**HOLA  Legal Issues and Questions**

1.            Are our By-Laws appropriate, satisfactory or lacking in any way?

(e.g. a quorum is defined as 15 members.  We have almost 200 members)   By-Laws last approved in 2008.To access the Bylaws go to [www.holarangeley.org](http://www.holarangeley.org/)  Go to Table of Contents , 7b are the Bylaws.

*Very broad question, requiring thoughts from the perspective of  non-profit corporation governance generally and from the perspective of lessons learned from homeowners' association litigation. I can do both, but I also know other lawyers who live and breathe these issues every day. Getting a brand new set of by-laws from one of them might well be  more cost effective than parsing through the existing by-laws to say "this is good"  "this is bad" "this could be better" "do you really want to do this" etc., etc. With the possible exception of #7, this is by far the most expensive task suggested by the list of questions. To do the job right,  whoever prepares amendments to the present by-laws or drafts new by-laws will have to meet with the board to determine exactly how the board/membership wants the organization o be run going forward. There are a large number of decisions to be made and extended discussions on even just a few of them can chew up hours and hours of legal time before any drafting gets done. The last time I did a similar project, it took four three-hour meetings and many e-mails in-between over a six-month period before the Board of Directors got to a final vote on the new by-laws. At $250/hour, the meetings, e-mails, drafting and editing would be between $5000 and $7500 and could easily drift to $10,000 or more, depending non how many directors (and members) want the opportunity to speak their piece or offer additional wording.*

*Many organizations set low quorum requirements because of the difficulty of getting people to come to meetings. You can set the quorum in the by-laws. If you do not, the state statute will set it a 1/10 of the membership, but you can decide or a larger or smaller percentage or use a definite number, like fifteen. The "Age of Zoom" has changed this small-quorum thinking to a degree, because scheduling can be more flexible and far fewer people will be unable to "attend" because of travel concerns. This would cut in favor of a higher quorum requirement for the sake of greater "transparency." Personally, my view is that it is harder to "get things done" in large meetings. so if you set a large quorum requirement, consider giving more authority to an executive committee and decide what kinds of executive committee action would require confirmation by the full board and/or the membership and which would not (This is one of those three-hour discussions).*

2.      What authority does HOLA have to set rules/regulations?  Is this a matter that the Board can determine or general membership?  If it is  general membership is a quorum of 15 appropriate, does this have to be a physical meeting, hard copy mailed question/vote, electronic mailed question or vote, done at the annual meeting?  If a member does not respond to a vote, can the board count that as a “Yes”?

*I'm resisting the temptation to start reading and interpreting the present by-laws, but, in general, yes, an association of this type either does have, or could modify its Articles of Organization and/or By-Laws to give the Board of Directors or members or executive committee the right to create rules and regulations. Typically, rules and regs are drafted by the Board ut, out of an abundance of caution, confirmed by a vote at the Annual Meeting or Special Meeting of the Membership. Some people will argue strongly that a Zoom or Team or other electronic meeting is a physical meeting. Rather than rely on that argument, I'd amend the by-laws to say specifically that such electronic meetings "count" as real meetings. The point is there does have to be a physical location and time or at least a Zoom link and time where a member can "appear" to participate in the meeting. The "not respond" question can be answered either way as long as that way is made clear in the notice of the meeting. "If you do not respond, your vote will be cast in favor of John Paul George and Ringo to be elected as new directors;" or, "If you do not respond and there is a quorum without you, you will be bound by the votes taken at the meeting." In the organizations I have had a say in, we treat non-responders as voting for a specific list of proposals that are set forth in the notice of the meeting. The danger is that if someone later makes a good case that they never got the notice, they could seek to 'withdraw" their vote or have the entire vote set aide.*

*This would all be included in the fee estimate for #1.*

3.      Can a HOLA approved rule or regulation “over-rule” a Town of Rangeley or LURC regulation?

*No, unless the HOLA rule is more stringent, but this is an "it depends" kind of general question; case-by-case basis.*

*Helping write new rules and regulations, including comparing them to the LURC maerial is probably a five hour job ($1250) if you have a lawyer there who will be attending rule-making meetings and writing first drafts of the rules.*

4.      If there is a HOLA approved regulation, restriction, or rule and a member does not adhere or violates the regulation, what authority, power, recourse does HOLA have against the individual?  Or, how can rules be enforced?

*Like #2, this would be included in the estimate for #1. Non-payment issues are usually handled by lien. The organization gets a lien on the homeowners property for non-payment of assessments and can foreclose, just as if it had a bank-style mortgage. Non-monetary failures require court action where the organization asks for an injunction requiring the violator to stop violating or be in contempt of court. The by-laws should be written to require the violator to pay the organization's legal fees if an injunction is issued, but even with such language, we have to recognize that Maine courts generally do not like provisions requiring one party to pay the other party's legal fees, so it is always a case by case determination. You could set up a system where there is a set fine for violations and a lien on the property if the violator fails to pay the fine, but a by-law provision imposing imposing fines and penalties should be ratified by the full membership and maybe even by unanimous vote (research required).*

5.      The Deeds currently vary extensively with regards to “rights”, building codes, waterfront rights, etc.  If a property is in a Plantation and under LURC authority, what takes precedence; LURC’s regulation or what may be stated in the Deed?   Same question if the property is in the Town of Rangeley.

*The government always wins unless there's a grandfathering argument or unless the HOLA rules are more strict than the government rules. As with #3, it's really a case-by-case determination. Plan on four hours ($1000) for me to review a representative sampling of the deeds and related LURC/Town regulations and suggest a course of action.*

6.      For all lots within an approved LURC subdivision are the covenants and restrictions the same?

*Not necessarily. You have to read the approval including any notes that appear on the approved subdivision plan. If you can get me copies of the plan(s) and approval(s), I'd probably need two hours to read them and another hour to read the application and any meeting minutes that might be referred to in the approval or on the plan; call it $750. Remember, LURC can require that certain covenants and restrictions be made applicable to some or all of the lots, but that does not "take away" covenants and restrictions that appear in the deeds that might have requirements that go beyond the LURC restrictions or simply deal with different issues. Those deed covenants may be different for different lots in the subdivision. In deciding cases on these issues, courts will often use the "common scheme or plan" rationale. If 80 out of 85 lots have certain restrictions and the last five do not, with no apparent reason, the court might impose those restrictions on the last five lots.*

7.      Can all of the Deeds be rewritten to standardize rights, rules, wording, etc.?

*Yes, unless there is someone other than the association and lot owners who has the right to enforce the conditions and restrictions. In those cases, the potential "enforcer" would have to agree, too.  100% of the lot owners would have to agree. Mechanically, the non-HOLA enforcers, including all of the lot owners, would have to release, by deed, their rights to enforce to HOLA and HOLA would give release deeds to the property owners releasing them from the restrictions HOLA could have enforced .Simultaneously, all the lot owners would give deeds to HOLA  agreeing to be bound by a new set of covenants and restrictions. The new covenants and restrictions would not have to be recited in each deed, but would have to make a reference to the a new Declaration of Covenants and Restrictions that HOLA will have recorded in the registry of deeds. All of this would have to be approved by a title insurance company underwriter to be certain the company will insure future conveyances of the lots and insure that the lots are subject to the restrictions. Some title insurance underwriters might require that every owner actually convey their  lot to HOLA and HOLA  convey them all back subject to the new restrictions. The time for this type of work is largely paralegal. If someone else does the deed printing, paper shuffling, mailing and the preparation of the transfer tax declarations, with some help from me, I could probably conduct the title insurance company negotiations and design the overall transaction structure and generally oversee the work in about ten hours ($2,500), but that assumes the Board of Directors carries the burden of convincing all the lot owners to go along. A more open-ended fee estimate is determining who, other than HOLA and other lot owners, has enforcement rights with respect to the covenants and conditions in each of the deeds to each of the lots. It could be another ten hours but could also be another fifty hours, if we need to do mini-title searches to go back two or thee deeds for every lot to see who might need to "sign off."*

Hope this helps, John.

Cheers,

Rick

Richard W. Smith, Esq.

*Expert Real Estate Title Analysis for Litigators and Conveyancers*

*Title Insurance Policy Coverage Dispute Resolution for Insurers and Policyholders*

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