

# LakeRidge Falls

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Here are the more important stories we had this past and upcoming weeks:

**2021 Amendments Workshop Meeting – Follow Up** – A little bit long, actually super long, piece, but still take a moment to read this. It is important information for the benefit of the community. Last Saturday, the Association held a Workshop Meeting at the Clubhouse and on Go-To-Meeting on the issue of the proposed amendments. Attending the meeting in person or online were about 50 members and residents of the community. The hour-and-a-half meeting was very productive. In the meeting, the Document Group provided some background and clarification regarding the proposed amendments, which was followed by a few Q&A segments. This meeting provided attendees the opportunity to ask questions and/or voice their concerns. Below is my sincere attempt to capture the main points behind the questions/concerns brought up and the answers provided and promised to be provided. Please make a note that the information below is my general and nonlegal attempt to answer the questions asked and concerns raised based on information provided to the Association by its legal representative. Please don't take my article below as more than a simple attempt to help clarify the matters brought up using some analogies. So without further ado, pour yourself a cup of wine or open a can of soda, and let's start.

Here are some of the main questions presented regarding the proposed amendments to **Articles III** and **XX**:

1. When reviewing an application, how does the Board of Directors judge the “social and moral character” of a corporation or a trust?
  - a. The simple answer is that the Association never did and most likely will never need to judge the “social and moral character” of a corporation or a trust simply because corporations/trusts do not occupy units. It is particularly important to understand the significant difference between **ownership** and **occupancy**.

Ownership – refers to the entities holding the title to the property. In practicality, the Association can't always control when transfers of a title take place. Here is an example. An owner dies and in her will endows the property to her son. There is no way the Association can interfere with the inheritance rights of the son. Another example is a family trust. If a homeowner wishes to transfer the title into a trust, for whatever reason, how can the Association get involved with their vested interest?

The governing documents recognize such situations and therefore states that: “nothing in this Article III is intended to restrict the ownership of or transfer of title to any Lot.” In other words, the Association has limited powers during the transfer of ownership. The governing documents do, however, direct members to notify the Association in advance, and in writing, when a transfer of a title takes place. This is mainly done for administrative reasons, i.e. who is to be held responsible for the Association quarterly dues, address to send the mailing to, etc.

Occupancy – refers to the individuals who reside in the property. While the Association has limited powers over who owns a property in the community, it has the right to “approve or disapprove in writing all proposed changes in occupancy of every Lot covered by this Declaration...” When the various Board of Directors review an application, they are actually considering who can **lease** or **occupancy** a

given property and **not the transfer of the title**. If you look at the Application Form posted on the Association's website you will see its title is "Application to Lease or Occupy" not "Application to Transfer Title, Lease, or Occupy."

Therefore, the Association/Board of Directors never judged nor will have to judge the "social and moral character" of a corporation or a trust. Its powers are limited to review the "social and moral character" of those who wish to occupy the unit that can be owned by a corporation or a trust.

2. Can you please clear up the 80/20 rule in the community?
  - a. This rule is one of the criteria that must be met in order for a given community to be designated as a 55+ community (i.e. using simple language). The rule means that at least 80% of the units, or in LakeRidge Falls' case 320 properties out of 399, must be occupied by at least one person who is 55 years of age or older. **Note:** it talks about occupying, not owning.
3. What percentage of the units in the community are not occupied by at least one person who is 55 years of age or older?
  - a. Simple, zero.

You see, the governing documents provide the Association tools, i.e. approval and disapproval, to ensure its 55+ status is kept. The main question is, however, how can the Association ensure at least 80% of the units in the community are occupied by at least one person of 55 years of age or older without selectively enforcing the rules?

For example, let's say that 82% of the units in the community are occupied by at least one person who is 55 years of age or older. Unfortunately, August in this imaginary year was a bad month as we lost 9 long term members. Those members bequeathed their units to their caregivers, adult children, grandchildren, realtors, and significant others who are all under the age of 55. Now, all those who inherited the properties wish to occupy the units. Some of them, such as significant others and caregivers, are already occupying these properties. Facing 9 new applications, who should the Board of Directors approve or disapprove to occupy these units assuming all have an outstanding record? Remember, if they approve all, the Association does not meet one of the criteria required to be considered a community for adults age 55 and over. Can you understand the problem with coming up with exceptions?

After the membership took over the Association from the Developer in 2004, the first few Board of Directors came to learn that one of the ways to ensure LakeRidge Falls remains a community for adults aged 55 and over is to make zero exceptions. Since 2004, all Board of Directors serving this community decided to make no exception to this rule for the sole reason that once an exception is made this exception in a fact becomes the rule.

While the question we attempt to answer does not relate to any proposed amendment, please be advised that based on the information the Association poses **100% of the units are occupied by at least one person who is 55 years of age or older**.

4. Can my adult children who are under the age of 55 but older than 18 years of age inherit my property?
  - a. Of course.

There is no age limitation on owning a property in the community. In theory, 399 homes in LakeRidge Falls can be owned by people who are younger than 55 years of age.

That said, adult children will be required to go through the application process if they wish to occupy the property. If there are no issues with their criminal background/credit check and at least one person who is 55 or older who will be a permanent occupant of the unit, then there is no reason why they would not be able to occupy the unit. This is the rule since day one and YES or NO vote on the proposed amendments will not change that.

5. Under the new proposed amendments, can the Board of Directors evict my daughter who may reside on the property for over 30 days?
  - a. The proposed amendments do not address this matter nor attempt to address it. Nevertheless, it is a good question that deserves a detailed answer.

LakeRidge Falls' governing document states that "a Lot shall be deemed to be "occupied" by any person who stays overnight in the dwelling on the Lot more than 21 days in any 60-day period or more than 30 days in any 12-month period." In other words, the governing documents consider all individuals who stay overnight in one of the units for more than 21 days in any 60-day period or more than 30 days in any 12-month period occupants. As such, these individuals are required to go through the application process.

Let's leave for a second the fact that the various Board of Directors can't legally and under their fiduciary duty ignore this specific directive and instead let's explore the logic behind it. Some may argue this rule is unjust because their adult kids have the right to stay with them for as long as they wish because they are exceptional members of society. However, how can the Association determine this? Meaning, what is exceptional members of society? Moreover, what should the Association do if a member of the community demands her convicted felon son stays in her unit because he just got out of jail and needs a place to stay for a few months? Can the Association selectively and arbitrarily enforce its rules allowing one while denying the other? Even then, should the Association allow members' adult children to stay with their under-age children on the property for months just because they are exceptional members of society? Can you see the issue as it unfolds?

Regarding the eviction itself, it is important to note that the Board of Directors in general doesn't evict people. All Board of Directors are legally bounded to initiate enforcement measures using dual-process against those who violate the Association governing documents. It may upset a member or even a group of members, but at the end of the day, all Board of Directors are required to do so because the governing documents are a legal contract between the members and the Association they form.

6. What consumer credit agency the Association uses and what are the general criteria the Board of Directors considered when reviewing an application?
  - a. Please note that the Association is using the services of Equifax, a leading consumer credit reporting agency. All applicants reserve the right to contact Equifax and obtain a copy of the report produced for the Association. When reviewing an application, the Board of Directors usually, and without going into too many details, consider if the applicants have a violent and/or recent criminal background and their current financial state ensuring they would be able to pay Association dues.

Here are a few of the questions presented regarding the proposed amendments to **Articles XVIII** and **XXII**:

1. What the past data show us as far as the percentage of membership participation?
  - a. For the last ten years, membership participation in annual meetings is constant and stands a little bit over 200. In other words, 200+ members, out of 399 members, in the community make sure to cast their votes by person or proxy each year. While the participation rate in the annual meetings is sufficient to establish a quorum such participation rate, i.e. around 55%, is not sufficient to pass amendments as required by the governing documents, i.e. 67%.

Therefore, the proposed amendment is asking to change the 67% to a 55% consent of a supermajority vote because this number is more realistic and obtainable.

2. Was it considered to promote more participation by members rather than lower the participation requirements rate?

As shared in the past, a homeowner in any given community holds three duties to the community: pay the Association dues, make sure to vote, and participate (i.e. be involved). While Associations have a set of tools to ensure members pay their dues, they have no means to enforce a member to come to meetings, read minutes, or even vote. Meaning, it is unlikely Associations have a nonparticipation fee clause in their documents allowing them to levy a fee on a member for failing to take part in a Landscape Committee Meeting, for example. What is left are mainly campaigns to promote participation. And indeed, LakeRidge Falls through Weekly Reports, Falls Forums, website, mailings, Nomination Committee, Social Committee, Art League, Bocce Ball Group, and many other entities and activities attempting to inform and the same time to convince more members to take part in the Association activities and procedures.

To some extent, this situation reminds me of a political science course I took in college. Halfway into the semester, one of my fellow students petitioned the Professor asking why is she failing him. The Professor's answer, which I remember clearly to this day, was swift: "show up to classes and you will not fail the tests." It is not hard to guess what is the moral of the story. The Association can't make a member of the community who resides in North Dakota, for example, read the meeting minutes of all committees, nor can it make sure the members email management, committees chairperson, and/or Board members when puzzled by an issue. The information is there and available to all. If the imaginary member from North Dakota chooses not to engage with what is going on in the community, it should come as no surprise that he is not going to be fully aware of what is going on in LakeRidge Falls, right? Should the Association "punish" someone who fails to participate? Of course not. However, should the reminding members "be punished" because of it? Also of course not.

Very important, this is not to criticize any member of this community. This is simply a general and extreme example used to explain a point. The point is that it takes a constant involvement over an extended period to get a good grasp of any given issue.

Use this long article as an example. Just look how much energy is spent on explaining one meeting. At some point, one must ask where do we draw the line between a homeowner's responsibility to be involved and the resources the Association spends in attempting to promote such participation. The last 10 years, legal advice, and new communities' governing documents indicate the participation rate of 55%, or 220 members in LakeRidge Falls' case, is the most realistic percentage that is obtainable and at the same ensuring consent by a supermajority vote only.

3. Why is this Board of Directors asking for more and more powers?

- a. There is some misconception regarding the meaning of what is a Board of Directors and what is an Association. Here is why.

The Association is not a live organism. It is simply a Florida not-for-profit corporation. The members of this corporation are you. It is extremely important to understand that when buying into this community one buys a share of the corporation. The governing documents are the legal and binding agreement between you and the other 398 members of this community. To make sure this legal contract is fulfilled, the members of this corporation appoint each year a Board of Directors. Its job is well defined in the by-laws. As all know, the Board of Directors is composed of members of the community/corporation who volunteer their time, endless hours one must add, for the benefit of its members. Yes, they may draw some "heat" because they enforce the contract on those who breach it or because they wish to promote one issue over another, but at the end of the day, they gain nothing in return.

Therefore, two questions must be asked: 1) what powers does the current Board get by potentially lowering the percentage required to approve an amendment to the Association governing documents from 67% to 55%? And 2) what powers does the current Board get if it changes in two weeks?

Again, the intention of these questions is not to offend anyone or patronize someone. They are simply presented in a critical thinking manner in an attempt to close the misconception gap.

Here is a question presented regarding the proposed amendment to **Articles IX**:

1. If a current homeowner wishes to purchase a different property in the community, why is the current homeowner not exempt from the capital contribution fee?
- a. When this Article was first considered a few years ago, one of the main concerns was to ensure that title transfers between spouses, children, and family trusts will be exempt from the capital contribution fees. The concerns were raised by several members of the community and therefore the amendment was eventually approved with this specific stipulate.

Two years passed and despite all the research and work performed on this specific amendment, the Association came to learn from its experience two shortcomings. First, real estate market trends boomed in the last two years, and therefore the cap on capital contribution is outdated. Second, existing members who buy a different property in the community are NOT exempt under this Article.

In reviewing the matter, the Document Group realized that addressing the first issue had a straightforward solution, while the second matter was more complex. The main issue that came about was: what is the difference between members who own a property in the community for many years and members who are relatively new to the community? In other words, should a member who bought into the community two years ago and paid the capital contribution fee to be required to pay it again if the member decides to purchase a different property in the community? If yes, how can the Association exempt those who own a property in the community for 15 years, for example, and now wishes to move to a bigger or smaller unit in the community? Moreover, stay with me I am almost done, what should the Association do if a long term member of the community decides to purchase an investment property or two in addition to the currently owned?

You see, many endless possibilities must be considered before exceptions are being made. For this reason, the Document Group decided not to address the second matter at this time.

Please note that voting YES or NO on this amendment will not change the fact that current members of this community will be charged a capital contribution fee if they decide to purchase another and/or different property in LakeRidge Falls.

However, this is a great issue that must be further explored by future committees, groups, and Board of Directors. This is why the ability to adapt to new trends as they present themselves while ensuring any proposed change to the governing documents will require the consent of a supermajority vote, i.e., 55% of LakeRidge Falls' membership, is so important.

I hope you find this little bit of long information useful.

Have a happy, healthy, and safe weekend.

Sincerely,

Oded Neeman - CAM

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