



Comments Introducing Amended and Restated Bylaws *Draft*

We would like to briefly re-cap this merger journey to date. The Merger Ad Hoc committee was appointed by Board resolutions of the Fountain of the Sun Homeowners Association (FOSHA) and the Fountain of the Sun Community Association (FOSCA) at their respective May 2016 meetings.

The committee's charge "to research, plan and present an implementing process, along with recommendations, for the merger of FOSHA & FOSCA, with a report to the Boards by September 1, 2016." Our recommendation was to follow the Carpenter Hazelwood 2004 legal opinion: Option #2 – Merger. *"This option would merge FOSCA into FOSHA. The new corporate entity would function with one board...the net result would be that one corporation would emerge from the current two. Under this option, the "non-FOSHA" associations in the community such as the condominium associations would continue to exist, they would have the same responsibilities they currently have, and they would continue to have boards of directors...the only difference would be that they would pay their "FOSCA assessments" to the new "merged corporations."*

The primary reason for using the FOSHA corporate structure is due to recorded deed restrictions – commonly referred to as Declarations or Covenants, Conditions and Restrictions, (i.e. CC&R's) that do not exist in FOSCA governing documents.

The committee report provided a roadmap, with numerous check points, of the work necessary to complete a successful merger. Said plan has included continual updating of both boards with progress, receiving their approvals prior to proceeding and a constant need to address multiple challenges due to the complexity of the project. This resulted in a "Plan of Merger" adopted by the joint boards in October of 2016, presented to the community in three open forums and sent out in ballot form to all FOSCA residents for their approval. With an 82% approval margin, the community is on record for making this happen. Thus, the work began in earnest to update the required legal documents.

The complexity of our communities' seven governing documents lies in the fact that each is interrelated to the other. Their hierarchy of order: Articles of Incorporation, Declarations (i.e. CC&R's), Bylaws, 1983 Agreement and various adopted Policy Procedures Rules & Regulations. The process requires that multiple steps be taken, one step at a time, before the next step can be addressed. The goal is a merger for a simplified governance structure, cost efficient operations and quality customer service.

The merger is not a singular, dictatorial takeover that a few have and continue to profess. The workload has been handled by a committee of eight – 3 directors from each board and 2 community members at large. Their volunteer efforts have been substantial, not only their time sacrifices but the cost savings generated for the community's benefit. They have continuously responded to the boards call for accurate information while performing with fiscal responsibility. All of which has received the timely review and approval from legal counsel with transparency to the residents.



With unanimous Board approval, our next step is presenting the Amended and Restated Bylaws Draft document for your review & comment. Our objective has been to present a clear, concise, understandable document that encompasses both the content and intent of each association.

Bylaws that:

- Outline the parameters within which the new organization will operate AND administer the terms of the 1983 Agreement for the community.
- Will function today and well into the future.
- Will provide an organizational structure designed to operate by job functions.
- Not only identify responsibilities but accountability for elected board members, committee members, paid professional staff AND each individual unit owner.
- Have passed the scrutiny of legal counsel and comply with current Arizona Revised Statutes (ARS) for associations.

FOSCA and FOSHA have operated independently with varying degrees of efficiency for the past 34 years – the segregation of responsibilities created a lack of accountability which limited successes and fostered distrust. Yet, through all of this history, the one common unifying factor has been the 1983 Agreement and its funding formula. This was the agreement that created FOSCA to own, maintain and operate the common facilities and activities within FOS. With that tried and true formula in place, we recommend identifying the 1983 Agreement as a governing community document. It is the document that fosters community unity.

As you read the amended & restated bylaws, you will find them to be clear, concise, and understandable and represent the parameters within which our community must operate. These bylaws are the working document which makes all others (Articles of Incorporation, Declarations/Covenants, Conditions and Restrictions – CC&R's, 1983 Agreement and Policies Procedures Rules & Regulations) function together under one corporate structure called Fountain of the Sun Association - FOSA. Ironically, FOSA was the original name given by the developer. For optimum operational efficiency, all articles in the bylaws work together; they are dependent on each other – NOT independent standing alone to describe an action.

With this in mind, the draft document is available for your personal review. Both Boards have reviewed, questioned, clarified and unanimously approved it. They recommend it as the working document providing a solid foundation for success of the merged FOSA structure. They now present the document for a “Review & Comment” by the residents. A time to assist in answering your questions and reviewing your comments – either by written mail or through a designated email address: mergercomments@fos-az.com .

Questions and answers will be published through various means of communication. While that is occurring, these comments will also be reviewed within the context of all governing documents to validate and clarify any need for modification of this draft. Community discussion groups or forums will be scheduled as warranted. All of this leading up to a residential vote to approve the recommended Amended and Restated Bylaws in the fall of 2017. This timing should maintain the schedule to meet a finalized merger on or before January 1, 2018.

On behalf of the committee and joint boards, we thank you for your interest and patience in the effort to make your community operate with more efficiency, responsibility and accountability.

Working together we can make it happen!