

J. Michael Melchert**
Kelly C. Dohm***
P. David Melchert
Racheal M. Holland**
Kathryn J. Barnes
Jason M. Thiemann
Matthew D. McDougall
Travis J. Adams
Jason R. Lee
Jacob M. Saufley
Timothy S. Anderson

Of Counsel:
David P. Hubert
Mac R. Willemssen
Keith E. Sjodin*
Bradley W. Solheim**

**Civil Trial Law Specialist, certified by the
Minnesota State Bar Association
**Real Property Law Specialist, certified by
the Minnesota State Bar Association
***Labor and Employment Law Specialist,
certified by the Minnesota State Bar
Association
**Also admitted in SD*



MELCHERT HUBERT SJODIN

Attorneys at Law

WACONIA OFFICE
121 W Main Street, Suite 200
Waconia, Minnesota 55387
Telephone: (952) 442-7700

CHASKA OFFICE
510 Chestnut Street N, Suite 100
Chaska, Minnesota 55318
Telephone: (952) 442-7700

Firm Administrator
Marcia A. Bening

WEB PAGE
www.mhslaw.com

February 28, 2022

Michael Larson
Seven Ponds Homeowners Association, Inc.
3300 Plymouth Blvd.
PO Box 47892
Plymouth, MN 55447
Via Email Only to mdlarson5@comcast.net

RE: Seven Ponds Homeowners' Association, Inc. Dissolution Overview

Mr. Larson,

I am assisting Ms. Holland with your inquiry regarding the dissolution of Seven Ponds Homeowners' Association, Inc. (the "**Association**"). While it is possible to dissolve the Association, it is potentially very time consuming and expensive partially due to the underlying impact that a dissolution will have on the real property within the Seven Ponds plat and the assets owned by the Association.

Dissolving a non-profit corporation is a relatively straight-forward process as the Minnesota Statutes set forth the procedure for dissolution. The difficulty with dissolving an Association is tied more so to terminating, or otherwise greatly amending, the Declaration that sets forth various restrictions on the real property subject to it, and the responsibilities of the Association relative to such real property.

Dissolution of the Association; Winding Up the Business

Because the Association's By-laws do not explicitly state a dissolution procedure, the Association's board (the "**Board**") will need to follow the statutorily mandated procedure for dissolution. Minn. Stat. Chapter 317A, the statute under which the Association was formed, requires the Board to adopt, by majority, a resolution and plan of dissolution for consideration and approval by a majority vote of all parcel owners with one vote allowed to each parcel (the "**Members**"). This dissolution plan would outline the assets owned by the Association, how such assets would be liquidated, whether there are creditor claims to be satisfied during the winding up process (which

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could be paid from the amounts received in liquidation) and then finally, the disbursement of remaining assets to the Members. Additionally, depending on how the Association handles its tax returns, it would need to notify the IRS and Minnesota Secretary of State of the Member approved plan prior to dissolution.

The sole purpose of the Association is to uphold the Declaration by protecting the real property subject to it and carrying out the required responsibilities. As such, the first step to dissolution is determining what assets are owned by the Association and if they can be liquidated by sale or gift. If those assets can be liquidated, the Declaration would then need to be amended or terminated (as discussed in more detail below) to eliminate the Association's remaining responsibilities. I have reviewed the Declaration and determined the following:

Association Assets:

Real Property or "Common Areas"

- Outlot I, Seven Ponds 2nd Addition ("**Outlot I**")
- Outlot C, Seven Ponds 3rd Addition ("**Outlot C**")

Personal Property

- Any personal property held by the Association
- Any Bank Accounts

Association Responsibilities:

- Landscape Easement Area (the "**LEA**")
- Maintenance and Insurance for Common Areas (outlined in Article VI, Section 1 & 4)
- Maintenance of LEA (outlined in Article IV, Section 8)
- Maintenance of public medians
- Election of the Board
- Settling and collecting annual and special assessments
- Establishing Rules and Regulations
- Enforcement of Rules and Regulations

The initial hurdle to liquidating the Association's assets will be transferring ownership of the Common Areas. We ran title checks on the Common Area parcels. Since the Declaration has been properly recorded upon both of their Certificates of Title, any potential buyer would need to honor the restrictions and easements prescribed by the Declaration. For example, the Common

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Areas appear to be drainage ponds which collect runoff from the residential development. This means that the land development of the Common Areas (if no longer drainage ponds) will be severely restricted. However, even if the use of the Common Areas could be modified, Outlot C is essentially landlocked, so the failure to have direct access by a 3rd party buyer would be prohibitive to development. Consequently, finding a buyer for either of the Common Areas will be equally challenging.

In your email, you mentioned abandoning or gifting the Common Areas to the City. The Association simply abandoning the drainage ponds would mean a lapse of upkeep (inviting rodents, overgrowth, etc.) and tax delinquency, all of which would have the effect of decreasing property values in the neighborhood. Moreover, if abandoned per Article XIII, Section 2, Subparts a&b of the Declaration, the City would have permission to enter the Common Areas, perform necessary upkeep and assess payment for these services against the Members whose lots abut the Common Areas. You could inquire to the City as to whether they would accept the Common Areas, but in my opinion, the City would not be agreeable to taking ownership and spending resources for upkeep and oversight as they already have the Association performing these tasks and the Common Areas have limited accessibility for the greater population of Plymouth to enjoy.

If, despite the restrictions, the Board successfully navigated the transfers of the Common Areas, the proceeds of these transactions, if any, would be pooled together with the remaining Association assets and disbursed. Creditors, fees and bills incurred by the Association would be paid first, then any remaining assets (or remaining debt) would be distributed to each Member. The interest of each Member would be determined by the independently appraised, fair market value for each lot divided by the total fair market value of all the Association's lots (See 515B.2-119(k)(1)). These sales, transfers, and disbursements would ultimately be included in the Association's dissolution plan that would need to be approved by the Members. This brings us to the Board's second big obstacle: Member and mortgagee support.

Dissolution of the Association; Terminating or Amending the Declaration

In order to sell or transfer the assets and subsequently relieve the Association of its responsibilities, the Board would need to have enough Members vote in favor of the dissolution, which will also require heavily amending the Declaration or completely terminate it. In your email, you pointed out that the Association is not subject to the 1994 Minnesota Common Interest Ownership Act (MCIOA). While Seven Ponds was established prior to the creation of the MCIOA, by not conforming with the statute the Association would be open to challenges by members of mortgagees for its failure to follow the law guiding most Association actions. Consequently, we would recommend using the procedure outlined in MINN STAT. 515B.2-119 for the termination

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of the Declaration in order to avoid any issues down the road. This requires approval of the plan by 80% of the Members and 80% of the first mortgage holders (rather than the 75% of Members and 51% of first mortgage holders required by the Declaration). I am not familiar with how involved the Members are, but this high percentage can often result in the dissolution process being stalled, especially if mortgages are required to consent.

Conclusion

As you can see, dissolution can be an expensive undertaking and unforeseen issues can arise which would have the potential to increase cost or simply create impassible barriers. From the outside, it appears extremely unlikely to successfully dissolve the Association. If members are questioning board decisions, actions or inactions, an alternative option to dissolution would be to hire a property management company and outsource the Board's obligations. This is allowed by Article VI Section2 of the Declaration. If you have questions about any of the above, please do not hesitate in contacting me.

Sincerely,



Timothy S. Anderson

TSA/jls