

Wild Horse Ranch Landowners' Association By-law Committee

Report on Existing By-laws with Amendments (1-6)

April 3, 2022

Objective:

Review the existing By-laws for currency and correctness

Recommend resolution(s) for conflicts between governing documents and the current Association By-laws with Amendments.

Propose changes to By-laws which restore the number of Board Directors to the level stated in the original By-laws dated March 5, 1998

Process:

Review New Mexico Non-Profit Corporation Act (53-8-1 to 53-8-99 NMSA, 1978), NM Senate Bills 147 and 150 known as the Homeowners Association Act, Articles of Incorporation of Wild Horse Ranch Landowners' Association, Declaration of Covenants, Conditions and Restrictions for Wild Horse Ranch Subdivision, Best Practices for Non-Profit Association Boards, Legal interpretations of Non-Profit Corporation By-laws as pertains to Quorum establishment, Selection of Directors and Officers, Association Officer voting practices, Roberts Rules as pertains to Meeting Conduct, Board of Directors and Officer Selection, Real Estate Contracts in New Mexico Second Edition.

These governing documents were compared to the By-laws and its Amendments to determine viability of each change as well as the baseline By-laws document.

Specific Observations:

Association By-laws Amendment 1.

Article V. Section 1. This change adds the position of Vice President. This change is of no consequence as the Board of Directors is already empowered to create Officer positions by resolution (Does not require a change to the By-laws).

Article V. Section 2. Removes the responsibility of selecting Association Officers from the Board of Directors and gives this power to the Members of the association. Best practices for this process dictate that the Board of Directors appoint the Officers and have the responsibility for their performance with the power to remove an inadequate performing Officer. By having the Members make this decision means the only way to remove an Officer would be through a Meeting of the Members for such a purpose. NM Statute 53-8-23 specifies that the Board of Directors perform the appointment and removal of Officers. This statute is the source of the original wording in the original Association By-laws. This change should be deleted and reverted to original By-law's wording.

Article V. Section 3. Duplicates Article V. Section 2 change. This change fails for the same reason. Does not follow best practices nor does it comply with NM Statute 53-8-23. This change should be deleted and reverted to the original By-laws wording. An additional change implements the requirement that Officers must be able to attend 75% of all Board meetings. This item is already address by Article V, Section 4.

Wild Horse Ranch Landowners' Association By-law Committee

Report on Existing By-laws with Amendments (1-6)

Article V. Section 4. Adds a voting privilege for the President of the Association. Best practices dictate that Officers do not get to vote. This change also includes typos that make the change incorrect without imaginative interpretation. This Section change should be deleted.

Amendment 1 fails to improve the By-laws and is non-compliant with required NM Statutes and Best Practices. We recommend that this change be cancelled in total with desired improvements mentioned to be included in a future amendment where appropriate.

Association By-laws Amendment 2.

Article IV. Section 1. Limits the number of Board Directors to three and removes the Board of Directors responsibility for appointing the Association Officers.

This amendment to the By-laws to fix the number to three has eliminated the Boards flexibility to adjust the Directors numbers without making additional Amendments to the By-laws thereby severely limiting Member representation on the Board.

New Mexico Statute 53-8-18 allows for the change in number of Directors within the limits stipulated in the By-laws either by Amendment or manner provided for in the By-laws. Our By-laws provide a method to increase the number of directors but not decreasing the number (See Article IV. Section 3).

We recommend changing this Section to read: "*Section 3. Change in Number: The number of Directors may be changed within the limits provided in Section 1 of this Article by the affirmative vote of a majority of the Directors or by the affirmative vote of a majority of the total number of votes of all Members voting on the issue at the annual meeting or at a special meeting called for that purpose, and by like vote the additional Directors may be chosen at such meeting to hold office until the next annual election or until their successors are elected and qualified, whichever occurs first. The number of Directors may be increase above ten by amendment of the By-laws.*"

The second part of this change violates Best Practices by removing responsibility of appointing the Officers by the Board. See comments on Amendment 1 concerning Article V. Section 2.

The committee recommends deleting this Amendment and implementing the change specified to Article IV, Section 3 thereby restoring the capability of having more than three Directors on the Board.

Association By-laws Amendment 3.

Article II. Definitions. Definition of Owner was modified to include purchasers using Real Estate Contracts. This change was not necessary as Real Estate Contract buyers receive equitable title when they sign their Real Estate Contract. Equitable title is already included in the definition of owner. This change is of no consequence and can be left or deleted.

Excerpt from Real Estate Contracts in New Mexico, Second Edition published by Security Escrow:

Legal Title. The real estate contract does not transfer legal title to real estate. Instead, it obligates the seller to transfer the legal title to the buyer upon the happening of some future event. The transfer of legal title is always done by a separate deed of conveyance, usually a warranty deed, which is placed in escrow when the REC is signed.

Wild Horse Ranch Landowners' Association By-law Committee

Report on Existing By-laws with Amendments (1-6)

Equitable Title. The REC does, however, transfer an interest to the buyer, known as the "equitable title". If the buyer defaults on the performance of his contract obligations and the seller elects to terminate the contract, it is essential that the seller recover this equitable property interest from the buyer, in order to have clear title to the property. For that reason, the buyer signs a special warranty deed which is placed in escrow together with the seller's warranty deed to the buyer.

Association By-laws Amendment 4.

Article V. Section 2. Proposes to change the Article to elect Association President, Treasurer, and two Directors for staggered terms using a "Secret Ballot" process. This has changed the number of Directors to two which is not allowed by New Mexico Statute 53-8-18, the Association Articles of Incorporation nor the By-laws. The minimum number of Directors by state statute is three. Also, there is no definition of "Secret Ballot" nor is such a process defined in our current governing documents for "Secret Ballots". This is not a legitimate proposal, and the committee recommends deletion of this Amendment.

Article V. Section 3. Proposes to delete the Terms section which currently defines the terms of Officers of the Association. The committee recommends deleting this proposed change and restoring the section to the verbiage of the original By-laws.

Article III. Section 4. Proposes to define a Quorum for the meeting of Members as the number of members voting on any By-laws Amendments, election, or other issue requiring Members vote. By our existing Association (prior to this proposed change) By-laws and New Mexico Statute, voting cannot occur until a quorum has been established based on Member(s) vote representation. New Mexico statute 53-8-16 requires that a Quorum be defined with a Number or Percentage of Members entitled to vote to determine a Quorum. The proposed change does not meet the intent nor definition provided by statute and this Committee recommends deleting this proposed change.

Association By-laws Amendment 5.

Article V. Section 5. This change has implemented a detailed process of how to fill a vacancy of an Officer position. This detail is not required in the By-laws as it is already stated that vacancy of an Officer position may be filled by the Board. If a detailed process is desired, it should be made into a resolution of rules for this process that the Board can use. The Committee recommends deleting this proposed change and reverting the language of Article V, Section 5 to the original By-laws.

Association By-laws Amendment 6.

Article V. Section 5. This item is worded as a resolution and not a change to the By-laws. This should never have been registered as a change to the By-laws. Problems noted for this resolution include:

It cannot be required of the President to be a full-time resident

No need to delete the position of Vice-President

Changing the duties of a director to include that of an officer can only be temporary and would change with each election

Wild Horse Ranch Landowners' Association By-law Committee

Report on Existing By-laws with Amendments (1-6)

Changing the terms of Directors and Officers must be a change to the By-laws and there is no specified change to the By-laws in this resolution

Cannot delete Directors 3 and 4 as State statute does not allow less than 3 Directors on the Board

Terms of Officer and Director positions are specified in the By-laws and cannot be modified by resolution.

For these reasons as well as those against previously mentioned against earlier Amendments, to the By-laws, this should not only be canceled as an amendment but should be canceled as a resolution.

Summary:

There is no complete Wild Horse Landowners' Association By-laws document that reflects the incorporation of Amendments 1-6. An attempt was made to create such a document however after Amendments 1-3, there is no way to reflect the remaining Amendments (4 – 6) into the By-laws document as there are no specified changes in these amendments.

Most of the Amendments were found to conflict with various governing documents and the one Amendment with no conflict is of a non-substantive nature and duplicates information that was already existing in the original By-laws.

It is the recommendation of this committee that all existing amendments should be canceled and removed from the By-laws to bring the document back to its original state and critical changes (items necessary from existing Amendments 1-6) made through a new Amendment. This would include the restoration of the definition of "Quorum" and the inclusion of staggered two-year terms for the Directors. The committee is providing a recommended Amendment 7 for the Board to use to accomplish this.

Assuming the Amendment 7 provided by the By-laws committee is approved, and to ensure that Amendment 7 does not disrupt the business of the Board, the committee recommends that once this Amendment is enacted, the following process be implemented as soon as practical:

- The current Board Officers will remain until the end of their current terms (Prior to Amendment #7) and until the Board of Directors elect new Officers after the next Members meeting.
- The current President no longer be referred to as President of the Board as the correct position title is President of the Association. This position will no longer have voting rights (as was incorrectly allowed for by Amendment 6) on the Board of Directors as the presiding President was not elected by the Members of the Association as a Board Director.
- All other Officer titles are Officers of the Association, not Officers of the Board. Their Job Descriptions and duties remain as specified in the By-laws document.
- The existing Directors Titles would need to be changed so that Jesse is Director 2 and Becky would be Director 1. This would be required to comply with the terms they were

Wild Horse Ranch Landowners' Association By-law Committee

Report on Existing By-laws with Amendments (1-6)

elected/appointed to serve. The current directors will then be required to stand for re-election per the Amendment 7 change specified in the updated Article IV, Section 10.

- The elected Directors will immediately (upon enactment of the Amendment 7 to the By-laws) have the discretion to increase the number of Director positions and at a minimum MUST increase the Board of Directors to a minimum of three (3) Directors. This process needs to be implemented as soon as practical to meet not only the By-law requirement but also New Mexico Statute requirements. The committee recommends that the number of positions created be an odd number to mitigate the possibility of tie-votes.
- The new Director positions created be added to the Ballot (along with the expiring term position) to elect Directors at the upcoming Members meeting. Odd numbered Directors would be required to stand for election after one year of service (this time only) as per Article IV, Section 10.

Performance of this process will ensure continuity with the Board and immediately restore the desired number of Board Directors and place the Officers back under the Directors supervision.

By: _____

Lila Zurzolo Committee Chairperson

Date

By: _____

Jim Feehan Committee Member

Date

By: _____

Rick Cooper Committee Member

Date

Wild Horse Ranch Landowners' Association By-law Committee


Report on Existing By-laws with Amendments (1-6)

elected/appointed to serve. The current directors will then be required to stand for re-election per the Amendment 7 change specified in the updated Article IV, Section 4.

- The elected Directors will immediately (upon enactment of the Amendment 7 to the By-laws) have the discretion to increase the number of Director positions and at a minimum MUST increase the Board of Directors to a minimum of three (3) Directors. This process needs to be implemented as soon as practical to meet not only the By-law requirement but also New Mexico Statute requirements. The committee recommends that the number of positions created be an odd number to mitigate the possibility of tie-votes.

- The new Director positions created be added to the Ballot (along with the expiring term position) to elect Directors at the upcoming Members meeting. Odd numbered Directors would be required to stand for election after one year of service (this time only) as per Article IV, Section 4. ¹⁰ *See unsigned page.*

Performance of this process will ensure continuity with the Board and immediately restore the desired number of Board Directors and place the Officers back under the Directors supervision.

By: 
Lila Zurzolo Committee Chairperson

4/3/2022
Date

By: 
Jim Feehan Committee Member

4/3/2022
Date

By: 
Rick Cooper Committee Member

4/3/2022
Date