

**DECEMBER 2014 ARROWCREEK HOMEOWNERS UPDATE FROM THE ACHOA  
PRESIDENT – CORRECTION TO PREVIOUS STATEMENTS – February 8, 2015**

- Develop and draft a proposal for Board of Directors Approval concerning the Ballot Procedures that will be followed as per NRS.
  - Independent Ballot counting by McClintock.
  - Ballots forwarded by Associa Sierra North as the Community Manager to each lot owner.
  - ACHOA member Ballots will be accumulated in a secure area and will be counted by McClintock after an agreed upon period of time with legal counsel approval. The Board will continue to solicit Ballots from ACHOA members that have not voted. [Eliminate the following response - Ballots will be accumulated in a secure area and ballots will not be opened or counted until a minimum of 650 to 700 Ballots have been received. The actual ballot validation number has not been determined by the ACHOA Board of Directors but will be in the next few weeks subject to legal counsel review.]
  - The Board will make numerous attempts and allow sufficient time to obtain votes concerning the governing documents – CC&Rs and Bylaws and the loan for the purchase (encumber common areas). The 50% plus one threshold will be required to approve the CC&R changes, Bylaw Changes and Loan Agreements. [Eliminate the following response - The Board will determine the threshold for number of ballots received .This threshold number needs to be determined since there will be negative and positive votes for the resolutions and we need to reach 50% plus one to decide the issue either way.]
  - [Eliminate the following response - Until the Ballot threshold is reached, the ACHOA community can receive a report of lots that have not voted and the community can solicit those lot owners to vote. Once the threshold is reached all electioneering activities cease and the votes are counted.]

**18. AMENDED FAQ – PREVIOUS RESPONSE ELIMINATED AND FOLLOWING LANGUAGE PROVIDED - February 8, 2015**

**What are the changes to the CCRs that have to be made in order for the HOA to be allowed to do what the board is recommending? Don't the Articles of Incorporation have to be changed? If not, why not?**

The ACHOA Board and ACCC have been advised by board counsel that 50% plus one votes are needed to amend the ACHOA CC&Rs. Board counsel also states that the ACHOA Bylaws require a majority of votes to be amended. NRS 116.3112(1) provides that at least a majority of Members vote in favor to encumber common areas. There is nothing that would suggest that a majority of votes is necessary to defeat any proposal but a majority of votes will be needed to approve changes for the ACHOA CC&Rs and the ACHOA Bylaws and any loan or encumbrance against the ACHOA common area assets. Therefore, a “two thirds” vote is not required for the following governing documents – CC&Rs and Bylaws. A “two thirds” membership vote is not required to encumber common areas.

The CC&R changes include modifications that allow the ACHOA to incur a debt after the vote of the ACHOA membership, the participation and ownership of a “For Profit” entity like the proposed operating enterprise, and other needed changes. Draft CC&Rs are being worked on by the ACHOA legal counsel and will be provided for all ACHOA members review.

It is not clear at this juncture whether the Articles of Incorporation will need to be amended. The ACHOA Board and ACCC have been working diligently with its accountant to determine whether any tax filing status will change if the proposed operational enterprise is approved by the ACHOA membership. Under Nevada law as explained by legal counsel, a not-for-profit (NFP) like the ACHOA can be a member of a for-profit (FP) enterprise. NRS 82.131(7) specifically governs NFP corporations like the ACHOA and it states that the entity may “. . . . [c]arry on business for profit and apply any profit that results from the business to any activity in which it may lawfully engage.” It is being confirmed by tax authorities that if the operating enterprise profits are incorporated into the ACHOA's operating and reserve budgets to offset monthly assessments and fund capital projects for the ACHOA that the NFP status remains and there is no change to the Articles of Incorporation.

The ACHOA Board and ACCC understand that nothing in the Nevada law would prohibit the Articles of Incorporation from being dully amended as per NRS 82.356, NRS 82.351, and NRS 82.131. The ACHOA Board and ACCC have been advised that Chapter 116 of the Nevada Revised Statutes does prevail if there is a conflict with Chapter 82 of the NRS. NRS 116.3101 unequivocally provides that an association may be organized as either for-profit (FP) or not-for-profit (NFP). The ACHOA Board and ACCC have been advised that NRS Chapters 82 and 116 allow a common interest community to be organized to carry on business for profit.

The ACHOA Board and ACCC agree that if the Articles of Incorporation as per Section IX are to be amended that an approval vote from the ACHOA membership would require two-thirds of the members approving the changes in the Articles of Incorporation only. At this time, it is unclear that the Articles of Incorporation will need to be amended as described above. As further information is developed, the ACHOA Board will timely provide the information to the ACHOA membership.

Additional information was provided to the ACHOA Board and the ACCC specifically to the FOA Letter of Intent and potential ACHOA member approval of the purchase of "The Club At ArrowCreek" concerning Article IX of the Articles of Incorporation for the ACHOA which states ". . . . permit the net earnings of the corporation to inure the direct financial benefit of any officer, director, member of the corporation, or the Declarant." In response to this inquiry, the ACHOA Board and ACCC respond as follows:

1. No member of the ACHOA Board and ACCC are investors in the FOA LLC. There will be no direct financial benefit to any officer, directors or ACHOA member of the corporation.
2. The mere interest of the FOA purchasing out of bankruptcy the ArrowCreek Golf Course owned by Aspen Sierra does not create any direct financial benefit subject to Article IX.
3. If the ACHOA Membership approves the purchase of "The Club At ArrowCreek" from the FOA, the financial benefit to the FOA above and beyond costs of operation, holding and borrowing regarding the golf course assets will inure to the FOA, LLC and not members of the ACHOA corporation (ACHOA homeowners).

4. Please note that the FOA, LLC is not a member of the ACHOA Corporation and as such the potential 12% per annum interest will accrue to the LLC only.

#### **AMENDED RESPONSE TO ACHOA MEMBER QUESTION #5 – February 8, 2015**

5. **There is a very good (important) reason why a HOA is a non-profit organization and we want to keep this way.**

**Revised response:** The ACHOA Board of Directors understand your commitment to keeping the ACHOA as a not-for-profit entity. It is not clear at this juncture whether the Articles of Incorporation will need to be amended to change from a not-for-profit (NFP) to a for-profit (FP) as previously thought. The ACHOA Board and ACCC have been working diligently with its accountant to determine whether any tax filing status will change if the proposed operational enterprise is approved by the ACHOA membership. Under Nevada law as explained by legal counsel, a not-for-profit (NFP) like the ACHOA can be a member of a for-profit (FP) enterprise. NRS 82.131(7) specifically governs NFP corporations like the ACHOA and it states that the entity may “. . . [c]arry on business for profit and apply any profit that results from the business to any activity in which it may lawfully engage.” It is being confirmed by tax authorities that if the operating enterprise profits are incorporated into the ACHOA’s operating and reserve budgets to offset monthly assessments and fund capital projects for the ACHOA that the NFP status remains and there is no change to the Articles of Incorporation.

The requirements for the ACHOA to remain as a NFP or change to FP will be fully disclosed when the due diligence and vetting process has been completed.