the undersigned, do hereby certify that I am the elected and acting secretary of the [COMMUNITY] Home Owners Association, a Delaware corporation, and that the foregoing Bylaws constitute the original Bylaws of the Association, as adopted at a meeting of the Board of Directors thereof, held on the \_\_\_\_ day of \_\_\_\_, 20\_\_ .

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Association this \_\_\_\_ day of \_\_\_\_, 20\_\_ .

\_\_\_\_\_, Secretary.