

Caracol Assn By-laws (english)

13/05/89 13:39

Association's By-Laws

Los Residentes de la Peninsula Caracol, A.C. By-Laws
Translated from Spanish to Literal English May 13, 1989
Translated from Literal English to Comprehensive English

Contract number- 5638 Volume CLXX
In the city and port of Guaymas, Sonora, Mexico, on May 11, 1993, before me is Arnulfo Salas Castro, Notary Public Number 10.

Representing Los Residentes de la Peninsula Caracol is: German Ustariz, Jesus Calderoni Guerra, Page Greer, Nancy Howard, Beverly Robertson Inaker, Maureen Mellon and David Howard Rosser. These last five individuals do not know Spanish and have designated as their interpreter German Ustariz, who knows its contents and agrees to accurately represent the contents. All the individuals present I know personally and am able, in my judgement, to sign, to bind, bear witness to all of this; and as their interpreter, say that: They agree to enter into a civil association contract in accordance with the following background and by-laws of Mexico.

BACKGROUND

1. The founders state that they applied for and received from the Exterior Relations Bureau permit number

26000532 (two six zero zero zero five three two), dated March 11, 1993, which was shown to me in its original form and are attached to the appendix folder of this contract, Exhibit "A", which is the literal English translation. A seal on the upper left hand margin reads: "United States of Mexico. The national Seal is in the center. Exterior Relations Bureau. Mexico. Permit: 26000532. Record: 9326000529. Folio: 541. The application, presented by C. Jesus Calderoni Guerra, applied for and received authorization to use the name "Residents of the Caracol Peninsula". This permit will be under the condition that the following must be added to the articles of association: the clause of Exclusion of Foreigners stated in Article 30 and the agreement stated in Article 31, both from regulations in the law to Promote Mexican Investment and Control Foreign Investment. The notary public or commercial broker with whom the permit will be registered will give notice to the Exterior Relations Bureau within 90 working days from the date on which the contract regarding the use of the permit or, of the agreement regarding the previous paragraph, is authorized. The above mentioned is based on the Constitutional Article 27 Fraction I, first of the Organic Law, seventeenth of the Law to Promote Mexican Investment and Control Foreign Investments, and under the terms of Article 28 in Fraction V of the Organic Law of the Federal Republic Administration. This permit will not be in effect if not used within 90 working days from the expiration date and it does not affect Article 91 of the Law of Labor and Protection of Industrial Property. Lic.

Alejandro Sobarzo Loaniza. An eligible signature. Page 1. (Treasury) Report of payment of certification right, replacements, etc.I. Authorized office 26II. Tax payer's information - Jesus Calderoni GuerraIII. Office - Exterior Relations Bureau. Judicial Services. Permit in agreement with Fractions I and IV of Constitutional Article 27. Amount Due 12,000. No. 2917371. Paid. Observing the permit above, the individuals appearing grant the following:

BY-LAWS

CHAPTER ONE

By the Nature, Name, Nationality, Objective, Duration, Residence and Endowment of the Association

Article 1 The Association is of civil nature and is established in accordance with the specifications stated in Articles 2955 through 2973 of the Civil Code for the State of Sonora, and in accordance to the unanimous resolution adopted by the General Assembly/ Consequently it is a civil association, since it does not have a prevailing economic nature, it does not pursue any lucrative ends and its' objective is the fulfillment of the common purposes permitted by law and stated as follows:Article 2 The name of the Association is "Los Residentes de la peninsula Caracol" followed by the words "Asociacion Civil" or the abbreviation "A.C.". Los Residentes de la Peninsula Caracol, A.C.Article 3 The nationality of the Association is Mexican, regardless of the nationality of the membership who form it. Article 31 from the Mexican law

promotes Mexican investment and controls foreign investment and agree to the following: "every foreigner states herein or who at a later date acquires an interest or social participation in the Association will be considered a Mexican citizen, and as such, will not be able to invoke the protection of his or her government. In case of doing so, he or she will be punished and the interest or participation mentioned will be taken away. This action will be taken in order to benefit the Mexican Nation".

Article 4 The duration of the Association is 99 years.

Article 5 The objectives of the Association are as follows:

- a. To defend the general and personal interests of the members as long as they are within the laws of Mexico currently in effect.
- b. To represent members before any kind of federal, state or local authorities as well as before any other judicial or national body, and to take the necessary action for the accomplishment of social purposes.
- c. To study the various problems that affect community life of the Caracol Peninsula and to make the best resolutions by making good judgement and taking adequate measures to provide a secure solution.
- d. To resolve conflicts among neighbors on the Caracol Peninsula. The Association is appointed by both parties as their arbitrator. All parties agree that they will accept the decision of the arbitration and will not use the judicial system or authorities for further legal action.
- e. To enter into any kind of contract or act, whether of civil, commercial or judicial nature relating to social purposes.
- f. To acquire all assets needed to fulfill its' social purposes.
- g. To study, to promote and to carry out any kind of forecasting, planning, organizing, integrating, ordering,

improving efficiency of public services, as well as the improvement of the community conditions of the Caracol Peninsula. Article 6 The residence of the Association is in Nuevo Guaymas, Guaymas County, Sonora, with no other offices or branches in any part of the Mexican Republic or abroad and, as such the Association and its' members will be subject to the laws of this jurisdiction and will agree to any other privilege that the law may grant them. Article 7 The Association is composed of the following working capital: a. Yearly fees from the members. b. Extraordinary payments members pay when needed. c. Contributions of any nature received from the members or unrelated individuals. d. Assets from any title the Association has at the moment of its establishment and those acquired in the future. e. Donations made by private parties, public or private institutions. Association's By-Laws Article 8 The assets of the Association are to be used strictly for its purposes, thus no member or any individual foreign to the Association will be able to claim right over said assets.

CHAPTER 2 *Member*

Article 9 Members of the Association will be all those individuals who live within the Caracol Peninsula Development, Nuevo Guaymas, Guaymas County, Sonora, whether they are a permanent or part-time resident, and that fulfill the requirements of this Article 9. The following are existing member categories: a. Founders of the Association b. House or lot owners and residents, and c. Honorarium. Members in any of the three categories will be subject to the following requirements: 1. Express in writing his or her willingness to be part of the

Association; respects its by-laws and the regulations that arise from it, and he or she must receive the Board of Directors' approval to join the Association.2. Be up to date on yearly fees.3. Honorarium members will be those individuals, even though they are not residents of the Caracol Peninsula Development, the General Assembly grant them this distinction. ***1/9/96 amendment struck the original 1 & 2 and renumbered... #3 is now 1, etc.*

CHAPTER 3*Rights of the Members*

Article 10 The members will have the following rights:a. To enjoy all the services, facilities, goods and common areas of the Caracol Peninsula Development.b. To assist, speak and vote in the General Assembly.c. To be part of the General Assembly, of committees or any other element of the Association.*** *d. MISSING FROM EXHIBIT A (LITERAL ENGLISH TRANSLATION)*e. To present to the General Assembly propositions to the improvement and development of the Association.f. To notify the Board of any irregular activity that endanger the Caracol Peninsula Development's Members or Neighbors.g. To be represented by the Association and to receive from it support needed to fulfill common purposes.h. To request or receive information about the activities of the Association.i. To enjoy the benefit and rights the by-laws grant, and members agree on.

CHAPTER 4*The Obligation of the Members*

Article 11 The following are the members obligations:a. To faithfully comply with the by-laws.b. To pay the yearly fees needed to maintain all common areas and services. This

fee will be established according to a yearly estimate. This fee is due at the General Assembly Annual Meeting and is delinquent 30 days from that meeting date (** which will be held the second Saturday of January).c. To pay the needed extraordinary fees that will be established according to previously made estimates for similar cases.d. To respect and carry out the construction regulations outlined by the Caracol Peninsula Development, whether as a property owner or property trustholder, as well as leasehold and to keep a copy of the regulations that are properly signed for Member's records.e. To pay the proportionally corresponding fees for goodwill that benefit directly or indirectly the Caracol Peninsula areas whose work could be performed by the adjoined neighbors, by the County, Federal or State authorities. Likewise, the members agree to pay the yearly fees described by local authorities for the services of trash collection, police, gardening, street maintenance, areas of recreation centers, etc.f. To thoughtfully carry-out the conditions and responsibilities assigned by the General Assembly and/or Board of Directors.g. To attend General Assembly meetings.h. To immediately notify the Board of Directors about matters of interest related to the Association or anything that may impact the Association.* i. To contribute and support the Association and avoid all activity contrary to the purpose of the Association.* j. To understand that all contributions or fees, proposed by the Board of Directors, must be approved by the General Assembly.* k. To abstain from voting at the General

Assembly when an issue affects a member's personal interests exclusively.

CHAPTER 5*Member's Sanctions or Punishments*

Article 12 The following sanctions or punishments will be applied to the members that do not fulfill these requirements and obligations stated in Chapter 4:a. The member that does not pay his or her yearly fee within 30 days after the Annual General Assembly is held, will pay a monthly monetary interest of 5% until the fee is paid.* b. In case the member does not fulfill his or her financial obligations for a period longer than 6 months, the legal representative of the Association has the right to proceed against him or her and demand the payment of fees by legal means.

CHAPTER 6*Separation and Exclusion of Members*

Article 13 A member may be excluded from the Association with agreement of the General Assembly in the following cases:a. Grave violations of the by-laws, purposes of the Association, and moral principals of the community of the Caracol Peninsula Touristic Residential Development.b. Failure to pay the fees stated in Chapter 4 of these by-laws.*Article 14 Any members that voluntarily leaves the Association or is excluded from the Association will lose all rights within the Association and the moral principals of the community of the Caracol Touristic Residential Development.

CHAPTER 7*The Bodies of the Association*

Article 15 The bodies of the Association are:a. The General Assemblyb. The Board of Directorsc. The Enforcement Committeed. Special Committees

THE GENERAL ASSEMBLY

Article 16 The supreme power of the Association resides in the General Assembly of its members.Article 17 The meetings of the General Assembly, whether regular or extraordinary, will take place at the location and time stated by the Board of Directors.Article 18 The regular General Assembly will hold its annual meeting **the second Saturday of January*. The Board of Directors will make every effort to mail notification to the members 15 days prior to the meeting. Extraordinary meetings can be held at any time subject to the approval of the Board of Directors, or by the request of at least 20% of the members.Article 19 All notices, regarding regular or extraordinary meetings, should be made through simple written communication sent to the member's registered address or by telephone. In case of an emergency, the time period for notification of the meeting can be reduced according to the Board of Directors' judgement.Article 20 Ordinary or extraordinary General Assemblies are considered legal when 51% of the members are present. If failure to meet this requirement, a second notice must be made. The meeting could be held on the 5th consecutive day at 10:00 a.m., unless this day falls on a holiday, then the meeting will be held the next working day.*Article 21 If a quorum is not present, a regular or extraordinary assembly will be held after a second notice and regardless of the number of

members present, it will represent quorum needed to propose and vote on any resolution that will be valid even for the absent members. Article 22 In the meetings, the resolutions will be approved only by the majority of votes of the members present. In case of a tie, the President of the Board of Directors of the Association will cast the deciding vote. Article 23 The President of the Board of Directors will preside over all General Assemblies. In his or her absence, the Vice President will preside at that particular meeting, in case of his or her absence, the Secretary will preside. In the Secretary's absence, the General Assembly will assign someone. Article 24 The members may be represented at the General assembly by a proxy or other legal instrument, by any member or individual that is of legal age. Article 25 During the regular General Assembly the following business will be conducted: a. To accept or reject any member. b. To nominate individuals who will be members of the Board of Directors, Enforcement Committee and Special Committees. c. To vote on the Board of Directors, Enforcement Committee and Special Committees. d. To accept or reject the reports made by the Board of Directors and to make necessary resolutions. e. To accept or reject the reports made by the Enforcement Committee and to make the necessary resolutions. ** f. To study and analyze working programs and budgets made by the Board of Directors, and modify, if necessary, and approve the budget for the upcoming year. The approved budget may be modified by the new Board of Directors subject to approval by the General Assembly at an extraordinary

meeting called specifically for that purpose.g. To study and analyze the reports made by Special Committees.h. To study and analyze all matters of general interest submitted for consideration and related to the Association, and all that pertains to the success of the Association's purposes.

Article 26 During regular or extraordinary General assemblies the following matters may be addressed:

- a. Legislate new amendments, reforms or additions to those in existence.
- b. Merge with other associations.
- c. Dissolve the Association.
- d. To dissolve the Association, liquidators must be appointed and resolution regarding the disbursement of the Association's assets must be made; and
- e. Any other important matters listed on the Agenda.

Article 27 During any meeting (General Assembly or Board of Directors), only those matters listed on the Agenda may be discussed.

Article 28 The motions made during a General Assembly meeting will be recorded in a book, and must be signed by the President and Secretary of the Assembly. Only the documents that have been voted on and approved may be added to the appendix of the book. These records must be registered with the official notary if needed.

Article 29 In case dissolution of the Association is desired, at least two thirds of the members present will be required.

Article 30 During the Annual Meeting, the General Assembly will elect: the Board of Directors, Enforcement Committee and Special Committees. They will hold office for a period of one year, unless they are substituted. They can be reelected for one more year, or as long as the Assembly agrees.

Article 31 The following process will be observed in

order to elect the members of the Board of Directors, Enforcement Committee and Special Committees:

- a. List candidate (s) proposed for each office. All candidates must live within the Development.
- b. Members can nominate a candidate if the nominated member agrees to fulfill the requirement stated in clause 31a.
- c. The list of candidates will be submitted for a vote by the Assembly and four counters, specifically assigned by the Assembly, will count the votes; and
- d. The result of the elections will be given immediately to the Assembly, in order to allow the elected Board of Directors, Vigilance Committee, and Special Committees to assume office.

THE BOARD OF DIRECTORS

Article 32 The Board of Directors will be the administrators of the Association, and it will limit itself to those stated by-laws and to the rules that the Assembly established in this manner. The Board of Directors will consist of the following offices:

- a. A President
- b. A Vice-President
- c. A Treasurer
- d. A Secretary

Three Directors

Article 33 Depending on the office, the absence of any Board of Directors must be substituted by his or her immediate subordinate. If there is no immediate subordinate, any member in good standing may be designated by the member intending to be absent.

Article 34 It will be the responsibility of the Board of Directors to represent, direct and administrate the Association and carry out all actions needed to improve the neighborhood. No member of the Board of Directors shall obligate the Association to any payment not included in the budget without prior approval of at least five members of the

Board of Directors, and the total of said expense(s) shall not total more than an aggregate of \$500 US dollars.

Article 35 The Board of Directors will have full authority over the control, administration, litigation and collection activities, as stated in the first three paragraphs of Article 2831 of the Civil Code of the State of Sonora; including other kinds of powers, as well as the special ones that would need a special clause in accordance with the law; and the authority to grant and revoke general and special powers.

Article 36 The Board of Directors will have the authority to:

- Decide on the admission of new members and to suggest to the General Assembly the exclusion of members, according to those stated in these by-laws.
- Decide on dates of regular and extraordinary meetings.
- Inform the Assembly about the matters that will be discussed.
- Inform the Assembly about activities any time a member requires it.
- Suggest to the assembly the fees to be paid by the members.
- Grant and revoke authorities.
- Perform any other activity that may be necessary to fulfill the responsibilities stated in the by-laws.

Article 37 The Board of Directors will hold regular meetings at least once a month; and extraordinary meetings, when the President and at least three members of the Enforcement Committee or residents of the Development request it. The regular meeting will be on days or dates set by the Board of Directors to be established during their first meeting. The first meeting will be held within 30 days of the election. The majority of the members must be present in order to form a quorum. Resolutions must pass by the majority of

votes, counting one vote per member present. In case of a tie, the President will have the deciding vote. Minutes of each meeting must be made and signed by the President and Secretary. Article 38 Every gathering of the Board of Directors in which all members are present will be considered a legal meeting, except any social event to which all members of the Association are invited. A legal quorum is 20% of dues paying members. Proxies will be counted in the 20%. Members must be given 20 days notice. Article 39 IS MISSING FROM THE LITERAL ENGLISH TRANSLATION (EXHIBIT A) Article 40 The President of the Board of Directors will also be the President of the Association and it will be his or her responsibility to carry out the resolutions of the Board of Directors and the Assembly; dispatching the Association's regular affairs, appointing and dismissing administrative personnel, and representing the Association with its authority according to Article 46 of these by-laws.

CHAPTER 8 *Disintegration and Liquidation of the Association*

Article 41 The disintegration and liquidation of the Association will be decided by a vote of at least two-thirds of its members. Article 42 The disintegration and liquidation of the Association can take place under the following conditions: a. By agreement of two-thirds of the members present at a regular or extraordinary General Assembly. b. By items stated in the Civil Code of the State of Sonora Fractions I-V of Article 2971. Article 43 Once the disintegration is accepted, the Association will be liquidated and the Assembly will appoint liquidator(s)

granting him, her or them the authority to liquidate. Liquidators must be informed of the existing capital. Once obligations and payments are met, assets will be equally distributed among all members.

CHAPTER 9*General Disposition*

Article 44 The Association may not participate in political or religious matters. The by-laws were read by the Secretary of the Assembly, and the individuals listed below have extensively discussed the by-laws and voted unanimously and approved each and every one of its parts in its literal translation of the original text. Article 45 The founders of the by-laws gathered in a General Assembly of members, by unanimous vote designated the following people to occupy the offices entrusted to them in order to form the Board of Directors, Enforcement Committee and Special Committees.

BOARD OF DIRECTORS
President Mr. German Ustariz
Vice-President Mr. Page Greer
Secretary Mrs. Nancy Howard
Treasurer Mr. Jesus Calderoni Guerra
Director Mrs. Beverly Robertson Inaker
Director Mrs. Maureen Mellon
Director Mr. David Howard Rosser

Generalities is a sub-heading under Directors that is a one and a fourth page document on the Directors' history, background, birthdays, and immigration numbers that the author did not feel should be made public unless it was deemed necessary.

CONSTRUCTION REGULATIONS FOR THE CARACOL PENINSULA
1. Plans should be presented for approval and should consist of the following: general land location map including measurements, surface, lot number, floor plan, front elevation, large scale outline

identifying sewage disposal.2. The house should have the following set-backs: 1 meter on each side, 3 meters in front, an open car port that only consists of columns and roof. The car port must be at the back of the lot with a space 2 meters between the adjacent land.3. In areas where the grade is greater than 20% two story dwellings may be constructed.4. The style of home should be modern colonial.5. The construction of 1 or 2 story homes, depending on the unevenness of the land, should not be larger than 4.5 meters from the street level.6. All water tanks on the terrace roof should be out of sight, as well as any other object with an unpleasant aspect that may obstruct the view.7. Variances may be granted only in specific cases and under very special circumstances by presenting an outline and sketch of the request in order to be analyzed and authorized. *THE LAST PAGE AND ONE-FOURTH IS CERTIFICATION FROM THE NOTARY PUBLIC, LIC. ARNULFO SALAS CASTRO.*SPECIAL NOTATIONS* May 15, 1999 the author revised the By-laws from the literal English translation to a “user friendly” translation always focussing on the intent of the content. Three sources were used. By going back to the original Spanish version, acquainting oneself with the Civic Codes, translating that to literal English (Exhibit a) and then translating that to a more understandable English, is daunting. There may be someone who would challenge the “user friendly” version. That challenge is open to the membership. When enough process time has taken place, and corrections made, it may be in the best interest of the Organization to adapt this and move forward. When one

goes back to the laws that are required to form a voluntary organization (Sonoran Civil Code 2955-2973), one realizes that it is necessary to have a charter in order to form an organization. The charter looks very different from anything ever seen by the author. Some of the by-laws will not be understandable (voting members, revocations, nationality, etc) but until amended must be in place according to the laws that govern organizations. Amendments are often necessary in order to reflect the Association as it grows.^[?]* The italics inserted in the Articles are amendments to the by-laws.* More work is being done to translate the two missing Articles, and define fraccion and organic law.

1989

© 2014,2015 David Jaksha Contact Me