

**SGHOA Proposed Bylaw Amendments
to bring Sunflower Gardens Governing Documents
into Compliance with Indiana House Enrolled Act 1286**

To SGHOA Owners, August 2016

Background

House Enrolled Act No. 1286 became effective July 1, 2015. This act governs rules that apply to multiple unit residential developments such as Sunflower Gardens. At the 2015 SGHOA Annual Meeting, an Ad Hoc Committee of Owners was formed to recommend Amendments to SGHOA Bylaws to reflect requirements of Indiana Code made by HER1286. Committee Members were:

- Anita Westerhaus, chair
- Terry Fink
- Leonard Kelley
- Carol Wise
- James Eiermann, Jamar
- Tonya Newlin, Jamar

Committee Recommendations

HER1286 sets specific requirements with lengthy details that can change over time. Instead of adding specific wording, the Committee recommended inserting HER1286 information as Indiana Code references – e.g., IC 32-25.5-5. – that could be viewed for current wording as needed in the future.

Change 1 -- Grievance Resolution

HER1286 requires all HOAs to have a grievance resolution process in their governing documents and imposes certain specific requirements for that process. Currently, our Bylaws contain no grievance resolution process. Accordingly, the Committee recommends that the Bylaws be modified by ADDING a NEW Article 8 as follows:

Article 8 Grievance Resolution

All claims arising from the Bylaws and governing documents of the HOA among the HOA, its members and/or the HOA Board shall be resolved in accordance with IC 32-25.5-5.

Change 2 -- Removal of Directors

HER1286 requires that HOA governing documents include means by which a director may be removed. Currently, our Bylaws have no such provision. Accordingly, the Committee recommends that the Bylaws be modified by ADDING a NEW Section 3.12 as follows:

Section 3.12 Removal of Directors

A director may be removed from office by a majority vote at any annual or special meeting of the HOA members at which there is a quorum. Any director so removed may be replaced at the same meeting (just as if it were an annual meeting in cases where it is not) as provided in Section 2.6.6.4.

Change 3 -- Interim Budgets

HER1286 adds certain requirements to provide for the establishment of operating budgets in cases where the membership is unable to approve a budget. While our Bylaws currently have a provision for establishing interim budgets, it falls short of meeting the requirements of HER1286. The Committee recommends keeping the current interim budget language (with one change highlighted below) but also adding a paragraph before the current one to address the requirements of HER1286.

Currently the Bylaws read:

Section 5.6. Temporary Budget and Assessments. If for any reason an annual budget and the Regular Assessments for any year have not been determined as of November 15th of any year, the budget and Regular Assessments in effect during the preceding year shall continue in effect until such time as the annual budget and Regular Assessments are determined in accordance with this Declaration and the Bylaws.

Replace the current Section 5.6 with a NEW and MODIFIED Section 5.6:

Section 5.6. Temporary Budget and Assessments.

5.6.1. If there is no quorum at the annual meeting, the Board may set an annual budget and Regular Assessments for the next year of up to 110% of the amount of the last annual budget and Regular Assessments.

5.6.2. If for any reason an annual budget and the Regular Assessments for any year have not been determined as of December 15th of any year, the budget and Regular Assessments in effect during the preceding year shall continue in effect until such time as the annual budget and Regular Assessments are determined in accordance with this Declaration and the Bylaws.

Change 4 -- Proxies

HER1286 imposes additional requirements for the use of proxies, most notably the requirement for an affirmation signed under penalties of perjury. Similar to the approach to grievance resolution, the Committee recommends that the proxy requirement be incorporated by reference. HER1286 also requires that proxies cannot be valid for more than 180 days. Currently our Bylaws allow proxies to be valid for 11 months. To bring our Bylaws in compliance with the law, the Committee recommends that Section 2.6.4 be MODIFIED by ADDING the words "and shall conform to IC 32-25.5-3-10." at the end of the second sentence, and by CHANGING the words "11 months" to "180 days" in the second last sentence.

Revised Section 2.6.4 would read as below and Jamar would redesign proxy forms

2.6.4. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting and shall conform to IC 32-25.5-3-10. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot or upon receipt of notice by the Secretary, or the Board of the death or judicially declared incompetence of a member or upon the expiration of 180 days from the date of the proxy. A form of proxy or written ballot may provide an opportunity to specify approval or disapproval with respect to any proposal.

Change 5 -- Financial Records and Minutes

HER1286 places new requirements on recordkeeping for financial transactions and clarifies the duties of the HOA to provide minutes to members upon request. In order to bring our Bylaws into compliance, the Committee recommends adding a new Section 4.9 and modifying Section 4.5.

Modify Section 4.5 to require providing copies of minutes

Section 4.5. Secretary. The Secretary shall be elected from among the Directors. The Secretary shall attend all meetings of the Association, and the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meetings, shall perform all other duties incident to the office of the Secretary and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association or the Board are duly given, mailed, or delivered, in accordance with the provision of these Bylaws, and that copies of meeting minutes are provided to members upon request. The Secretary and President shall not be the same person.

Add new section 4.9

Section 4.9. Records. Board members (and the Management Company when there is one) are responsible for keeping copies for a minimum of two years of any correspondence whether written or electronic regarding financial transactions of the Association.

Attachments to be provided

IC 32-25.5-5 HOA Grievance Resolution.doc

IC 32-25.5-3-10 HOA Meeting Proxies.doc