

Title 10 vs. Title 33

Attorney requests changes, resident gears for lawsuit

By Rusty Bradshaw

Sun City resident **Anne Randall Stewart** is pressing forward with plans to bring legal action against the **Recreation Centers of Sun City** for what she and her attorney believe are violations of RCSC corporate documents and state law.

Mrs. Stewart, who represents the **Sun City Formula Registry**, an advocacy group she established, alleges the RCSC board violated Arizona law when it changed the quorum for membership meetings and is not complying with the Planned Communities Act. She further alleges RCSC violates its own documents by having unequal assessments for members and spends more than \$750,000 on projects without a membership vote.

Mrs. Stewart retained **Nancy Mangone**, the attorney who successfully argued a lawsuit against RCSC by Viewpoint Lake homeowners, in 2012 to represent her in the case. Ms. Mangone sent a letter Aug. 22, 2012, to Ridenour, Hienton and Lewis, RCSC's statutory agent, outlining the allegations and calling for corrective action by RCSC officials. **Since that letter has been ignored, Mrs. Stewart believes legal action is necessary.**

"I have been working on this for 12 years," Mrs. Stewart told RCSC music club leaders in a Jan. 2 meeting. "This is the only way they are going to follow the rules, because they certainly aren't going to listen to members."

Mrs. Stewart is conducting fundraising in January and February to gather funds to cover the legal effort.

"I can't afford to do this on my own," she said. "Other residents need to step forward and help if we want to have RCSC follow state law and its own rules."

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The crux of Mrs. Stewart's long-standing dispute with RCSC is the **corporation should comply with Title 33 of Arizona Revised Statutes governing community associations.** However, RCSC officials believe they are governed by Title 10.

Jan Ek, RCSC general manager, stated in an e-mail last week she could not comment specifically about Ms. Mangone's letter because it could lead to litigation. However, she did answer some questions in July 2012

regarding the differences between Title 33 and Title 10, and reaffirmed that information last week, in addition to providing other published comments addressing the issue.

"RCSC does not qualify under Title 33 as a planned community association, because not every property owner in Sun City is required or can qualify to be a member of the Recreation Centers of Sun City," Ms. Ek stated in an e-mail. "A planned community association is a common interest organization to which all the owners of lots in a planned community must belong."

The four defining characteristics of a planned community association, as would have been expanded by Senate Bill 1208 in the 47th Arizona Legislature, were that all owners are automatically members, governing documents create mutual obligations, mandatory fees or assessments are generally levied against owners and used for the operation of the association, and owners share a property interest in the community, according to Ms. Ek. However, that bill was killed in committee.

Ms. Ek stated RCSC would face a large financial impact in meeting notices alone if required to comply with Title 33. The statute, 33-1804.B, requires association officials to hand deliver or mail membership meeting notices to all members no fewer than 10 days prior to the meeting.

"RCSC assesses 27,491 properties and currently holds four membership meetings per year," she stated in a July e-mail. "If the cost of postage, printing, paper and labor to prepare the meeting notices was \$1 per property, the cost per meeting would be \$27,491."

The RCSC board has since eliminated three of the annual membership meetings and established the remaining to be an all day affair in January. The first of this style of annual meeting is 9 a.m. Saturday, Jan. 26.

Ms. Mangone requested RCSC officials **reinstate the 100-member quorum for membership meetings based on Title 10 provisions that the board cannot create a greater quorum number without a membership vote.** RCSC officials believe since they are a nonprofit corporation, rather than a homeowners association, the Title 10 provision, 10-3722, that sets the quorum

number at one-tenth of the number of votes entitled to be cast is what applies.

Vance Coleman, former RCSC board member and president, stated in a February Independent guest commentary the larger quorum was necessary to protect corporate and member interests.

“The previous membership quorum of 100 was less than one-half of a percent (.3 percent) of the total membership and left RCSC and its members at risk of being controlled by a small minority,” he stated. “Someone with 100 proxies could have made changes with numerous unintended consequences that could have done a great deal of harm to RCSC and Sun City homeowners.”

Ms. Mangone alleged the member cardholder and privilege cardholder designation in RCSC documents establishes different classes of members. She believes this gives member cardholders greater rights and privileges, while RCSC documents state all members must be treated equally.

However, Mr. Coleman refuted the charge in a separate February Independent guest commentary, stating members are defined in the corporate documents.

“The definition of a member is outlined in the corporate bylaws Article II by establishing qualifications that must be met; i.e. must be a deeded real estate owner of property in Sun City, must be 55 years of age or older or qualified by spousal exemption and must occupy the Sun City property as his/her primary Arizona residence unless his/her other Arizona residence is farther than 75 miles from Sun City,” he stated. “Privilege cardholders are not members, as per RCSC corporate Bylaws.”

The bylaw states a privilege car can be purchased by non-property owners, including resters, tenants, lessees, occupants and those granted non-owner lifetime use. The bylaw goes on to require these non-owner occupants meet the age and primary residence requirements.

Ms. Mangone alleges large projects, including renovations at Bell Recreation Center, at \$3.5 million; Fairway Recreation Center, at \$18 million; and the Sundial roof repair, at \$8 million, violated the RCSC provision that projects over \$750,000 by first member-approved.

However, RCSC officials contend the documents require a member vote only if the project completion requires RCSC to incur debt.

“RCSC is not now, nor has it been, in debt in excess of \$750,000,” Mr. Coleman stated in his February 2012 guest commentary.

He added projects such as Sundial, Bell and Fairway were paid for with cash on hand and no debt was ever incurred.

Ms. Mangone, though, believes RCSC documents require the vote whether the corporation incurs debt or not. She quoted Article X as stipulating RCSC’s “highest amount of indebtedness or liability, director or contingent,” must not exceed \$750,000 without membership approval by vote.

Associations are not bound to follow only one Arizona title, according to Angela Potts, Community Associations Institute Arizona chapter president.

“Most HOAs fall under both and some are only under Title 10,” she said.

Recreation Centers of Sun City West follows provisions in both titles, according to Katy O’Grady, RCSCW spokeswoman. The association was under Title 10, but in 2007 the Governing Board voted to add Title 33.

“We had followed it (Title 33) loosely previously,” she said.

Ms. O’Grady said the board’s decision to add Title 33 was an effort to be as open as possible with community residents.

“When we read the statutes it was clear it was written for communities like ours,” she said. “Title 33 is more favorable to the residents.”

Dist. 21 Rep. Rick Gray, a Sun City resident, said there were some bills proposed in the last Legislative session concerning HOAs and associations like RCSC, including one to allow videotaping of meetings. He believes the more open associations are, the better.

“It is important that people know what their associations are doing,” he said. “They exist to serve the community.”

However, Ms. Potts believes Arizona statutes are set up differently for private corporations, a matter on which RCSC officials and their supporters strenuously argue for Title 10.

Ms. Ek quoted the RCSC Articles of Incorporation regarding RCSC structure, “The affairs of the Corporation shall be conducted by a Board of Directors and such Officers as the Board may elect or appoint.”

“The Board of Directors has defined the present system as the most effective and productive manner to carry out its duties, which benefits the cardholders,” she stated.

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