

**MEMORANDUM OF LAW**<sup>1</sup>

To: Star Valley Ranch Association  
Attn: Keri Sawdy, General Manager  
From: Amanda F. Esch & Cole L. Gustafson  
RE: 2025 Bylaws Rewrite  
Date: November 11, 2024

**QUESTIONS PRESENTED**

Our client, Star Valley Ranch Association (“SVRA”), is a five-decade-old Wyoming nonprofit corporation. SVRA’s Directors are in the process of updating SVRA’s Bylaws, which date back to 2001. SVRA has asked for our recommendations regarding various proposed amendments the Board hopes to adopt. Before analyzing these proposed Bylaw revisions, however, we will first address a preliminary question: Does the Board have authority to amend the Bylaws without a membership vote?

**Question I: Can the Board amend the Bylaws under Article XI, § 2 without a vote of the members?**

**Answer: Though we are sympathetic to the Board’s desire to update the Bylaws, SVRA should have the members vote on any proposed Bylaw amendment because SVRA is a mutual-benefit corporation, not a religious or public-benefit corporation.**

Wyoming’s Non-Profit Corporation Act, WYO. STAT. ANN. §§ 17-19-101 to -1807, outlines procedures for bylaw amendments. If a non-profit corporation has “members,” as SVRA does,<sup>2</sup> then the governing statute is Wyoming Statute § 17-19-1021, titled: “Amendment by directors and members.” In pertinent part, this statute reads as follows (emphasis added):

- (a) For corporations *with directors and members*, . . . an amendment to a corporation’s bylaws to be adopted *shall be approved*:
  - (i) *By the board if the corporation is a public benefit or religious corporation* and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

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<sup>1</sup> This confidential document is attorney work product and is protected by the attorney-client privilege.

<sup>2</sup> A *Member* is a person who has “the right to vote for the election of a director or directors . . .” WYO. STAT. ANN. § 17-19-140(a)(xxii). Because SVRA’s property owners elect its directors, *see* Bylaws Article VIII, § 3, these property owners are the members.

- (ii) *By the members by two-thirds (2/3)* of the votes cast or a majority of the voting power, whichever is less; and
- (iii) In writing by any person or persons whose approval is required by a provision of the articles authorized by W.S. 17-19-1030.

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Relatedly, SVRA’s Bylaws similarly include a two-thirds membership requirement. Article XI, § 1 provides that “[t]he Bylaws . . . may be adopted, amended, or repealed . . . by an affirmative vote of at least two thirds (2/3) majority of the voting powers of those present or by proxy. The presence in person or by proxy of fifty percent (50) of all members authorized to vote shall constitute a quorum for the purpose of amending or repealing the Bylaws.”

But that is not all the Bylaws say about amendments. Article XI, § 2 purports to create a separate avenue for amendment, stating that, “[s]ubject to the right of the members to adopt, amend or repeal these Bylaws, as provided in Section 1 of this Article XI, at any special or regular meeting, the Board of Directors may adopt, amend, or repeal any of these Bylaws other than a Bylaw or amendment thereof changing the authorized number of Directors.” This language is similar to Wyoming Statute § 17-19-1021(a)(i), which permits boards of religious or public-benefit corporations to amend bylaws so long as the amendment does not relate to the number of directors (or related matters). The question is whether Article XI, § 2—which tracks Wyoming Statute § 17-19-1021(a)(i)—is effective and allows amendments by the Board without a membership vote.

The answer depends on SVRA’s classification. Per Wyoming law, non-profit corporations may be one of three kinds: “public benefit, mutual benefit [or] religious corporation.” WYO. STAT. ANN. § 17-19-140(a)(vii). Here, the Wyoming Supreme Court has already clarified how SVRA should be classified, stating SVRA is a mutual benefit corporation.<sup>3</sup> *Mueller v. Zimmer*, 2005 WY 156, ¶ 1, 124 P.3d 340, 343 (Wyo. 2005) (“The Star Valley Ranch Association (the Association) is a nonprofit, mutual benefit corporation that manages a recreational residential subdivision in Lincoln County, Wyoming.”). We agree. *See Mutual-Benefit Association*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining this term to mean a “social organization that provides benefits for its members, usu. on an assessment basis”).

If SVRA is a mutual-benefit corporation, Wyoming Statute § 17-19-1021(a)(i) does not apply to SVRA. Rather, the appropriate section is Wyoming Statute § 17-19-1021(a)(ii), which requires the approval of two-thirds of the members for a Bylaw amendment. Article XI, § 2 of the

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<sup>3</sup> SVRA is not organized for religious purposes; it is not a religious corporation. What is more, because SVRA is a homeowners’ association formed to benefit its members, we do not view SVRA as a public-benefit corporation. *See* WYO. STAT. ANN. § 17-19-1804(iv) (stating that an entity is a public benefit corporation if it is organized “for a public or charitable purpose,” among other requirements).

Bylaws, which purports to treat SVRA like a public-benefit or religious corporation, is in conflict with Wyoming Statute § 17-19-1021(a)(ii).

A reasonable follow-up inquiry might be whether SVRA’s Bylaws can supersede Wyoming non-profit corporation law. We do not think that is the case. Simply put, bylaws of non-profit corporations “may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.” WYO. STAT. ANN. § 17-19-206(b). And Wyoming law provides that, when a non-profit corporation has members, an amendment to the Bylaws “*shall*” be approved by two-thirds of the members unless the corporation is a public-benefit or religious corporation. WYO. STAT. ANN. § 17-19-1021(a)(i)–(ii) (emphasis added). This requirement is mandatory. *See Wyo. Dep’t of Revenue v. Qwest Corp.*, 2011 WY 146, ¶ 30, 263 P.3d 622, 632 (Wyo. 2011) (“The use of the word ‘shall’ in a statute makes the provision mandatory.” (citation omitted)).

Bottom line: Article XI, § 2 of the Bylaws conflicts with mandatory Wyoming law. We therefore conclude that an amendment to the Bylaws without membership approval would be impermissible. To avoid issues and potential litigation, we advise SVRA to seek membership approval for *any* Bylaw amendment.

**Question II: Are there other considerations for the proposed Bylaw Amendments?**

In the table below, we address the proposed amendments SVRA has submitted:

Proposed Amendment	Davis & Cannon’s Comments
Page 1: Changing the principal office of SVRA	We see no issues with this. SVRA should file an updated form with the Wyoming Secretary of State upon changing its principal office. A link to the form is here: <a href="https://sos.wyo.gov/Forms/Business/General/UpdateForm.pdf">https://sos.wyo.gov/Forms/Business/General/UpdateForm.pdf</a> . Going forward, SVRA’s new annual reports should identify the new principal address.
Article VI, § 7: Changing the due date for assessments.	The CC&Rs provide the due dates for the assessments “shall be established by the Board of Directors.” Article VI, § 7. Thus, we see no issues with this.
Article VI, § 8: Noting that 6% interest will apply on unpaid assessments.	Although some of the CC&Rs provide for 6% interest, others state that interest will be “the maximum allowable rate per annum.” SVRA’s current By-Laws state that interest will be 12% per annum.  However, as we’ve discussed in past correspondence with SVRA, the CC&Rs will be binding and determine the

	<p>members’ contractual obligations for assessments, not the By-Laws. Thus, if a member fails to pay assessments, SVRA will need to make a case-by-case analysis to determine what CC&amp;R applies.</p> <p>That said, because this portion of the By-Laws is currently inconsistent with at least some of the CC&amp;Rs (particularly the ones that limit interest to 6%), we recommend amending this portion of the By-Laws. Consider language along these lines: “. . . at the rate of six percent (6%) per annum, or if required per the applicable Covenants, Conditions, and Restrictions, the maximum rate per annum under current Wyoming law.”</p> <p>One more note on this: the language in some of the CC&amp;Rs allowing SVRA to charge “the maximum rate per annum” is ambiguous because Wyoming has no general usury law outlining the maximum rate for commercial transactions. In the absence of a contrary agreement, the maximum rate is 7%. <i>See</i> WYO. STAT. ANN. § 40-14-106(e). For clarity, it may be wise to alter the pertinent CC&amp;Rs to state simply that interest on unpaid assessments will accrue at 6% per annum (or a different amount). If you do that, then the By-Laws could track the CC&amp;Rs and limit interest to 6%.</p>
<p>Article VII, § 4: Allowing notice by electric mail.</p>	<p>This change is fine.</p>
<p>Article VII, § 7: Incorporates changes for proxy voting, revocation of proxies, and superseding.</p>	<p>Wyoming law permits a non-profit to limit proxy voting in the Bylaws. WYO. STAT. ANN. § 17-19-724(b) (“Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact.”). Thus, SVRA has ample discretion here to make changes. We are somewhat concerned, however, on the restrictions on revocation. Wyoming law provides that [a]n appointment of a proxy is revocable by the member.” <i>Id.</i> § 724(d). What is more, what does SVRA do if it receives notice of a member’s death <i>before</i> the election <i>but after</i> the vote is received? We would recommend simply stating: “A proxy may be revoked in accordance with Wyoming law.”</p>

<p>Article VIII, § 1: Note that the Wyoming Non-Profit Corporation Act applies.</p>	<p>This change is fine.</p>
<p>Article VIII, § 2: Stating that the Board consists of seven directors, not five.</p>	<p>Because this change affects the number of directors, it needs to be approved by the members—irrespective of whether SVRA is a mutual-benefit, religious, or public-benefit nonprofit. We don’t see any issues with the restriction on close relations between the directors, so long as the members approve the change. That said, we believe the language needs to be fixed as follows:</p> <p>“No two members of the Board of Directors related by blood, marriage, domestic partnership, <b>[or relationship within]</b> the second degree of <b>[con]sanguinity</b> . . . may serve on the Board of Directors at the same time.”</p>
<p>Article VIII, § 4(a): Resignation, Vacancies, and Removal of Directors</p>	<p>The proposed changes in green track Wyoming Statute § 17-19-807, so we have no problems with these changes.</p> <p>Wyoming Statute § 17-19-808(j) provides, “If, at the beginning of a director’s term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.” We would alter the language in orange to clarify the Board <i>may</i> remove the member for missing three consecutive Board meetings. In other words, we would not make removal automatic.</p>
<p>Article VIII, § 4(c): Removal</p>	<p>We would cut these provisions:</p> <p>“A director may be removed by the board through a majority vote for failing to adhere to their responsibilities in regards to board meeting attendance. Board meetings are to be considered but not limited to, Board Workshops, Board of Director Meetings, General Manager Status Meetings, Special Meetings, Organizational Meetings and Executive Meetings. Attendance is considered by way of in person appearance or via Video Conferencing. For attendance via Video Conferencing,</p>

	<p>the Director’s video camera and microphone must be turned on and the Director must remain fully engaged and in view. Attendance of 75% of all meetings within a calendar year is mandatory. Should a Director’s attendance fall below this threshold, a subsequent vote for removal will be instituted. Absenteeism of 3 consecutive regularly scheduled meetings, without previous written notice by way of an electronic mail to the Chairman of the Board, will be deemed as a resignation by abandonment.”</p> <p>Under Wyoming law, “[a] director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice shall state that the purpose, or one (1) of the purposes, of the meeting is removal of the director.” WYO. STAT. ANN. § 17-19-808(e). These provisions seem to circumvent this requirement. And, as discussed above, the revisions already include a provision about removing a director for absenteeism.</p> <p>Finally, we would change the paragraph in green/brown to read: “A director elected by the Board may be removed without cause by the vote of two-thirds (2/3) of the directors then in office; provided, however, that a director elected by the Board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not by the Board.” <i>See</i> WYO. STAT. ANN. § 17-19-808(h).</p>
<p>Article VIII, § 8: allowing notice to Directors by telephone, texting, or electronic mail</p>	<p>These changes are fine.</p>
<p>Article IX</p>	<p>Generally, these changes are fine. A few notes:</p> <ul style="list-style-type: none"> <li>• Ensure “Board” is capitalized throughout for consistency;</li> <li>• In Section 8, an apostrophe is missing: “Board of Directors['] approval . . . .”</li> <li>• In Section 9, “principle office” should be “principal office.”</li> <li>• Capitalize “Director” throughout.</li> </ul>

	<ul style="list-style-type: none"> <li>• Capitalize “Treasurer” and other officers throughout for consistency.</li> <li>• Section 12: The added language about “informal” committees is fine, but is it necessary? Aren’t all of these committees under Section 12 already informal committees? Language in this section should be changed to ensure these committees are just making recommendations to the Board (e.g., strike language about “overseeing” and being “[r]esponsible for irrigation systems . . . .” We would include language about making suggestions—rather than overseeing—these tasks. We do not want there to be an appearance that the Board is improperly delegating authority.</li> </ul>
<p>Article X: Inspection Rights/signing checks</p>	<ul style="list-style-type: none"> <li>• The change to Section 1 seems inconsistent with Section 2. We would recommend keeping 1, but clarifying that the member can’t inspect <i>all</i> the records of the corporation; rather, they can inspect “any of the records of the corporation described in W.S. 17-19-1601(e) . . . .” WYO. STAT. ANN. § 17-19-1602(a). These include things like the minutes, articles, bylaws, etc. We would cut Sections 2 and 4 (which discussed litigation and the power of the court)—these provisions are not needed and will be addressed if there is litigation.</li> <li>• Section 3 is fine and tracks Wyoming Statute § 17-19-1603(c).</li> <li>• Section 5: limitations on the use of membership list. This is fine and tracks Wyoming Statute § 17-19-1605. Any reason why subsections (ii) and (iii) aren’t also included?</li> <li>• Change about signing checks is fine.</li> </ul>