

## **Why Is Mariner's Pointe Resort Unique?**

In 2015, a few association-operated timeshare resort properties suddenly found themselves with limited or insufficient support by an aging membership, and in 2016, several more faced the same reality. The phenomenon had begun a few years prior during the economic winter due to debt service pressure. This new reality became a bit more prevalent by 2013. 'Legacy' resorts are association operated, constructed in the 1980's, and with less than 100 physical units. Some are located in areas of current demand by the present generations of leisure travelers, and some are not. Those which were not so located, were usually constructed for the 'Boomer' generation demographic who preferred less competitive tourism areas with lower hustle for their family vacationing.

In 2014, 86% of all timeshare resorts in the USA were Legacy properties. However, in many cases, a Developer owns the real property including common areas (amenities) for the association, and appropriately charges the association a fee for use or may bill the association for expense support. Other circumstances may include a contractual relationship with a management company responsible for sales and marketing and interval inventories may default to the company for resale under a prearranged financial arrangement with the association. Many of these resorts now face circumstances not considered during their development in the '80's. All manner of issues bearing little importance 30-plus years ago could emerge in regards to associations experiencing circumstances involving potential termination, dissolution, or liquidation of assets. Fortunately, although not contemplated at the time, a decision made by the Board and ratified by the membership in 1994 eliminates much of the complexity with such an issue and could reduce concern for supporting MPIOA members. The decision by the new 1993 Board making a difference in 2016 derives from using the opportunity presented by the IRS to put the Association in position for control of its circumstances in any eventuality, by becoming the Owner and Developer of the resort property and amenities, by successfully bidding at the IRS Seizure Sale. This unique fact removed for-profit motives and placed the Association in full control to the benefit of the membership. This means the Association owns the resort property and assets as the resort's developer, and the Association's elected leadership makes their decisions according to the benefit for the Association's membership at-large.

When normal resort operations funding became insufficient due to loss of supporting members as evidenced by the response to the 2016 annual fee billing, the Board determined Management to distribute a Referendum to the entire Membership for determining the percentages in any preference, March 17, 2016. The results of the referendum represented the member's preference to be overwhelmingly in support of the Board of Directors for termination, dissolution, and liquidation of the Association and its business operations, as reported at the Annual Meeting in April 2016.

Once the facilitation of the process is complete, whether by voluntary action of the membership or by Order of the Court, the Association assets are sold (or liquidated, depending upon which route is determined most beneficial or necessary) and most expenses are paid. Once the expenses for the process are fully satisfied, the net proceeds which may exist are disbursed to the membership by the Board of Directors, according to a Disbursement Plan as determined by the Board with counsel in accordance with the Declaration and Tennessee Code Annotated. The Association's Disbursement Plan shall conform to the Declaration & Master Deed regarding the equitable and just manner of distribution of funds according to accounts supporting the Association appropriately through the process of termination, dissolution, and liquidation.

***Why is Mariner's Pointe Unique?*** Of the resorts I have learned of which have experienced this circumstance, the members received little or nothing in the way of asset value after expenses. In fact, it seemed for the smaller properties (physical units) the timeshare unit buildings were vacated of furnishings, (which brought little or nothing in a yard sale or a used-furnishings contractor buy-out), and expenses were not met for termination or dissolution after liquidation. The real estate asset remained as property of the developer. *In MPR's circumstance, the Association is the landowner!*

By September 2016, the required steps for dissolution approached completion. The Deed-back process for the accounts that had indicated their preference for this option was complete. Distribution to the members of the Interim Membership Agreement for execution, to those who preferred to remain an active, supporting member voluntarily, and who appropriately responded with their preference to participate, are expected to respond by close of business, October 31, 2016. Accounts with a balance above zero received a lien, and the Foreclosure process thereon has begun. Therefore, by October, the activity toward the objective of the Association's membership at-large had been mostly complete, ***except for the accounts which had not responded to communication attempts or the Association's requests for follow-through of the necessary steps.***

At this point, it would have been most beneficial for the Association to proceed with the dissolution and liquidation process, and be in a better position to forecast the potential for net proceeds upon conclusion of the process for the benefit of the actively supporting members. Unfortunately, to the degree net proceeds may exist is now dependant largely upon the response, or continued lack thereof, of the ***minority*** of the membership. Were the membership fully cooperative and appropriately responsive, formal Marketing would begin in November for the commercial demographic typically most active regarding acquisition of properties such as Mariner's Pointe Resort. Since several have not been responsive to the needs of the Association in its efforts to accommodate the preferred objective of the majority, after October 31, 2016, the Board may have no choice but to initiate the judicial activity as necessary to make it happen through the Court. The legal pursuit of the Association's objective will of course change the anticipated expense significantly, which will negatively affect the net proceeds. At the same time, a court ordered sale is a 'fire sale', any potential 'buyers' respond by adopting the 'wait and see' posture, and simply show up for the sale (if they still have interest at that time), and then bid only according to the bidder response present that day. Proper marketing and a private sale with appropriate negotiations, provides greater positive outcomes, but timing and the opportunity to convey are critical in maximizing the potential offer response. Therefore, the outcome may depend upon the action of the minority who have not been forthcoming with cooperation for the Association's needs thus far. As their deadline for action passes, the Court's process is likely to be required.