

§ 904.308 Relationship with homeowners association.

The HBA and the homeowners association are, in legal terms, separate and distinct organizations with different functions. The homeowners association may hold title to and be responsible for maintenance of common property (see §§ 904.119 and 904.120), while the HBA has more general service and representative functions. While all residents are members of the HBA, only those who have acquired title to their homes are members of the homeowners association.

§ 904.309 Use of appendices.

Use of the Articles of Incorporation (Part I of Appendix I) and the Recognition Agreement between the Local Housing Authority and Homebuyers Association (Appendix II) is mandatory for projects developed under subpart B of this part which have homebuyers associations. No modification may be made in format, content or text of these Appendices except (1) as required under state or local law as determined by HUD or (2) with approval of HUD. The By-Laws of the Homebuyers Association is provided as a guide for such projects and it may be used or modified to the extent required by the HBA and LHA respectively to meet local needs and desires.

APPENDIX I—ARTICLES OF INCORPORATION AND BY-LAWS OF _____
HOMEBUYERS ASSOCIATION

(Subpart D)

Part I—Articles of Incorporation

In compliance with the requirements of _____ (reference to statute under which incorporation is sought) the undersigned, all of whom are natural persons, residents of _____, of full age, have this day voluntarily associated themselves together for the purpose of forming a Corporation, not-for-profit, and do hereby certify:

ARTICLE I—NAME

The name of the corporation is _____ Homebuyers Association (hereinafter referred to as the "Association").

ARTICLE II—OFFICE

The principal office of the Association is located at _____

ARTICLE III—AGENT

_____, whose address is _____, is hereby appointed the initial registered agent of the Association.

ARTICLE IV—DURATION

The period of duration of the Association is perpetual.

ARTICLE V—MEMBERSHIP

Membership in the Association shall be limited to families who are entitled to occupancy of a Home in the Development pursuant to a Homebuyers Ownership Opportunity Agreement and families who are Homeowners in the Development, and all such families shall automatically be members so long as they are in occupancy of a Home. For purposes of these Articles, the term "Development" includes the following described Development or Developments in the Homeownership Opportunity Program of _____ (hereinafter referred to as the Authority):

ARTICLE VI—PURPOSES

The purposes for which this Association is formed shall not result in pecuniary gain or profit to the members thereof. These purposes are to provide organization and representation for its members in their relationships with the Authority in all matters regarding the homeownership opportunity program and, if appropriate, to perform management responsibilities for the Development under contract with the Authority.

1. In order to carry out these purposes, the Association shall perform the following functions:

a. Represent its members, individually and collectively, with respect to any deficiencies in the Development or in the Homes and with respect to fulfillment of the construction contract and related warranties;

b. Represent its members, individually and collectively, in their relationships with the Authority and others in regard to financial matters such as monthly payments, credits to and charges against reserves, settlement upon vacating a Home, and acquisition of ownership, and other matters pertaining to operation and management of the development;

c. Recommend policies and rules to the Authority for operation and management including rules concerning use of the common areas and community facilities;

d. Participate in the operation of official grievance mechanisms;

e. Advise and assist its members regarding procedures and practices relative to their Earned Home Payments Accounts and to their acquisition of homeownership;

f. Participate with the Authority in periodic maintenance inspections of the Homes after occupancy and make recommendations in case of disagreement arising out of maintenance inspections;

g. Participate with the Authority in the selection of subsequent homebuyers;

h. Coordinate, supervise, or manage the operation of credit union, child care, or other supportive services established for the Development;

i. Participate with the Authority in the establishment and implementation of policies related to collection of monthly payments, termination of occupancy, and resolution of hardship situations;

j. Perform management services as specified under contract with the Authority or with the Homeowners Association and participate in other activities pursuant to agreement with the Authority or with the Homeowners Association.

2. The Association may also offer special services such as:

a. The development of self-help such as consumer clubs, furniture and other co-ops, credit unions, transportation pools, and skill pools;

b. Assisting Homebuyers in acquiring group insurance;

c. Developing programs and contracting for services such as child care centers to be located in the community facility, where such a facility exists;

d. Assisting Homebuyers in their employment, especially by participating in skill development and apprenticeship programs in cooperation with local educational organizations; and

e. Assisting Homebuyers in planning the management role of the Association and in negotiating any contract for management services with the Authority.

ARTICLE VII—POWERS

This Association shall have all the powers, privileges, rights and immunities which are necessary or convenient for carrying out its purposes and which are conferred by the provisions of all applicable laws of the State of _____ pertaining to non-profit corporations.

ARTICLE VIII—VOTING

There shall be only one vote per Home regardless of the number of persons in the family that occupies the Home.

ARTICLE IX—BOARD OF DIRECTORS AND BY-LAWS

The affairs of the Association shall be managed by a Board of Directors, all of whom shall be members of the Association. The number of Directors shall be as provided in the By-Laws of the Association. The fol-

lowing persons shall serve as the first Board of Directors and as the first officers:

Office	Address
.....
.....
.....

This Board shall manage the affairs of the Association until election of their successors by the membership.

Promptly after 60 percent of the Homes are occupied, or one year from the date the first Home is occupied, whichever occurs sooner, the Board shall call the first annual meeting of the Association at which the members shall adopt By-Laws and elect one-third of the Board for a term of one year, one-third for a term of two years, and one-third for a term of three years. At each annual meeting thereafter the members shall elect one-third of the Board for a term of three years.

ARTICLE X—DISSOLUTION

After all members have acquired ownership of their Homes, the Association shall be dissolved with the assent given in writing and signed by not less than two-thirds of the members. The dissolution shall be effective when all of the assets of the Association remaining after payment of its liabilities have been granted, conveyed and assigned in such manner as the Association and Authority may mutually agree.

ARTICLE XI—AMENDMENT

Amendment of these Articles shall require the assent of 75 percent of the entire membership.

In witness whereof, for the purposes of incorporating this Association under the laws of the State of _____, we, the undersigned constituting the incorporators of this Association, have executed these Articles of Incorporation this ____ day of _____, 19__.

[Witness, Notary, or Acknowledgment as required by state law]

NOTE: The following is a suggested form of By-Laws. Different format and content to meet local needs may be used. For example, it may be considered desirable to combine HBA offices, eliminate or change functions of various committees, provide for other committees, etc.

Part II—By-Laws

The members of the _____ Homebuyers Association (hereinafter referred to as the "Association") do hereby adopt in accordance with Article IX of the

Articles of Incorporation the following By-Laws:

SECTION 1. *Organization*—The affairs of the Association shall be managed by a Board of Directors elected by and from the members of the Association. The Board shall elect officers of the Association, including a President, Vice President, Secretary, and Treasurer, who shall carry out such functions and duties as are prescribed by these By-Laws and the Board.

SEC. 2. *Association meetings*— A. *Annual meetings*. The Association shall have an annual meeting at _____ (time) on the _____ (day of week and month) each year for the purpose of transacting such business as may be necessary or appropriate. If the date of the annual meeting is a legal holiday, the meeting shall be held at the same hour on the first day following which is not a legal holiday.

B. *Quarterly and special meetings*. Between annual meetings, quarterly meetings shall be called by the President and be held for the purpose of advising the membership of activities of the Board and enabling the members to bring up matters of common concern. Special meetings may be called at any time (1) by the President with the written concurrence of at least two of the other officers or (2) by a petition filed with the Secretary stating the purpose of the meeting and signed by at least one-fifth of the total number of members in the Association.

C. *Notice of meetings*. Written notice of each annual, quarterly or special meeting of the members shall be given by, or at the direction of, the Secretary by mailing a copy of such notice at least fifteen days before an annual or quarterly meeting or at least seven days before a special meeting, addressed to each member at the member's address shown on the records of the Association. Such notice shall specify the place, date, and hour of the meeting and, in the case of a special meeting, the purpose of such meeting. No business shall be transacted at any special meeting other than that stated in the notice unless by consent of at least one-half of the total number of votes of the Association.

D. *Quorum*. A quorum at any meeting shall consist of members entitled to cast votes which represent at least one-tenth of the votes of the Association. If such a quorum is not present, those present shall have the power to reschedule the meeting from time to time without notice other than an announcement at the meeting until there is a quorum. At any rescheduled meeting at which a quorum is present, the only business which may be transacted is that which might have been transacted at the original meeting.

E. *Voting*. Each family shall designate in writing to the Secretary the family member who is to cast the family vote. That designee

may appoint as a proxy for a specific meeting any other member of the Association. A proxy must be in writing and filed with the Secretary not later than the time that meeting is called to order. Every proxy shall be revocable and shall be automatically revoked when the person who appointed the proxy attends the meeting or ceases to have voting privileges in the Association. Votes represented by proxy shall be counted in determining the presence or absence of a quorum at any meeting.

F. *Agenda*. An agenda shall be prepared for every meeting.

SEC. 3. *Board of Directors*— A. *Number of directors*. The affairs of the Association shall be managed by a Board of _____ Directors, all of whom shall be members of the Association. The number of Directors may be changed by amendment of the By-Laws of the Association.

B. *Term of Office*. The Board of Directors shall be elected at the annual meeting of the Association. At the first annual meeting, the members shall elect _____¹ Directors for a term of one year, _____¹ Directors for a term of two years, and _____¹ Directors for a term of three years. At each annual meeting thereafter the members shall elect _____¹ Directors for a term of three years.

C. *Removal and other vacancies of Directors*. Any Director may be removed from the Board, for cause, by a majority of the votes of the Association at any annual or quarterly meeting or any special meeting called for such purpose, provided that the Director has been given an opportunity to be heard at such meeting. In the event of death, resignation or removal of a Director, his successor shall be elected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

D. *Chairman of the Board*. At the first regular Board meeting after each annual meeting, the Board of Directors shall elect a Chairman from among their number.

E. *Compensation*. No compensation shall be paid to the Board for its services. However, any Director may be reimbursed for his actual expense incurred in the performance of his duties, as long as such expense receives approval of the Board and is within the approved Association budget.

SEC. 4. *Nomination and election of the board*— A. *Nomination*. Nomination for election to the Board of Directors (other than for filling of vacancies under section 3. C.) shall be made by the Nomination Committee; provided, however, that nominations may also be made from the floor at the annual meeting by motion properly made and seconded, or by a petition which states the name of the

¹Each group shall be one-third of the total number of Directors.

person nominated, is signed by members representing at least ten votes, and is filed with the Secretary not later than the day prior to the annual meeting. Persons nominated must be members of the Association.

B. *Election.* Election of the Board of Directors shall be in accordance with Section 2.E., and by secret written ballot. The ballots shall be prepared by the Secretary. Cumulative voting is not permitted (that is, a voter who refrains from voting with respect to one or more vacancies may not on that account cast any extra vote or votes with respect to another vacancy). The persons receiving the largest number of votes shall be elected.

SEC. 5. *Meetings of Directors— A. Regular meetings.* Regular meetings of the Board of Directors shall be held monthly at such time and hours as may be fixed from time to time by resolution of the Board. Notice of time and place of the meetings shall be mailed to each Director no later than seven days before the meeting.

B. *Special meetings.* Special meetings of the Board of Directors shall be held when called by the President of the Association, the Chairman of the Board or by any two Directors, after not less than three days notice to each Director.

C. *Quorum.* A simple majority of the Board shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Board present at a duly held meeting shall be regarded as an act of the Board.

D. *Action taken without a meeting.* Any action which could be otherwise taken at a Board meeting may be taken in the absence of a meeting, by obtaining the written approval of all Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board.

SEC. 6. *Power and duties of the Board of Directors— A. Power and duties generally.* The Board of Directors shall have and exercise all the powers, duties, and authority necessary for the administration of the affairs and to carry out the purposes of the Association, excepting only those acts and things as are required by law, by the Articles of Incorporation, or by these By-Laws to be exercised and done by the members or their officers.

B. *Powers.* The Board shall have the power to: (1) Adopt and publish such rules and regulations as are appropriate in the exercise of its powers and duties, including but not limited to rules and regulations governing the amount and payment of dues, use of common areas and facilities and the conduct of the members and their guests thereon, and the establishment of penalties for violation of such rules and regulations; (2) appoint or designate officers, agents, and employees, and make such delegations of authority as in its judgment are in the best interest of the Association; (3) declare the office of a mem-

ber of the Board of Directors to be vacant in the event such member shall be absent from at least three consecutive regular meetings of the Board of Directors.

C. *Duties.* It shall be the duty of the Board of Directors to: (1) Cause to be kept a complete record of all its acts and Association affairs, and to present a statement thereof to the members at the annual meeting, or at any special meeting when such statement is requested in writing by members representing at least one-fifth of the votes of the Association; (2) cause to be prepared an annual audit of the Association books to be made at the completion of each fiscal year; (3) cause to be supervised all officers, agents, and employees of the Association, and see that their duties are properly performed; (4) procure and maintain adequate liability and hazard insurance on any property owned by the Association; (5) cause such officers or employees having fiscal responsibilities to be bonded as the Board may deem appropriate; (6) cause to be performed the functions listed in Article V of the Articles of Incorporation.

SEC. 7. *Association officers and their duties— A. Election.* The Board of Directors shall elect the following officers of the Association: a President, a Vice President, a Secretary, a Treasurer, and such other special officers as, in the opinion of the Board, the Association may require. The President and Vice President shall be elected from members of the Board. The election of officers shall take place biennially at the first meeting of the Board of Directors following the annual meeting of the members.

B. *Term.* The officers shall hold office for two years unless they shall resign sooner, be removed, or otherwise be disqualified to serve; provided, however, that special officers shall hold office for such period as the Board may determine, but not to exceed one year.

C. *Removal and resignation.* Any officer may be removed from office, for cause, by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

D. *Vacancies.* A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

E. *Multiple Officers.* No person shall simultaneously hold more than one of the offices required by these By-Laws.

F. *Duties.* The duties of the officers are as follows:

(1) *President.* The President shall preside at all Association meetings; shall execute the orders and resolutions of the Board; shall

sign all leases, mortgage, deeds, and other written instruments; and shall cosign with the Treasurer all checks and promissory notes.

(2) *Vice President.* The Vice President shall act in place and stead of the President in the event of his absence or disability and shall exercise and discharge such other duties as may be required of him by the Board.

(3) *Secretary.* The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Association; shall keep the corporate seal of the Association and affix it on all papers requiring said seal; shall serve notice of the meetings of the Board and of the Association; shall keep appropriate current records showing the names and addresses of the members of the Association; and shall perform such duties as may be required by the Board.

(4) *Treasurer.* The Treasurer shall receive and deposit in appropriate bank accounts all funds of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall cosign with the President all checks and promissory notes of the Association; shall keep proper books of account; and shall prepare an annual budget and statement of income and expenditures which shall be approved by the Board before presentation to the Association at its regular annual meeting, and furnish a copy to each of the members.

(5) *Special officers.* Special officers shall have such authority and perform such duties as the Board may determine.

(6) *Compensation.* Officers may not be compensated except as may be determined by the Board, in accordance with the approved Association budget.

SEC. 8. *Committees.*— A. *Committees to be established.* The Board of Directors shall establish the following committees:

(1) *Representation Committee* which shall represent members, individually and collectively, with respect to: any deficiencies in the Development or the individual Homes therein; fulfillment of the construction contract and related warranties; relationships with the Authority and others in regard to financial matters such as monthly payments, credits to and charges against reserves, settlement upon vacating the home, and acquisition of ownership; matters pertaining to project management; and matters in the Authority's official grievance mechanisms.

(2) *Rules Committee* which shall present to the Board for recommendation to the Authority policies for operation and management and, where appropriate, assist the Board in establishing Association rules in that respect.

(3) *Homeownership Committee* which shall advise and assist members in regard to maintenance and acquisition of ownership of their

homes, financial matters and other matters related to homeownership and home management.

(4) *Selection Committee* which shall recommend proposed homebuyers from a list of eligible applicants.

(5) *Nominating Committee* which shall consist of a chairman, who shall be a member of the Board of Directors, and two or more members of the Association, none of whom are Directors. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies to be filled.

B. *Other committees.* The Board may establish other committees, permanent or temporary, which it deems necessary or desirable to carry out the purposes of the Association.

C. *Committee Chairman and Members.* The chairmen of all committees, except the Nominating Committee, shall be appointed by and serve at the pleasure of the President. Committee members shall be appointed by the chairman of the committee on which they are to serve and shall serve until a new chairman is appointed.

D. *Committee Reports.* The chairman of each committee shall make a report to the President in writing of committee meetings and activities prior to each regular monthly meeting of the Board of Directors.

E. *Authority.* Unless specifically authorized in writing by the Board of Directors or the President, a committee chairman or a committee member shall have no authority to legally obligate the Association or incur any expenditure on behalf of the Association.

SEC. 9. *Suspension of rights.* The Board may suspend, by a majority vote of the Board, the voting rights and rights to use the recreational facilities, of a member, and his family and guests, during any period in which the member shall be in default in the payment of any dues or assessment imposed by the Association. Such rights may also be suspended, after notice and hearing, for a period not to exceed sixty days, for violation of the Association's rules and regulations.

SEC. 10. *Books and records.* The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member.

SEC. 11. *Amendments.* Amendments to these By-Laws may be introduced and discussed at any annual or special meeting of the Association, provided that copies of any proposed amendment shall be mailed to all the members with the notice of the meeting at which

such amendment will be introduced. A vote on adopting such amendment shall be taken at the first Association meeting held at least two weeks subsequent to the meeting at which the amendment was introduced. Amendments shall be adopted by a vote of a majority of the members of the Association.

SEC. 12. *Corporate seal.* The Association shall have a seal which shall appear as follows: [SEAL]

SEC. 13. *Fiscal year.* The first fiscal year of the Association shall begin on the date of incorporation and shall end on the last day of _____ (month, year). Each successive fiscal year shall begin on the first day of _____ (month) and end on the last day of _____ (month).

The foregoing By-Laws were adopted at the first annual meeting of the Association held _____ by the undersigned members of the Association.

APPENDIX II—RECOGNITION AGREEMENT
BETWEEN LOCAL HOUSING AUTHORITY AND HOMEBUYERS ASSOCIATION

(Subpart D)

WHEREAS, the _____ (“Authority”), a public body corporate and politic, has developed or acquired with the aid of loans and annual contributions from the Department of Housing and Urban Development (“HUD”), the following Development or Developments in its homeownership opportunity program (hereinafter referred to as the “Development”):¹

WHEREAS, an organization of residents (“Homebuyers”) is an essential element in such Development for purposes of effective participation of the Homebuyers in the management of the Development and representation of the Homebuyers in their relationships with the Authority, and for other purposes; and

WHEREAS, the _____ Homebuyers Association (“Association”) fully represents the Homebuyers of the Development;

NOW, THEREFORE, this agreement is entered into by and between the Authority and the Association and they do hereby agree as follows:

1. The Association, whose Articles of Incorporation are attached hereto and made a part hereof, is hereby recognized as the established representative of the Homebuyers of the Development and is the sole group entitled to represent them as tenants or Homebuyers before the Authority;

¹List here the specific Development or Developments whose Homebuyers are represented by the Homebuyers Association with which this Agreement is entered into.

2. For each fiscal year, the Authority shall make available funds to the Association for its normal expenses, in such amounts as may be available to the Authority for such purposes and subject to whatever applicable HUD regulations;

3. The Association shall be entitled to the use of office space in _____ at the Development without charge by the Authority for such use;

4. The Authority and the officers of the Association shall meet at a location convenient to both parties on the _____ (day) of each month to discuss matters of interest to either party;

5. In the event the parties later agree that the Association should assume management responsibilities now held by the Authority, a contract for such purpose will be negotiated by _____ the Association;

_____ terminate upon dissolution of the Association.

IN WITNESS HEREOF, the parties have executed this Agreement on _____, 19____.

Local Housing Authority
By (Official Title) _____
Homebuyers Association
By (Official Title) _____
WITNESSES: _____

PART 905 [RESERVED]

PART 906—SECTION 5(h)
HOMEOWNERSHIP PROGRAM

- Sec.
- 906.1 Purpose.
- 906.2 Applicability.
- 906.3 General authority for sale.
- 906.4 Fundamental criteria for HUD approval.
- 906.5 Resident consultation and involvement.
- 906.6 Property that may be sold.
- 906.7 Methods of sale and ownership.
- 906.8 Purchaser eligibility and selection.
- 906.9 Counseling, training, and technical assistance.
- 906.10 Nonpurchasing residents.
- 906.11 Nonroutine maintenance reserve.
- 906.12 Purchase prices and financing.
- 906.13 Protection against fraud and abuse.
- 906.14 Limitation on resale profit.
- 906.15 Use of sale proceeds.
- 906.16 Replacement housing.
- 906.17 Records, reports, and audits.
- 906.18 Submission and review of homeownership plan.
- 906.19 HUD approval and PHA-HUD implementing agreement.
- 906.20 Content of homeownership plan.
- 906.21 Supporting documentation.