

Questions and Answers regarding the Rolling Green HOA Lawsuit

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Phone Conference 1/10/2022 - 2:00 PM

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Why do some homeowners assert that our Board doesn't follow the law?

The vast majority of Florida mobile homeowner board members—including your Board members—try very hard to act in the best interests of their homeowners and their corporation. But, Chapter 723, the Florida Mobile Home Act, is very complicated. Some lawyers—even board certified real property lawyers—have openly stated that they also find Chapter 723 to be difficult to understand and apply. Over the past 26 years I have discussed the correct interpretation of Chapter 723 with hundreds of non-lawyer HOA board members. It is quite normal and expected that they would misconstrue, misunderstand, and misapply sections of Chapter 723. But, I have **never** encountered a HOA board member deliberately violating the law.

It is common for ignorant and ill-informed homeowners to unfairly criticize board members. Frequently, those homeowners have only partial information or some personal agenda. Those homeowners may simply operate under an “illusion of knowledge.”¹ One example includes the illogical suggestion that an appointed board member has less authority than an elected board member. Another is the similarly illogical implied assertion that the board’s alleged violation of 723 justifies any action by the homeowner-members, including holding an illegal mock “election.”

Are you representing the RGHOA or individuals?

I represent the incorporated homeowner association and the directors of the RGHOA in their representative capacities.

What can we do as residents to not have collusion between the future HOA boards and Cove? Can Bylaws include that past board members cannot be elected?

Your Bylaws cannot simply restrict past board members from future service. Collusion between future board members and Cove would have to be addressed when those instances present themselves. If homeowner-members believe the board is acting inappropriately, they can, using the Bylaws and/or provisions of Chapter 723 call a meeting to effect a recall of such directors or officers.

¹ “The greatest enemy of knowledge is not ignorance, it is the illusion of knowledge....”
Stephen Hawking.

What rules must the RGHOA follow?

Any lawfully incorporated profit or not-for-profit corporation is expected to follow the law generally. The law in existence at the time of its incorporation is deemed to be “adopted” by the corporation.

- Chapter 723, *Fla. Stat.*;
- Chapter 617, *Fla. Stat.*, as directed by Section 617.1703(1)(a), *Fla. Stat.*, unless of a conflict then the applicable provisions of Chapter 723 shall apply;
- Chapter 61B, *Fla. Admin. Code*;
- Florida and federal Constitutions;
- County and City Ordinances.

May a homeowner who is an agent or an “ambassador” of Cove have the right to be appointed or nominated to serve as a board member if there is no conflict of interest clause in the Bylaws?

The presence or absence of a conflict of interest clause in your Bylaws is irrelevant. The officers and directors of the incorporated homeowners’ association have a statutorily-imposed fiduciary relationship to the homeowner-members. A fiduciary duty is one of the highest obligations recognized at law; much like the duty of a doctor to patient or a lawyer to a client. By definition, then, an agent (or foot soldier) of Cove clearly cannot be appointed or nominated to serve as a board member. But, a simple brand ambassador of Cove is a closer question. If the brand ambassador is simply a good-will communicator to prospective homeowners, then there is likely no apparent conflict of interest. If Cove provides some benefits to ambassadors which are withheld or provided at an expense to others, there may be some possible conflict of interest.

What is the cost of this lawsuit? From where did those funds come?

Your HOA wisely negotiated a flat-fee contract for \$10,000 plus costs. The HOA also paid Attorney Perry an annual retainer fee of \$2,000. The funds came from your incorporated HOA’s legal reserve fund.

If the HOA is not successful will it be responsible for the legal fees of Cove or the individual defendants?

The incorporated HOA faces minimal or no exposure to attorney’s fees and cost in the unlikely event it is unsuccessful. Significantly, there is no exposure of the individual homeowners in the Park to any attorneys’ fees award against the incorporated HOA.

One allegation in the lawsuit is that the sale to Cove was illegal. Is the expectation that the courts will reverse the sale? What would become of the park?

It is a possibility the Court could award significant monetary damages to the incorporated HOA. Or, the Court could order the Park to be offered to the homeowners presumably at a deep-discount from its current value.

By what authority do you believe that the 2021 Board can extend their term of office for another year? Our bylaws says the Board serves one year.

Like many Florida HOAs, the Board simply recognized that they could not hold a proper election in the middle of a COVID-19 pandemic. They acted prudently by suspending the election. They are working on scheduling an election as soon as it can be conducted safely; possibly using an online or electronic voting platform.

Why was Zoom or some other video or audio platform not used in the past several months to hold HOA meetings and dispense meeting minutes and financial reports?

Your Board is making an effort to become more proficient in these new technologies. That is why this Slido.com question/answer platform and Uberconference.com audio platform is being used now. Zoom is on their horizon.

Does being part of this lawsuit put me at any risk of having a lien on my home if we lose?

No.

What if Cove causes some retribution or harassment to homeowners?

Retaliation or harassment would be an illegal violation of Section 723.0615. *Fla. Stat.*, which reads:

- (1) It is unlawful for a mobile home park owner to discriminatorily increase a home owner's rent or discriminatorily decrease services to a home owner, or to bring or threaten to bring an action for possession or other civil action, primarily because the park owner is retaliating against the home owner. In order for the home owner to raise the defense of retaliatory conduct, the home owner must have acted in good faith and not for any improper purposes, such as to harass or to cause unnecessary delay or for frivolous purpose or needless increase in the cost of litigation. Examples of conduct for which the park owner may not retaliate include, but are not limited to, situations where:

- (a) The home owner has in good faith complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the mobile home park;
- (b) The home owner has organized, encouraged, or participated in a homeowners' organization; or
- (c) The home owner has complained to the park owner for failure to comply with s. 723.022.

What is the benefit of me being part of this lawsuit? Is there a cash settlement involved?

Possibly.

Do I have to be part of this lawsuit? Can I opt out?

The lawsuit is not technically a class action. It is a representative action under Florida Rule of Civil Procedure 1.222 which reads:

A mobile homeowners' association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all homeowners concerning matters of common interest, including, but not limited to: the common property; structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving the park property; and protests of ad valorem taxes on commonly used facilities. If the association has the authority to maintain a class action under this rule, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action under this rule.

Nothing herein limits any statutory or common law right of any individual homeowner or class of homeowners to bring any action which may otherwise be available. An action under this rule shall not be subject to the requirements of rule 1.220.

Rule 1.222 was adopted in *Lanca Homeowners, Inc. v. Lantana Cascade of Palm Beach, Ltd.*, 541 So.2d 1121 (Fla. 1988).

Have you won any similar lawsuits?

Some aspects of your case are unique. Other aspects involve similar issues which are currently being litigated in Florida state and federal court.

How do we ask questions of the Board or their lawyer? It will be difficult on a phone or Zoom call with hundreds of homeowners in attendance.

The HOA Board has—with the assistance of their lawyer—set up a Slido.com question and answer portal which you may use to ask questions of the Board and their attorney. Those posted questions will be given first priority and answered during the phone conference.

You may go to www.slido.com to post questions to the Rolling Greens HOA Board of Directors or their attorney, Daniel Perry.

Click on the weblinks below and only enter your email address to post a question:

Rolling Greens HOA

Weblink: <https://bit.ly/rollinghoa>

HOA Attorney Daniel Perry

Weblink: <https://bit.ly/atty-perry>