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Do Voluntary Civic Associations Have Authority to Enforce Their Covenants and Restrictions Over Real Property?

Written by Hans C. Wahl, Esq. - 1/18/18

Prior to mandatory homeowners' associations, planned master community developments, and CDDs becoming en vogue, developers established civic associations, and other forms of property owners' associations to oversee the communities they constructed. Before the Florida Homeowners' Association Act was enacted by the Florida Legislature, developers created these antiquated, and mostly voluntary, associations as non-profit corporations under the Florida Not For Profit Corporation Act. As the formation and administration of mandatory homeowners' associations became more sophisticated over the years, the perception became that these older voluntary, civic and property owners' associations (i.e. non Chapter 720 HOAs) were powerless and unenforceable. That is not always true and voluntary civic associations have authority to enforce their covenants and restrictions under the right circumstances.

If a voluntary civic association was established as a valid non-profit corporate entity and remains currently active with the State of Florida, it will be governed by Chapter 617, Florida Statutes, (the Florida Not For Profit Corporation Act) and will have all the rights and powers granted by it. Chapter 617 expressly includes and authorizes not-for-profit corporations that limit membership in its corporate entity to property

owners within specific geographic boundaries where the corporation has been formed for the benefit of those property owners. Fla. Stat. § 617.0601(7). Therefore, such associations have power under the Florida Statutes to operate and enforce its rules and covenants over the properties and owners within its purview.

These associations have the statutory authority and right to elect or appoint officers and directors to handle their affairs and to exercise their powers. Fla. Stat. § 617.0302. They can hold meetings, conduct their business and carry on operations as contained within its governing documents. *Id.* They also have the statutory right to adopt, change, amend and repeal their bylaws and other governing documents. *Id.* They can also establish one or more classes of members, along with different qualifications and rights for those members within each class. Fla. Stat. § 617.0601.

To be enforceable against the properties and owners within its control, the covenants and other governing documents created by the developer of these associations must be recorded in the county's official records. Moreover, the covenants and governing documents must expressly state that the developer transferred or assigned its right of enforcement to the corporate entity acting as the association after development was completed. If the recorded governing documents do not include this language, then there would need to be a separate written assignment of rights recorded in the county's official records for the association to have the right of enforcement of the developer's covenants. Stated another way, there must be a written statement somewhere within the county's official records that granted the association the power to enforce the developer's covenants and governing documents once development was completed.

The term "voluntary" is oftentimes associated with these older associations and it causes issues with people believing that means the association's recorded covenants and restrictions are not enforceable. "Voluntary" is not always synonymous with "unenforceable." Usually when an association is labeled "voluntary" it means the payment of dues and assessments by its members is voluntary, not the obligation of owners to abide by the covenants and restrictions.

If there are recorded covenants and restrictions in a county's official records that apply to certain parcels of land, those covenants and restrictions run with the land, which bind the owners of those parcels, regardless of whether dues and assessments are voluntary. Florida case law affirms the right of an association governing residential property and consisting of member property owners, whether voluntary or mandatory, to enforce its covenants and restrictions, and to even create amended covenants and new restrictions over time. *See Hernandez v. Trout Creek Development Corp.*, 779 So.2d 360 (Fla. 2d DCA 2000) (holding that a voluntary homeowners' association has the authority to enforce its covenants and restrictions based on its status as assignee of the developer's rights if expressly stated in recorded governing documents); *See also Zerquera v. Centennial Homeowners' Ass'n, Inc.*, 721 So.2d 751 (Fla. 3d DCA 1998) (explaining that an owner who purchased a lot subject to covenants and governed by an association that did not have authority to assess fines and record liens at the time of the owner's purchase is subject to validly passed amendments to the covenants made after the owner's purchase of the lot, including amendments granting fine and lien rights to the association.)

Don't let the terms "voluntary association" or "civic association" cause confusion or lead your association to believe that it is unenforceable and powerless. If it is a validly enacted and active non-profit corporation with a set of recorded covenants and restrictions in the county's official records, then it is likely an enforceable association to at least some extent under Florida law. The extent of its power, authority and right of enforcement will vary based on a myriad of factors as described in this blog post. An experienced community association attorney should be consulted to analyze the specific facts and circumstances involving your association.

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