

Proposed Bylaw and Covenant Changes for Malvern Club, Inc.

The original Covenants for Malvern were recorded in November of 1970 and modified in April 1972. With the exception of periodic additions there has been no known comprehensive review since that time. Based on this and at the request of a Malvern member, the Board of Directors reinstated the Rules Committee and charged them with reviewing and making recommendations to change Malvern's existing restrictions and/or by-laws, if necessary.

Board President Monnat appointed Board member Kaplon to chair the committee. The committee includes a number of other residents and they have held open meetings on a weekly basis since July 2008. The committee then presented their recommendations to the Board in January and revised recommendations in February.

*The recommendations are now presented below for your review prior to the Annual Meeting on April 25th. It is **not** intended that the membership vote on these proposed changes in April but only that the Board hear your comments and recommendations with respect to these changes. Future actions will be based upon this discussion.*



: Existing wording is black; **New wording is bold, underlined, blue;** ~~Deleted existing wording is red, line through;~~ *Rationale is italics, green*

BY-LAW III, MEMBERSHIP

SECTION 2. MEMBERSHIP REGISTER. **(a)** Membership shall be duly recorded on a Membership Register. This Register shall contain the names, addresses, and telephone numbers of all members; the date of acquisition of membership; the name in which the membership is held, if held in joint ownership; the amount and date of each assessment fee paid; and if applicable, the date and cause for suspension of membership in good standing. ~~In addition to the inclusion of the foregoing on the Membership Register, membership shall be certified by issuance, upon receipt of assessments as required, of an identification card to each member specifying the name and current lot number (s).~~

(b) Upon receipt of assessment payment residents shall receive two vehicle identification decals to be displayed on the vehicle's rear or back window until such time as the vehicle is sold or the property vacated. The Association may grant additional decals upon request.

***Rationale:** Eliminate the requirement for identification cards for each member and instead provide vehicle decals to help validate those using common areas.*

BY-LAW IV, PROPERTY RIGHTS: RIGHTS OF ENJOYMENT

SECTION 3. INFORMATION TO THE TREASURER. **(a)** All members shall notify the treasurer, in writing, of any changes in address, telephone number, status of Malvern Property ownership, and family membership.

(b) All members shall notify the Treasurer, in writing, when their property is leased, including the number of tenants, names, and contact telephone number and a statement declaring that the tenants have been provided a copy of the documents and rules and regulations of Malvern Club, Inc. The duration of the lease shall not be for less than one (1) year without written approval of the Association.

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***Rationale:** Add this section to state property owner obligations when tenants occupy the property. To inform Malvern Club, Inc. of changes in residency, which is needed for the use of recreational facilities, to make certain that tenants understand the rules and regulations that apply to residents and to protect property values by prohibiting short term leases. This does not in any way conflict with The Deed of Dedication #4, which clearly states that all lots must contain only one single-family residence and does not allow for apartments within residences or on lots.*

BY-LAW V, ORGANIZATION

SECTION 1. PURPOSES. The purposes of this organization are those set forth in the Articles of Incorporation and Deeds of Dedication and further:

To own, operate, conduct, and maintain a membership club, clubhouse, and recreation areas for the use centers, and recreation and assembly rooms, and other facilities for the purpose of providing for the members' entertainment, sport, recreation, and instruction of all kinds; to furnish, equip, and decorate such clubs and clubrooms; to promote social and friendly activities among the members of such club or clubs and their guests and to provide and supply any and all appurtenances that may be necessary, useful, or convenient for the carrying on of sports, recreations and diversions of all kinds and descriptions for the entertainment, welfare and convenience of the members of such club or clubs and their guests and friends.

***Rationale:** Revises the obligation of the association to provide facilities for members' recreation to be more in tune with current usage.*

BY-LAW V, ORGANIZATION

SECTION 2. POWERS. In fulfillment of these purposes, the Club shall have the power further to:

- (a) Contract for all services and expertise, such as attorneys, engineers, auditors, tax consultants, architects, etc. as may be required in connection with litigation concerning the Club;
- (b) Employ such personnel as may be required;
- (c) Establish budget formation and approval procedures;
- (d) Enforce collection of assessments owed by initiating court proceedings against any members whose payment thereof has not been made within sixty (60) days of the date of notice of assessment.
- (e) Restrictions, rules and regulations may be enforced by any method normally available to the owner of private property in Virginia including but not limited to application for injunctive relief or damages. The Club, or its successor or the owner of any lot may bring such action.
- (f) The Club shall also have the power to suspend the right to use facilities or services, assess charges against and suspend voting rights of any member for any violation of the declaration or rules and regulations.

The foregoing statement of corporate purposes and powers shall not be construed as restricting or limiting in any way the general powers of this corporation, or their exercise and enjoyment, as they are defined in the Articles of Incorporation or expressly or implicitly granted by the laws of the Commonwealth of Virginia.

***Rationale:** Add this covenant to state that Malvern Club, Inc. or any member thereof, in accordance with the Code of Virginia, may enforce the provisions of the Deed of Dedication and By-laws.*

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BY-LAW VII, BOARD OF DIRECTORS

SECTION 3. REMOVAL. A director may be removed from office by a vote of 75% of all eligible votes of the Club. A director who is absent for three(3) Board meetings in any six(6) month period may be removed by a majority vote of the Board of Directors. In ~~which~~ each case, the vacancy shall be filled pursuant to the provisions of Section 2 above.

Rationale: Add language that allows the board to remove a director who fails to attend 3 regular meetings in any 6-month period to ensure that the director is participating in the process of running the corporation.

BY-LAW VIII, OFFICERS

SECTION 3. PRESIDENT. The president shall preside at all meetings of the corporation or the Board of Directors at which he is present, shall exercise general supervision of the affairs and activities of the corporation, shall co-sign checks for more than \$2,500, and shall serve as a member ex-officio of all standing committees.

Rationale: To add wording that allows the President to co-sign checks for more than \$2,500. This is currently incorrectly placed in the Deed of Dedication.

BY-LAW VIII, OFFICERS

SECTION 8. APPOINTMENT OF COMMITTEES.

The Board of Directors shall, by appointment from ~~among~~ the Club members, annually designate ~~chairmen~~ chairs of the following standing committees: ~~(a) auditing, (b) architecture and community goals; (c) maintenance, safety and security, and (d) operations~~

1. Architecture

2. Grounds/lake

3. Clubhouse/pool/playground

4. Roads

5. Rules/Covenants

In addition, the president may appoint chairmen of special committees as he may deem ~~desirable~~ necessary and shall provide for their powers and duties. Such appointments shall be subject to the approval of the Board of Directors.

Rationale: Revise to be more in line with current committee operations and to add rules/covenants as a standing committee to assist with amendments, interpretations, education and questions.

END OF PROPOSED BY-LAW CHANGES

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START OF PROPOSED COVENANT CHANGES

COVENANT #2

The lots ~~designated~~ in Malvern ~~the~~ subdivision shall be used for residential purposes only, ~~and no~~. No profession, business, trade, enterprise or commercial activity of any kind or ~~any~~ nature shall be conducted or carried ~~on~~ out upon any said lot or within any existing dwelling or hereinafter erected thereon, excepting those defined as a By-Right Home Occupation by the Madison County Zoning Regulations for A1 areas, for which written approval of the Association must be requested. ~~without the express written approval of the developer or the Property Owner's Association.~~

Rationale: Revise to emphasize the residential status of Malvern and to allow the Board to approve home based occupations, primarily home offices, under specific conditions that do not change the character of Malvern or violate Madison Zoning Ordinances as follows: Home Occupation (paraphrased from the definition contained in the Madison County Zoning regulations) is an occupation limited to persons who reside on the premises where there is no evidence that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than a dwelling or accessory building thereto; conducted solely within the home without employees other than those who reside on the premises and without any customer traffic to the home, and; shall use no mechanical equipment over 5HP other than that which is normally used for domestic or household purposes.

COVENANT #5

5. No ~~structure, whether~~ residence, accessory building or other improvement structure shall be constructed upon any lot without the prior written approval of the Association. ~~or maintained upon any building lot and no~~ No structural alterations, excavations, walls, fences or other improvement, which alter the exteriors of any property shall be made or done without ~~to the exterior of the structure shall be made unless there shall have been first submitted to and~~ written approval ~~obtained from~~ of the ~~Property Owner's Association,~~ of the Appropriate Madison County building permits shall be submitted with the complete final plans, specifications and design thereof showing the exterior, [comma removed] height, elevation, building material, color scheme, and further setting forth the location of said structure or improvement plotted on a plat of said lot. All such structures shall be set back ~~from~~ at least one hundred feet from the edge of all roads and at least sixty feet from all side lot lines ~~unless prior written consent to locate such structures elsewhere is obtained from the developer or the Property Owner's Association.~~

Rationale: Reword to clarify property owners obligation for proposed building or improvements to property in order to pass architectural review and approval and not violate Madison County Zoning Ordinances.

COVENANT #7

No structure of a temporary character, trailer, house-trailer, tent or other outbuildings shall be used or permitted on any lot or in any area at any time as a residence, either temporary or permanent, ~~without the express written approval of the developer or the Property Owner's Association.~~

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Rationale: To remove exceptions.

COVENANT #10

No signs shall be erected on the common areas, including road easements, excepting by the Property Owner's Association. No ~~sign shall~~ signs may be erected on ~~any lot other than one~~ individual lots except the following: a sign not to exceed two(2) square feet in size may be erected designating ~~the identity of the owner thereon, of said lot.~~ and in no case shall a sign exceed in size two square feet and the design of such sign shall be subject to the prior approval of the Property Owner's Association or the developer. A traditional real estate sign not to exceed four(4) square feet may be erected on the lot that is for sale and must be removed within one(1) week of the final sale of the property. A construction company sign not to exceed four(4) square feet may be placed on the lot only during construction. Any other signs require written approval of the Association.

Rationale: Revise to clarify the posting of signs on common property and owners lots. To allow residents to post temporary real estate and construction signs on lots, while prohibiting them from posting signs along roadways and other common property.

COVENANT #12

Owners of occupied or unoccupied lots shall at all times keep and maintain their property ~~in this development~~ in an orderly manner to prevent its becoming unsightly, hazardous, or a nuisance--and shall prevent and eliminate an accumulation of any garbage, ~~rubbish,~~ refuse, debris ~~and or~~ other ~~like material~~ materials that are deemed objectionable on the premises.

Rationale: Revise to clarify owners' obligation to maintain their property in a manner which preserves the safety and quality of the neighborhood.

COVENANT #13

No cutting of ~~any~~ evergreen trees whose trunk diameter shall be in excess of four inches ~~nor or~~ deciduous trees whose trunk diameter shall be in excess of six inches shall be permitted without the prior written approval of the ~~Property Owner's Association or the developer.~~ Malformed, damaged, dead, rotting, or those trees that threaten property may be cut and removed.

Rationale: Add language to allow "problem trees" to be removed without approval of the Association.

COVENANT #17

No hunting shall be allowed upon any lot or the common area, areas, and no firearms or weapons of any kind shall be discharged in the subdivision ~~except as authorized by the Property Owner's Association.~~

Rationale: To provide for the safety of the residents no hunting or use of weapons shall be permitted within the subdivision.

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COVENANT #18

No animals, livestock or poultry of any kind shall be raised, bred, kept or maintained for commercial purposes. Common household pets shall at all times be the responsibility of the owner, shall be under the owner's control, and shall not be allowed to become a nuisance or a danger to the community. Dogs that become a problem to the community may become subject to a leash requirement by order of the Association.

Rationale: Renumber and add this covenant to clarify owner's obligation regarding pets.

COVENANT #19 [renumbered only]

~~18.~~ **19.** Malvern Club, Inc. is designated as the Property Owner's Association, and it will be responsible for the upkeep and maintenance of all lakes and other common areas to be acquired from the Developer. Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by said Corporation shall be a member of the Corporation, provided that such membership shall not extend to those holding such interest only as security for an obligation, and provided further that the Developer shall not be required to be a member of said Corporation nor shall it be subject to such assessments.

END OF PROPOSED COVENANT CHANGES

START OF PROPOSED CHANGE TO AMENDMENT TWO RECORDED IN INSTRUMENT NUMBER 050001571

~~SECTION 3. PRESIDENT~~

~~The president shall preside at all meetings of the corporation of the Board of Directors at which he is present, shall exercise general supervision of the affairs and activities of the corporation, shall co-sign checks for more than \$2,500, and shall serve as a member ex-officio of all standing committees.~~

Rationale: Strike this section and enter it in the By-law revision VIII.

Revisions:

04-12-2009: Bylaw VII, BOARD OF DIRECTORS, Section 3, REMOVAL – changed the designation of the first sentence from being deleted wording to existing wording that is to remain

04-13-2009: Page formatting