



KAMAN & CUSIMANO L.L.C.

COMMUNITY ASSOCIATION ATTORNEYS

Andrew F. Meinert, Esq.

50 Public Square, Suite 2000
Cleveland, Ohio 44113

November 22, 2024

Re: Restriction Expiration

Dear Heatherstone Village Member:

Our office represents the Heatherstone Village Homeowners Association. The Board of Trustees had received questions regarding the ongoing applicability of the Declaration restrictions because of language in the Declaration pertaining to expiration. The Board involved our office by asking us to review the matter and it was discovered that the previous vote to extend the restrictions was not conducted as required. Accordingly, the Board has asked I write to you to explain why the previous vote did not extend the restrictions, the impact of the expiration, and the Board's plan moving forward.

Prior Association Vote

The Declaration provides on page 13:

The foregoing Restrictions shall remain in effect until January 1, 2016 unless, within the year immediately proceeding such date, they are extended as written or as changed by consent thereto in writing signed, witnessed and acknowledged as then required by the laws of Ohio for the conveyance of real estate, by Owners of sixty-five percent (65%) of all the Lots subject to such provisions, excluding all mortgagees and lien-holders and purchasers under executory contracts[.] (Emphasis added.)

This language states that the restrictions in the Declaration expire on January 1, 2016, unless within the year immediately prior, at least 65 percent of the lot owners agreed in writing to extend them. This means that the approval from the owners needed to be completed between January 1, 2015, and December 31, 2015. The information I received from the Board states the Association did not send out voting documents for the extension until May 2017, with the results notarized in June 2018. Accordingly, the Declaration's internal extension requirement was not fulfilled and, as a result, the restrictions expired on January 1, 2016.

While the Board of Trustees in 2015 may have been aware of an upcoming expiration date, there are factors that may have contributed to confusion regarding the deadline. For example, as you can read above, the Declaration's language states, "within the year immediately proceeding

such date[.]” The word “proceeding” generally means something that is moving forward, and so the Board may have understood the language as requiring consent before January 1, 2017. However, Ohio courts interpret community association declarations according to their intent, and in my opinion, a court will find the unambiguous intent to be that the word that was meant to be used was “preceding” based on the context. However, the Trustees are not attorneys. It’s understandable they would continue operations as they had been run for 25 years if they believed that they had properly begun the process of organizing a vote of all members before January 1, 2017, as they believed the Declaration required, and that the results of that vote prevented the restrictions’ expiration. Unfortunately, while we may understand their intentions, the deed restrictions expired.

Impact of Expiration

The restrictions’ expiration likely prompts a number of questions, including what happens to the Association and what authority it still maintains, if any. A key distinction to understand is that the restrictions’ expiration does not automatically terminate the Association itself. When developers establish community associations, they first create the restrictions to govern the real property through a recorded document, typically in the form of a declaration. Once the general plan for the community has been created through the recording of the Declaration and its’ terms, developers then file articles of incorporation to establish the business entity that will enforce the restrictions, and own the property, for common benefit of the members (the association).

While the restrictions themselves have expired and the Association can no longer enforce them, the Association itself still exists as a non-profit corporation under the laws of the State of Ohio. Further, the Association is still a ‘planned community’ based on the definition in the Ohio Revised Code. ORC 5312.01(M), part of the Ohio Planned Community Act, defines a planned community as:

[A] community comprised of individual lots for which a deed, common plan, or declaration requires any of the following:

- (1) That owners become members of an owners’ association that governs the community;
- (2) That owners or the owners’ association holds or leases property or facilities for the benefit of the owners; and
- (3) That owners support by membership or fees, property, or facilities for all owners to use.

To that end, the Bylaws provides that every owner of a lot within the Heatherstone Village property is a member of the Association. Further, the Association owns over 20 acres of property for the use and benefit of the members. Accordingly, the Association is a planned community, and since the Ohio Planned Community Act states that it applies to all planned communities in Ohio, the Association is still governed by and permitted to take actions authorized by the Ohio Planned Community Act.

Moving forward, the Association's primary function will be to maintain the common element property it owns or is otherwise responsible for. Again, the restrictions limiting the use of the individual lots are no longer enforceable due to their expiration, but the Association still exists as a non-profit corporation and owns property for the common use and benefit of the members. The Association-owned property includes many wooded areas behind the residential lots, as well as property near the community entrance that contains entrance signage for the community. Accordingly, the Association must maintain and repair the entrance signage and address issues that may arise with the wooded areas, like cleaning up debris from fallen trees and removing dangerous trees that could damage a residential lot. Property taxes must also be paid. As mentioned, the Association is a planned community, and ORC 5312.06(A)(1) directs the Board to establish an annual budget for the common expenses and to allocate the expenses equally among the owners. Accordingly, the Board must still collect assessments from the membership to fulfill the Association's responsibilities with respect to the common property. ORC 5312.12(A) also authorizes the filing of a lien for non-payment of assessments.

I also note that courts in other states, such as North Carolina, Massachusetts, and Iowa, have ruled in similar contexts that, despite the restrictions on property expiring, the homeowner's association originally formed to enforce the restrictions is still permitted to collect assessments or dues to fund the maintenance of common property. As a result, the Association will not be issuing refunds of previously paid assessments, but will continue to levy assessments to fund the Association's common expenses. If you have any questions about what Association-collected funds have been used for, the Board encourages you to review the financial records available on the Association's website, www.heatherstonevillage.com/resources.

In addition, it is also important to remember that while the restrictions have expired, that does not mean that your property is not subject to certain easements rights and other regulations. In other words, utility companies may still have an easement over your lot for the provision of utility services, and other regulations, like the local Lake County Regulations, still govern the use of your property. The Board encourages you to research any such restrictions for yourselves, rather than assuming that there are no longer any rules in place for their property.

Next Steps

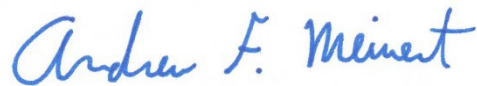
I understand this will come as a surprise and may be disappointing to many members of the community, but unfortunately, the time to extend the restrictions uniformly throughout the community has passed. While some of the formal Association procedures will still take place, like the collection of assessments as discussed above, and the conducting of annual meetings for the election of Board members, the Association will no longer be taking enforcement action for violations of the restrictions. However, the Board is committed to ensuring the Association-owned property does not deteriorate, and negatively impact the property values of the residential lots.

Enclosed with this letter (and posted alongside this letter on the website) is a letter from the Board outlining their proposals for the future of Heatherstone Village. They intend to hold a members' meeting early in 2025, and to review and discuss a set of guidelines that all members would agree to abide by to continue the spirit of harmony in the development. While these guidelines would be purely voluntary, and no owner would be required to sign any document that would bind them in a legal sense, the Board recognizes, as do most owners, that a neighborhood with no common rules may descend into something less than its current state, and your property

values may descend as well. The Board's primary goal is to maintain the status quo as much as possible, to prevent any negative impact on property values in the community.

Thank you for your attention to this matter. If you have any questions, contact the Board by email at trustees@heatherstonevillage.com and, if necessary, the Board will forward your questions for me to review and respond.

Sincerely yours,



ANDREW F. MEINERT

AFM:sm
Enclosure