

Status of Christina Homeowners Association Inc. October 2020

Clarification for Homeowners

The objective of this document is to address homeowners' questions as to the status of Christina Homeowners Association Inc. (CHOA) and whether it has voluntary or statutory membership by homeowners and rights to amend or enforce covenants. The status of the covenants within the seven phases of Christina will also be explained, these questions have been answered after seeking and reviewing the legal opinions in CHOA records to date, most recently from attorney Robert Chilton who completed a Title Search Review of one lot per phase.

Background / History

Up until 2000, the separate covenant documents for the 7 different neighborhoods that make up the Association were the controlling documents. In 1998, the developers assigned the rights they had to the Christina Homeowners Association corporation as a transition from the developer-controlled to the homeowner-controlled operation of the neighborhood.

In 2000, the CHOA Board of Directors created a new, single, unifying covenant document (by amendment of the original covenants) that changed the association from the seven different associations under Florida Statute 617 to a statutory homeowner's association under Florida Statute 720.

In 2001, some homeowners challenged the Association's authority in court. After numerous legal proceedings through 2007, the court ruled that the Association could not prove it was properly formed. The Association planned to appeal the ruling but settled with the plaintiffs in 2007 to allow them to not be members of the association. The agreement did not apply to other homeowners, and subsequent arguments in court by others challenging the requirement to pay dues and validity of the association did not prevail.

In 2019, the Board of Directors got a second opinion from a real estate / HOA attorney (Chilton) as to the validity of the 2000 covenants and association formation. The conclusion of the second opinion is that the association was not properly formed to meet the requirements of a statutory association, and that the covenant amendment document was not valid.

In 2020, the Legal Committee was tasked with sorting through all the documents, legal opinions, etc. and propose a "final" answer to the question regarding validity of the 2000 covenant document / statutory association, and how to move forward. The details of the assessment are explained below.

The unfortunate situation is that all of the original covenants (except Phase 6) have expired by MRTA, so those neighborhoods have no governing covenants. However, most of the original deeds had the covenants listed as specific deed restrictions, so it is possible that some lots are still required to comply with the original covenants. A title search would be required to determine which parcels still have deed restrictions in effect.

Status of Christina Homeowners Association Inc. October 2020

Status Summary

The 2020-2021 CHOA Board has made every attempt to look objectively at the evidence. (Also see Table 1 at end of this document, which summarizes the Chilton data). For the sake of moving forward, CHOA considers that:

1. **CHOA is not a statutory HOA.** CHOA does not meet the definition under FS 720 that requires mandatory membership as a condition of lot ownership. CHOA was not formed by at least 51% majority of lot owners in various phase (e.g. Woods Unit 1, Lakes, Woods) or as covenants otherwise demanded (e.g. Cliffside Estates, which only authorized developer NHJ Partnership to form HOA). The original covenants for Woods Annex, Phase 5, and Phase 6 did not mention formation of HOA.
2. **CHOA is voluntary to join.** According to the 1980 Articles of Incorporation, CHOA is voluntary to join and membership is not limited to lot owners in this Christina area. The Articles prevail over any Bylaws and the 2000 amended covenants that conflict. Though the 1998 assignments passed some phase developer rights to CHOA, they could not change the voluntary status according to the 2019 legal review, since other state laws prevailed.
3. **CHOA has authority to charge dues and establish any voting rights of members.** CHOA has the authority as a civic/environmental corporation not for profit under FS 617 to charge dues/fees to members of CHOA, and to decide whether or not to grant members voting rights. Currently, members are charged dues, and have rights to vote for the Board of Directors. Homeowners in Christina have no automatic rights with CHOA since it is not organized as an FS 720 HOA.
4. **Some covenants are in effect.** Covenants are still in effect for all lots in Phase 6 since they were preserved under MRTA by Formal Notice in 2007. The other phases have at least some lots that have expired, and so are candidates for revitalization should Christina homeowners choose that route.
5. **Some deed restrictions are in effect.** Deed restrictions for a lot and community/HOA covenants are not the same thing. However, both expire in 30 years unless preserved by reference during the sale of the lot by the owner, or by a homeowners association through specific processes, or through certain exceptions. Each lot would require a Title Search Report in order to make a determination as to whether or not its restrictions are expired. Any unexpired deed restrictions in Christina are enforceable homeowner to homeowner. CHOA did hire Attorney Robert Chilton to conduct a Title Search Report in 2019 on one lot per phase, to see what came up. It found that Woods Phase 6 restrictions were preserved for all lots by Formal Notice in 2007 for an additional 30 years, until 2037. Woods Annex and Phase 5, were said to not be preserved through the language citing automatic 5 year renewals within the original covenants because the MRTA law prevailed and invalidated that language.
6. **CHOA has some enforcement rights.** Regarding “enforcement” requests, it depends on the phase as to whether CHOA has authority. For Christina Woods Unit 1, Lakes, and Woods, only lot owners can enforce any valid deed restrictions, unless a statutory HOA were to be formed (whether new or CHOA). Per 2019 legal opinion, CHOA does have general rights to enforce (via the 1998 Assignments of developer rights) any valid covenants within Woods Annex, Phase 5

Status of Christina Homeowners Association Inc. October 2020

and Phase 6 only (since provision for creating an HOA was lacking in the original covenants, CHOA authority granted by the 1998 assignments was not invalidated), but mandatory assessments and liens were never authorized and so may never be imposed. As of this date, only Phase 6 covenants are currently valid for the entire phase; these covenants may be enforced by CHOA through means other than assessments/liens.

7. **CHOA cannot impose mandatory assessments or liens.** CHOA does not have the authority to impose mandatory assessments or liens, unless in certain phases (i.e. Woods Unit 1, Lakes, Woods) a statutory HOA were to be formed out of CHOA and grant such rights. For Cliffside Estates, only the developer NHJ Partnership was authorized in the original covenants to form a statutory HOA. Assessments may never be imposed upon Woods Annex, Phase 5 and Phase 6 since the original covenants did not authorize.

Following is a more detailed Q/A that helps explain the findings, particularly about whether or not deed restrictions and covenants are still valid, and why CHOA membership is voluntary instead of mandatory.

Q: Why is CHOA voluntary instead of mandatory?

A: It was originally set up that way. CHOA was organized under FS 617 in 1980 as a corporation not for profit. Its Articles of Incorporation, which have never been amended, state that anyone can join. Its original 1980 Bylaws further state that those who would like to become members shall submit an application to join. Any amendment to the Bylaws must be consistent with the Articles, and in case of conflict, Articles prevail.

Q: Why do some believe that CHOA is mandatory to join?

A: Some have always thought it was mandatory since CHOA was formed, likely since most organizations calling themselves HOAs are mandatory (e.g. statutory HOAs).

Others apparently believe it became mandatory after the 1998 assignments. On January 20, 1998 the developers/successors, IMC-Agrico Company, filed six documents titled "Assignment of Authority Under Declaration of Covenants, Restrictions, Limitations and Conditions" with Polk County. These documents transferred, conveyed and assigned to CHOA the entire rights, interests and authorities of the developer, as recorded in the "Declaration of Covenants, Restrictions, Limitations and Conditions" documents of six phases (i.e. 1972 Christina Lakes, 1972 Christina Woods Unit 1, 1972 Christina Woods, 1975 Christina Woods Annex, 1976 Christina Woods Phase 5, 1977 Christina Woods Phase 6).

However, the original covenants for Woods Annex, Woods Phase 5 and Phase 6 written by the developer did not provide for or authorize the creation of a homeowners association (so CHOA could not be made mandatory). In Cliffside Estates, the covenants only allowed an HOA to be formed by the developer NHJ Partnership; CHOA was not formed by NHJ. For Christina Woods Unit 1, Lakes and Woods, their covenants did provide for the creation of an HOA with the consent of a majority of the homeowners. However, courts have ruled that "there WAS sufficient proof that CHOA was NOT formed with" the 51% of required homeowners consent. So overall, the legal opinion is that CHOA cannot be mandatory to join because it was not formed in the manner that would have allowed that to be the case.

Status of Christina Homeowners Association Inc. October 2020

Q: Do the 1998 assignments (passing on the developer rights to CHOA) allow CHOA to enforce any valid covenants?

A: Yes, for Woods Annex, Woods Phase 5, and Woods Phase 6. No, for Woods Unit 1, Lakes, Woods, and Cliffside Estates.

The covenants for Woods Unit 1, Lakes, and Woods only allow for lot owners to enforce covenants with other lot owners, and CHOA is not currently a lot owner. CHOA does have authority under FS 617 to purchase a lot if it so decided.

For Woods Annex, Woods Phase 5 and Woods Phase 6, CHOA DOES have the right to enforce any valid covenants since IMC-Agrico assigned its enforcement rights to CHOA (and covenants did not invalidate this assignment); however, only Phase 6 has unexpired covenants, according to legal opinion, since they were preserved for the entire phase in 2007 by Formal Notice.

For Cliffside Estates, NHJ Partnership did not assign enforcement rights to CHOA, so it cannot enforce any existing covenants if there were any. This phase was not included in the 1998 assignments.

Q: Are the 2000 Amendments valid? Who can amend covenants?

A: In all phases the right to amend is with the developer, and “lot owners and successors-in-title would be grandfathered in as exempt unless those lot owners granted (witnessed) consent”. The original covenants (except Cliffside Estates) provided that amendments would require lot owner consent. Legal opinion has therefore doubted the validity of the 2000 Amendment, because there were not the required percentages of consents, nor were any of the consents witnessed as required. Cliffside Estates was the only phase established after the 1980 formation of CHOA, but the developer NHJ Partnership never formed an HOA, nor did it grant rights to CHOA.

Q: Where does the Christina community have deed restrictions and/or covenants?

A: Woods Phase 6 was preserved through MRTA under the 2007 Formal Notice. As to the other phases, it depends on the lot.

Deed restrictions are listed on the deed; they are enforceable homeowner to homeowner. Each lot would have to run its own Title Search Report in order to determine whether or not its particular deed restrictions were preserved or extinguished under The Marketable Record Title Act (MRTA). In short, they expire in 30 years unless preserved through specific processes or exceptions.

If all lots were found to be expired, then the entire phase would be expired. However, revitalization is a legal process available to the entire phase, when at least some of the lots have expired. Not all lots have to be expired within the phase before being revitalized.

According to the Title Search Reports (1 lot per phase was selected) and legal opinions given to CHOA:

1. Christina Woods Phase 6 – This is the only phase for which covenants for ALL lots are still valid and have not expired, enforceable homeowner to homeowner, as well as by CHOA. These covenants were preserved for the entire phase due to a Formal Notice of Record filed September 17, 2007, which preserved the covenants for the entire phase by reference. This was

Status of Christina Homeowners Association Inc. October 2020

the Notice of Intent in Real Property recorded in O.R. Book 7428, Pages 1057-1069 with Polk County. Legal opinion is that despite CHOA not being a statutory HOA, it was/is “an association of parcel owners which is authorized to enforce use restrictions that are imposed on the parcels” per the 1998 assignments of rights from the developer to CHOA. And therefore, was authorized to file the Formal Notice. Any legal challenges to the notice have to be within a timeline (see 95.11(2)(b) and 95.231), which may have passed per legal opinion.

2. Christina Woods Unit No. 1, Lakes, Woods, Woods Annex, Woods Phase 5, and Cliffside Estates – At least some of the lots have been extinguished by MRTA; owners may choose to revitalize their covenants.

If an owner wants to preserve their covenants from expiring, they can do so either by 1) Deed Reference, that is, by referencing them (book and page) in a muniment of title per FS 712.03(1); or 2) Formal Notice, giving written notice to each affected owner per FS 712.05(2)(a) and 712.06. (e.g. CHOA was said to be given authority by the 1998 Assignments to file Formal Notices for Woods Annex, Woods Phase 5 and, as it did for Phase 6 in 2007).

Statutory HOAs can also preserve their covenants before they expire by 1) Summary Notice, as approved by the Board of Directors, and per FS 712.05(2)(b) and 720.3032(2); or 2) Valid Amendment, recording an amendment and referencing the covenants to be preserved under FS 712.05(2)(b). The Valid Amendment process was not effective until October 1, 2018, so it was too late for Christina, had it had a statutory HOA at the time. Since none of the phases currently have a statutory HOA, the valid amendment process is not available to them. The 1998 Assignments, the 1998 First Amended Bylaws, the 2000 Amendments, and a 2001 Affidavit were additionally said to not preserve the covenants by Valid Amendment (had CHOA been a statutory HOA) since they either didn't reference the required information about the covenants or didn't try to amend the original covenants as required.

Polk County Covenant Records:

- Christina Lakes expired covenants Bk 1474 Pg 590
- Christina Woods expired covenants Bk 1491 Pg 939
- Christina Woods Unit 1 expired covenants Bk 1491 Pg 580
- Christina Woods Annex expired covenants Bk 1665 Pg 907
- Christina Woods Phase 5 expired covenants Bk 1680 Pg 437
- Christina Woods Phase 6 updated covenants Bk 7428 Pg 1057
- Cliffside Estates expired covenants Bk 2355 Pg 1393
- Crescent Lake Covenants Bk 3223 Pg 1749
- 2000 Amended Declaration of Covenants (Invalid) Bk 4570 Pg 1008

Status of Christina Homeowners Association Inc. October 2020

Table 1. Data from 2019 Title Search Reports and Legal Findings of Attorney Robert Chilton

Phase	Start Date	HOA Provided for in Original Covenants /% Approval Required/ Developer	Deed Restrictions or Covenant Enforcement Rights/ Rights to Amend	Current Covenants	1998 Assignments of Rights to CHOA/ Developer/ Validity	Mandatory Assessments Provided for in Original Covenant Language
Woods Unit 1	1972	Yes/ 51%/ URS (Original Covenants Not in Title Search Report)	Lot owner to lot owner; CHOA No, since not formed by 51%/ URS Right to Amend	No, not preserved by 1998 Assignments	Yes/ IMC-Agrico/ No since CHOA not formed with 51% majority vote	No
Lakes	1972	Yes/ 51%/ URS	Lot owner to lot owner; CHOA No, since not formed by 51%/ URS Right to Amend	No, not preserved by 1998 Assignments	Yes/ IMC-Agrico/ No since CHOA not formed with 51% majority vote	No
Woods	1972	Yes/ 51%/ URS	Lot owner to lot owner; CHOA No, since not formed by 51%/ URS Right to Amend	No, not preserved by 1998 Assignments	Yes/ IMC-Agrico/ No since CHOA not formed with 51% majority vote	No

Status of Christina Homeowners Association Inc. October 2020

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Woods Annex	1975	No/ Not applicable/ IMCD	Lot owner to lot owner; CHOA does have enforcement rights due to 1998 assignments inc landscaping and removal of trees; after 10 days notice to owner then develop can correct and bill; Developer rights to amend	No but can choose to revitalize; MRTA said to invalidate the 5 year automatic extensions of covenants	Yes /IMCD/ yes valid	No
Woods Phase 5	1976	No/ Not applicable/ IMCD	Lot owner to lot owner; CHOA does have enforcement rights due to 1998 assignments including landscaping and removal of trees; after 10 days notice to owner then develop can correct and bill; Developer rights to amend	No but can choose to revitalize; MRTA said to invalidate the 5 year automatic extensions of covenants	Yes/ IMCD/ Yes valid	No

Status of Christina Homeowners Association Inc. October 2020

Phase	Start Date	HOA Provided for in Original Covenants /% Approval Required/ Developer	Deed Restrictions or Covenant Enforcement Rights/ Rights to Amend	Current Covenants	1998 Assignments of Rights to CHOA/ Developer/ Validity	Mandatory Assessments Provided for in Original Covenant Language
Woods Phase 6	1977	No/ Not applicable/ IMCD	Lot owner to lot owner; CHOA does have enforcement rights due to 1998 assignments inc landscaping and removal of trees; after 10 days notice to owner then develop can correct and bill; Developer rights to amend	Yes due to 2007 Formal Notice filed; MRTA said to invalidate the 5 year automatic extensions of covenants	Yes/ IMCD/ Yes valid	No
Cliffside Estates	1985	Only by NHJ Partnership (the developer)	Yes, lot owner to lot owner; CHOA No, since CHOA not formed by NHJ	No	No	No