

Converting from Voluntary to Permanent Membership

By Kimberly C. Gaddis, Esq.

In most new subdivisions being built today in and around metropolitan Atlanta, mandatory or permanent membership in a homeowners association is the custom. However, this has not always been the case. In many older subdivisions, membership in the homeowners association is voluntary. Also, if your covenants have expired, you may find yourself in a position of having to propose a new set of covenants to the owners in your community. If this is the case, and if your association owns any amenities, such as a swimming pool, tennis courts, or a landscaped entry, you know that budgeting to cover the costs of these amenities can be difficult. If major repairs or replacement of the amenities is needed, the association may risk having to close or abandon the amenities if it does not have adequate funds.

By creating a permanent membership association, homeowners can plan and budget for upkeep of the amenities. Protecting your neighborhood's amenities will allow your community to compete with new communities in attracting new buyers and to maintain property values in your development.

To become a permanent membership association, the first thing you must have is an organizing committee. If your association has an involved and committed organizing committee, you will be able to sell the benefits of permanent membership to the owners in your neighborhood and protect your amenities and property values. Because becoming a permanent membership association does take work, it is a good idea to assign tasks to committee members. For example, you may appoint someone as the marketing chair, someone else as the attorney liaison and another person as head of the membership drive. This way, no one person will be saddled with all the work.

Once you have an organizing committee in place, you will need to contact a community association attorney to assist you in preparing the legal documents your neighborhood must have to operate as a permanent membership association. There are significant legal issues involved in converting to permanent membership, and it is important to have an experienced attorney assisting you.

The conversion to permanent membership typically will involve: (i) creating or amending the Articles of Incorporation and Bylaws for your association, (ii) creating a Declaration of Protective Covenants to establish, among other things, the types of membership allowed in the association, the assessment and membership obligations of members, and the property bound by the Declaration, and (iii) creating other related legal documents necessary for the process. Each homeowner who agrees to become a permanent member of the association must either sign the Declaration or a consent form subjecting that owner's lot to the Declaration, and these documents must be recorded in your county's land records office so that the covenants run with the title to the property and bind future owners.

To assist your attorney, the following is a list of some of the items your organizing committee should consider for permanent membership:

- Determine what legal documents already govern the association. Your attorney can assist you in determining what requirements there are for amending or restating any documents already governing your voluntary association.
- Determine the minimum number of homes you will require to participate in permanent membership before it will become effective. Setting a minimum participation threshold will relieve owners from the worry that, if too few people sign up, they will be stuck with exorbitant annual fees.
- Set a deadline for signing up to become a permanent member, and determine whether the association will charge an initiation fee for the new permanent members. Many associations waive or reduce the initiation fee for owners who sign up for permanent membership prior to the deadline.
- Determine what fees will be charged to members who elect to continue on a voluntary basis.
- Determine the procedures for establishing the budget and permanent member annual fees.
- Determine the procedures for adopting special assessments and whether voluntary members will be obligated to pay special assessments.
- If there are voluntary members, determine whether they will be eligible to vote and/or serve on the board of directors of the association.

These are just some of the issues you will need to review to assist in preparing the legal documents for your permanent membership association. There will be other items as well, but do not get overwhelmed. With the commitment of an involved organizing committee, your campaign to become a permanent membership association will be successful and benefit your neighborhood for years to come.

If you would like more information about converting your community from voluntary to permanent membership, please contact GADDIS VATH LANIER, LLC at info@gvl-law.com.

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