



RBHOO
SPECIAL MEETING

January 13, 2025

Disclaimer

Accuracy: The information presented in this meeting is for general informational purposes only. While we strive to ensure the accuracy and completeness of the information provided, we make no guarantees or warranties, express or implied, about the reliability, suitability, or availability of the information for any purpose. Any reliance you place on such information is strictly at your own risk.

No Professional Advice: The information shared during this meeting does not constitute legal, financial or any other professional advice. Always seek the advice of a qualified professional with any questions you may have regarding the subject matter discussed and or your specific situation. This meeting does not create any legal relationship between you and the presenters of the meeting.

Errors and Omissions: We are not responsible for any errors or omissions, or for the results obtained from the use of this information.

Confidentiality: The contents of this meeting are confidential and intended only for the participants. Unauthorized sharing or distribution of the meeting content is prohibited.

Views Expressed: The views and opinions expressed during this meeting are those of the individual speakers and do not necessarily reflect the official policy or position of Rarity Bay Home Owners Organization.

If you do not agree with these terms, please exit from the meeting.

www.rbhoo.org

Meeting Protocol

Please take out your cell phones and turn them off.

- No photos or videos allowed.

If you are seen recording the event you will be asked to leave.

- There are no refunds.

Please note that outbursts from the audience will not be tolerated.

Questions yelled from the audience will also not be tolerated or answered.

Anyone causing disruption will be asked to leave.

- There are no refunds.

Agenda (based upon questions submitted)

Background Questions

Attorney Introductions

Bankruptcy Overview

Potential Claims

Claim Form Overview

Submitted Questions

Questions from Audience

Background Questions - Players

RBCAI – Rarity Bay Community Association, Inc.

SPC – Salem Pointe Capital LLC

RBP – Rarity Bay Partners

RBCC – Rarity Bay Country Club

SPCP – Salem Pointe Capital Partners (RBP's old name)

SPHP – Salem Pointe Holding Partners

- Partnership between SPC and RBP in 2016
- Terminated in 2017 by SPC

Background Questions – Why?

Why not the Rarity Bay Community Association, Inc. (RBCAI)?

According to RBCAI legal counsel, RBCAI must remain neutral.

- *RBCAI is a secure creditor*
- *RBCAI is bound by the Settlement Agreement*

Why Now?

Bar Claim Date (Proof of Claim) is quickly approaching – January 27, 2025.

- Attorneys will provide more information

Background Questions on CC&R's and Condos

Rarity Bay developed in Phases

- Phases have different Covenants, Conditions and Restrictions (CC&R's or Declarations)
 - Phases 1, 2, 3, 4 and 5 each have their own CC&R's
 - Phases 6 – 16 have a single CC&R known as the **Master Declaration**
 - Condos were developed in 4 phases (Phase I, II, III and IV)
 - Condos are part of the RBCAI and have their own CC&R's
 - Article 3 of the condo CC&R's

**ARTICLE 3: MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR RARITY BAY**

In addition to Membership in the Association as provided for herein, each Owner shall also be a Member of the Master Association, and shall be subject to the terms and conditions of the Master Declaration. The rights and obligations arising from each Owner's Membership in the Master Declaration

BK M120 PG 48

Background Questions

SPC Acquired RBCC and other assets on May 19, 2015

- SPC was given the whatever interest the receiver had in Declarant Rights
 - Master Declaration
 - Without any warranty
- SPC recorded the Sixth (6th) Amendment on May 19, 2015
 - Modified the By-Laws and Master Declaration
- SPC recorded the Seventh (7th) Amendment on October 22, 2015
 - Modified the By-Laws and Master Declaration
- ***Neither the Board nor the members of the RBCAI approved the Amendments***

Settlement Agreement

- December 2015
- Between SPC, SPCP (RBP) and RBCAI
- ***Stipulated that the Board cannot challenge the 6th and 7th Amendments***
 - ***No stipulation that residents cannot challenge the Amendments!***

Background Questions – Amendment Changes

By-Laws and Master Declaration

- Provided initial assessment exclusion for additional parties mainly RBP

Master Declaration

- **Added Section 7.11 – Club Membership and other Club Matters**
 - *Required properties subject to the Master Declaration purchased after May 19, 2015, to be Social members*

Background Questions on Why Club Membership

Voluntarily joined the club

Phases 1 – 5

- Chain of Deeds; Mandatory club membership is on one of the deeds

Phases 6 – 16

- Chain of Deeds; Mandatory club membership is on one of the deeds
- Property purchased after May 19, 2015 – 6th Amendment

Condo's

- Chain of Deeds; Mandatory club membership is on one of the deeds
- Property purchased after May 19, 2015 – 6th Amendment
 - Article 3 of Condo CC&Rs tied the condos to the Master Declaration

Attorney Introductions

Melanie Davis

- HOA Attorney
- Kizer, & Black, Attorneys Pllc
- Familiar with Rarity Bay Governing Documents

Mary Miller

- Bankruptcy Attorney
- Miller Law
- Very familiar with Bankruptcy proceedings

Bankruptcy Overview

Purpose Bankruptcy – Fresh Start

Automatic Stay

Secured Creditor v. Unsecured Creditor

Chapter 11 v. Chapter 7

- Reorganization v. Liquidation
- Trustee vs. No Trustee
- Chapter 11 – Monthly Reporting
- Dates/Deadlines
- Plan
 - How it Works
 - What Can Plans Do?
 - Who Can File Plans?
 - Deadlines for Filing Disclosure Statement and Plan
- Discharge – Individuals v. Corporations

Bankruptcy Overview

How does this impact you?

Claims

- Claims Bar Date
- Claims Form to be gone over in detail later
- Basis for Claim club members versus non-club members
- Claim can be amended after filing
- Address to Mail Claim Form or Deliver Claim Form
- If it does not make it on time, it will not be allowed
- Trustee or debtor can object to claim

What comes after Proof of Claims

Potential Claims

By-Laws Changes

Master Declaration

Declarant Rights

Transfer Fee

Deed Alteration

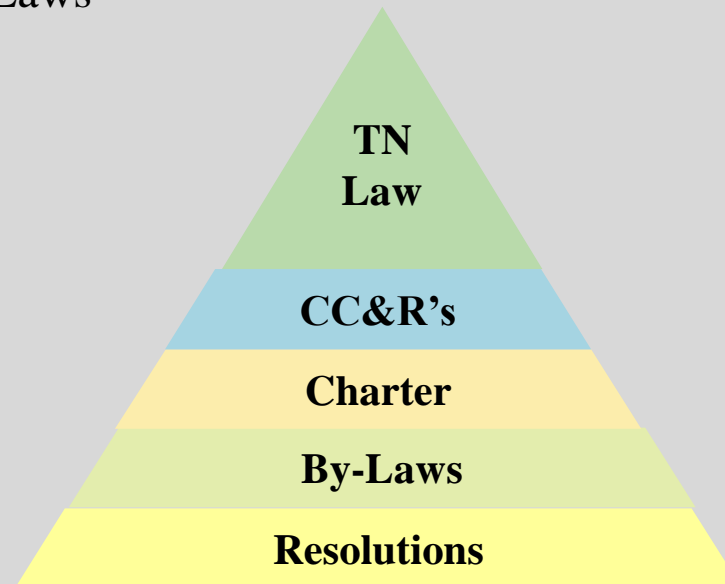
Club Not Providing Services

Club Deposits

Claims – By-Laws Changes

SPC Improperly Modified the By-Laws with Amendments 6 & 7

- Neither the RBCAI Board nor the members of the RBCAI approved the changes
- TN Law 48-60-202 does not allow for a third party to alter the By-Laws
- Original CC&R's and changed By-Laws conflict with one another
 - CC&R's override the By-Laws



Claims – Master Declaration Changes

SPC Improperly Modified the Master Declaration with Amendments 6 & 7

- *Affects owners tied to the Master Declaration*
- TN Case Law does not allow CC&R's to be modified without consent of the owners
 - Owners did not approve of the changes
- For Owners who purchased **prior** to May 19, 2015
 - When property is sold, the new owner is required to be a member of the club
 - Decreases pool of potential buyers
 - Has property value been reduced?
- For Owners who purchased **after** May 19, 2015
 - Required owner to be a social member
 - Paid transfer (initiation) fee
 - When property is sold, the new owner is also required to be a member of the club
 - New owner also required to pay transfer (initiation) fee)
 - Decreases pool of potential buyers
 - Property value has been reduced

Claims – Declarant Rights

SPC Must cede the Declarant Rights

- TN Case Law in Innerimages v. Newman
 - Stipulates when the Declarant must relinquish Declarant rights back to the community.
 - Adopted the UCIOA (Uniform Common Interest Ownership Act)
- Under the UCIOA, the Declarant must cede control when *any* of the following are met
 - 60 days after conveyance of three-fourths of the units that may be created to owners other than declarant,
 - two years after all declarants have ceased to offer units for sale in the ordinary course of business,
 - two years after any right to add new units was last exercised, or
 - the day the declarant, after giving notice in a record to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association.
- SPC meets the first 3

Claims – Transfer Fee

SPC has been improperly charging a transfer

- Prohibition of Covenants Providing/or Transfer Fees Act of 2011
 - TN Law 66-37-101, 102, 103
- SPC send letter to title agencies specifying they collect the transfer fee per the CC&R's
 - CC&Rs were altered in 2015; well after 2011

Claims – Deed Changes

Deed Changes Requiring Mandatory Club Membership

- Original Deed did not have a mandatory club membership (MCM)
- The MCM was then added to a subsequent deed

Claims – Club not Performing

Club Services

- Club is not providing services that were contracted for
 - SPC raises dues arbitrarily
 - Decreased restaurant hours

Claims – Deposits not Returned

Deposits

- Deposits not returned
- Enforceability of club plans

Claim Form Process

Form and Instructions are on the Bankruptcy website

- https://www.uscourts.gov/sites/default/files/2024-12/form-b410_1224_instructions.pdf
- https://www.uscourts.gov/sites/default/files/2024-12/form_b_410_0.pdf
- On RBHOO website
 - Documents, then Other

Process

- Open the claim form
- Fill out the form (PDF fill-in form)
- Save the form
- Print the form
- Sign the form
- Include supporting documentation
- Optionally fill out a self-addressed/stamped return envelope
- Mail the form and return envelope or hand deliver the form to the court

For Knoxville:

U.S. Bankruptcy Court Clerk's Office
Howard H. Baker Jr. U.S. Courthouse
800 Market Street, Suite 330
Knoxville, TN 37902

Claim Form Process

Case Identification

Fill in this information to identify the case:

Debtor 1 Salem Pointe Capital, LLC

Debtor 2
(Spouse, if filing)

United States Bankruptcy Court for the: Eastern District of Tennessee ▼

Case number 3:24-bk-31702-SHB

Official Form 410
Proof of Claim

12/24

Claim Form Process

Form and Instructions are on the RBHOO website

- Documents, then Other Important Documents

Part 1

- 1 – Your info

Remember if home is in trust to list the trust

- 2 – No
- 3 – Your info
- 4 – No
- 5 - No

1. Who is the current creditor?		
Name of the current creditor (the person or entity to be paid for this claim) _____		
Other names the creditor used with the debtor _____		
2. Has this claim been acquired from someone else?		
<input type="checkbox"/> No		
<input type="checkbox"/> Yes. From whom? _____		
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
	Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	
Name _____	Name _____	Name _____
Number _____ Street _____	Number _____ Street _____	Number _____ Street _____
City _____ State _____ ZIP Code _____	City _____ State _____ ZIP Code _____	City _____ State _____ ZIP Code _____
Contact phone _____	Contact phone _____	Contact phone _____
Contact email _____	Contact email _____	Contact email _____
Uniform claim identifier (if you use one): _____		
4. Does this claim amend one already filed?		
<input type="checkbox"/> No		
<input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____		Filed on _____
		MM / DD / YYYY
5. Do you know if anyone else has filed a proof of claim for this claim?		
<input type="checkbox"/> No		
<input type="checkbox"/> Yes. Who made the earlier filing? _____		

Claim Form Process

Part 2

- 6 – Leave blank
- 7 – TBD or \$\$\$ if you know
 - Check No
- 8 - Breach of Contract/
Breach of Fiduciary Duty
- 9 – No
- 10 – No
- 11 - No

Part 2: Give Information About the Claim as of the Date the Case Was Filed	
6. Do you have any number you use to identify the debtor?	<input type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim? \$ _____	Does this amount include interest or other charges? <input type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. _____
9. Is all or part of the claim secured?	<input type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

Claim Form Process

Page 3 – Part 2

- 12 – No

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Claim Form Process

Part 3

- Check First Box

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(3) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name
First name Middle name Last name

Title

Company
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address
Number Street

City State ZIP Code

Contact phone Email

Questions - Membership

I purchased a transferable club membership from Michael Ross for \$25000 on a vacant lot I owned when we were told that once the limit on club memberships was reached no more would be sold. This was an investment to enhance the value of my property for a future buyer. SPC did not recognize those existing memberships and they were void. Do I have a claim in this situation?

Do Premier Members have recourse under any of the laws and precedents being discussed. Can claims be filed for these agreements with the Club that Michael Ayres has not honored. Background: Many RB residents purchased a Premier Membership to the Country Club and paid a \$30,000 deposit. An Owner Consent and Joinder was recorded on their deeds by Rarity Management Company, LLC. This deed restriction requires mandatory Premier Membership. There were many agreements in the sales documents and Club Membership Agreements that agree with the sales presentations but conflict with the filing. When Michael Ayres purchased the Club, he continued to force club membership but absolved himself from other portions of the agreements. When I inquired, the Rarity Bay Country Club COO stated they had many members that no longer wanted it on their deeds, and to look for a communication in the coming weeks establishing a meeting on this topic. That was on February 24, 2017 and it still has not occurred,

The Premier Membership granted among other things, that: "Buyer's membership deposit will be 100% refundable and permanent membership privileges can be transferred (subject to the Membership Plan) to a future property owner on the subject property should Buyer at any time decide to sell." All memberships are to be repaid their deposit 30 years after their application date. Members can resign and will be refunded their deposits from new memberships based on 1 refund per every 4 new members.

Please provide guidance on club members establishing an “escrow account” for their club payments until the bankruptcy proceedings are resolved?

Questions - Membership

With the Club being a Private Business, we can not see its books yet he can raise the initiation fee and the monthly dues to any amount he wants. Should the residents of Rarity Bay be allowed to see the Club Books to see if the initiation fee and the increase in monthly dues is justified?

For deeds that have more than 1 property deeded in them, for example a home and 2 lots but only mention of one mandatory membership....added years after the home changed hands....Can the lot be sold off without the membership in place especially if it is in phase 1? What if the mandate was in prior deeds but not current deed? or if the property was transferred via Quit Claim deed? What if a home or lot is under contract to be SOLD currently and we don't want to hold up the closing? Can the funds be requested to be held in escrow? Since we are no longer using the club due to lack of good service and low quality of food, if we stop paying the \$300 a month club fee what could Ayres legally do?

Costs for club membership, monthly dues have risen sharply. Are there no controls for this escalation?

Please explain why my having a mandatory RBCC membership on my deed constitutes a claim. And what exactly would I be claiming?

Most of the wording around mandatory club membership is singular, yet SPC requires each property to have a membership. Shouldn't club membership be buy person and not property?

We are new to Rarity Bay and live on a replatted lot (originally platted as two) in Phase 1 of Rarity Bay. It was initially transferred from Tellico Lake Properties to Rarity Management in early 2010 via quit claim deed. It was then sold (as a single lot) to the owner whom built the house. At that time (June 2010), the information relative to the mandatory club requirement (premier membership) was added to the deed. Was the club requirement added legally? Only one replatted lot is recorded, should we be paying two club fees and HOA fees for a single lot?

Do residences in Phase 1-5, whose initial deed has a mandatory membership requirement, have any legal recourse regarding dissolving the memberships?

Questions – Other

How might the community proceed if we wished to make an offer for the Golf Course and Country Club? May we make an offer at any point--or are there other considerations?

In the bankruptcy documents, Michael and Amy Ayers were to be paid \$25,000 a month for managing the Country Club; was that approved by the bankruptcy court? Also, if there are ghost employees (being paid but not working), should that be communicated to the Bankruptcy Judge?

What is the hierarchy of rule between the CCR's, Amendments, Master Plan, Bylaws, Deeds, etc? We have heard everything: CCR's supersede the Deed; the Deed supersedes the CCR's; the only way to amend the CCR's is thru an Amendment; the CCR's controls the land, the Master Plan controls memberships. What gave the developer the right to place mandatory memberships on deeds? What document supports this action?

Can a Declarant just write a mandatory membership into a deed with no references to the CCR's or Master Plan?

Will the claims help Rarity Bay gain Self-Governance?

Questions – Other

How could the RBCAI Board agree to the Settlement Agreement without presenting the terms to the property owners first for us to agree to the terms as it affected most members of the Association? IMO, we should've had a say/vote as to whether or not we agreed to the terms.

On October 1, 2024, you sent a detail letter regarding country club and other issues to Joe Ayres, Executive VP of WindRiver. Since there are some similar issues with Rarity Bay Country Club; have you received a response, and could you share them with us? If not, what are your thoughts.

The 60000A contract between TVA and TRDA states that a Country Club/Golf Course, must be operated as a NON-Profit and can not be a burden to the community. So how was it possible for Mike Ross to set it up as a FOR PROFIT, business and Sterling Owens allowed it to be sold and run as a For Profit business when it was purchased out of Bankruptcy in 2015?

Questions – Claim Related

How much does it cost for one person to file a claim?

Would the cost to file a claim be less (per person), if there is more than one person in that class that files the same claim?

What is the value or benefit of filing a claim with the Bankruptcy court?

How will a claim be processed?

Would the member filing the claim be obliged to file a lawsuit in the future if the claim is approved by the bankruptcy court?

If there are multiple people in the same class or category of the claim, is it necessary for all members in that class to file a claim or will one claim suffice for all the members in that class or category?

If one member of a class files a claim, and the claim is approved, would it be possible for a different member of that same class or category to file a lawsuit even if that member did not file a claim?

If Michael Ayres for any reason, went into chapter seven bankruptcy, would any of these claims be of any value in the future and or apply to a future owner of the club/golf course?

How is the best way to file a Chapter 11 Bankruptcy Claim? What language do we use? What does the court want to see?

Questions



www.rbhoo.org