

BYLAWS  
OF  
MT. POCAHONTAS PROPERTY OWNERS ASSOCIATION INC.  
Adopted: July 17, 2021 Effective: July 17, 2021

ARTICLE I.

Name, Membership, Applicability, and Definitions

**Section A. Name & Purpose**

The name of the Association shall be, Mt. Pocahontas Property Owners Association Inc. (aka; MPPOA or the "Association"), a Pennsylvania Not For Profit Corporation. The official address of the Association is 386 Old Stage Road, Albrightsville, PA 18210. Incorporation date was March 1, 1977, and Registration number is 640050.

The purpose of the Association shall be to own, operate, maintain and manage the common areas and amenities within the Community known as MPPOA situated in CARBON County Pennsylvania (the "Community"), in addition to which, it shall be the stated purpose of the Association to monitor, manage and supervise day to day affairs of the Community in order to provide for and maintain the health, safety and welfare of all members owning property therein.

**Section B. Membership**

Every Record Owner (defined as being the owner of record as set forth in the Carbon County Recorder of Deeds office) of a lot within the Community known as MPPOA, situated in Carbon County, Pennsylvania shall be a member in the Association.

All members shall be bound by the Covenants, Conditions, Restrictions, Rules and Regulations, Articles of Incorporation, and Bylaws of the Association and/or Community (all of which, as may be amended from time to time, are specifically incorporated herein by reference and shall be referred to individually and/or collectively as the "Community Documents").

Except as otherwise set forth herein, a Member in Good Standing is a member who is in compliance with all terms of the Community Documents and who, no later than March 31<sup>st</sup> of each year, has paid all fines, assessments and other charges levied by the Association according to the MPPOA Collection Policy. Notwithstanding anything set forth herein to the contrary, a member who has not paid all assessments, fines, etc. but has entered into an Association approved payment plan no later than March 31<sup>st</sup> which plan is at all times currently maintained and adhered to, shall be classified as a "Limited Member in Good Standing" entitled to use all amenities of the Association, but who shall not be entitled to vote at membership meetings. No individual shall be denied membership on the basis of race, creed, religion, color or national origin.

A member may not be privileged to resign or transfer his/her membership, so long as he or she continues to be a Record Owner of property in the MPPOA Community.

Tenant Privileges - A tenant may be granted limited privileges as given by the owner of record in reference to the facilities of the Association. THIS SHALL NOT INCLUDE THE RIGHT

TO ATTEND, SPEAK AND VOTE AT BOARD MEETINGS OR YEARLY ANNUAL MEETINGS.

All current rules and regulations of the Association shall be published and made available to the membership.

## ARTICLE II.

### Association: Meetings, Quorum, Voting

#### **Section A. Place of Meetings**

Meetings of the Association shall be held at the principle office of the Association, the clubhouse, or such other places as may be designated by the Board of Directors.

#### **Section B. Annual Meeting**

The annual meeting of the membership shall be held each year on the second Saturday in the month of July at 12:15 pm.

#### **Section C. Notice of Meetings**

It shall be the duty of the Secretary or office personnel to mail or cause to be delivered to each member a notice of each Annual or Membership Meeting, as well as the time and place where it is to be held. Notice shall be deemed given when it is hand delivered or placed with the United States Post Office, first class mail, postage prepaid to the member's address on file with the Association. The date of mailing of such notice shall be considered the date of service of such notice.

Only members who are in good standing shall be eligible to receive notice of an annual or special meeting.

#### **Section D. Voting**

The election of the Board shall be conducted at the Annual Meeting of the Association. At the election, the Members in Good Standing may cast one (1) vote (for each available position) for each lot owned in the Community. The candidate receiving the greatest number of votes shall be elected, as shall each candidate receiving the next highest number of votes until all directors positions are filled. Multiple owners of a single lot shall be entitled to cast one vote per lot between them. In the event of a dispute between such joint owners as to who shall be entitled to cast such a vote, which dispute is not resolved between the owners directly and before the time for a particular vote, the voting right shall be suspended for the duration of the dispute.

Members Not in Good Standing may attend all meetings of the Association but shall not participate in the discussion and shall not be entitled to make motions or vote. Limited Members in good standing can attend all meetings of the Association and may participate in the discussion but shall not be entitled to make motions or vote.

**Section E. Written Ballots**

For the annual membership meeting, each Member in Good Standing may cast electorate votes by presenting the official ballot in person or by mail to the Chairman of the nominating committee or to the designated party set forth in the ballot. If ballots are mailed, they must be received by the Chairman or designated party before the appointed time the day prior to the meeting.

**Section F. Quorums and Proxies**

The quorum for the official annual meeting of the Association shall be a total of thirty (30) eligible votes in person or by proxy.

Members may not cast votes by proxy except at the annual meetings.

**Section G. Conduct of Meetings**

The annual meeting and the meetings of the Board of Directors shall be conducted in accordance with the latest addition of The Modern Rules of Order so long as such Rules do not conflict with these ByLaws. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all other transactions. Audio recordings of meetings are made by the secretary alone and shall be part of the official record and shall be maintained and safeguarded in an appropriate manner as are other official records.

**ARTICLE III.**

**Board of Directors: Number, Power, Meetings**

**Section A. Governing Body Composition**

The affairs of the Association shall be governed by a Board of Directors which shall be between Five (5) and Nine (9) in number. The President, Treasurer, and Maintenance Director must have their primary residence in Mt. Pocahontas.

**Section B. Eligibility**

A Director shall be a record owner of a lot within the Community subject to the jurisdiction of the Association; provided however, that no more than one record owner of a particular lot may serve on the Board at the same time. In addition, no Director shall be eligible for nomination who has resigned and/or has been removed from the Board. A two year absence from the Board is required before such resigning and/or removed member can be re-nominated.

**Section C. Nomination of Directors**

At least sixty (60) days prior to the annual meeting, a Nomination and Election Committee shall be composed of not less than three (3) members, all of whom shall be Members in Good

Standing. The Nomination and Election Committee shall present a slate of candidates, that they have ensured are in good standing, for the director positions to be filled at the meeting. No member of the Board running for re-election, nor any member of his or her family, shall serve on this Committee.

**Section D. Election, Term of Office and Vacancy**

At each Annual Meeting of the Membership vacancies in the Board of Directors shall be elected at large. All Members in Good Standing shall be entitled to vote on the elections of Directors. The members shall cast one vote for each vacant position for each lot owned in the Community. The candidate having the most votes shall fill the first vacant position while the candidate with the second most votes shall fill the second vacant position, etc., until all such vacancies are filled. Any vacancy on the board caused by resignation, sale of property, removal, death or otherwise shall be filled by the majority vote of the Board from the membership at large. The replacement director shall then hold that position for the balance of the unexpired term of his or her predecessor. Directors shall be limited to two (2) consecutive three-year terms. They cannot run for re-election until one full year passes from the end of their second consecutive term, unless those persons in office shall continue in office until their successors may be duly elected. They shall retain the full powers of their position until the aforesaid time. No director shall serve more than seven (7) consecutive years.

**Section E. Removal of Directors**

(1) A Director of the Association may be suspended and/or removed from office for cause by a majority of the total membership of the Board at a special meeting called for such purpose. The special meeting shall be held not less than fifteen (15) days nor more than thirty (30) days after a motion to suspend or remove is approved. The motion to suspend or remove shall set forth specific reasons and shall be made by open roll call and recorded.

(2) The Board may temporarily suspend the authority of a Director and assign his or her duties to another director of the Association pending resolution of the motion to suspend.

(3) Any Board member who begins litigation against the Association or elected officials of the Association shall automatically be considered as having resigned his or her position, since this is considered a severe conflict of interest not capable of being cured. Personal litigation, not having to do with the business of the Association, shall not be considered as litigation against an elected official.

(4) Any Board member who interferes or prevents another Board member from performing his/her fiduciary responsibility or prevents him/her from performing their job description, acts in gross or willful neglect of the duties of the office, failed or refused to disclose necessary information on matters of Association business, unauthorized expenditures, signing of checks, or misuse of Association funds, misrepresented the Association or its officers to outside persons, or convicted of a felony, shall be considered for suspension or removal. MPPOA is committed to providing a work environment that is free of discrimination and unlawful harassment of any kind between Board Members and employees. Violation of this concept shall also be grounds for removal

(5) Any Board member who is absent for three (3) consecutive regular meetings of the Board, or a total of four (4) regular meetings in the course of a twelve (12) month period, regardless of cause, shall be deemed to have resigned from the Board and the Board shall fill the unexpired term in accordance with these ByLaws without having to go through the removal procedures set forth in Section E.

**Section F. Organization Meetings**

The annual organizational meeting of the Board shall be held immediately after Annual Meeting. The first business at the organization meeting shall be the election of the Board Officers and setting Regular Meeting dates.

**Section G. Regular Meetings**

Regular Meetings of the Board of Directors may be held at the time and place as shall be determined from time to time by a majority of the Board, but at least four (4) meetings shall be held during each fiscal year with at least one (1) per quarter.

**Section H. Special Meetings**

Special Meetings of the Board of Directors shall be held when called by written notice by the President or a majority of the Board. The notice shall specify the time and place of the meeting and the nature of the special business to be considered. The notice shall be given to each Director by one of the following methods; (a) By personal delivery (b) written notice by first class mail (c) telephone (d) email. All notices shall be given or sent to the Board Member's address as shown on the records of the Association at least five (5) calendar days before the time set for the meeting.

**Section I. Quorum of Board of Directors**

At all meetings of the Board of Director's attendance of a majority of Directors in office shall constitute a quorum for the transaction of business, and unless otherwise stated herein, the vote of a majority of the Directors present shall constitute the decision of the Board of Directors.

**Section J. Compensation**

No Director shall receive compensation from the Association for acting as a Director. No contracts shall be awarded to any Board Member, his/her immediate family or to an individual, entity or corporation in which any Board Member has a financial interest.

**Section K. Conduct of Meetings**

The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of the Board of Directors' meetings, recording all resolutions adopted by the Board of Directors, and a record of all other transactions and proceedings occurring at the meeting. Meetings may be audio recorded by the Board Secretary or another Board Member only for the purpose of minutes and these recordings shall be maintained as a permanent record .

**Section L. Open Meetings**

Any open meeting of the Board shall be accessible to all members, but members may not participate in any discussion. The annual meeting or regular monthly meeting will allow open discussion for Members in Good Standing and Limited Members in Good Standing for a limited time in the "Open Discussion" time period only.

**Section M. Executive Session**

The Board may by majority Board approval, adjourn or precede a meeting with an executive session to discuss and vote upon personnel matters, litigation in which the Association may become, or is currently, involved, and other business of a similar nature. The general nature of any and all business considered in executive session shall be announced when the business is concluded, however the nature of all decisions shall remain confidential.

**Section N. Board Voting**

At all Board meetings each member of the Board, with the exception of the President, may cast one vote on each motion. The President may cast a vote only if the voting by the Board is by ballot and results in a tie. If a Director becomes a Member Not in Good Standing or in Limited Good Standing for any reason, said Director shall have his or her voting privileges suspended until they become a Member in Good Standing.

Business may be conducted through e-mail, text, and phone conversations between meetings, provided all Board Members are included or given the opportunity to be included. At the conclusion of said business, written signatures, for or against, are required as official votes.

**Section O. Powers**

The Board of Directors shall be responsible for the affairs of the Association, and shall have all of the powers and duties necessary for the administration of the Association's affairs as provided by law, including but not limited to, all of the powers defined in the Pennsylvania Corporation Law, and may do all acts and things as are not by the Community Documents directed to be done and exercised exclusively by the members. Suggestion and Issue forms are to be used by members to communicate with the Board of Directors. Response will follow by the Director in charge or the Board of Directors. Powers include, but are not limited to:

(1) preparation and adoption of the annual budget for each year in which there shall be established the assessment against each lot or unit. The Board shall anticipate income and expenses from all sources. The fiscal year shall run from January 1 to December 31;

(2) providing for the operation, care, upkeep, maintenance, and replacement of the Common Areas and property of the Association and each of the Association's corporations in the Community;

(3) designating, hiring, and dismissing the personnel and contractors necessary for the maintenance, operation, repair and replacement of the property and Common Areas of the Association, and where appropriate, providing for the compensation of personnel and contractors and for the purchase of equipment, supplies, and materials to be used by the personnel in the performance of their duties;

- (4) collecting the assessments, depositing the proceeds of same in a bank depository which it shall approve, and using the proceeds to administer the Association;
- (5) making and amending such mandatory rules and regulations as the Board deems necessary in order to manage, maintain and provide for the health, safety, economic stability and welfare of the membership, the Association, and the Community at large;
- (6) opening bank accounts on behalf of the Association and designating the signatories required. The signature of two designated Board Members is required on all checks;
- (7) making or contracting for the making of repairs, additions and improvements and/or alterations to the Common Areas and property of the Community in accordance with the provisions of the Community Documents. Three (3) bids are required for each non-annually recurring contract. The contract must be awarded by majority vote of the Board. The awarding of any such contract does not necessarily depend on cost only, but shall include considerations of character, experience, reputation and scope of services to be provided. The Board must be assured that the contracting firm has liability insurance and should attempt to obtain some form of guarantee or performance bond for work performed. If three (3) bids are not obtained, documentation of the attempt to obtain three (3) bids is required;
- (8) enforcing by legal means the provisions of the Community Documents and bringing any proceedings which may be instituted on behalf of or against the members concerning the Association;
- (9) obtaining and carrying insurance against casualties and liabilities, and paying the premium cost for same;
- (10) paying the costs of all services rendered to the Association or its members; and
- (11) keeping separate books with detailed accounts of the receipts and expenditures affecting the Association, and its administration, specifying the maintenance and repair expenses and other expenses incurred. The books and vouchers detailing the entries shall be available for examination by the Board members, their duly authorized agents, accountants or attorneys, during general business hours on working days at the time and in a procedural manner that shall be set and announced by the Board of Directors for the general knowledge of the members. All books and records each month shall be kept in accordance with generally accepted accounting principals as determined by the Association's financial and/or accounting advisors.

**Section P. Appeals Committee**

The Board of Directors shall appoint an Appeals Committee consisting of a least three (3) and no more than five (5) Members in Good Standing, serving at one time. The Appeals Committee must report to the Board each quarter. The members of the Appeals Committee must be approved annually by the Board, at the July re-organization meeting.

**Section Q. Citation/Appeals Procedure**

With the exception of fines and/or sanctions for failure to make monetary payment to the Association which fines and/or sanctions shall be automatically imposed, the Board may impose a

fine, suspend voting, and/or curtail rights of a member or other occupant of property within the Association for violations of the Community Documents provided that the following procedure is followed:

(1) **Demand** Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:

- (a) the alleged violation;
- (b) the action required to abate the violation;
- (c) a time period of not less than fifteen (15) days, during which the violation must be abated without further sanction if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation will not be tolerated.

(2) **Citation**

- (a) If the violation is not abated or if a second violation takes place, a fine will be imposed as specified in the Rules and Regulations and other Community Documents. It is to be paid within fifteen (15) days and if not, shall be added to the violator's account balance and become a lien on such violator's lot/unit.
- (b) The violator may request an appeal of the citation within fifteen (15) days of receiving the fine. A hearing date will be set with the Appeals Committee and a decision rendered that day or as soon as outstanding information is received.
- (c) The decision of the Appeals Committee, if unsatisfactory to the violator, may still be appealed the Board within fifteen (15) days of receipt of the Appeals Committee's decision. A hearing date will be set with the Board for a hearing.
- (d) The decision made by the Board on the appeal shall be final. If the violator does not keep his/her appointment with the Board, the citation will be upheld.

## **ARTICLE IV.**

### **OFFICERS and BOARD APPOINTED POSITIONS**

#### **Section A. Officers**

The Officers of the Association shall be a President, Vice President, Secretary and Treasurer. In the case of resignation, any two or more officer positions may be held by the same person until the next scheduled meeting, except the offices of the President and Secretary. The President, Vice President, Secretary and Treasurer shall be elected from the members of the Board of Directors.



**Section B. Election, Term of Office and Vacancies**

The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting. A vacancy in any office arising because of death, resignation, removal or otherwise shall be filled by the Board at the next Board Meeting following the vacancy.

**Section C. Removal**

See article III Section E which terms shall apply for the removal of Officers.

**Section D. Powers and Duties**

The officers of the Association shall have the powers as described herein and duties as may from time to time be specifically conferred or imposed by the Board of Directors.

(1) **President** shall be the chief executive officer of the Association, shall have the powers and responsibility for the general management of the affairs of the association and shall carry out the resolutions of the Board of Directors, and shall be ex-officio member of all standing committees.

(2) **Vice President** shall assume the duties of the president in the absence of the president.

(3) **Secretary** the Secretary shall assure that all meetings of the Board of Directors and all meetings of members are documented; and shall record all votes and minutes for all proceedings (votes at a Board of Directors meeting shall be recorded by name and how the individual voted) in a book kept for that purpose.

(4) **Treasurer** shall have the responsibility for all funds of the Association, which shall be deposited in a bank designated by the Board. The Treasurer shall disburse such funds only in accordance with such procedures adopted by the Board or contained in the Bylaws, with at least one other officer designated by the Board for signing all checks. The Board shall from time to time set parameters as to what person(s) shall have access to financial data and information. The Treasurer shall attend court if necessary.

The Board may also appoint these other positions:

(5) **Architectural Director** shall ensure that all Architectural standards are enforced according to MPPOA Architectural Standards and Regulations. A member who plans to construct a residence or other improvement upon a lot or lots in MPPOA shall apply to the Architectural Director for approval of the plans for said construction prior to the commencement of any work on said lot. Please refer to MPPOA Architectural Standards and Regulations.

(6) **Maintenance Director** shall oversee maintenance staff, equipment, and work to be done, and inform the Board of same, enabling the Board to make well informed decisions pertaining to maintenance.

(7) **Security Director** shall oversee all security concerns including guards, schedules, security equipment, and inform the Board of same, enabling the Board to make well informed decisions pertaining to security.

**Section E. Resignation**

Any officer or director may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Any resignation shall take effect three (3) working days after the receipt of the notice to allow for reconsideration of the resignation. Acceptance of the resignation by the Board of Directors shall be necessary to make it effective.

**Section F. Agreements, Contracts, Deeds, Leases, etc.**

All agreements, contracts, deeds, leases and other instruments of the Association, approved by the Board, shall be executed by at least The President and one (1) Officer.

**ARTICLE V.**

**Indemnification**

**Section A. Personal Liability of Directors**

A Director of the Association shall not be personally liable, as such, for monetary damages for any action taken, or failure to take any action, unless

(1) The Director has breached or failed to perform the duties of his or her office under Title 42 PA. Consolidated Statutes 8363, as amended from time to time, (relating to Standards of Care and Justifiable Reliance) and

(2) The breach or failure to perform constitutes self-dealing, willful misconduct, or recklessness. The provisions of this Section shall not apply to the responsibility or liability of a Director, pursuant to any criminal statute, or the liability of a Director for the payment of taxes pursuant to local, state or federal law.

Any repeal or modification of this SECTION shall be prospective only, and shall not affect, to the detriment of a Director, any limitation of the personal liability of a Director of the Association, existing at the time of such repeal or modification.

**Section B. Indemnification of Directors and Officers**

(1) The Association shall indemnify any Director or Officer of the Association who was, or is, a party, or is threatened to be made a party to any threatened, pending or completed action, suit or other proceedings, if such person is

(a) a Director or officer of the Association or

(b) was serving in the capacity of Director or officer at the request of the Association

(2) Such indemnification shall be against all expenses (including attorney's fees), monetary penalties and damages (including settlements from such actions), unless

- (a) the behavior which gave rise to such action is deemed by the Board to constitute self dealing, willful misconduct or recklessness, or
- (b) applicable laws expressly prohibit such indemnification.

**Section C. Payment of Indemnification**

A Director or Officer entitled to indemnification under these sections of the Bylaws, shall submit to the Secretary of the Association a written request for such indemnification within thirty (30) days of receiving notice of legal action being brought against him or her and/or within thirty (30) days of receiving notice of the probable commencement of such legal action. A Director or officer whom the Board deems to be entitled to indemnification under these Sections, shall be indemnified within thirty (30) days of the Board's receipt of his or her written request.

**Section D. Proceedings Initiated by Indemnified Individual**

Unless specifically authorized by the Resolution of the Board of Directors of the Association and directed to do so, a Director or officer who initiates legal action shall not be indemnified by the Association.

**Section E. Indemnification Not Exclusive**

The foregoing indemnification shall not be deemed exclusive of any other right to which the indemnitees may be entitled, both as to action in one's official capacity and as an action in another capacity while holding such office, and shall inure to any such person.

**Section F. Membership Indemnification**

Any member of the Association who commences, initiates and/or pursues any type of legal and/or administrative action against the Association shall, in the event such action is unsuccessful, be responsible for reimbursing and indemnifying the Association for all costs and charges including attorney fees resultant from such legal and/or administrative action.

In addition, in the event the Association is forced to commence any action against any member as a result of the member's failure to adhere to the Community Documents, including by way of example and not limitation the failure to pay charges and/or assessments, the member shall be responsible for reimbursing the Association for all costs incumbent with the action, including attorney fees.

## ARTICLE VI.

### Saving Clause

#### Section A. Saving Clause

In the event any part of these Bylaws shall be found by a court to be invalid or unconstitutional, all other remaining sections shall remain in full force and effect.

#### Section B. Previous Bylaws

These Bylaws shall act to amend the previous Bylaws of the MPPOA and shall not impair or affect any act done, offense committed, or substantial right accruing, accrued, or acquired, or liability, duty, obligation, penalty, judgment or punishment incurred prior to these Bylaws.

## ARTICLE VII.

### Amendments

#### Section A. Amendment

These ByLaws may only be amended by membership vote at the Annual Membership meeting. Amendments may be proposed by (1) a resolution passed by a majority of the Board of Directors or (2) a petition by Members in Good Standing. Members' petitions must (1) identify the proposed amendment (including the ByLaws' existing language and proposed new language), (2) include an explanation of the need for the amendment, (3) be signed by a minimum of fifty (50) Members in Good Standing with each signer's lot and section number identified and (4) be filed with the Secretary of the Association at least ninety (90) days prior to the date of the Annual Membership meeting.

The Secretary shall cause written notice of properly proposed ByLaw amendments, including explanations of the need for the amendments, to be mailed to each Member in Good Standing no less than 30 days prior to the Annual Membership meeting.

Passage of a ByLaw amendment requires the affirmative vote of at least two-thirds (2/3) of all votes cast in person or by proxy.

Modified and edited July 2021