

**ARBOR TRACE**

**TOWER POINTE  
AT ARBOR TRACE**

**A RESIDENT GUIDE**

**TO**

**GOVERNANCE AT ARBOR TRACE**

**A SENIOR LIVING COMMUNITY**

## ARBOR TRACE: A SENIOR LIVING COMMUNITY THE PURPOSE AND FUNCTION OF OUR GOVERNANCE SYSTEM

The purpose of this document is to provide some critical information about how we govern ourselves here at Arbor Trace. Although this overview will be of particular interest to our new residents, we expect it will be informative for our more seasoned residents as well. Since our system of governance is instrumental in the operation of our community, it is important for all residents to understand what exactly it entails and how it was intended to function.

We'll start with a brief reference to our very beginnings. As most of you know, our community began as a single condominium association called Arbor Trace. It then included the villas and mid-rise buildings that you see today, along with access to the ancillary facilities and services at the Clubhouse. Later, a second building, called Tower Pointe, was erected on the property and was designed to operate as a separate condominium association. Fortunately for all of us, the members of the two associations, from the very beginning, saw the benefit of establishing a collaborative relationship as well as the benefit of buying out the developer and assuming full control of our community. To that end, the existing residents raised the money needed to purchase the Clubhouse along with all remaining property owned by outside parties. With this accomplished, the two condo associations now had full control of their destiny.

Although this was an important first step, there were still challenges ahead. It was still the case that the community consisted of two separate condo associations sharing the same parcel of land, each with its own Board of Directors, its own By-Laws, Declarations, and Articles of Incorporation. And it was still the case that the two associations were sharing the use of the clubhouse, the pool, and all the associated services: dining, housekeeping, maintenance, transportation, etc. This was viewed as a potential problem. It seemed prudent to devise some form of collaborative arrangement that would ensure a balance of power to prevent one condo association from exerting undue influence over the community's shared facilities. What was needed was a system of shared governance, a mechanism for the two condo associations to work collaboratively in overseeing their shared facilities and services.

Apart from the need for a system of shared governance, our founding residents also realized that attention must also be given to any potential liability associated with Arbor Glen. In a litigious society, senior living communities are potentially vulnerable to wrongful death suits and other forms of litigation associated with, but not limited to, the delivery of health care services.

With these concerns in mind, a committee was formed to tackle these difficult issues. With careful thought and deliberation and, fortunately for all of us, a good deal of wisdom, these committee members, along with their attorneys, created the governance system we have in place today. It's a structure that is both unique in its design and in the manner in which its various components articulate. It starts with the two condo associations, who remain

ultimately in charge, but then includes two additional layers of governance: Tower Trace, LLC. and Arbor Pointe Management, LLC. We'll address each of these companies in turn.

The first part of the plan involved forming a jointly owned entity called Tower Trace. Tower Trace was to be a Limited Liability Company with only two shareholders: The Arbor Trace Condominium Association and The Tower Pointe at Arbor Trace Condominium Association. It is important to point out that the shareholders of Tower Trace are the two Associations and not the residents themselves. The purpose of Tower Trace was to take ownership of the community's shared facilities: the clubhouse, along with the associated furniture, fixtures, and equipment, as well as the pool compound. Tower Trace would be charged with looking after these facilities and with keeping everything in working order, but, and this is important, it would have no direct role in the operation or management of these facilities. The arrangements for that will be discussed later on.

Taking care of the clubhouse, pool, and associated equipment requires money. So, in setting up Tower Trace, provisions needed to be made for a source of income. That income came initially from leasing out the clubhouse to APM, the people responsible for providing the community's ancillary services. We will hold off discussing them until a bit later. Although helpful, this initial stream of income proved to be insufficient, so much so that Tower Trace was forced to temporarily borrow money from the two condo associations in order to pay its bills. Fortunately, an opportunity arose several years later to acquire control of the community's on-site realty office. In conjunction with that acquisition, Tower Trace then created a subsidiary company called Tower Trace Realty, LLC, and was thereafter able to supplement their rental income with income generated from the real estate sales commissions. Tower Trace is the sole owner of the realty company, is responsible for hiring its staff, and for overseeing and approving all of its activities. Tower Trace also receives a small amount each month from each unit owner for its capital reserves.

So far, we've mentioned why Tower Trace was formed and how it is funded. Now let's address how it operates. Tower Trace is run by six Managers, three from each condo association. Each Manager is appointed by his/her respective condominium Board of Directors and can be recalled at any time. In addition to the Managers who attend each meeting, each of the two condo Association Presidents sits in, as an observer. Each month the Tower Trace Managers make sure everything they are responsible for is in working order, and if not, arrangements are made to repair or replace whatever it is that requires action. The Tower Trace Managers also review community finances and attend to other matters related to real estate transactions, the clubhouse, and the pool area. Matters requiring action are normally brought to the Managers' attention by either the Executive Director of Arbor Trace or, in the case of real estate, by the Tower Trace Realty Broker of Record. Residents are kept apprised of what happens at Tower Trace meetings during their monthly condo association meetings.

So, to summarize what has been said thus far. The two condo associations own Tower Trace and Tower Trace owns Tower Trace Realty and the community's shared facilities: the clubhouse and pool area, along with the associated furniture, fixtures, and equipment, and sees

that everything is kept in working order. Tower Trace is funded through rent it receives for the use of Clubhouse space, from real estate commissions, and from monthly fees from each unit owner.

In conjunction with the formation of Tower Trace, our founding members also created a second governing entity, called Arbor Pointe Management (APM). The purpose of this company, owned by Tower Trace, is twofold: to operate and manage the various ancillary services offered to the two condo associations and to provide a barrier to protect the associations from potential litigation resulting from the delivery of these various services. The services provided by APM include: administrative services, dining services, housekeeping, laundry, maintenance, transportation, and the assistive care services provided by Arbor Glen.

Arbor Glen is an on-site, independent facility open to our residents as well as to clients from outside our community. Although it is available to our residents, it is run by APM and has no formal connection with our two condo associations. We underscore our independence from Arbor Glen by making certain that residents who transition to Arbor Glen are no longer listed in our community directory. They are, from that moment on, residents of Arbor Glen.

The APM Company has full responsibility for hiring all on-site personnel, with the exception of Tower Trace's real estate employees, and for overseeing the delivery and operation of all of our shared services. In order to help with the coordination of these services, APM employs an Executive Director who works in concert with them on these matters and also liaises with the Managers of Tower Trace.

In order to fund their operations, APM collects monthly fees from the residents of each condo association. These monies pay for the salaries and benefits of all community employees and for the materials required to carry out their respective jobs; examples include raw food costs, uniforms, paper products, cleaning supplies, tools, trash removal fees, and other related costs too numerous to mention. Any excess income from APM reverts back to Tower Trace. As with Tower Trace, APM is run by six Managers, three from each condo association, but in this case, the Managers of APM are appointed, not by the condo associations, but by the Managers of Tower Trace. As with the Managers of Tower Trace, the Managers of APM may be recalled at any time by those making the initial appointment, in this case Tower Trace.

Let's now examine why who does the appointing for APM is so important. Why are APM's Managers appointed by Tower Trace and not by the Board of Directors of our two condo associations? Along with that, why don't residents hear about APM's activities during their monthly association meetings, just as they hear about what goes on at Tower Trace? This may, at first glance, seem like a lack of transparency. But, there's a very good reason for maintaining this separation between our associations and APM.

Our two condo associations, while loosely associated with APM, are purposely not formally connected to APM. The absence of a formal connection is an effort to shield our two condo associations from potential lawsuits associated with the services provided by APM. Tower

Trace, as opposed to our condo associations, owns APM and appoints its Managers. While Tower Trace owns APM, Tower Trace itself is also prohibited from becoming directly involved in the operations of APM. These operational restrictions are spelled out in company documents and by specific provisions articulated within Tower Trace's Lease Agreement with APM.

Our Arbor Trace community, through these constituent governing bodies, is intended to operate as a representative democracy. The two condo associations' residents elect people to serve on their respective Boards of Directors, and those respective boards, in turn, appoint members of their association to serve on the Tower Trace Board. As we have seen, to maintain the required separation between the condo associations and APM, it's the Managers of the Tower Trace Board, not the condo associations, who appoint the Managers to serve on APM. At each level, care is given to appoint individuals deemed capable of carrying out the responsibilities associated with each role. In the event of unforeseeable difficulties, Managers appointed to either Tower Trace or Arbor Pointe Management can be recalled by the governing body charged with making the original appointment.

Careful thought has gone into the creation of our governance structure here at Arbor Trace. Our governing bodies include provisions for equal representation from each of the two condo associations, as well as provisions for maintaining a balance of power within our community. With regard to equal representation, both Tower Trace and APM have an equal number of Managers representing the community's two condo associations. Note also, that even the company names for our governing bodies, Tower Trace and Arbor Pointe Management, are derived from the names of our two independent condo associations.

Where the balance of power is concerned, aside from appointing an equal number of Managers from each association to serve on Tower Trace and APM, the role of President in each company is intentionally designed to alternate annually between the two condo associations. As a further safeguard, the President of one company will always be from a different condo association than the President of the other. A final provision for maintaining a balance of power is the prohibition preventing Managers of TT and APM from simultaneously serving on their respective condo association boards. Taken together, these provisions allow our two condo associations to remain on equal footing and have equal say in the governance of our community.

It is important to emphasize that the actions and decisions made by each of these governing bodies are intended to benefit the community as a whole, not individuals or subgroups of individuals. To say this more pointedly, the two companies are designed to represent the expressed wishes of the two major stakeholders: our two condominium associations via their elected board members.

To conclude, Tower Trace and Arbor Point Management were designed to enable two independent condo associations to work together collaboratively in providing and coordinating services to the larger community and to insulate members of the two condo associations from potential liability related to the delivery of health care and other provided services. For the

most part, these governing structures were not designed to respond to the needs of individual residents or to the needs of a subset of residents within our community. When a resident, or group of residents has a concern, that concern should be addressed first by the resident's respective condo association. If a majority of residents within a given condo association feel that a particular issue has merit, they, through their elected boards, may ask to have that issue addressed by the appropriate governing body. Residents with individual concerns, such as dietary requests or suggestions related to the delivery of specific services, are encouraged to communicate their concerns directly to the director or person in charge of that service area.

This information is being presented to clarify for our residents the purpose and function of our governance system. Few, if any, senior living communities have the distinction of being resident owned and operated. For all of our governing boards, membership is restricted to elected or appointed residents of our community, who then have a fiduciary responsibility to act in the community's best interest. We in Arbor Trace are most fortunate to live in a community so carefully designed, where we are able to chart our own course and control our own destiny.

F. William Fischer [In consultation with numerous others]  
President, Tower Trace, LLC  
Revised July 15, 2022

## FREQUENTLY ASKED QUESTIONS

### **How is a resident-owned and operated community different from a professionally managed community?**

In a resident-owned and operated community, it's the residents, through their elected or appointed boards, who make the decisions and establish the policies that govern life within the community. In a professionally managed community, an outside professional is hired to make all the decisions and oversee the operations and activities within the community.

### **What are the advantages and disadvantages of living in a resident-owned and operated community?**

The advantage is that residents get to chart their own course, make decisions in keeping with their expressed needs, and, along with that, have greater control over the quality of their life and the costs associated with meeting their needs. The chief disadvantage is the need for some residents to willingly give of their time to serve on boards, participate in the required meetings, and make on-going policy decisions as the need arises.

### **Who is ultimately in charge here at Arbor Trace?**

That will vary depending on what entity you are talking about and which board is in charge of that entity. Matters having to do with the associations, Arbor Trace or Tower Pointe, are controlled exclusively by their respective Board of Directors. Each board establishes by-laws and policies pertaining to their overall operation, including policies regarding how, and under what circumstances, their common areas might be used by members of the community at large. APM sets the rules pertaining to activities within the Clubhouse and the manner in which other shared activities and services are provided. Tower Trace is in charge of the Clubhouse's furnishings, equipment, and fixtures; the condition of the Clubhouse grounds; and the operation of the real estate office.

### **What is the role of Arbor Trace's Executor Director?**

The Executive Director is in charge of shared community services and works in concert with the resident managers of our two companies (Tower Trace, LLC and Arbor Pointe Management, LLC.) and, as needed, with the Tower Trace Realty office, each association's Board of Directors, and the condo manager of our two associations. His/her job is to implement the policies of our TT and APM boards and coordinate the delivery of all shared community services: maintenance, housekeeping, laundry, food services, dining, nursing, transportation, resident services, realty, and associated administrative services such as accounting/finance, and human resources.

The Executive Director has an important role within our community. Unlike board managers and board directors who are engaged in other activities, having retired from their previous

careers, the Executive Director maintains an on-site presence and is positioned to monitor what is occurring on a day-to-day basis. The Executive Director holds weekly staff meetings to review operations, address specific concerns, and apprise staff of events and issues impacting on the delivery of their services and is also responsible for holding directors and their staffs accountable for their delegated responsibilities.

**With Arbor Glen located on community property, should I be concerned about my condo association becoming involved in a potential healthcare-related lawsuit?**

The truth is there can be no future guarantees. What can be said is that our community, like other communities having provisions for on-site healthcare, has received the same legal advice that has been dispensed to hundreds of similar communities across the nation, including those who have the resources to hire the best legal minds from top-rated law firms. That advice is to have a separate board responsible for the delivery of healthcare services. Our condo associations engage the services of a separate company, Arbor Pointe Management, LLC, to provide healthcare and other desired community services. Like any responsible company, APM also carries insurance for general, professional, and management liability, as well as carrying an umbrella policy and coverage for excess professional liability.

**When it comes time to sell, why should I consider listing with our real estate agency as opposed to an outside agency?**

First, because the monies provided through the commissions are funneled back into the community, which helps to keep our fees low and avoid the need for special assessments. Second, because agents on the outside are not as familiar with how our community operates and the many ancillary services provided here. And finally, listing through our in-house agency is a meaningful way to say "thank you" and help us in perpetuating an affordable senior living experience, in a positive and caring environment, where people gain comfort from their relationships while remaining active and engaged. If you would like to "give-back" when the time comes, please consider adding a codicil to your will instructing your heirs of your intentions. Your generosity in doing so can make a demonstrable difference for both current residents and those residents yet to come.



## Organizational Chart Explanation

This attached chart provides a top-down, visual illustration of how the community's various components relate to each other. Although it accurately represents the hierarchical structure of the community, it does not necessarily indicate the channels one must go through before engaging in a specific task or activity. The description that follows indicates the reporting structure that is used in managing the *shared services* available to the community.

Arbor Trace is a senior-living community comprised of two independent **condominium associations**, ultimately in charge of the community, and three subsidiary companies designed to provide the associations with a variety of shared services: **Tower Trace, LLC, Tower Trace Realty, LLC, and Arbor Pointe Management, LLC.**

Both condo associations, as well as each of their three subsidiary companies, are governed by **resident managers**, who are either elected or appointed to their respective boards. These managers meet monthly, or as required, to set policy and address the concerns falling within their purview. The condo associations also utilize the services of a **condo manager** who engages and oversees the delivery of non-shared services within the associations and coordinates with other community directors in the delivery of shared services to the associations.

In order to meet the shared needs of the community and implement the policies set by the resident managers, the condo associations, together with their three subsidiary companies, coordinate their activities through an **Executive Director**. The executive director serves as an interface between the respective company resident managers and the employees they hire to cover their shared service areas (e.g. maintenance, housekeeping, laundry, food services, dining, nursing, transportation, resident services, realty, and associated administrative services such as accounting/finance, and human resources). An executive director is essential since, unlike resident managers, she has an on-site presence and is in a position to monitor what is occurring on a day-to-day basis and hold staff members accountable for their delegated responsibilities. The executive director holds weekly meetings with staff to review operations, address specific concerns, and apprise them of events and issues impacting on the delivery of their services.

To assist the executive director in the management of operations, each shared service area has a designated **Director**, and, in the case of our dining room, a **Manager**, who is responsible for overseeing the activities associated with that specific service area. The employees in a given area report to their director, who in turn reports to the executive director, who in turn reports to the resident managers of the company overseeing that service area.