

**FORT MYERS VILLAS EDUCATIONAL, LITERARY
AND CHARITABLE INSTITUTION, INC.**

d/b/a

VILLAS COMMUNITY ALLIANCE

State of the Corporation

The following is a brief summary of a few important issues that the Corporation has addressed on behalf of its members.

I. ARTICLES OF INCORPORATION

The **Fort Myers Villas Educational, Literary and Charitable Institution, Inc.** (the “Corporation”), a Florida not for profit corporation, was originally formed when its Articles of Incorporation (Document Number 702424) (the “Articles”) were filed with the Florida Secretary of State on May 13, 1961. The original subscribers signing the Articles were Vernon Housewright, William Clements, and Paul Page. The Florida Secretary of State, by issuance of a certified copy of the Articles and all amendments thereto on October 15, 2019, has confirmed that only two amendments to the Articles have been filed since that time. Article IX of the Articles provides that the Articles may be amended upon two-thirds vote of the members present and voting at any annual or special meeting of the Corporation called for such purpose.

On August 27, 2009, Articles of Amendment to the Articles (the “2009 Articles of Amendment”) were filed with the Florida Secretary of State by John E. Greenfield Jr., as then Vice President of the Corporation. The 2009 Articles of Amendment indicate that the attached amendments “were adopted by the members and the number of votes cast for the amendment(s) [were] sufficient for approval.” The attached amendments incorporated language to recognize the Corporation’s new 501(c)(3) tax exempt status.

Amended and Restated Articles of Incorporation (the “2014 Amended and Restated Articles”) were filed with the Florida Secretary of State by John E. Greenfield Jr., as then Vice President of the Corporation, on December 12, 2014. The first paragraph of the 2014 Amended and Restated Articles specifically states that “These Restated Articles of Incorporation, which did not require member Approval, pursuant to FSS 617.1007, were approved by a unanimous vote of the Board of Directors on October 27, 2014.” The 2014 Amended and Restated Articles include many changes to the Articles as originally filed.

Section 617.1007 of the Florida Not-for-Profit Corporations Act (the “Act”) does authorize a corporation’s board of directors to restate its articles of incorporation at any time with or without a vote of the members. However, the same section goes on to provide that, where amendments to the article require approval, amendments incorporated as part of the restatement must be adopted as provided in Section 617.1002 of the Act. Section 617.1002 of the Act defers to the amendatory threshold contained in the corporation’s articles of incorporation. In sum, a board

can restate the articles to incorporate previously approved amendments, but any new amendments must be approved as set forth in the bylaws.

Here, the Articles specifically provide that amendments to the Articles must be approved by two-thirds of the members present and voting at a membership meeting. Accordingly, the amendments that were simply approved by the Board of Directors in 2014 are invalid. The Board of Directors adopted a Board Resolution repealing the 2014 Amended and Restated Articles on November 14, 2019, and Articles of Amendment attaching the Board Resolution were filed with the Secretary of State. The Corporation will be operating pursuant to the Articles and 2009 Articles of Amendment until such time as they are legally amended.

II. BYLAWS

The Constitution and By-Laws approved by the membership at the April 16, 2009 membership meeting (the “2009 Bylaws”) provided that they “may be amended, rescinded and/or additions made thereto by a majority vote at any regular membership meeting after such intention has been announced to the membership at the previous membership meeting.”

The Board attempted to amend the 2009 Bylaws in 2015. At the September 17, 2015 membership meeting, it was announced that the Bylaw Committee would have a rough draft to present to the board in October. There was no business conducted at the October 15, 2015 membership meeting, as there was no quorum present. The minutes of the November 9, 2015 Board meeting indicate that the 2015 Bylaws had been completed and submitted to the Board for approval. At that same meeting, the Board approved the draft of the 2015 Bylaws and stated that they would be presented at the November General meeting for a vote by the members. There is no record that this intention to present the 2015 Bylaws to the members was announced to the membership at the previous membership meeting, nor is there any record of notice otherwise being provided to the members, thus depriving the members of notice of the opportunity to vote on the 2015 Bylaws.

Based on the foregoing, the Constitution and By-Laws considered at the November 19, 2015 membership meeting (the “2015 Bylaws”) are invalid. The Board of Directors adopted a Board Resolution repealing the 2015 Bylaws on November 14, 2019. The Corporation will be operating pursuant to the 2009 Bylaws until such time as they are legally amended, after providing the required notice.

III. MEMBERSHIP

The original Articles provide that the “qualifications of members and the manner of their admission shall be as may be prescribed from time to time in the by-laws of the corporation.” This was not revised until the 2014 Amended and Restated Articles were allegedly adopted. At that time, membership was more specifically defined as follows:

Membership shall be defined as “the owner in his own right, or in common with another or others, of at least one entire building in one of the several subdivisions now, or hereafter, in existence collectively known as Fort Myers Villas, located in Lee

County, Florida. Associate members are defined as “current residents, or former members who have moved from the area and kept their dues in good standing.” Each member shall be entitled to one vote except for the associate members who will have no voting privilege. The manner of admission of members shall rest solely in the absolute and uncontrolled discretion of the Board of Directors of the corporation.

The 2009 Bylaws generally provide that membership in the Corporation shall be limited to “adults in Fort Myers Villas and its environs.” The definition of membership was allegedly amended when the 2015 Bylaws were adopted. The intent at this time was to bring the Bylaws into conformity with the 2014 Amended and Restated Articles. The 2015 Bylaws provide the following relative to membership:

General Membership will be limited to adults who are the owner in their own right, or in common with another or others, of at least one entire building in one of the several subdivisions within the boundaries stated in Article I Section II of these bylaws, collectively known as The Fort Myers Villas.

Since the time that the 2015 Bylaws were allegedly adopted, the Corporation has limited membership to only the owners of property within the following definition of “The Fort Myers Villas” contained in the 2015 Bylaws

Its location is on Sunrise Boulevard in Fort Myers Villas, Lee County, Florida. This area is bounded on the East by the Coast Line Railroad; Christiana and LaSalle Roads on the South; Austin St on the West, and by the Southside of Crystal Dr between Austin St and Coast Line Railroad on the North.

In light of the action by the Board to repeal the 2014 Amended and Restated Articles and the 2015 Bylaws, membership has been opened back up to all adults in the Fort Myers Villas and its environs as set forth in the 2009 Bylaws. Ownership is no longer a requisite to membership, though only those members who live within the Fort Myers Villas and its environs, which has been defined by the Board to include Lee, Collier, and Charlotte Counties, may vote on Corporation matters.

IV. PROPERTY OWNERSHIP

Title to the property located at 2316 Sunrise Boulevard, Fort Myers, Florida, together with the improvements located thereon (the “Corporation Property”), was conveyed by J. Foster Pate Associates, Inc. to the Corporation by warranty deed dated June 29, 1961 and recorded on June 30, 1961 in Official Records Book 73, Page 266 of the Public Records of Lee County, Florida. The warranty deed did not convey an ownership interest in the Corporation Property to any individual. Accordingly, despite assertions by individuals to the contrary, no owner within the Fort Myers Villas has an ownership interest in the Corporation Property. Rather, the Corporation members have a right, as does the public, to use the park and the Community Center, subject to rules adopted by the Board of Directors.

V. 501(C)(3) TAX EXEMPT STATUS

Since taking title to the Corporation Property in 1961, the Corporation had received an ad valorem tax exemption pursuant to Chapter 196, Florida Statutes. Pursuant to Section 196.011, Florida Statutes, the Corporation filed an application for exemption with the Lee County Property Appraiser on or before March 1 of each year for purposes of preserving the exemption. As a result of this exemption, the Corporation historically paid no property taxes on the Corporation Property.

While the reasons are not clear, the Corporation Property was re-classified as common elements in 2004. Section 193.0235, Florida Statutes provides that ad valorem taxes and non-ad valorem assessments shall be assessed against the lots within a platted residential subdivision and not upon the subdivision property as a whole. In plain terms, the assessed value of the Corporation Property was passed on to each individual homeowner on a pro rata basis, with the small amount being included in the assessed value of each individually owned lot. The Corporation still had no obligation to pay property tax but, because it was not based on an exemption, there was no longer a need to continue to file the exemption application.

The Corporation Property continued to be classified by the Lee County Property Appraiser as a common element until 2008. Again, while the reasons are not clear, records do reflect that the Property Appraiser removed this designation and assigned a taxable value of \$1,051,850 against the Corporation Property in 2008. Unfortunately, however, the Corporation did not timely file the exemption application that had been previously required. So as to requalify for the exemption, the 2008 Board sought to be recognized as a 501(c)(3) charitable organization. The application to become a 501(c)(3) was submitted multiple times with multiple revisions before it was ultimately approved by the IRS in August 2010 with an effective date of June 24, 2009.

This approval required the corporation to amend the Articles of Incorporation and the Bylaws in order to comply with the IRS. This action forever changed the corporation. What had been considered by law to be a voluntary homeowner's association/club became a public charity with all of the rules and regulations that come with that classification. In the interim, the corporation paid property taxes for two years, 2008 and 2009. The application for Ad Valorem Tax Exemption was finally approved in 2010 saving the corporation from further taxation and possibly losing the property. That exemption carries on today.