

From: Mark Glenn <mark@moseslaw.com>
Subject: RE: Initial GWLUA Docs
Date: October 22, 2019 at 6:05:14 PM MDT
To: Gillian Fryer <gfryer@bluefeather.biz>
Cc: Ronda Young <ronda@moseslaw.com>

Sorry, this went into my junk email file and I didn't see it immediately.

In reviewing your documents, I have a couple questions: Was the issue of the Association's viability or legal standing an issue or addressed in any way as part of the lawsuit brought by the County that Reynolds lost in 2001? Have any of these issues been raised in the current lawsuit in *Rhines*?

Regarding your Question No. 1, it's my opinion that the Greater World Land User's Association, an unincorporated association ("Greater World") expired 20 years after its Articles of Association were first recorded in the Office of the Taos County Clerk sometime around April 1994 (the "original Articles"). Some of the documents you sent are illegible and the recording information is not clear, although I generally can see page numbers from when they were recorded. The first paragraph of the Greater World original Articles note that they are in "compliance with the requirements of Section 53-10-1-8 [sic] N.M.S.A. (1978)" an apparent reference to NMSA Sections 53-10-1 through 53-10-8, sometimes referred to as the Unincorporated Association Act (the "Act"). As you have noted, the Act allows properly formed unincorporated associations to exist for a period of time not exceeding 20 years. In direct contravention of the statute, the Article VIII of the Articles states that Greater World shall exist for 25 years and that it may be renewed thereafter upon proper consent of 75 percent of its members in good standing. However, the Act contains no provision whatsoever for "renewal" or "extension" or whatever other term someone may choose as a way of extending the life of Greater World beyond its original 20-year period. Presumably, the Legislature believed that 20 years was sufficient time for an association to exist and evolve into another form of legal entity like a partnership or corporation. The text of a statute is the "primary, essential source of its meaning[,]" and where a

statute's language is clear and unambiguous, we are required to "give effect to that language and refrain from further statutory interpretation." NMSA 1978, § 12-2A-19 (1997). Having said all that, there is very little caselaw in New Mexico interpreting the Act and none at all addressing the 20-year maximum term of existence of an unincorporated association. I haven't found cases from other jurisdictions interpreting the termination of unincorporated associations due to the passage of time and statutory requirements.

Question No. 2: Ok, this is complicated with a lot of moving parts, including documents drafted over three decades. Assuming Greater World still existed this year as a legal entity (I've argued to the contrary above) and given that its attorney has taken the position that it is a homeowner's association, I would argue that the attempt to create a nonprofit corporation was improper and illegal. The most recent edition of the 2003-05 Bylaws of the Association seemingly would require a special meeting of the members and a two-thirds majority vote to form a new corporation that would take the place of the Association. Section 47-16-17 of the New Mexico Homeowners Association Act, which was effective July 1, 2019, requires that members be given written notice of an Association meeting at least 10 days and not more than 50 days in advance of the meeting. In the case of a special meeting, the purpose or purposes for which the meeting is called along with the time, date and location of the meeting. All lot owners have the right to attend and speak at all open meetings, and meetings may be closed only during portions where the board is hearing legal advice, discussing litigation or personal health or financial information about an individual member, employee or contractor. The Association shall keep a written copy of the meeting minutes, including summaries of all agenda items and formal actions taken. Section 47-16-9 of the act related to voting and how votes should be counted, but does not apply to Associations created before July 1, 2013 that have fewer than 30 lots. I'm not sure about the number of lots within this Association.

Question No. 3: Your recourse is to have an attorney write a demand letter to the Association and its Board members outlining your concerns and asking the Board to take certain actions. If the Board fails and

refuses to do so, your alternatives are to do nothing or file a state district court lawsuit asking a judge to declare the actions illegal, void, or unenforceable.

I'm sure you'll have some questions, so let me know.

Mark

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From: Gillian Fryer <gfryer@bluefeather.biz>
Sent: Tuesday, October 22, 2019 12:18 PM
To: Mark Glenn <mark@moseslaw.com>
Cc: Ronda Young <ronda@moseslaw.com>
Subject: Re: Initial GWLUA Docs

Hi, I'm wondering if you've had a chance to review the documents I sent regarding our HOA and what we might be able to do about the current course of events.

I'd like to present an update to the community members who have contributed to funding our legal fees.

Thank you

/Gillian Fryer

On Oct 8, 2019, at 6:01 PM, Mark Glenn <mark@moseslaw.com> wrote:

Ms. Fryer: I wanted to let you know that I received the signed engagement letter and the retainer checks.

Unfortunately, the timing of this is such that I haven't had a chance to look at your email or the attached documents in any detail yet. And I will be out of the office the rest of this week, returning on October 15. I'll look at your questions and give you answers next week after I return. I hope this is acceptable. I'll be checking my email periodically when I have access to wifi while I'm gone.

Mark

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