

Bylaws Of Misty Harbor Condominium Association

Article I Organization

Section 1.1. Applicability. These bylaws shall govern the operation and management of Misty Harbor Condominium Association, a Maine nonprofit corporation which is the unit owners' association of Misty Harbor, A Condominium, located in Winter Harbor, Hancock County, Maine. The provisions of these bylaws apply to all owners of units of the condominium, together with their lessees and mortgagees, and to their permittees, invitees, and any others who use or occupy any part of the condominium.

Section 1.2. Office. The principal office of the association, where the books and records of the association shall be kept, shall be at the condominium or at such other reasonably convenient location as the executive board may direct. The books and records of the association shall be made available for inspection by any unit owner within three business days upon a request made to the executive board.

Section 1.3. Definitions. As used in these bylaws, the following terms shall have the following meanings. The *condominium* means Misty Harbor, A Condominium, and the *association* means the unit owners' association of the condominium, namely, Misty Harbor Condominium Association. The *declaration* means the declaration of condominium which created the condominium, as it may from time to time be amended. The *executive board* means the executive board of the association. The *declarant* means Misty Harbor Properties, LLC, which created the condominium by executing the declaration and also means any successors to or assignees of the declarant. *Unit owner* means the owner or all of the owners of a unit of the condominium, of whatever number and gender. Other terms shall have the meanings defined in the Maine Condominium Act, Me. Rev. Stat. Ann. tit. 33, §§ 1601-101 to 1604-118, as it may be amended from time to time.

Article II Executive Board

Section 2.1. Membership. The executive board shall consist of five members, all of whom shall be unit owners, as qualified in Section 2.6 below. The association shall elect the members of the executive board, except during the Declarant Control Period, as set forth in Section 4.3 of the declaration.

Section 2.2. Terms. The members of the executive board shall be elected for

terms of one year. Terms may be somewhat longer or shorter than the stated period due to variations in the date of the annual meeting of the association. A member of the executive board may be reelected any number of times.

Section 2.3. Vacancies. If a vacancy occurs on the executive board due to the resignation, incapacity, or death of a member, the remaining members may appoint a new member to fill the vacancy. The member so appointed shall serve until the next meeting of the association, at which time the association shall elect a member to serve the unexpired portion, if any, of the term of the member who left the executive board.

Section 2.4. Elections. The election of members of the executive board by the association shall take place at the annual meeting of the association, except during the Declarant Control Period, as set forth in Section 4.3 of the declaration. Only unit owners may vote for members of the executive board; mortgagees and lessees may not vote. The declarant is the owner of any unsold units and may vote. The election shall be by secret ballot if requested by the owners of units to which ten percent or more of the votes in the association are allocated.

Section 2.5. Removal. Except during the Declarant Control Period, as set forth in Section 4.3 of the declaration, any member of the executive board shall be removed from office if, at any meeting of the association, more than fifty percent of the votes in the association are cast in favor of the member's removal. Only those entitled to vote for members of the executive committee may vote upon such a motion for removal. Before such a vote is taken, the member whose removal is proposed shall be given the opportunity to address the association, if the member is present at the meeting.

If a member is removed, a new member shall be elected to the executive board forthwith. The newly elected member shall serve on the executive board for the unexpired portion of the removed member's term.

Section 2.6. Qualifications. All members of the executive board shall be of legal majority, as determined by the laws of Maine, and shall not be subject to guardianship or conservatorship. Except during the Declarant Control Period, as set forth in Section 4.3 of the declaration, all members of the executive board shall be unit owners; mortgagees and lessees are not eligible, in such capacity, to serve on the executive board. If a unit is owned by a corporation, a company, or a partnership or is held in trust, then an agent of the corporation, a manager or member of the company, or a partner of the partnership or a trustee of the trust may be considered an owner of that unit and be eligible to serve on the executive board.

Section 2.7. Officers. Except during the Declarant Control Period, as set forth in Section 4.3 of the declaration, at the first meeting of the executive board following the annual meeting of the association and at such other times as a new person becomes a member of the executive board, the executive board shall elect from among its members the following officers of the association:

- (a) a president, who shall preside at all meetings of the association and

of the executive board,

- (b) a secretary, who shall keep records of the business transacted at all meetings of the association and of the executive board, and
- (c) a treasurer, who shall keep books evidencing the financial status and transactions of the association.

The secretary and the treasurer may be the same person, but the president shall not hold either of the other offices. The officers shall perform such other duties as the association may direct. No member of the executive board shall receive compensation from the association for serving on the executive board or as an officer of the association.

The executive board shall also appoint a registered agent of the association, who need not be a unit owner and who may receive compensation for the registered agent's services.

If an officer resigns the officer's office, the executive board shall vote forthwith to fill the vacancy, except during the Declarant Control Period, as set forth in Section 4.3 of the declaration. If a vacancy has been created on the executive board, however, the executive board shall wait until the vacancy has been filled before electing the officers. If for any reason, at any time, the executive board is unable to fill all of the officers' positions, then any member of the executive board not holding one of the offices shall be considered to have resigned from the executive board, but in this case, the vacancy shall be filled at a special meeting of the association which the executive board shall cause to be held not more than forty-five days after the occurrence of the vacancy.

The president or the secretary shall cause amendments to the declaration, duly adopted by the association, to be prepared for recording, and either or both of them may execute, certify, and record the same. All documents evidencing financial obligations of the association, such as checks, notes, and withdrawal orders, must be signed by two officers of the association. All other documents which must be signed on behalf of the association may be executed, certified, and recorded by any of its officers.

Section 2.8. Powers and Duties. The executive board shall have all powers necessary and proper for the governance and operation of the condominium and of the association and may exercise its powers and act on behalf of the association in all matters, except those matters which are required by these bylaws, the declaration, the Maine Condominium Act, or other provisions of law to be voted upon by the association, nor may the executive board act on behalf of the association to determine the qualifications, powers and duties, or terms of office of executive board members, nor to make or authorize non-budgeted expenditures of funds unless required in cases of emergency. The executive board has the duties imposed upon it by law, the declaration, and these bylaws and shall perform those duties faithfully on behalf of the association.

Section 2.9. Delegation of Powers. The executive board may employ personnel, including a managing agent, to manage the daily affairs of the condominium. The

executive board may delegate to such person or persons any or all of the following powers:

- (a) to hire and terminate employees and independent contractors,
- (b) to regulate the use, maintenance, repair, replacement, and modification of the common elements,
- (c) to receive payments on behalf of the association and to deposit them to association accounts,
- (d) to make payments on behalf of the association as authorized by the executive board and to sign checks for that purpose, and
- (e) to enforce the rules and regulations of the association.

The executive board may not delegate any of its other powers. If the executive board delegates a power, it shall nonetheless retain the right to exercise that power concurrently with the person to whom it was delegated, to overrule the decisions of that person, and to withdraw the power from that person at any time. Delegation of its powers shall not relieve the executive board from its responsibility for the faithful exercise of its powers on behalf of the association.

Section 2.10. Meetings. Regular meetings of the executive board may be held at such times and places as a majority of the executive board shall from time to time determine. Any member may participate in a meeting by conference telephone or similar communications equipment which allows all participants in the meeting to hear all of the other participants. At least four meetings shall be held during each fiscal year, and one of these meetings shall be held within fifteen days following the annual meeting of the association. Special meetings of the executive board may be called by the president upon notice three business days in advance of the meeting unless all of the executive board members agree to meet sooner. Any member of the executive board may call a special meeting, subject to the notice requirement, provided that a majority of the executive board members agree to meet. If all of the executive board members agree to meet, the meeting may be held at any time and place agreed upon.

Section 2.11. Notice. Notice of regular and special meetings shall be given to each member by mail or telephone and shall state the time, place, and purpose of the meeting. Any executive board member may waive notice in writing at any time, and such waiver shall be the equivalent of having received such notice. Attendance at any meeting by an executive board member shall constitute such a waiver of notice unless the member attends solely for the purpose of objecting to any action because the meeting was not lawfully called or convened.

Section 2.12. Quorum. At all meetings of the executive board, a majority of the members thereof shall constitute a quorum, but the votes of a majority of the total number of members of the executive board shall be required to constitute the decision of the

executive board. Each member of the executive board shall have one vote and may vote only in person.

Section 2.13. Informal Action. Any action required to be taken at a meeting of the executive board or any action that may be taken at such a meeting may be taken without a meeting if a written document setting forth the action so taken is signed by all of the members of the executive board entitled to vote with respect to such action.

Section 2.14. Fidelity Bonds. If so directed by the association, the executive board shall obtain fidelity bonds for all officers and employees of the association responsible for or having access to association funds.

Section 2.15. Budget and Fiscal Year. The fiscal year of the association shall be the calendar year. The executive board shall annually propose a budget for the condominium for the next fiscal year. Within thirty days after adoption of the proposed annual budget for the condominium, the executive board shall provide a summary of the budget to all of the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than thirty days after mailing of the summary. Unless at that meeting the owners of units to which a majority of the votes in the association are allocated reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.

Section 2.16. Liability of the Executive Board. The members of the executive board shall not be liable to the association or to the unit owners or to others for any actions taken or omitted on behalf of the association, except for intentional misconduct or actions taken or omitted in bad faith. The members of the executive board shall not be personally liable for any obligations incurred on behalf of the association, except for obligations intentionally incurred contrary to the provisions of law, the declaration, or these bylaws or incurred in bad faith.

Article III

The Condominium Association

Section 3.1. Membership. The membership of the association shall at all times consist exclusively of all the unit owners. Mortgagees and lessees of units are not unit owners and shall not be members of the association in such capacity.

Section 3.2. Title to Units. Title to the units may be taken in the name of an individual, in the name of two or more persons as joint tenants or tenants in common, in the name of a corporation, limited liability company, partnership, or other entity, or in the name of a fiduciary.

Section 3.3. Meetings. The association shall have an annual meeting to be held

on the date established by the executive board each year. Special meetings of the Association shall be called by the president upon resolution by the executive board or upon petition of unit owners entitled to cast twenty-five percent or more of the votes in the association. No business shall be transacted at a special meeting except as stated in the notice of the meeting. Any meeting of the association shall be held at the place designated in the notice.

Section 3.4. Notice. The secretary of the association shall give notice to all unit owners not less than fourteen days but not more than thirty days before any meeting is to be held. Notice may be given by hand delivery or sent by prepaid United States mail to the mailing address of each unit or to any other mailing address designated in writing to the executive board by the unit owner. Receipts of delivery of notice shall be obtained. The notice shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or these bylaws, any budget changes, and any proposal to remove an executive board member.

Section 3.5. Waiver of Notice. Any unit owner may at any time waive notice of meetings of the association in writing, and such waiver shall be the equivalent of having received notice. Attendance at a meeting by a unit owner shall constitute waiver of notice.

Section 3.6. Quorum and Voting. The presence, in person or by proxy, of persons entitled to cast more than fifty percent of the votes in the association shall constitute a quorum at any meeting of the association. The vote allocated to a unit must be cast as a single vote; no vote may be divided. A majority of the votes entitled to be cast on a matter by the members present or represented by proxy at a meeting at which a quorum is present shall be sufficient to decide the matter, unless a higher percentage of votes is required by the Maine Condominium Act, the declaration, or these bylaws. If a meeting cannot be held because a quorum is not present, persons entitled to cast a majority of the votes then represented, either in person or by proxy, may adjourn the meeting to a time less than thirty days from the time the original meeting was called. If a quorum is present at any such adjourned meeting later reconvened, any business that might have been transacted at the meeting originally called may be then transacted without further notice.

Section 3.7. Proxies. Votes may be cast by proxy. Proxies must be filed with the secretary at or before the time of each meeting and may designate any person, whether or not a unit owner, to act as proxy. The designation of any proxy shall be made in writing, signed by the unit owner, and may be revoked only by actual and written notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or if it purports to be revocable without notice. A proxy terminates eleven months after its date, unless it specifies a shorter term.

Section 3.8. Votes in the Event of Multiple Ownership of a Unit. If only one of the multiple owners of a unit is present at meeting of the association, that owner shall be entitled to cast the vote allocated to that unit. If more than one of the multiple owners are present, the vote allocated to that unit may be cast only in accordance with the

agreement of a majority in interest of the multiple owners. A majority in interest consists of owners of the unit who, collectively, own more than fifty percent of the unit. There is deemed to be a majority agreement when any one of the multiple owners casts the vote allocated to that unit without protest being made promptly to the person presiding over the meeting by any other of the owners of that unit. If a majority agreement is not reached, the vote allocated to that unit shall not be cast.

Section 3.9. Informal Action. Any action required to be taken at a meeting of the association, and which may be taken at such a meeting, may be taken without a meeting if a written document setting forth the action so taken is signed by all of the unit owners entitled to vote with respect to such action.

Section 3.10. Procedure and Order of Business. At all meetings of the association, Robert's Rules of Order, as then revised, shall govern matters of procedure, except as they may conflict with these bylaws, the declaration, or provisions of law. The order of business at all meetings of the association shall be, to the extent required, as follows:

- (a) roll call;
- (b) proof of notice of meeting or waiver of notice;
- (c) reading of minutes of preceding meeting;
- (d) reports of officers, executive board, and committees;
- (e) election of executive board member(s);
- (f) unfinished business;
- (g) new business;
- (h) adjournment.

Article IV

Assessments and Maintenance

Section 4.1. Common Expenses. The executive board shall determine the amount payable by the unit owners to meet the common expenses of the condominium. The common expenses shall be assessed against the units in accordance with the percentages established by the declaration, as it may from time to time be amended. The common expenses shall include, but are not limited to, (a) the maintenance and repair costs of the common elements; (b) the cost of any insurance obtained by the executive board; (c) any management fees or other administrative expenses incurred by the executive board; (d) the funding of any reserve funds as established by the executive board; (e) any amounts necessary to eliminate any deficits from prior fiscal years; and (f) any funds for capital improvements as authorized by the association. The maintenance and repair costs of a limited common element and any other common expense which benefits fewer than all of the units, even though not arising from a limited common element, shall be assessed exclusively against those units which it benefits, in the same proportion as their allocated percentages of common expense liability bear to each other.

Section 4.2. Collection of Assessments. The executive board shall notify in writing each unit owner of the amount of the common expenses assessed against the unit owner's unit. Payment of the designated amount shall be due on the date or dates stated in the notification or, if not stated, thirty days after receipt of notification, unless otherwise stipulated by the executive board. In the event any amount remains unpaid, the executive board shall take prompt action, which may include the initiation of legal proceedings, to collect the outstanding balance. In addition, the executive board shall collect interest on any unpaid balances from the date payment was due at the rate of interest then charged by the Town of Winter Harbor on delinquent real property taxes. Any expenses incurred by the executive board in collecting such overdue payments, including the costs of any collection proceedings and attorneys' fees in connection with collection efforts, shall be paid by the delinquent unit owner. The executive board shall provide, upon the written request of any unit owner, a written statement in recordable form setting forth the amount of unpaid common expenses currently assessed against the unit owner's unit. The statement shall be furnished within ten business days after receipt of the request.

Section 4.3. Liens for Assessments. The association has a lien on a unit for any unpaid common expense assessment levied against that unit. The association's lien is prior to all other liens and encumbrances except (a) those recorded before recordation of the declaration; (b) a first priority mortgage recorded before or after the due date of any amount owing; and (c) liens for real estate taxes and other governmental assessments or charges against the unit. Such a lien is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due.

Section 4.4. Foreclosure of Lien. The lien in favor of the association for unpaid common expense assessments may be foreclosed in the same manner as a mortgage on real estate or in any other manner provided by law for the enforcement of liens. The association may take a deed in lieu of foreclosure. The association shall have the right to purchase such unit at the foreclosure sale and to hold, lease, mortgage, convey, or otherwise deal with the unit. A suit to recover a money judgment for unpaid common expenses assessments may be brought without foreclosing or waiving the lien that secures the amount owing.

Section 4.5. Maintenance and Repair Responsibilities. The executive board, acting on behalf of the association, is responsible for the maintenance and repair of all common elements, including the limited common elements. Each unit owner is responsible for the maintenance and repair of the unit owner's unit. Damage to common areas or other units occasioned by a failure to maintain or repair a particular unit shall be the responsibility of the owner of that unit. In the event that such a failure to maintain or repair a unit creates the risk of structural damage to common areas or other units, the executive board shall have the authority to take reasonable measures to prevent such damage, including entry into the unit to perform such work as the circumstances may require.

Section 4.6. Repair or Reconstruction After Common Casualty. In the event the condominium building is substantially destroyed, any repair or restoration shall be

substantially in accordance with the original architectural and engineering plans and subject to the approval of the association, and shall comply with all applicable building codes.

Section 4.7. Insurance. The executive board shall purchase and maintain such insurance on any or all of the condominium property or operations as is required by the Maine Condominium Act and such additional insurance as the executive board may deem appropriate. Questions regarding insurance may be submitted to the association and the executive board may use its response to determine the scope and amount of coverage. Any such insurance purchased on behalf of the association might not adequately protect the individual interests of unit owners, and nothing herein shall prevent a unit owner from obtaining insurance for the unit owner's own benefit.

Article V

Rights and Obligations of Unit Owners

Section 5.1. Rules and Regulations. The executive board shall adopt rules and regulations that shall further regulate the management of the condominium and the conduct of the unit owners and their employees and lessees. Such rules and regulations shall become effective upon ratification by the association.

Section 5.2. Violations by Unit Owners. The violation of any rules or regulations, the breach of any of these bylaws, or the breach of any provision of the declaration shall give the executive board the right to take whatever action is reasonably necessary to terminate the particular violation or breach, to remedy any damage occasioned by such violation or breach, and to prevent further violation or breach. Such action on the part of the executive board may include entry into any unit where such violation or breach exists without giving rise to any manner of trespass and may include the bringing of any appropriate legal action. The costs of any such termination, reparation, or prevention, including reasonable attorneys' fees, shall be assessed against the unit of the unit owner in violation or breach. The executive board shall impose reasonable fines for violations of the rules and regulations.

Section 5.3. Payment of Common Expense Assessments. Each unit owner shall be obligated to pay the common expense assessment levied by the executive board pursuant to the provisions of article IV of these bylaws at such time as the executive board shall determine. Any assessment levied against a unit after any sale or transfer of the unit shall become the responsibility of the purchaser or transferee. A purchaser or transferee shall also be liable for the payment of any previous assessment remaining unpaid at the time of sale or transfer.

Section 5.4. Use. All of the units not owned by the Declarant shall be used only for single-family, residential purposes.

Article VI General Provisions

Section 6.1. Tort Liability. Each unit owner shall be deemed to have released and exonerated every other unit owner and the association, and the association shall be deemed to have released and exonerated every unit owner from any tort liability, other than that based on fraud or criminal acts, to the extent to which such liability is satisfied by proceeds of liability insurance carried by a unit owner or by the association.

Section 6.2. Mortgages. Every unit owner shall notify the executive board of the name and address of any person holding a mortgage of the unit owner's unit. The executive board shall, upon request, provide the mortgagee with such information as relates to the mortgagee's financial interest in the unit as required by the Maine Condominium Act.

Section 6.3. Notices. All notices required by these bylaws shall be either hand delivered with receipt acknowledged or sent by registered mail, return receipt requested to the unit owners at the condominium or at such other addresses as they may have furnished in writing to the executive board. All notices shall be deemed to have been given either upon hand delivery or when mailed. Notices of general interest to the unit owners shall also be posted on the bulletin board in the condominium's mail delivery area, but any failure in such posting shall not affect the validity of such notice.

Section 6.4. Severability. The invalidity of any provision of these bylaws shall not affect or impair the validity, enforceability, or effect of any other provision of these bylaws.

Section 6.5. Waiver. Any failure by any party to enforce any restriction, condition, obligation, or provision of these bylaws shall not be deemed a waiver or abrogation of the same, regardless of the number of breaches or violations that may occur or the number of instances in which enforcement is not pursued.

Section 6.6. Conflict. These bylaws shall be construed, if possible, to comply with the provisions of the declaration and Maine law. Any provision of these bylaws which cannot be so construed shall be void and of no effect, and the provisions of the declaration or Maine law shall control.

Article VII Amendment

These bylaws may be altered or amended at any duly called meeting of the association provided that the notice of the meeting contained a full statement of the proposed amendment and that the amendment is approved by the owners of units to which eighty percent or more of the votes in the association are allocated. No amendment to these bylaws shall be contrary to the provisions of the declaration, the Maine

Condominium Act, or the Maine Nonprofit Corporation Act, as they may from time to time be amended.