

RCPOA PRESIDENT SPECIAL MEETING

March 30, 2019

Presented by: Ed McDonald, RCPOA President



CONDUCT OF MEETING

- RCPOA Presidents Meeting - A courtesy to RCPOA Members
- Meeting will focus on those items communicated on agenda
- This meeting purpose is to brief the Members of RCPOA on decisions made by the RCPOA Board concerning agenda topic concerns.
- Each agenda topic will be presented, followed by a brief question and answers period.
- Courtesy and polite communications will be observed at all times during this meeting. The President may halt or terminate the meeting at any time if he deems that communications have become ineffective.

AGENDA

1. Validity of the 2018 Selected Board
2. Restriction of Board Authority to Modify RCPOA Governing Documents
3. Address all Previous Filings with Gilmer County by proceeding Boards and identify valid and invalid filings.
4. Term of Service for RCPOA Board Members
5. Correct Voting Procedure and Revised Voting Ballots
6. Number of Board Members eligible for election
7. Right of POA to purchase and hold ownership of RC Properties.
8. Right of the RCPOA Board to Impose Fines & Liens
9. Member obligations to pay RCPOA Fees/Dues
10. GA POA Act Applicability
11. Accessibility to POA Records
12. Procedures for Making Requests of the RCPOA Board or its Committees.

AGENDA EXTENSION CONSIDERATION

- RCPOA Member, Devon Morris, Letter of Expressed Concerns

1. VALIDITY OF THE 2018 SELECTED BOARD

2018 Board Selection was viewed as invalid

- Article III, Section 4, “Election and Term of Office” states that directors **shall** be chosen by the Members at the Annual Meeting of the Members... The term “shall” is a term that unequivocally requires something to occur as described following the word “shall.” Article III, Section 4, was not adhered to in the last Annual Meeting of the Members, therefore, it is asserted that the current selection of the Board of Directors is invalid.
- Article II, Section 9, “Proxies”, allows for Member not planning on being present at a meeting of Members where voting is to take place to submit a Proxy Ballot identifying their voting choices to the Association Secretary prior to the meeting. *A Proxy Ballot must include the Members signature and date.* The voting ballots submitted did not include the minimum requirements of a signature and date, nor were they submitted prior to the Annual Meeting of the Members to vote for the Board of Directors. Due to the fact that the voting ballots did not meet the requirements of the By-Laws they are invalid. Due to the selection of Board of Directors and Officer being invalid, the previous Board of Directors and Officers are restored until a new vote of the Members can be taken.

1. VALIDITY OF THE 2018 SELECTED BOARD

Board Membership Corrected

- Article III, Section 5, “Removal of Directors, and Vacancies” states “In the event of death, disability, or *resignation of a director*, a vacancy may be declared by the Board and it may appoint a successor.
- January 12th Emergency Board Meeting (Refer to RCPOA Presidents Letter of January 27, 2019.) - Previous elected, undisputed Board Members were returned to authority and then voted in new Board Members and then elected Officers (Refer to January 12 Board Meeting Minutes)

2. RESTRICTION OF RCPOA BOARD AUTHORITY TO MODIFY RCPOA DOCUMENTS

The Association Board of Director, nor the Association Officers, have no authority to modify, make amendment to, add or subtract from, or change in any way the RCPOA By-laws or Declaration.

- Article VI, Section 6 states that “These By-laws may be amended only by the affirmative vote or written consent or any combination thereto, of Members representing a **majority of the total votes of the Association (RCPOA)**. No amendment may remove, revoke, or modify any right or privilege of Declarant (All Members), without the written consent of Declarant, or assignee of such right or privilege, as applicable.”
- The Declaration of Covenants, Conditions and Restrictions for Rodgers Creek are incorporated into the By-Laws as stated in Article VI, Section 3.

3. ADDRESS ALL PREVIOUS FILINGS WITH GILMER COUNTY

The majority of filings were invalid.

- Filing of 03-22-2006, “Rules and Regulations of Rodgers Creek POA”
- Filing of 11-22-2010, “Rules and Regulations of Rodgers Creek POA”
- Filing of 08/26/2013, “Rodgers Creek POA Inc.”
- Filing 09-09-2014, “No Title” Subject: Amendments to replace and supersede the amendments filed on 08-26-2013.
- Filing 08-29-2018, “Rules and Regulations of Rodgers Creek POA”

A new filing will be shall be made by the RCPOA Board to clear the old slate of all filings

4. TERM OF SERVICE FOR RCPOA BOARD MEMBERS

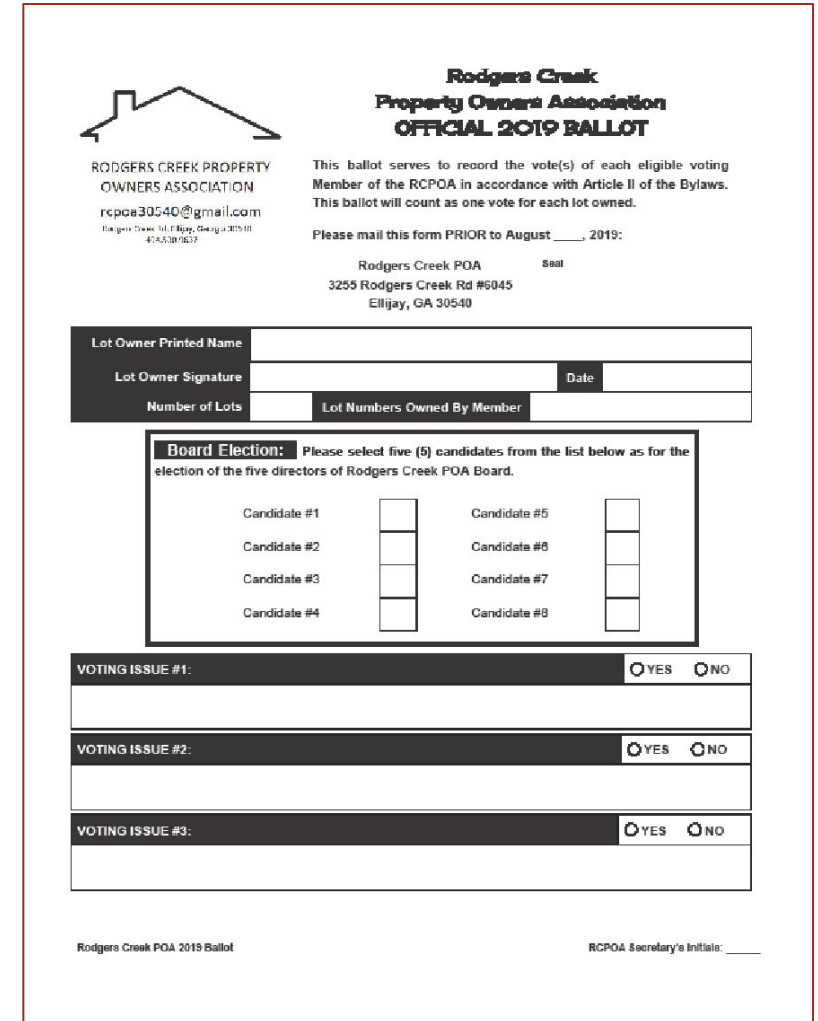
- The RCPOA Board of Directors asserted modification of Article III, Section 4, “Election and Term of Office” of the By-Laws, as filed with Gilmer County on 08/26/2013 as Item #0306-9, extending the Term of Office for the Board of Directors from 1 Year to 3 Years is unsupported, unenforceable, and therefore invalid as currently evidenced.
- Article VI, Section 6, “Amendment” of the RCPOA By-Laws provides clear instruction that only a majority of **all** RCPOA eligible voting Members may modify the RCPOA governing documents, namely the By-Laws. There has been no evidence of either the number of signed and dated Member Ballots pertaining to this vote, nor is there any sworn and signed statement by the then presiding President or Secretary confirming that a specific number of signed and dated ballots, meeting the majority of Member votes requirements, was accomplished. (Reference GA POA Act)
- By-law Article III, Section 4 “Election and Term of Office” “The directors shall be chosen by the Members at the annual meeting of the Members and **shall serve for a period of one year, or until successors are qualified.**”

5. CORRECT VOTING PROCEDURE AND REVISED VOTING BALLOTS

1. Form a Nominating Committee as defined by the By-Laws in advance of the Annual Meeting of the Members to identify persons interested in serving on the Board of Directors.
2. The Nominating Committee will generate and distribute Proxy Ballots and submit them to all Members 15 Days Prior to the Annual Meeting.
3. At the Annual Meeting of the Members all interested candidates will be given equal floor time to introduce themselves and rally for votes.
4. Upon completion of all candidates' presentations, a vote of the present members will be taken by submitted paper ballot.
5. The votes will be tallied and reported at the meeting.
6. The Proxy Ballot votes will then be opened, tallied and reported at meeting.
7. The nominated candidates for Board of Director Positions will be identified and recorded in the meeting minutes.

5. CORRECT VOTING PROCEDURE AND REVISED VOTING BALLOTS

- New Voting Ballot – fully meets By-laws requirements
- Ballots serves as both capture of actual vote of member and serves as a Proxy Ballot.



Rodgers Creek Property Owners Association OFFICIAL 2019 BALLOT

RODGERS CREEK PROPERTY OWNERS ASSOCIATION
rcpoa30540@gmail.com
Rodgers Creek, GA 30540

This ballot serves to record the vote(s) of each eligible voting Member of the RCPOA in accordance with Article II of the Bylaws. This ballot will count as one vote for each lot owned.

Please mail this form PRIOR to August ____, 2019:

Rodgers Creek POA 3255 Rodgers Creek Rd #6045 Ellijay, GA 30540

Lot Owner Printed Name _____
Lot Owner Signature _____ Date _____
Number of Lots _____ Lot Numbers Owned By Member _____

Board Election: Please select five (5) candidates from the list below as for the election of the five directors of Rodgers Creek POA Board.

Candidate #1	<input type="checkbox"/>	Candidate #5	<input type="checkbox"/>
Candidate #2	<input type="checkbox"/>	Candidate #6	<input type="checkbox"/>
Candidate #3	<input type="checkbox"/>	Candidate #7	<input type="checkbox"/>
Candidate #4	<input type="checkbox"/>	Candidate #8	<input type="checkbox"/>

VOTING ISSUE #1: _____ YES NO

VOTING ISSUE #2: _____ YES NO

VOTING ISSUE #3: _____ YES NO

Rodgers Creek POA 2019 Ballot RCPOA Secretary's Initials: _____

6. NUMBER OF BOARD MEMBERS ELIGIBLE FOR ELECTION

By-laws clearly states 3 – 5 Board Members

- Article III describes the numbers, powers, and meetings of the Board of Directors. A definition of what Board of Directors may also be found under O.C.G.A. §14-3-140 Definitions for GA Non-Profit Organizations.
- Article III, Section 2, “Number of Directors” of the By-Laws instructs that the number of Directors shall not be less than three (3) and not more than five (5) as provided by majority vote of the Members. This section clearly identifies that the Members determine the number Directors (3-5) to seat the Board of Directors.
- Article IV, Section 2, “Election, Term of Office, and Vacancies” describes how, when and by whom the Officers (President, Vice President, Secretary, Treasurer, et al) will be selected. The cited section clear states that, “The officers of the Association shall be elected annually by the Board of Directors ...”. Members of the Association do not elect the Offices of the RCPOA.

7. RIGHT OF POA TO PURCHASE AND HOLD OWNERSHIP OF RC PROPERTIES

- RCPOA is a non-profit corporation and as a corporation may own property.
- RCPOA Inc. may also foreclose on property and become owner of such property.

8. RIGHT OF THE RCPOA BOARD TO IMPOSE FINES & LIENS

- Article III, Section 21 Enforcement. “The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the lot of the violating owner. In the event that any occupant of a lot violates the Declaration, By-Laws, or rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner who invited or allowed the occupant to use the premises shall pay the fine upon notice from the association.”

9. MEMBER OBLIGATIONS TO PAY RCPOA FEES/DUES

- Declaration of Covenants, Conditions and Restrictions for Roger Creek, Paragraph 10 – “By acceptance of a deed or by entering into a contract for the purchase of a lot in the subdivision, the owner(s) shall automatically become a member of the RODEGERS CREEK OWNERS ASSOCIATION, INC., a non-profit Georgia corporation, and covenant and agree to pay to the Association annual membership dues and such special assessments as may hereafter be changed by the Association in accordance with its charter and By-laws. Such dues and assessments are payable on a per lot basis.”
- “The annual dues shall be used by the Association for the purpose of maintaining roads within the subdivision, for the enforcement of these restrictions, and for any other lawful purpose of benefit to the subdivision or the lots therein, within the discretion of the Association Board of Directors.”

10. GA POA ACT APPLICABILITY

- Debatable due to Article VI, Section 3, “Conflicts” clearly states the relevance of Georgia Law: *“The Declaration in incorporated herein by this reference, If there are conflicts between the provisions of the Georgia Law, the Declaration, the Articles of Incorporation, and the By-laws, the provisions of Georgia Law (first in importance), the Declaration, the Articles of Incorporation, and the By-laws (in that order) shall prevail.”* This inclusion in the adopted By-laws of RCPOA mandates that should there be anything in RCPOA By-Laws that conflict (or absent from) with GA POA Act (Georgia Law), then the GA POA Act takes precedence.
- Impact of application, pros and cons.
- To be applicable it would need a court decision.
- Three questions to ask the court

10. GA POA ACT APPLICABILITY

- Three questions to ask the court
- **Question 1:**
- If RCPOA Bylaws are absent of any language that would clarify a term/or term use in the RCPOA Bylaws, would it be legally appropriate to reference the GA POA Act to obtain a definition of a term not fully defined?
- **Question 2:**
- Article 6, Section 3 “Conflict Clause” of the RCPOA Bylaws states that GA law takes precedence over all RCPOA governing documents in the event of a conflict between the content of a RCPOA governing document and GA law exists. With the existence of Article 6, Section 3 “Conflict Clause” in the RCPOA Bylaws, would the GA POA Act take precedence over any content of the RCPOA Bylaws should a conflict exist between the two documents?
- **Question 3:**
- If the answer to Question two is affirmative, then does Article 6, Section 3 “Conflict Clause” submit the RCPOA to the GA POA Act as defined by the first sentence of 44-3-235 (a.), Applicability of Law?

10. GA POA ACT APPLICABILITY

- A read of the GA POA ACT by itself states under 44-3-235, “Applicability of Law” that “(a) This article shall apply to all property which is submitted to this article.”
- 44-3-235 (c) “This article shall not be construed to affect the validity of any instrument recorded before or after July 1, 1994, but benefits derived from or based upon this article may only be claimed by developments submitted to this article.”
- 44-3-233, “Construction of Law”, “The provisions of this article and of an instrument recorded pursuant thereto shall be liberally construed in favor of the valid establishment of property owners’ association pursuant to this article with respect to the submitted property. Substantial compliance with the requirements of this article for the establishment of a property owner’s association shall suffice to being property described in an instrument recorded pursuant to this article within the purview and application of this article; and any defects in such instrument or want of conformity with this article may be cured by an amendment thereto duly executed by the association and recorded or, upon application of any lot owner, with notice to the declarant, the association, and all other lot owners, by decree of the court.”

10. GA POA ACT APPLICABILITY

- Option 1 – RCPOA Board may seek a legal decision or cure to confirm that RCPOA falls under the GA POA ACT.
- Option 2 – RCPOA Membership may vote to clarify submittal to the GA POA ACT
- Option 3 – Any RCPOA Member may seek a legal decision or cure to confirm that RCPOA falls under the GA POA ACT.
- Option 4 – No action is taken until a legal matter forces a court clarifying decision concerning applicability of the GA POA ACT to RCPOA.

11. ACCESSIBILITY TO POA RECORDS

- By-law Article VI, Section 4 Books and Records (a) “Inspection by Members and Mortgagees – The Declaration and By-laws, membership register, books of account and minutes of meetings of members, the Board, and committees shall be made available for inspection and copying by any Mortgagee, Member of the Association, or by his or her duly appointed representative at any reasonable time and for a purpose reasonable related to his or her interest as a Member at the office of the Association or at such other place as the Board shall prescribe.

