

January 25, 2011 Special Board Meeting Homeowner Q & A

Refunds of fees previously paid

A homeowner asks:

“So if I understand the explanation and legal opinion contained herein, the R@RF has been collecting fees for amenities for years that should have been supported through our general assessments all along. So now is the association obligated to re-pay those fees to homeowners for horse boarding and storage? Will this be a consideration for determining the amount of the shortfall?”

RRF HOA counsel David Firmin answers :

“No, the Association is not obligated to return or refund any costs associated with costs that may have been charged in the past. The Association was acting in good faith upon its interpretation of the declaration. Upon notification of the Association's error, the Board took immediate action to correct the charging of fees. Owners that were charged fees for use of certain amenities received the benefit of these amenities and therefore no refund is due.”

Ballots

Several homeowners have inquired about the availability of written ballots for the members and the use of proxy voting at the meeting.

The January 25th meeting is a special meeting of the Board of Directors of the Association. It is not a meeting of the membership. So, there will not be any matter for the members to vote on at this meeting. However, the Board does want input from the membership on the topic of the meeting. Everyone in attendance who has indicated in advance that they wish to speak will be given an opportunity to comment before the Board takes any final action with respect to a special assessment. In addition, the Board may take one or more “straw polls” of the members in attendance on matters under consideration.

It may be appropriate to hold a special meeting of the membership of the HOA in the future on matters relating to the topics to be discussed at the January 25th Board meeting.

Position of the Board of Directors with respect to “everyone pays” vs. “user pays”

A homeowner asks:

Why does the Board wish to vary the long standing policy of the Ranch that those who fish, store and pasture horses on the Common Elements of Ranch have to pay for that privilege?

Paul Schlauch responds for the Board:

The Board did not set out to make a change to the “user pays” approach. Rather, it sought to extend the concept to the golf course as well. Various members of the Ranch community objected to applying a “pay to play” approach to the golf amenity . They brought to the Board’s attention certain provisions of the Ranch Declaration that appeared to preclude charging the members of the association for their use of the Common Elements of the Ranch. After considering the arguments and authority put forward, the Board determined that a legal opinion should be sought providing the Board guidance as to how best to comply with the Declaration going forward. The opinion obtained and now shared with the membership provides, among other things, that the Ranch cannot charge its members a “user fee” for the members’ use of the Common Elements. Rather, the expenses of the maintenance, repair, operation, additions, alterations and improvement of the Common Elements are to be met through assessments charged to all the members, whether they use the Common Elements or not.

Need to Follow Legal Advice

As a follow-up to the preceding question, the same homeowner asks:

Why does the Board need to follow the advice of the Association’s counsel? Can’t it simply ignore that advice and follow the long held practice of “user pays”?

Paul Schlauch responds for the Board:

Once the Board has received the advice of counsel, it would be highly imprudent for it to ignore that advice. The Board members are fiduciaries for their constituents, in this case the members of the HOA. Having received the advice of its counsel on a point of law that appears to be legally sound, it is incumbent upon the Board to follow that advice.

The Board’s desire in this matter is not to achieve any particular outcome. Rather, it only desires to cause the Association to be in compliance with its governing documents.

Obligations of Association with respect to General Common Elements

A homeowner asks:

“In our covenants under section 4.2 it states “The Common Recreation Reserve contains two tennis courts, a nine-hole “executive” golf course, a series of connecting lakes and streams, riding trails and related recreational amenities. Additional recreation oriented improvements may be made to the Common Recreation Reserve at Declarant’s or the Association’s option”.

Under Section 2.8 Common Elements shall mean the Common Recreational Reserve.

Those common expenses under 2.9 states that all members shall share the common expenses. Common expenses do not include the boarding of horses, specific fishing expenses or the upkeep for a storage facility I do not use.

No-where in our covenants are fish, horses or storage lock-ups referenced or mentioned as an amenity or part of the Common Recreational Reserve.

In the [many] years I have lived here, the homeowners have never chosen to declare otherwise. The above mentioned section only mentions lakes and streams but gives no reference to their usage. The same can be said for riding trails. I believe that over the years the homeowners have always felt that fishing, horse boarding and storage use were always an option that was available to all but additional expenses would be incurred. Expenses that are incurred in the boarding of horses are not a common recreation reserve and cannot expect to derive funds from the Common reserve. The same can be said of using storage facilities or the expense of fish upkeep.

I believe that in section 10.8a it gives the Association the power to establish cost centers to collect income from the common recreation reserve. “There shall be allocated to the General Cost Center all income and funds derived by the Association from fees or charges for use of the Common Recreation Reserve....”

I personally feel that under the present proposal suggesting all homeowners pay for everything, this would require a vote of a super majority of homeowners to change the covenants to make fishing, horses and storage facility an amenity since they presently are not.

If I am wrong in my assumption, I believe this will open up many other concerns.”

David Firmin, RRF HOA attorney responds:

“As we pointed out in the letter, the cost of maintaining the Common Elements is shared among all owners. This includes the maintenance of horse trails, - (including pastures, barns, run in sheds, fencing, and arena maintenance); fishing areas, -hay meadows, all open spaces, and storage areas. Additionally, the Declaration defines the Common Areas as the Common Recreation Reserve and, with respect to any Condominium Parcel, all of the Condominium Parcel and improvement thereon except the portions thereof which constitute Individual Spaces; and with respect to any Detached Housing Parcel all of the Detached Housing Parcel and improvements except the portions thereof which are within the boundaries of any Lot and except any residence or other structure or improvements on any Lot; and such improvements in such other areas as may be provided for community recreation, utility or for common use. Using this definition, any portion of the community not owned by an individual owner is part of the common elements subject to maintenance as required by the Declaration.

So, as for the common area storage, the cost of maintaining the common area (the land) should be a common expense. This is budget specific and the budget should be examined as to what costs may be allocated to the owners for the operation of the storage area.”