

Port Royal Community Association, Inc.

Organization, Structure, Procedures

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This is a summary and explanation of the legal provisions and operation of the Port Royal Community Association (PRCA). It is not intended to be complete and definitive as to every provision, and the governing documents (as set forth below) should be consulted for complete information.

The PRCA was created in 1984, prior to the actual construction of Port Royal Phase I (the tower and townhouses) or Phase II (single family detached houses), but in contemplation of both phases. In recognition that there would be some shared facilities that would need shared management, the Community Association was created to provide for such shared management.

I. Governing Documents:

There are four governing documents for the Community Association, setting forth its purpose, organization, powers and duties:

1. Articles of Incorporation, executed May 3, 1984, filed with State of Florida May 9, 1984, filed at Escambia County Official Records, Book 1937, pages 264-269
2. By-laws, executed July 9, 1984, filed at Escambia County Official Records, Book 1937, pages 272-279
3. Declaration of Covenants, Conditions and Restrictions, executed July 9, 1984, filed at Escambia County Official Records, Book 1937, pages 247-262
4. Amendment to Declaration of CC&R, executed May 1, 1997, filed at Escambia County Official Records, Book 4141, pages 455-465 (which amendment includes an amendment to the Articles of Incorporation, pp 462-463)

II. Purpose of PRCA:

The Community Association was created to manage shared facilities such as Port Royal Way and the pool.

“The specific purposes for which it is formed are to provide for maintenance, preservation, and architectural control of the shared facilities within that certain tract of property described as:

PROPERTY IN THE CITY OF PENSACOLA, FLORIDA, KNOWN AS PART OF THE “BAYLEN STREET PROPERTY” AND MORE PARTICULARLY DESCRIBED ON EXHIBIT “A” ATTACHED HERETO.

And promote the health, safety, and welfare of the residents within the above-described property.” (Articles of Incorporation, Article II)

(Exhibit A describes the lease for Phase I and “such additional property as may be designated by The City of Pensacola as Port Royal, Phase II.”)

The Articles of Incorporation repeat this purpose in Article V: “The primary purpose of this Association is to manage and hold title by partial assignment of lease or by easement to certain shared facilities.”

The Declaration of Covenants, Conditions and Restrictions (CC&R) says essentially the same thing – maintenance of “shared facilities”:

“The annual and special assessments levied by the Association shall be used exclusively for the purpose of maintaining the easement property and for promoting the recreation, health, safety and social welfare of the residents in Port Royal, a Condominium and the second phase, through the improvement, operation and maintenance of the shared facilities within the jurisdiction of the Association.” (Article VI, Section 2)

III. Definition of Shared Facilities:

The Shared Facilities are defined in the By-Laws as follows:

“‘Shared Facilities’ shall mean the easement properly described in Article III of the Amendment to Lease Agreement recorded in official Record Book 1749 page 251 of the public records of Escambia County, Florida, the pool to be constructed in connection with Port Royal, a Condominium, the community building to be constructed in connection with the second phase, and all other properties or facilities which may come within the jurisdiction of the Association pursuant to the provisions hereof or of any amendments hereto.” (By-laws, Article II, Section 3)

This definition is also set forth in the Declaration of CC&R, Article I, Section 3, and expanded somewhat in Article III. The “easement property” is there described as the Entrance Road Easement ..for the purpose of ingress, egress and the installation and maintenance of utilities and landscaping thereon.” This means Port Royal Way to the beginning of Phase I, the northern boundary, by the pool.

The Declaration of CC&R says essentially the same thing in Article IV with regard to Association responsibilities:

“Association Responsibility. The Association shall be responsible for the management and control of the easement property, shall keep the roadway, landscaping, utilities, guard shack and other improvements thereon, as well as the grounds, in good, clean, attractive and sanitary condition, order and repair; the management, control, and repair of the pool to be constructed in Phase I, the Community Building to be constructed in connection with the second phase and for such other amenities as may come under its control pursuant to the provisions of this Declaration.”

At about the same time (September 1984) the developer of Phase I, Port Royal of Pensacola, Inc., assigned to Port Royal Community Association the following properties:

- the “swimming pool site”
- the easement for Port Royal Way
- the easement for the “sewage lift station site”
- the “drainage easement”

(Escambia County Official Records, Book 1969, pp 292-296)

The “swimming pool site” is described in this transfer in survey terms to make it clear that it encompasses only the area of the swimming pool itself. Thus it does not include the adjoining land to the west, between the swimming pool and the road surface, or the adjoining land to the east, between the swimming pool and the Baylen Street walkway, which contains a small swale.

The “drainage easement” was returned to the City of Pensacola in September 1998 (Escambia County Official Records, Book 4328, pp 322-324), when the retention pond was being constructed on the adjoining land, apparently at the direction of the City of Pensacola, for the same drainage purpose.

The “Community Building” was subsequently defined in 1997 in the Amendment to the CC&R to mean “a health or work-out facility and a covered patio area” constructed as part of Phase II. (Amendment to CC&R, Article II, Section 1) In the lease from the City of Pensacola to Port Royal Phase II, also in 1997, it was described as “a community building (fitness room)” (Phase II Lease, Article I).

The “shared facilities” were then made more specific in 2000, when Phase II construction was under way, by the transfer of title (leasehold assignment) of two parcels from Phase II to the Community Association, filed at Escambia County Official Records, Book 4631, page 1308. Such transfer of “shared facilities” to the Community Association is provided for by the CC&R at Article IV, Section 2. These two parcels are “Parcel A” - the lot immediately adjoining the pool property to the north, where the “community building” (health and workout building) was built, and “Parcel C” – the storm water drainage retention pond, located southwest of the entrance gate, which connects to the drainage basins along Port Royal Way.

IV. PRCA Membership:

The owners of each unit in Phase I and Phase II are members. The City of Pensacola is also a member (Articles of Incorporation, Article III). The Declaration of CC&R says the same (Article V).

V. Membership Meetings:

Annual Members’ Meeting:

There is to be an annual meeting of the members: “regular annual meeting of the members shall be held.” (By-laws, Article III, Section 1) At such meeting the Board of Directors is to present a statement of its “acts and corporate affairs” (By-laws, Article VII, Section 2(a)) This presentation must include “an

annual budget and a statement of income and expenditures.” (By-laws, Article VIII, Section 8, under duties of Treasurer)

Notice of the meeting is to be given by mail to all members at least seven days in advance (By-laws, Article III, Section 3), unless a membership vote on the annual assessment and/or a special assessment is needed – see below for the circumstances in which a vote is needed – in which case twenty-five days advance notice is required (CC&R, Article VI, Section 3).

Special Members’ Meeting:

A special meeting of members may be called at any time by the President, by the Board of Directors, or by one fourth of the members (not including the City of Pensacola).(By-laws, Article III, Section 2) The same seven day notice or twenty-five day notice is required.

Quorum for Membership Meetings:

The presence of one tenth of the membership, and the City of Pensacola, in person or by proxy, is required to establish a quorum (By-laws, Article III, Section 4). There is an exception to this rule for some financial matters. If a membership vote is required for an assessment under Article VI, Sections 3 and 4, the quorum consists of the City of Pensacola and 60% of the unit members, in person or by proxy. Thus an increase in an annual assessment (under By-laws, Article VI, Section 3) greater than 15%, or any special assessment (under By-laws, Article VI, Section 4), will require a meeting with this significantly larger quorum.

Member Voting:

One unit – one vote. The City of Pensacola does not have voting rights. (Articles of Incorporation, Article IV)

VI. Board of Directors:

The Community Association is to have and be managed by a Board of Directors, with the only qualification being that each director must be a member of the Association:

“The affairs of this Association shall be managed by a Board of at least five (5) Directors, who must be members of the Association.” (Articles of Incorporation, Article V)

The By-laws have the same provision (Article VI). That means that each director must be the owner (or part owner) of a unit in Phase I or Phase II, with the exception of the director designated by the City of Pensacola.

These directors are not elected by the members of the Community Association, either through the Community Association itself or through the respective phase meetings. Instead, four directors are elected by the Boards of Directors of the two phases – two directors per phase – and the fifth director is designated by the City.

“Selection of Directors. One director shall be designated by and shall serve at the pleasure of the Declarant. Two (2) directors shall be elected by the directors and shall serve at the pleasure of the directors of the Condominium Association for Port Royal, Phase I. Two (2) directors shall be elected by the directors and shall serve at the pleasure of the directors of the Condominium Association for Port Royal, Phase II.” (By-laws, Article V)

This division of directors between the two phases is also set forth in the Articles of Incorporation.

“For this Association, two (2) directors will be elected by Port Royal Owners Association, Inc., a Condominium, two (2) directors will be elected the Condominium Association for the second phase and one director shall be designated by Declarant, the City of Pensacola.” (Articles of Incorporation, Article V)

VII. Meetings of the Board of Directors:

The Board of Directors is to have quarterly meetings, unless the President determines that there is no business to conduct (By-laws, Article VI, Section 1). No notice is required, apparently because these meetings are to be previously scheduled by board resolution.

Special meetings of the Board of Directors may be called by the President, or by any two directors, with three days advance notice to each director (By-laws, Article VI, Section 2).

A quorum requires the presence of a majority of the directors, and action may then be taken by a majority of those directors present (By-laws, Article VI, Section 3).

The Board of Directors may take action without meeting by obtaining unanimous written approval of such action (By-laws, Article IV, Section 5)

VIII. PRCA Officers:

The Articles of Incorporation provide for four officers, elected by the directors:

“The affairs of the corporation are to be managed by a President, Vice-President, Secretary, and Treasurer. They shall be elected at the first meeting of the Board of Directors following each annual meeting of the members. The President and Vice-President shall be directors.” (Articles of Incorporation, Article IX)

The By-laws confirm this list of officers (Article VIII, Section 1), and add that the offices of Secretary and Treasurer (and only those two offices) can be held by the same person (Article VIII, Section 7).

The duties of the officers are set forth in the By-laws (Article VIII, Section 8):

“The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the board are carried out; and shall sign all leases, mortgages, deeds and other written instruments.”

“The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the board.”

“The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.”

“The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.”

Note that, notwithstanding the “duty” of the Treasurer to “sign all checks,” the By-laws later say: “Any two(2) of the four (4) principal officers may sign checks on behalf of the Association.” (Article XIV, Section 6) This seems to say that the Treasurer, alone, can sign checks for the Association. If the Treasurer does not do so, such as in case of unavailability, a check can be executed by two signatures of other officers.

IX. Finance - Assessments:

The Declaration of CC&R provides authority for an annual assessment (CC&R, Article VI, Section 3) and special assessments (CC&R, Article VI, Section 4).

The annual assessment is set by the Board of Directors: “After consideration of current operating and maintenance costs and future needs of the Association, the Board of Directors of the Association shall fix the annual assessment.” (CC&R, Article VI, Section 3)

Specifically included in the “current operating and maintenance costs and future needs” are:

- taxes imposed upon the shared facilities (By-laws, Article VII, Section 2(f) and CC&R, Article IV, Section 3);
- insurance (By-laws, Article , Section 2(e) and CC&R, Article IV, Section 3): “The Association ... shall carry adequate public liability insurance covering all property for which it is responsible, shall carry hazard, flood and windstorm insurance if available in the amount of the full replacement value of the buildings, structures and improvements for which it is responsible”; and
- a reserve fund: “The Association is required to establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to

the shared facilities, which fund is to be maintained out of regular assessments for common expenses.” (CC&R, Article VIII, Section 6)

The timing of fixing the annual assessment is of significance:

The assessment is to be set prior to the end of November for the following year: “The Board of Directors of the Association shall fix the amount of the Annual assessment against each unit at least thirty (30) days in advance of each annual assessment period (which shall be the calendar year).” (CC&R, Article VI, Section 7)

Failure to do so precludes an increase in the assessment from the prior year: “in the absence of such action by the Board of Directors the Annual assessment shall be in the amount last fixed.” (CC&R, Article VI, Section 7)

Note that there is no provision for membership approval of the financial matters of the Community Association, including the annual assessment, unless it exceeds the prior year’s assessment by more than 15%. (CC&R, Article VI, Section 3) It is a matter for the Board of Directors.

The 1997 amendment to the Declaration of CC&R provides for the total annual assessment to be divided between Phase I and Phase II on a 70% / 30% basis. Each phase will then allocate its share among its members in accordance with its governing documents. (Amendment to CC&R, Article II, Section 2)

An annual audit of the finances of the Community Association is required, as set forth in the By-laws as one of the duties of the Treasurer: “cause an annual audit of the Association to be made by a public accountant at the completion of each fiscal year.” (By-laws, Article VIII, Section 8)

X. Miscellaneous:

Form of Organization:

The Association is a “nonstock corporation not for profit.” (Articles of Incorporation, preamble) This is important because the Florida Condominium Act, Chapter 718 of the Florida Statutes, does not apply: “this is not a condominium subject to The Florida Condominium Act (Florida Statutes Chapter 718) and it is not for the purpose of serving as the Association for any condominium as set forth in the said Act.” (Articles of Incorporation, Section II(h))

Note that Phase II is also not a condominium, and does not have a Condominium Association. The references in the By-laws to a “Condominium Association for Port Royal, Phase II” were based upon the early thought of a second condominium. Phase II ultimately developed as sixteen single-family homes, and this is well explained in the 1997 Amendment to the Community Association CC&R.

Future Amendments to Governing Documents:

Articles of Incorporation:

“Amendments to these Articles shall require the assent of 75 percent (75%) of the entire Class A membership [unit owners] and the Class B members [City of Pensacola]. Amendments may be proposed by any member at any annual meeting or special meeting called for that purpose, and adopted by the members in person or by proxy at that or any subsequent meeting by the percentage of members set forth above.” (Articles of Incorporation, Article VIII)

By-laws:

“The By-laws of the corporation shall be made, altered, or rescinded, at a regular or special meeting of the members, by a vote of a majority of the members present in person or by proxy.” (Articles of Incorporation, Article VIII)

CC&R:

There is some measure of ambiguity regarding amendments to the CC&R. There is a section entitled “Amendment” (Article VIII, Section 3) but it provides only a procedure by which the CC&R may be “expressly terminated by a duly recorded instrument executed by not less than seventy-five percent (75%) of the Members.” However the section then also says, “Any amendment must be duly recorded,” which would seem to indicate a power of amendment less than complete termination. The “express termination” power is further restricted to ten year intervals, and the next possible date will be in July, 2024.