

Restated Declaration FAQ : The Terrace Homeowners Association B, Inc.

The Board of Directors provides this communication to give a general overview of the amendment process. The questions and answers contained in this communication are for reference only and are not legal advice. If you have questions of law or concerns about the legality of the amendment process or about the statements made herein, you are encouraged to consult your own attorney.

What happens to the Association if the Declaration expires on March 31, 2023 without a new declaration being approved?

The Association loses its ability to collect dues, enforce regulations, and quite possibly maintain its assets. The "Not for Profit Corporation" would continue to exist but only as a means for the Dissolution/Termination of the Association and Corporation. The members would have to approve a proposal to dissolve, which would include a plan of dissolution. If a vote for dissolution cannot be affirmed, then the Association would have to obtain a Court Ordered Dissolution.

This plan of dissolution would cover the sale and/or distribution of community owned property; however, some common elements are required by the PUD and their sale/distribution could become problematic and lead to further complications and additional legal expenses to the community. It is possible that at the end of this process that certain common elements would revert back to the owners by percentages (1/228th shares).

In the meantime, what happens to the real property of the association while this process plays out?

Real property is held in common by the Association for the individual members. Therefore, without a Restated Declaration and the possibility that the Association would no longer be able to obtain liability insurance, individual owners could be liable for incidents that occur on common elements (Parks, Open Space, Bike Path, etc....). It would be suggested that all individual homeowners obtain additional liability insurance at their own expense to cover these common elements.

I live in the Pinion Valley Townhomes, why should I vote to approve a restated Declaration when I already have the Pinion Valley HOA?

The Terrace HOA acts as a master association as the property and lots in the Pinion Valley Townhomes borders Terrace HOA common elements and affords itself of many of the same amenities and services that are paid for by the Terrace HOA (Bike Path, Tot Lot Playground, Brush Creek Terrace sidewalk plowing, maintenance of Open Spaces, etc....). The Restated Declaration (4.2) does allow for separate classifications and assessments of Single Family Lots and Townhome Units and future BODs could look at differentiating dues based on these classification and the services that each is afforded.

How can we vote?

Unless prohibited in the Bylaws, Colorado law authorizes voting by written ballot without a meeting, for any action that could otherwise be taken at any regular, special or annual meeting (C.R.S. §7-127-109). As per our Bylaws, section 4.14, "Voting by mail or electronic means shall be acceptable in all instances in the Declaration, Articles or these Bylaws requiring the vote of Members at a meeting."

Therefore, a vote will be conducted according to the parameters established by our governing documents and statutes of the state of Colorado. It is preferable to vote by electronic means with proper notice to in order to maximize member participation.

How do we pass a restated Declaration?

The original Declaration allows for amendment to the Declaration at Article X, section 2, "These covenants may be amended by a vote of two-thirds of the votes entitled to be cast by Members of the Terrace Homeowners' Association." Therefore, two-thirds of the homeowners that are entitled to vote must vote to approve. (228 lots x .666666666 = 152).

Can we approve with just a majority vote?

The association can petition a court to amend its declaration if half the owners required under the existing declaration vote for the proposed amendment; however, there are many other stipulations that must be met, and this can be a lengthy and costly process with no guarantee of success.