

Who's Who in the MPIOA Dissolution and Liquidation Process 2016

Who is responsible for the Association taking this action?

...The Members who decided NOT to financially support the Association by withholding their fees!

When it is all over, WHO receives payment of any net proceeds?

...The Members who continued their support of the Association to conclusion as contracted!

Although most members are somewhat aware of what has happened with their Association, some (about 7%) continue to have issues with understanding the background and the activity involved. Therefore, this brief discussion is to help clarify the structure of our circumstances and the players involved in this process.

The parties (players) in the current affairs of the Association include:

1. The Mariner's Pointe Interval Owner's Association, Inc. (a Not-for-Profit entity);
2. The Association's Membership at-Large;
3. The MPIOA, Inc., Board of Directors: Chairman Henry Phillips, Director Sid McBee, Director Ben Edmonson, Director Ray Lankford (now retired), and Director Foster Moore (now retired);
4. Management (Contracted Association Managing Agent and Fiduciary): Universal Services Corporation, Pointe Realty Company;
5. Counsel for the Association
 - a. Primary Counsel, Joe Looney, Esq. (Looney, Looney, and Chadwell, PLLC);
 - b. Counsel Olana J. Burgess, Esq. (Primarily Foreclosure activity and Indemnities);
 - c. Gullet, Sanford, Robinson, and Martin, PLLC as needed.

The AUTHORITY from which all action is determined is applicable in this order:

1. Master Deed recorded in Deed Book 239, Page 33, and the Amended and Restated Horizontal Declaration of Property Regime and Master Deed recorded in Deed Book 496, Page 150, and the First Amendment to the Amended and Restated Horizontal Declaration of Property Regime and Master Deed recorded in Deed Book 1238 Page 858, Second Amendment to the Amended and Restated Declaration of Horizontal Property Regime and Master Deed recorded in Deed Book 1238, Page 961, and any further amendments thereto, and subject to Deed Book 285, Page 457, all of record at Register's Office Cumberland County, Tennessee;
2. MPIOA, Inc. Corporate Charter;
3. MPIOA, Inc. Board of Directors;
4. Universal Services Corporation, as Management Company under authority of Board of Directors, with its subsidiary Pointe Realty Company which provides support staff, sales, audit/financial services with Audit trail as determined by Tennessee Real Estate Commission.

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Your initial membership packet included a copy of the governing documents, but they can also be found at the Register of Deed's Office, Cumberland County, Tennessee, or by contacting the Association and requesting another copy of these documents for a fee.

The Association exists through the Declaration and Master Deed (as amended), which details the powers and responsibilities given for the members, by the members and its elected Board of Directors.

For owners who remain unaware of the chain of events, below is a brief description of the events of 2016 and resulting circumstances for MPIOA:

- The Association became self-governing in 1993, when the former developer abandoned the Association, and the first official MPIOA, Inc., Board members were formally elected by the membership to govern the affairs of the Association. Subsequently, the Association became the owner of all developer rights, title, and interests as the result of its 1994 purchase, at a tax (seizure) enforcement sale on the Cumberland County Courthouse steps, in Crossville, TN.
- In 1994, as the Association acquired the property from the IRS, investigation revealed other significant developer abuses had occurred, which jeopardized the Association's members by placing the Association in a position of liability. The Association's Board and Management determined to seek protection under Chapter 11 of the US Bankruptcy code, which would identify all pending issues, and ascertain the accountability position of each party. In this process, all parties engaged in issues with, against, or on behalf of the Association were examined in detail and validated by the US Middle District Court as proper, or accountable. In this process, the relationship of Universal Services Corporation, as the Association's Managing Agent providing professional and Fiduciary services, was determined to be appropriately established, and was not in conflict of interest with the Association.
- The Association grew in size and scope in the decades following the 1993 organization; however, it began to experience a reduction in annual membership the last few years leading up to 2016. Articles relative to this issue, as well as discussion of the 'product-service shift' and 'generational shift' occurred within most newsletters during the years prior to 2016. The basic causative factors of the reduction experienced include the aging population of 'Baby Boomer' members, a generational shift in preference regarding leisure travel venues, and a variation in the product demand v. the product offered. The details of these influences appeared in earlier articles in print as well as on the resort's website.
- The billing of the 2016 annual maintenance fee was mailed to the membership in the 4th Qtr., 2015. As the 'past-due' date for the Association's receipt of the 2016 annual fee passed, only a minor percentage of accounts had paid their accounts appropriately as billed. An extension of the past due date through February 2016 was allowed by Management, which provided little change in total percentages toward funding for 2016 MPIOA operations. Therefore, the Association's 2016 operations remained grossly underfunded, which created an Emergency status for the Association by March 2016.
- In consideration of the Association's continuing needs, and the urgently needed capital improvements required to continue in a manner appropriate to compete, the Board determined

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each member's individual annual fee would become unrealistic and burdensome for supporting members.

- The Board of Directors responded to this circumstance by submitting the March 17, 2016 Referendum to the membership at-large. The Referendum solicited member preference regarding support for the Board with continued Association operations, or member's support for the Board to terminate and dissolve the Association's affairs.
- The overwhelming majority of those members entitled to vote indicated a preference in support of the Board of Directors for terminating the association, dissolving the association's operations and business affairs, and liquidating the Association's assets. Interestingly, several members who had remained delinquent and unresponsive to the association's demand for payment, responded to the referendum in preference with the majority, and a few paid their account current in order to participate in the process.
- Therefore, with all options considered, the Board viewed the Referendum response as a voice of the majority, and with consideration of the Declaration and Master Deed, the Board appropriately cast the association's votes (regarding the unit intervals as held by the Association), in accordance with the preference of the membership majority.

The Association's 2016 dissolution and liquidation activity, after reporting the March 2016 Referendum results to the membership in April, revealed three very different member postures:

1. The majority preferred to forego any participation for dissolution and liquidation and simply deed their unit interest back to the Association to relieve their financial obligations while avoiding participation in the uncertain future related to unknown potential assessments.
2. Of the remaining minority, most preferred to continue support of the Association through the dissolution and liquidation process, and in so doing, remained eligible and entitled to their pro rata share of any net proceeds that may occur as a result of having continued to support the Association to conclusion (while being liable for potential assessments as well).
3. A fraction of the remaining minority (about 7% of total intervals), however, preferred to go unresponsive to any activity. These member's accounts have remained generally current. Some allowed communication with Management during the process, and with collaboration, gained a better understanding for themselves as a result, instead of relying on false information conveyed to them by others.

In an effort to help those remaining 7% understand the Association's reality, the following explanation may assist:

1. The Association is a Not-for-Profit corporation formed under the laws of the State of Tennessee, governed by its Declaration and Master Deed (as amended), through its member elected Board of Directors, and with the guidance and enforcement of its management company (Universal Services Corporation), and the agents and employees it retains to better serve the membership. USC has been serving as management for twenty-three years, and was created to help insulate the Association from significant liability for statutory management responsibilities.

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2. The members of the Association elected your Board of Directors, who are unpaid for this position, and volunteer their time to ensure the best interest of the membership is achieved. These Board members are: Chairman Henry Phillips, Director Sid McBee, Director Ben Edmonson, Director Foster Moore (retired), Director Ray Lankford (retired). Each of these board members has been owners at Mariner's Pointe Resort for **over thirty years**. Each is active in their community, their church, and has a genuine concern for serving the Association, its membership and the resort at Mariner's Pointe, which they and their families have dearly loved.
3. The management company (USC) has no official position on the Board of Directors. **USC has NO vote-power on any issue brought to the Board**. USC's role is to enforce the policies of the Association as determined by the Board. USC's President, T. Dave Burgess, is also President of the Association, as appointed by the Board, and is an **Ex-Officio** member of the Board. This position is necessary for facilitation of the daily operations of the Association's affairs on the member's behalf. USC's President must hire, fire, and maintain responsibility for all staff, contractors, or Professionals providing services on behalf of the Association, while shielding the Association from this liability.
4. **Pointe Realty Company (PRC)** was created soon after USC's creation to better serve the Association members. This entity was necessary in order to comply with Tennessee Code in regards to licensing requirements, fiduciary and escrow fund requirements, and many other statutory regulations requiring expertise, certifications, and qualified oversight. Pointe Realty Company is a division of USC, and appropriately licensed with all regulatory authorities. PRC assisted in the re-sale of timeshare units, facilitated sales and the rental program, received and distributed rents to timeshare owners, while maintaining appropriate licensure and accountability with local and state laws.
5. **Association's Primary Counsel** for the MPIOA, Inc., for the termination, dissolution, and liquidation processes, is Mr. Joe Looney, Esq., of Looney, Looney & Chadwell, PLLC. Recognized as the leading full service law firm in the Upper Cumberland region for generations, the firm is the oldest (1937) continuously operating law firm in Cumberland County, Tennessee. Mr. Looney, as senior partner of the firm, represents a number of homeowner's associations, property owners associations, and timeshare associations throughout Tennessee. While heavily involved in all aspects of timeshare law for more than 30 years, Mr. Looney has provided the needed legal representation for Wyndham Worldwide for their resorts in the state of Tennessee, handling all foreclosure and Wyndham association issues from Nashville throughout East Tennessee.
6. **Additional Counsel/Co-Counsel** is Olana J. Burgess, Esq., who primarily handles the various Associations' foreclosure activity, and handles various contract, employment, and other operational legal issues as needed by the Association or USC, and is licensed to practice law in the States of Tennessee, Kentucky, Georgia, and Florida. In 2007, Mrs. Burgess was responsible for directing the Association to a process of foreclosure through Publication, which eliminates court costs, reduces legal fees, and saves the association considerably compared to the judicial foreclosure process.

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7. **Additional Counsel** also consists of the law firm of Gullet, Sanford, Robinson, and Martin, PLLC (GSR&M), of Nashville, Tennessee. This prominent firm through their various counsel and staff, represented the Association in its organization and recreation in 1993, and represented the Association in its necessary battles with the former developer and its Bankruptcy in 1994-1995. This firm also represented the Association in its necessary Re-Organization, Chapter 11 in 1994-1998, which was a result of the former developer's abuses. Then, just after 2000, the firm represented the Association in its multi-year defensive litigation process with MPIOA's neighboring developer ('Austa La Vista, LLC' and 'Take It Easy, LLC'), all of which the Association had favorable results of significant benefit for the membership-at-large. Should their expertise once again be required, it is logical for this firm to lead the Board and Association through any litigation necessary to protect the interest of the membership, as their familiarity of the 'Who' and 'What' of the Association is very intimate.

Although attempts to discuss the multiple circumstances occurred by newsletter, and then on the website, in the effort to address the common concerns expressed by members, questions continue to require response. If you desire further explanation or have additional questions in need of a response, please contact your associations Member Advocate, Ms. Chris Green. Chris will respond to your questions, or will identify the appropriate person to assist you further as necessary.