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PLEASE REPLY TO BRANDON OFFICE

June 5, 2020

REGULAR U.S. MAIL

EMAIL: ajeffery813@gmail.com

Talmadge Almand
Hickory Hill Community Homeowners Association, Inc.
504 Sportsman Park Drive
Seffner, FL 33584

**Hickory Hill Community Homeowners Association, Inc.
Outstanding Issues
Our Matter No.: 2017-3912-002**

Dear Mr. Almand:

Thank you for your patience. Below I believe I have answered the most pressing questions we discussed after the Hearing. Also, I am pleased that we were able to prevail.

What is the Association's Name?

There has been some confusion about the Association's name. The Articles of Incorporation and given to me by Ms. Boyd dated November 4, 1987 has the name as "Hickory Hill Homeowners Association, Inc." However, the name of the Association on the Articles of Incorporation actually filed with the Division of Corporations on January 11, 1988 is "Hickory Hill Community Homeowner Association, Inc."

Apparently, the original developers tried to use the name "Hickory Hill Homeowners association, Inc." but could not because another association was already using that name; they must have changed the name by adding "Community" and then filed the Articles. The bottom line is that there is NO issue with the name after all. The Association has had the same name since its incorporation in 1988. I have included the filed Articles with the original name for the Association's file.

Is Every Lot Owner Required to Follow the Restrictions?

Yes, without question, EVERY lot owner in Phase 1 and Phase 2 are subject to the Restrictions. For example, the Declarations state, “all lots [in the Subdivision] are subject to the restrictions as described below.” (emphasis added). Although there are some lots that were sold before the restrictions were recorded, but all but one owner consented to being subject to the restrictions and their consents has been recorded in the public record.

May Lot Owners Enforce the Restrictions?

Yes, without question, a lot owner (or a group) has the right to enforce any restriction and the right of reimbursement of attorney fees if that lot owner prevails in court. Article II, section 2, states that if any persons violates or attempts to violate any restriction, “it shall be the right of [any person] or persons owning any lot in the subdivision to prosecute any proceeding at law or in equity” against the violator and the violator “shall bear expenses of the litigation,” including “reasonable attorney fees.”

May the Association Enforce the Restrictions.

Yes, but the basis for the Association’s right to enforce the Restrictions is not explicit (like the owners’ rights) but implied by the powers given it in its Articles of Incorporation and in Chapter 617, Florida Statutes.

Article III.4 of the Articles of Incorporation states that one of the Association’s purposes is to “support adherence to recorded deed restrictions.” (emphasis added). Moreover, the Articles state that the corporation shall have and exercise all rights and powers conferred upon it under Chapter 617 (the not for profit statute). Under Chapter 617, a corporation shall have power “necessary or convenient to effect any or all of the purposes for which the corporation is organized.” (emphasis added). If the Association is to “adhere to the recorded restrictions,” then it is necessary to file lawsuits against lot owners to enforce them.

N.B. If you recall, attorney Hatley argued that the Association had no enforcement power because it does not meet the definition of a “Homeowners Association” under Chapter 720, Florida Statutes, which required that membership in the HOA be mandatory. The difficulty with her position is that Hickory Hill was established BEFORE Chapter 720 or any other HOA statute was enacted. The Association is governed by the 1985 and 1988 versions of Chapter 617, the non-for-profit statute. That is why the basis for enforcement must come from Chapter 617, which is why I rely on it above in my analysis.

Are Dues Mandatory?

No. Whether dues are mandatory for every lot owner has been a hot button issue. Although I had believed there was an interpretation of the documents making them mandatory, upon further examination I believe they are not. Let me explain.

Article I of the Bylaws states, "The annual dues of members . . . shall be payable in advance on the first day of January of each year." (emphasis added). I relied on that statement when I first analyzed the question. However, this statement assumes every lot owner is required to be a "Member". They are not. Lot owners are Members only if they pay their dues. For example, the definition of "Membership" is in both the Articles of Incorporation and the Bylaws, which are as follows:

Article VI of the Articles of Incorporation states:

The qualifications for membership in this corporation shall be that the person be a resident and/or homeowner of the subdivision know as Hickory Hill, Phase I and II . . . and payment of dues.

The Bylaws, Article I, states,

Membership in this Organization shall consist of the persons named in the Charter upon application and payment of dues.

It is fair to conclude that to be a Member you must (1) be a resident and/or homeowner and (2) pay dues. Therefore, a lot owner who is not a Member is not required to pay dues. If you want to be a Member, and vote or hold an office, then you must pay dues. So, dues, like membership, are voluntary.

To make dues mandatory for every lot owner and to assess and record liens against a lot owner's property for non-payment, the Association must amend the Restrictions. Amendments to the Restrictions required not less than 75% of the "owners of lots in the Subdivision."

I hope the above helps the Association going forward. Don't hesitate to call me if you have any questions.

Sincerely,

RORY B. WEINER, P.A.

By. 

Rory B. Weiner, Esq., B.C.S.

State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of HICKORY HILL COMMUNITY HOMEOWNERS ASSOCIATION, INC., a corporation organized under the laws of the State of Florida, filed on January 11, 1988, as shown by the records of this office.

The document number of this corporation is N24295.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capital, this the
Fourteenth day of January, 2020



Laurel M. Lee

Laurel M. Lee

Secretary of State

ARTICLES OF INCORPORATION
OF
HICKORY HILL COMMUNITY HOMEOWNERS ASSOCIATION, INC.
A FLORIDA CORPORATION
NOT FOR PROFIT

FILED
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TAMPA

ARTICLE I - NAME

The name of this corporation is HICKORY HILL COMMUNITY HOMEOWNERS ASSOCIATION, INC.

ARTICLE II - EXERCISING LAW

This corporation is organized pursuant to the Corporations Not for Profit Law of the State of Florida, set forth in Part One of Chapter 617 of the Florida Statutes.

ARTICLE III - PURPOSES

- A. The specific and primary purpose for which this Corporation is founded is to organize and operate a homeowners association. The purpose for which the organization shall function shall include:
1. The promotion of a spirit of neighborly relations and cooperation among property owners and residents of the community.
 2. The achievement of cooperation in obtaining improved utilities, governmental services and other beneficial improvements for the community.
 3. The maintenance of a high standard of morality in the community and vigorous opposition to any encroachment or conduct of whatever kind and description which may tend to lower the moral standard of the community.

4. The promotion of physical improvement of the community for the common good of its property owners and residents and opposition to any act whatever which may tend to depreciate the property values in the community and support adherence to recorded deed restrictions.

B. The aforementioned goals and objectives shall not serve to limit the functions of this organization and it will be permitted to do such other things to protect the health, welfare and moral standards of the community.

C. This corporation is organized and operated exclusively for non-profit purposes, and no part of any income shall inure to the benefit of any member, director, or officer nor shall this corporation issue any shares of stock or pay any dividend.

D. This corporation shall have and exercise all rights and powers conferred upon corporations under the laws of the State of Florida, provided, however, that this corporation is not empowered to engage in any activity that in itself is not in furtherance of its purposes as set forth in paragraphs (A), (B), and (C) of this Article.

ARTICLE IV - TERM

This corporation shall have a perpetual existence.

ARTICLE V - INCORPORATION

The names and residences of the subscribers to these Articles of Incorporation are as follows:

JAMES CARR	401 Penn National Rd. Seffner, FL 33584
DOUGLAS MCCLENDON	502 Freakness Place Seffner, FL 33584
JEAN HUTSON	205 Running Horse Rd. Seffner, FL 33584

ARTICLE VI - MEMBERSHIP

The qualifications for membership in this corporation shall be that the person be a resident and/or homeowner of the subdivision known as NICKORY HILL, PHASE I & II, the boundaries of which are set forth in the survey attached hereto and made a part hereof, and payment of dues.

ARTICLE VII - MANAGEMENT
OF CORPORATE AFFAIRS

The Board of Directors shall manage the affairs of the corporation. The number of Directors shall be not less than seven (7) nor more than fifteen (15), the exact number to be provided in the by-laws. The number of Directors fixed by the by-laws may not be changed except by two-third (2/3) vote of the membership. The Board of Directors shall be elected annually as shall be set forth in the by-laws of this corporation.

The names and address of the persons constituting the first Board of Directors are:

JAMES CARR	401 Penn National Rd. Seffner, FL 33584
DOUGLAS MCCLENDON	502 Preakness Place Seffner, FL 33584
JEAN HUTSON	205 Running Horse Rd. Seffner, FL 33584
ART HUTSON	205 Running Horse Rd. Seffner, FL 33584
DELIA MCKAY	702 Thistle Dr. Seffner, FL 33584
TODD ENGSTROM	403 W. Running Horse Rd. Seffner, FL 33584
JERRY EUGENIO	503 Running Horse Rd. Seffner, FL 33584
JOE ROBERTSON	503 Preakness Pl. Seffner, FL 33584

CHUCK HUDSON

507 Sportsman Park Dr.
Seffner, FL 33584

SEAN CALLAHAN

532 Sportsman Park Dr..
Seffner, FL 33584

ARTICLE VIII - OFFICERS

A. The Officers of this corporation shall be a President, Vice-President, Secretary, and Treasurer. Other offices and officers may be established or appointed by members of this corporation at any regular annual meeting. The qualifications, the time and manner of electing or appointing, the duties of, the terms of office, and the manner of removing officers shall be as set forth in the by-laws.

B. The Officers who are to serve until the first election of officers under the Articles of Incorporation are:

PRESIDENT

James Carr
401 Penn National Rd
Seffner, FL 33584

VICE-PRESIDENT

Douglas McClendon
502 Preakness Place
Seffner, FL 33584

SECRETARY/TREASURER

Jean Hutson
205 Running Horse Rd.
Seffner, FL 33584

This corporation shall have such standing committees or other committees as may be specified in the by-laws.

ARTICLE IX - LOCATION OF
REGISTERED OFFICE, IDENTIFICATION
OF REGISTERED AGENT

A. The address of this corporation's initial registered office in the State of Florida is:

401 Penn National Rd.
Seffner, FL 33584

B. The name of this corporation's initial registered agent at the above address is:

James Carr