

# WEST VIRGINIA CODE: §7-25-10

## **§7-25-10. Resort area boards.**

(a) The powers of each resort area district shall be vested in and exercised by a resort area board which shall be composed of seven members, the composition of which shall be as set forth in subsection (b) of this section. Board members need not be residents of the district or landowners, except where specifically required otherwise. For purposes of this section, "residential, improved real property" includes, but is not limited to, condominium units, townhouses, and single-family residences.

(b) The composition of a resort area board shall be as follows:

(1) Three board members at the time of nomination and as of the day of their election shall be owners of or representatives of owners of residential, improved real property located within the resort area district;

(2) Two board members shall be representatives of the primary resort operator located within the resort area district;

(3) One board member at the time of nomination and as of the day of their election shall be an owner or a representative of commercial business property owners located within the resort area district; however, for purposes of this subdivision, owners of residential, improved real property who rent their property are excluded; and

(4) One board member at the time of nomination and as of the day of their election shall be an owner or a representative of owners of unimproved, developable real property located within the resort area district.

(c) For purposes of this section, if a parcel of real property is owned by one or more entities (such as a corporation, limited liability companies, or other entity), then the following are also eligible to serve on the board as an owner with respect to such parcel: (1) Any person having an ultimate beneficial interest in the parcel, whether directly or indirectly, and regardless of the number of intermediate ownership entities; and (2) any person designated at the outset of the election as authorized, by an owning entity, to serve on the board as an owner for that particular parcel. Nothing in this provision, however, creates any additional voting rights to the owners of a single parcel of real property, and each parcel of real property shall be entitled to only one vote, regardless of the number of owners participating in ownership of the parcel. Furthermore, nothing in this provision authorizes the owners of real property of one type (such as the primary resort operator, owners of residential improved real estate, or owners of unimproved, developable real estate) to vote regarding a board position reserved to another ownership category.

(d) The board members shall be elected for terms of four years each and thereafter until

their respective successors have been elected and have been qualified, except, that of the board members elected at the initial election meeting, two shall serve for a term of two years, two shall serve for a term of three years, and three shall serve for a term of four years. At the first meeting of the board, the board members shall determine by lot which of them shall serve the terms less than four years. Each succeeding term is four years. Board members may be reelected for any number of terms. In the event a board member who is required to own real property within the district to be eligible for such board position no longer owns real property within the district, such member may serve out the remainder of his or her term.

(e) Only owners of real property, including commercial business property owners, located within the district shall be eligible to vote in elections for board members.

(f) Elections for board members shall be held in accordance with bylaws adopted by the board, but the provisions of §7-25-11 of this code shall govern the initial election of board members. Voting shall be in person, by mailed ballot, by proxy, or by electronic means. The voting restrictions set forth in §7-25-11(d) and §7-25-11(e) of this code shall apply to all board elections and may not be altered.

(g) Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by section five, article IV of the West Virginia Constitution.

(h) In the event that a board vacancy arises before the scheduled end of a board member's term, vacancies on the board shall be filled for the remainder of the unexpired term of the member whose office shall be vacant and such appointment, pursuant to the procedures set forth in subsection (r) of this section. Any board member may be removed by the board in case of incompetency, neglect of duty, gross immorality, or malfeasance in office, upon a unanimous vote of the remaining six board members. A vote of four board members is sufficient to schedule and conduct an election to fill an unexpired board member's term. Any other action of the board taken while one or more board positions are vacant must be unanimously approved by a board which is comprised of at least five active serving board members.

(i) The board shall organize within 30 days following the first election of board members and annually thereafter at its first meeting after January 1 of each year by selecting one of its members to serve as chairman, one to serve as treasurer, and one to serve as secretary. The secretary, or his or her designee, shall keep a record of all proceedings of the board which shall be available for inspection as other public records and the treasurer, or his or her designee, shall maintain records of all financial matters relating to the resort area district, which shall also be made available for inspection as other public records. The secretary and treasurer shall perform such other duties pertaining to the affairs of the resort area district as shall be prescribed by the board.

(j) The initial board shall adopt bylaws for the district: *Provided*, That the adoption of such bylaws and any subsequent amendments thereto shall require approval by six-sevenths of

the board.

(k) The members of the board, and the chairman, secretary, and treasurer thereof, shall make available, at all reasonable times and upon reasonable notice, all its books and records pertaining to the resort area district's operation, finances, and affairs for inspection and audit. The board shall meet at least semiannually.

(l) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman. Board members may vote either in person, by telephone, or by electronic means.

(m) Staff, office facilities, and costs of operation of the board may be provided by the county which created the resort area district or by contract, and said costs of operations shall be funded from resort service fees collected within the district or any other source.

(n) The chairman shall preside at all meetings of the board and shall vote as any other members of the board, but if he or she should be absent from any meeting, the remaining members may select a temporary chairman, and if the member selected as chairman resigns as chairman or ceases for any reason to be a member of the board, the board shall select one of its members to serve as chairman until the next annual organizational meeting.

(o) The board shall, by resolution, determine its own rules of procedure, fix the time and place of its meetings, and the manner in which special meeting may be called. The members of the board shall not be personally liable or responsible for any obligations of the resort area district or the board but are answerable only for willful misconduct in the performance of their duties.

(p) The members of the board may serve with reasonable compensation as the board of directors may fix, except where prohibited by law, and shall receive reimbursement for actual and necessary expenses incurred in connection with the performance of their duties.

(q) Every board member who handles public funds or property, and every other officer or employee of a resort area district of whom it shall be required, shall, unless otherwise provided by law, give bond, with good security, to be approved by the board, and in such penalty as such board, conditioned upon the faithful discharge of the duties of his or her office or employment and the faithful accounting for and paying over, as required by law, of any funds or property coming into his or her possession.

(r) Vacancies on the board shall be filled by a special election within 120 days of the vacancy unless the vacancy occurs within the last 365 days of the board member's term. The special election shall be on a date specified by the board, which shall not be less than 45 days sooner than publication of notice of the election. If the vacancy occurs within the last 365 days of the board member's term, the board shall appoint a replacement who meets the qualifications for the vacant seat. Recommendations for the replacement shall be made by the type of ownership category for the seat vacated. The new board member shall serve out

the remainder of the unexpired term and may stand for subsequent election as long as he or she is eligible for the seat. The publication process for an election to fill a vacancy shall be the same as set forth in §7-25-11(c), §7-25-11(d), and §7-25-11(e) of this code, and only those owners eligible to vote for the board member whose departure from office caused the vacancy shall be eligible to vote to replace the member. Without limiting the foregoing, and by way of example, only owners of improved residential property may vote to fill a vacancy created by the departure from office of a board member elected by that class of owner. Notwithstanding the provisions of this subsection, a vacancy in the office of the board as to a board member elected or appointed as a resort primary operator representative, may be filled by direct appointment of the primary resort operator, rather than by election.