

The Pending Lawsuit Against One Hundred Hills Homeowners Association

In this HOA election for One Hundred Hills, we have a group of current and former HOA board members who are campaigning against two candidates (Sid Leach and Bertrand Kaper) who are in favor of transparency. If you have not yet voted, please consider the following:

The HOA Board and Management Company Have Avoided Disclosing the Pending Lawsuit to Homeowners

The website for our HOA that is maintained by the management company has a “Knowledge Base” that provides answers to frequently asked questions. One of those frequently asked questions has been: “Is the Association a party to any pending litigation or administrative proceedings?” The HOA website falsely answers that question: “No.” At another place, the HOA website included the question: “If the Association is a party to any pending litigation or administrative proceeding - what is the nature of any pending cases or proceedings?” The answer provided is false, and states: “No pending cases.” A copy of screenshots of these portions of the HOA website are attached. At the last annual meeting of the HOA members on March 23, 2021, a homeowner asked if the HOA was being sued. The board member presiding over the meeting, and the First Service Residential employee in attendance, both refused to answer the question, even though the existence of the lawsuit is neither secret nor privileged.

The HOA May Suffer a Loss That Is Not Covered by Insurance

The case is *Pladgeman v. One Hundred Hills Homeowners Association*, Case No. CV 2019-010615, in the Superior Court of Arizona for Maricopa County. The case has been pending since 2019, and is set for trial on July 19, 2022. In these types of cases, attorneys fees are routinely awarded to the prevailing party. If the HOA loses the lawsuit, the award of attorneys fees against the HOA will not be covered by insurance. The estimated uninsured loss could be between \$50,000 and \$80,000.

Our HOA Illegally Fined a Homeowner Under Rules that Were Themselves Illegal

The lawsuit was filed by a homeowner. Here are the facts as I understand them. The homeowner’s daughter had a high school graduation party. None of his neighbors complained about any noise. But late that night, after the guard gate closed, some high school students apparently heard about the party, and tried to sneak through the gate into our community. None of those high school students were invited guests. As far as the homeowner was concerned, they were trespassers. The homeowner was not responsible for noise created out at the guard gate by those trespassers, but the HOA fined him anyway. Moreover, the homeowner did not have a first offense. Under our rules, homeowners could only be fined if it was a second offense. They fined him anyway. The HOA deducted the fine directly from the homeowner’s bank account.

But it gets worse. The homeowner attended an open board meeting to appeal the fine, and at that board meeting, the HOA board promised the homeowner that they would send him a formal note providing written confirmation that he was cleared of all violations. The case could have been resolved if they had sent him the promised written confirmation. They did not do so, and the

homeowner sued the HOA. After the lawsuit was filed, the homeowner requested a written apology clearing him of all violations, and payment of his attorney fees which were less than [REDACTED]. The HOA would not do it. Instead, they allowed the case to languish, and the attorneys fees at issue are now estimated to be in excess of \$40,000.

But it gets worse. The HOA subsequently sent the homeowner a letter that told him that he still had a violation, even though they had previously verbally told him he was “cleared.” This letter was a serious mistake. In the pending lawsuit, the court held a hearing on October 19, 2021, on a motion for summary judgment. During that hearing, the court ruled that the letter that was sent to the homeowner by the HOA raised an issue of fact concerning whether the HOA had violated its duty of good faith and fair dealing. The court also determined that the HOA rules that were in effect at the time were illegal. A copy of the relevant portion of the court’s Minute Entry containing those rulings is attached.

Our HOA Should Not Keep This Information from Homeowners

Article 2, Section 2.3 of our CC&Rs prohibits the HOA from indemnifying any board member or representative of the HOA who “failed to act in good faith or has engaged in willful or intentional misconduct.” *According to our community manager, he told the HOA board members that they could only give Pladgeman a warning and could not impose a fine, but he was told to “just do it anyway,” so the HOA imposed a fine on homeowner Pladgeman, even though they knew at the time that the rules only allowed the HOA to give the homeowner a warning.*

Board members, both past and present, who may have been involved in causing this lawsuit, or the subsequent letter that led to denial of a summary judgment motion, have not disclosed to homeowners the above details about the lawsuit. If our HOA suffers a substantial uninsured loss as a result of this lawsuit, there may be homeowners who will be upset at any current or past board member who may be responsible for the loss. An email sent to the community on March 8 entitled “HOA ALERT” reveals the strategy of our opponents -- if they can defeat the two candidates in favor of transparency and remove Gloria Leach from the board, then you will never know the truth about what happened. And they currently plan to have First Service Residential count the ballots behind closed doors, (who clearly has a conflict of interest), instead of having an election committee of homeowners count the ballots.

Our Homeowners Association Can Be Better

I am a candidate for the HOA board, and I am in favor of transparency. I have over 40 years of experience as a lawyer, and believe that our HOA would benefit from having someone on the board who has legal experience. Our insurance rates were increased dramatically this year. Our HOA is being sued by a homeowner who appears to have a valid claim. I will take a more conservative approach to the way our HOA operates, and will conduct HOA business in accordance with both the letter and the spirit of the law. I believe we need to change the culture of our HOA. If we do not make changes, I believe homeowners will ultimately pay the price.

[REDACTED]