



FOREST HOMEOWNERS' ASSOCIATION
Governing Documents for Non-Lawyers—a brief guide and history
Nancy Kedersha- April 13, 2020

The Forest Homeowners Association has two (2) Governing Documents: the Declarations, and the By-Laws. Together, these comprise the working “Constitution” of The Forest.

1. Declarations: AMENDED AND RESTATED DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR THE FOREST, A SUBDIVISION WELLS, MAINE (original version in 1999 only applied to lot owners, first revision 2003 included lot and condo owners, most recent version included owner-approved amendments was Restated May 30, 2015).

This is basically a “we the people” document saying that “a certain parcel of land” would become The Forest. It describes how homes should be built, what services exist (pool, roads), sets up the Architectural Review Committee, and serves as a blueprint for the ByLaws. Section 3 sets out a number of “do’s and don’ts” that form the core of the rules that apply to every homeowner and resident. Like the Constitution, it is difficult to change. Amendments require “yes” votes from 60% of the total Forest Owners (lot and condo), or 84 votes. Just getting 84 people to vote at all has proven difficult.

2. Bylaws: THE FOREST HOMEOWNERS' ASSOCIATION BY-LAWS AND PROTECTIVE COVENANTS (Amended and restated, April 22, 2017).

The Forest By-Laws set up the self-governing structure of The Forest: how many people on the Board, (7-9) how often they meet (every 4-6 weeks), how Committees are formed (by the President), how Special Meetings are called, and stipulates that all new owners receive a copy of these documents. Changing this document also requires a 60% “yes” vote of the total membership (84 votes/140 members). The Bylaws also establish that “The Association shall have the duty and authority to enforce all of the above documents, as well as the establishment of any additional rules and regulations deemed appropriate to enhance the quality of residential living for the residents and owners of property in the Subdivision.”

The Board of Directors represents the owners, and, like Congress, is charged with creating and enforcing the rules. Directors serve for 3-year terms and are limited to 2 consecutive terms (6 years).

Architectural Standards- The Architectural standards primarily refine and specify how homes should be designed and built. These are created and updated by the ARC and the Board of Directors, who can change them as needed. Architectural Standards apply only to lot/homeowners, while other rules (such as those governing the use of the clubhouse) apply to everyone—homeowners, condo owners, and renters/visitors. The Architecture Review Committee (ARC) describe general building standards that apply to both new and existing homes.

Enforceable Rules and Regulations Process-

The governing documents do not address all issues clearly, or in some cases, not at all. The Enforceable Rules Process was adopted by the Board to address such issues, as well as to make rules and set reasonable fines to enforce the governing documents at a “nuts and bolts” level. It includes a mechanism for community advice and input, allowing 25% of the Members of the Association (35 homeowners) to reject a proposed Board Rule within a 30-day comment period, before the rule is enacted. Here’s how it works:

When the Board sees a need for a rule (in response to community complaints, safety issues, etc.), it asks the Documents Committee to create a clear rule and to set reasonable penalties/fines to enforce it. The Documents Committee designs these rules to be compatible with the Governing Documents. The full Board discusses, modifies, and approves the rule/penalty schedule. The approved rule and corresponding penalty schedule are

then communicated with the membership (by posting on the website, email, or regular mail). FHOA owners have 30 days to respond. If enough people object to the rule (35 people, which amounts to 25% of the total membership), it is not implemented. This empowers a minority of members (25%) to block it, rather than requiring 60% of the owners to approve it, putting more power in the hands of all the owners (lot and condo equally). Since it is a rule, rather than a modification of the governing documents, it can more easily be updated or changed.

History of our Declarations and ByLaws

The original FHOA Declarations were filed with the Town of Wells in 1999 and described a Homeowners Association containing 122 lots with single-family homes. In 2002, the clubhouse and pool were built and became operational. Approximately 84 lots had been sold, but most lacked houses because owners were waiting for building permits, as the Town of Wells was restricting residential growth. Condominium building permits were available, however, so the developer took land he owned next to the Forest on Rt 1, built the 20-unit Forest Village Condos, and merged this into the already-existing FHOA. In the process, he amended the original “lot owner” FHOA documents by making sections (Section 3, containing restrictive covenants, and Section 9, ARC standards) only applicable to the original lot owners, to whom he was already legally obligated. The amended, hybrid 2003 Declarations were created *solely for the developer’s benefit and interests*, not for those of the owners, and these Declarations have been conflicted and confused from this point onwards. This created long-term legal problems—first, because they were never comprehensively designed with 2 types of owner in mind, and second, because Maine law regarding Condominiums is different than the laws regulating HOA nonprofits. We now have unique, hybrid documents that lack clear precedent in Maine law. Subsequent BODs and various management companies have wrestled with this problem. Our current Maine Counsel, who specializes in laws governing both homeowners and condo associations, describes our documents as “‘unique’ to put it mildly and problematic to be honest.”

Between 1999 and about 2004, every original lot or a condo owner was told that the Town of Wells would take ownership of the roads and the expense of maintaining them. This meant that the dues required to maintain the Forest amenities, consisting of the clubhouse and pool, would be modest. Despite the developer’s promises and intentions, the Town first stalled, and eventually refused to take over our roads, leaving FHOA owners with the considerable expenses of plowing, sanding, maintaining fire hydrants and streetlights, and eventual road replacement—and much higher dues. In 2006, the condominiums attempted to separate from the FHOA, feeling it was unfair that they had to pay for their roads separately, while also paying for the FHOA roads. This dispute went on to binding arbitration. Although the FHOA “won” the legal decision and the Forest Village Condos remained part of the FHOA, the costs for “winning” were about \$8000 for the FHOA, plus whatever it cost the FVC. If the documents had been clearer, or more carefully thought out when the developer merged the FVC into the FHOA, this useless expense and bad feeling could have been avoided. The only ones who really won were the developer (who was long gone in 2005) and the lawyers involved.

Since 2014, BODs have administered 3 surveys, and held 2 Special Meetings, attempting to amend the Declarations piecemeal to fix some of the questions/ambiguities/problems one at a time—such as permitting homeowners to have sheds in their back yards, or making regular BOD meetings open to the membership. In 2014, 123 owners voted on 9 issues, 5 received the needed 60%/84 votes needed to pass. In 2017, only 97 owners responded, voting on 6 ballot issues, only 2 of which passed. Items receiving 80% support of those voting did not pass because limited voter response (69%) prevented getting to the magic number (84 votes). Survey response was even worse—the best that was achieved was 47 votes. It has been legally argued that issues pertaining to lot owners only should only need 60% of the 120 lot owners to vote, not 60% of 140 total owners—but this is a legal opinion, and not clearly stated. Another confusing issue is that of RVs parked in driveways. Our documents are ambiguous on this, and people read them to different ways ranging from “completely allowed” to “not at all.” Our documents say that Board Directors are limited to serving 2 consecutive terms, but don’t specify how long a “retired” director must wait before he/she can run again—one year, three years? Our documents mandate that we hold our Annual Meeting in July. Can we (legally) postpone it, or can we ZOOM meet? Questions like these eat up a lot of BOD discussion time without being clearly resolved, or else require that we consult (and pay for) an attorney’s opinion every time a question comes up. These questions illustrate the need to revise and update our

documents to ensure that the BOD can fairly and effectively govern, and to minimize the potential for dispute and litigation.

The crux of the matter is that times have changed, and issues have emerged that the current documents can't handle. There is no way to adjudicate challenges such as the current one about RVs other than going to court, and this is expensive and time consuming. Worse, resolving such issues through arbitration does nothing to preclude additional challenges or provide a way to resolve them internally (i.e. without lawyers). So, anytime a new challenge comes up, we're looking at another \$6-8K and more hard feelings.