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Questions Regarding Controlling Documentation for The Falls Section One and Two

1) Does The Texas Falls Corp (TFC going forward) representatives presently on the board of directors within The Falls Owners Association, Inc (HOA going forward) still qualify for "developer" status?

2) Does the HOA have the right to make a "special assessment" to the membership for legal fees? See Article VI, Section 1 -3 of the Declaration of Covenants, Conditions and Restrictions of The Falls Section I and Section II (going forward Covenants). If not, what specifically can it make a "special assessment" for?

3) Is the Irrevocable Assignment of Developer and Declarant Rights dated November 18th, 2009 a legal document since Claude Manning who signed for HOA was also at the time an employee of the TFC and closely aligned with The Texas Falls Joint Venture L-1, LLC (TFJV going forward)?

4) This document was never presented to the HOA general membership for review and approval. Doesn't that go against Texas Property Codes? If so, which ones?

    a. Is it legal/allowable for the TFJV to exclude their ~ 157 lots from the 1984 Declaration?
    b. How can the TFJV owned lots NOT be a part of the Falls Owners Association, Inc.?
    c. How can the TFJV owned lots NOT be assessed the same annual maintenance fee the rest of the lot owners pay?
    d. If they should, doesn't the TFJV owe the Falls Owners Association, Inc. back assessments since 2009 for these lots?
    e. If the exclusion of these TFJV lots is legal/allowable, then do the TFJV owned lots get to vote in the Falls Owners Association, Inc matters? See Article III, Section 21, Paragraph B of the 1984 Declaration.
    f. Doesn't this document; if legal, by default imply that a new HOA should be formed under new covenants, restrictions and declarations for these lots?

5) Isn't the "Lot Owner Recreational Maintenance Fee Covenant" (Recreational Covenant going forward) by TFJV invalid? First, TFJV has nothing to do with the HOA? Second, if it did have something to do with the HOA this covenant would change the assessments of the HOA. Since it was never brought before the general membership of the HOA for

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review and approval, doesn't that make it invalid per Texas Property Codes? Doesn't it also violate Article III Section 6 of the By-Laws of the HOA. If not, what law(s) gave the TFJV the right to establish this new covenant?

6) If the Recreational Covenant is valid, isn't it valid only for those owners who purchased lots from the TFJV as of December 18th, 2009, not all the existing members of the HOA?

7) Under Article 2 Section 9 of the By-Laws of the HOA the "Common Area" shall mean all real property (including the improvements thereto) owned by the HOA for the common use and enjoyment of the Owners. **NOTE:** The HOA does not own any "deeded" property. All "common areas" within the boundaries of the HOA are still owned by TFC. Also, under Article III Section 21 Paragraph A of the Covenants, the HOA does have the right to charge admission and other fees for the use of any recreational facility situated upon "Common Area" **if any**. That defined, what "common areas" within the platted area (see Fall's Platt maps) of the HOA could even be considered a recreational facility or amenity where a recreational or amenity fee could be charged by the HOA? Also is there any clause(s) in the attached documentation that says the HOA has a right to charge a mandatory amenity fee to maintain these "common areas"?

8) Since the HOA owns no "deeded" property how can the HOA and its membership be assessed Property Taxes by TFC on property it does not own? Is this legal?

9) There was no general membership meetings called from the years 2009 through 2013. Doesn't that violate Texas Property Codes? Does that affect any business transacted by the board during that time?

10) How is the required number of signatures for amending The Falls section 1 and 2 Declaration of Covenants, Conditions and Restrictions as stated in Declarations determined? Article I, § 6, defines "Owner" as "shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation". For the definition of Properties see Article I, § 7.Article VII, § 1 states ".....after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the then Owners of the Lots has been recorded agreeing to change or terminate said provisions in whole or part. For definition of Lots see Article I, § 5.

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a. There are 257 lots in the Falls Section One, Two and Three. Is the majority number, based on Declaration statements above, 129 signatures (> 50% of the number of lots) regardless of the number of recorded owners for each lot?
b. Using 2013 tax records and using each lot as a basis there are approximately 363 recorded owners in the subdivision using each lot and recorded owners for each lot. Lots in the subdivision have multiple owners which also own multiple lots. Is the majority number, based on Declaration statements above, 182 signatures (>50% of all recorded owners of each lot) regardless of the number of lots owned and the number of owners of each lot?
    i. As an example: a husband and wife are recorded owners of two (2) lots. Are they required to furnish four (4) signatures, two (2) signatures for each lot owned?
    ii. An entity owns one hundred (100) lots. Are they required to furnish 100 signatures, one for each lot owned?
c. Using 2013 tax records and using each recorded owner as a basis there are 201 individuals or entities that are recorded as owners of property in the subdivision. Some individuals or entities own multiple lots and lots are also shown to have multiple owners. Is the majority number, based on Declaration statements above, 101 signatures (>50% of the individual recorded owners) regardless of the number of lots owned?
    i. As an example: a husband and wife are recorded owners of two (2) lots. Are they required to furnish only (2) signatures as recorded owners of lots?
    ii. An entity owns one hundred (100) lots. Are they required to furnish only one (1) signature as recorded owner of lots?

11) On the Falls Owners Association, Inc. Management Certificate dated 2/17/2014 on the Declaration Recording Data it lists declarant documents of the Volume 632 Pages 39 and P47 which are The Recreation Maintenance Fee and First Right of Refusal of the TFJV. Should either of these documents be referenced on this HOA Management Certificate? Again, do these documents have any controlling interest in the HOA?

12) Is The Statement of Consent of the Board of Directors signed and dated 12/30/1993 a valid assignment of ownership in the Falls Owners Association Inc. when it was never notarized and filed in the Colorado County Courthouse?

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13) The following questions pertain to the "proposed" Term Sheet For Provision of Maintenance and Services to The Falls Owners Association, Inc. going forward (management contract).

a. Is this management contract valid if it mandatorily assesses the recreational amenities fee that presently does not exist in the HOA? Doesn't that sort of assessment need to be voted on by the entire membership and not just the BOD according the Texas Property Codes?
b. If the management contract is valid, can it exclude the FJVR owned lots from paying the maintenance and amenities fees?
c. If the management contract is valid, can it be for two years since the BOD membership turns over each year? Should it not be for any longer than one year at a time?

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HOA Legal Questions

1.

Ref. Sec. 1, Art. V, Decs: Developer/Declarant has exempted it's lots from paying assessments since 2009. Is Developer, therefore, a member of the Association? Can Developer vote?

a. **Can Association Board exempt Developer lots from assessments?**
b. **If no, is Developer in arrears for assessments, 2009-2014.?**

Sec. 21, Art. III gives the Association the right to charge reasonable fees for the use of any recreational facility situated on the common areas, if any. But Sec. 2, Art I defines common areas as all real property owned by the Association for the common use and enjoyment of the owners. Our Association owns no common areas (none have been deeded to the Association). Can the fees be charged?

Sec. I, Art VI: Special Assessments are for Capital Improvements. Can Special Assessments be levied for other expenses (legal fees)?

Annual assessment for 2014 was increased by cost of living index reaching back to 1986. Is there a limit to how many years "reach back" is permitted?

Sec. 6, Art. VI requires a notice and quorum for any action under Sec 3 "Rate of Assessment" and Sec. 4 "Maximum Annual Assessment. No meeting was called. Is 2014 assessment valid?

QUESTIONS FOR ATTORNEY

Orig. Declarations, V.492, P.181

Art. III, Section 21 Owner's easements of enjoyment

Though there were never any "common areas" owned by the HOA, the Developer owned a number of amenities to which owners were given access "subject to payment of admission and other fees". As a matter of practice since 1984, owners were assessed a fee of $660/year as written in their purchase contracts for use of the amenities (excluding the golf club). The owners right to use the (amenities) could be suspended for any period during which **any assessment** against his lot remains unpaid.....

JV-L1: (Successor Developer) Vol. 632, P.039-)

The remaining unsold lots were deeded to JV-L1 and Buyers of those lots were subject to a "Lot Owner Recreational Maintenance Fee Covenant" under which they agreed to pay a monthly sum of $100 in exchange for the right and license granted to each Lot owner (current buyer), successors, guests, and invitees to utilize such amenities.. Nonpayment will subject such owners to collection litigation and...to liens and foreclosure rights. Owner of amenities reserves right to impose additional user fees and charges in connection with the use of the amenities. (Such foreclosure rights are subordinated to any first priority purchase money mortgage and further subordinate to any lien for ad valorem real property taxes.)

Q: CAN DEVELOPER LEGALLY ENFORCE THESE RIGHTS AGAINST THOSE OWNERS WHO PURCHASED LOTS AFTER DECEMBER 18, 2009?

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Article III Section 21: Owner's easements A: What is your interpretation of this "The right of the association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common areas. Does this allow for an assessment to charge a use fee for the amenities we have such as the pools, tennis courts, fishing pond, and basketball court.

Article VI Section 2 Purpose of assessments: It states the assessments levied by the association shall be used exclusively to promote the recreation, health, safety and welfare of the residential area in the properties and for the improvement and maintenance of any common areas. What do you interpret this to mean in terms of the type of expenses assessed by the HOA to the residents and lot owners? How does this statement reflect in terms of covering their share of the recreational amenities?

Section 4: Maximum annual assessment calculation. What is your interpretation of the CPI adjusted assessment? Also, what expenses are allowable in order to calculate the assessments?

General: What type of special assessments do the covenants allow for currently?

The Lot Owner Recreational, Maintenance Fee Covenant-We have a number of lots purchased under the requirements of this covenant. Doesn't this still apply to those lot owners/home owners who were paying this assessment at $1200/year up through Dec 31 2013. Since these owners signed contracts and initialed related documents and acknowledgements as to their contractual obligation to not only pay the assessment from the 1984 covenants but also to pay this recreational fee of $1200 per year, shouldn't we be able to hold them to their signed contract and collect this fee? In fact the recreational maintenance fee was part of the contractual agreements for lot and home owners who purchased property between 1984 and 1992? Since these are contractual obligations of these owners, shouldn't this apply currently? With this information, it seems that the recreational maintenance assessment has always been around even prior to the 2009 covenant. Why shouldn't home owners and lot owners be subject to a recreational amenities fee? It does state recreation in Article VI Section 2: Purpose of assessment which states "assessments levied by the association exclusively to promote the **recreation**....etc How do we charge for recreational amenities if not through an assessment? Please clarify.

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