

THE VILLAS AT TRAPP FAMILY LODGE OWNERS ASSOCIATION, INC.

NOTICE OF SPECIAL MEETING OF MEMBERS

**To the Members of The Villas at
Trapp Family Lodge Owners Association, Inc.**

NOTICE IS HEREBY GIVEN that a Special Meeting of the Members of The Villas at Trapp Family Lodge Owners Association, Inc. to be held at the Trapp Family Lodge, Trapp Hill Road, Stowe, Vermont on **Tuesday, May 14, 2024 at 4:00 P.M.** For Owners who desire to participate remotely, the Zoom meeting ID is 890 2371 8533 and the passcode is 798794. There will be no voting on Zoom.

The meeting is to be held for the following purposes:

1. To vote upon the removal of Gary Gagnon as a Director of the Association. The By-Laws of the Association provide that adoption of this vote requires a quorum of the Owners and that the number of votes cast in favor exceed the number of votes cast in opposition.

April 26, 2024

Dean A Scarborough

President

Dear Villa Owner:

This is an official communication from the Villas HOA Board (VHOA).

This Special Meeting is being called per our by-laws at the request of Mr. JP Hernandez. This owner's request was based on his perspective that Gary Gagnon's purchase of Neil Paulsen's defaulted shares via the TFL foreclosure process constituted a breach of his fiduciary responsibility, and violated his duty as a Director not to profit from the operations of the Association. Mr. Hernandez felt that Mr. Gagnon's actions rise to the level of an impeachable offense, and that he should be removed by owner vote at a Special Meeting, or that he should resign as a Director.

Mr. Hernandez created and disseminated an owner on line survey outlining his perspective, and asked owners to respond and indicate (yes or no) whether a Special Meeting should be conducted. A sufficient number of owners, based on the content of the on-line survey, responded in the affirmative. Therefore, a Special Meeting and proxy vote regarding this situation is warranted.

In early March, it should be noted that the Association President had asked its Association Counsel, Darby Kolter & Roberts (DKR), specifically Mr. Roberts, to investigate this matter. Counsel concluded that (1) the process of the Association to determine to foreclose an owner's interest was properly followed and Mr. Gagnon did not play a particular role other than as a member of the Board who unanimously supported the Association's decision to foreclose this ownership interest, and (2) the public sale process was followed, and that (3) he did not breach his fiduciary responsibilities. This finding was reported to the VHOA Board, and to all owners on March 16.

Subsequently, the VHOA Board met in Executive Session with Mr. Walter Frame and Mr. Roberts to further investigate, understand, and review the process used by TFL when an owner defaults on their Association dues, and at times, ends with a public foreclosure auction on the defaulted shares. An in-depth discussion followed where Mr. Frame and Mr. Gagnon were recused and did not participate.

In this discussion, it became evident that if the VHOA had a standard policy, and a timely all owner notification process for when these unfortunate situations occur, in addition to public notification, this particular situation and the optics surrounding it may have been avoided.

The VHOA tasked Counsel to report back with a detailed chronology of events in the Paulsen foreclosure, other recent foreclosures, and provide the VHOA a conclusion on whether Mr. Gagnon violated his fiduciary duty as a director of the Association or any other appropriate Vermont law.

The VHOA has reviewed the report from our counsel and concurs with the recommendation to increase transparency surrounding foreclosures as the best remedy to resolve this type of situation. Currently, the Governance Committee is crafting a policy requiring advance notice to all owners of impending foreclosure sales prior to the auction date. This policy will be presented for consideration and adoption at the upcoming May 16 VHOA meeting.

As we continue to work together to improve the Villa community, we acknowledge that there might be other situations that will necessitate improved protocols and processes. Our goal is to work collaboratively to make these improvements for the benefit of all.

MARK H. KOLTER
KEITH A. ROBERTS*
E. DARBY HERRINGTON**



Darby Kolter & Roberts, LLP

ATTORNEYS AT LAW

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Report to the Board of
The Villas at Trapp Family Lodge, Inc.
Regarding the Sale of the Foreclosed Ownership Interests of
Neil Paulsen
April 22, 2024

The Board of Directors of The Villas at Trapp Family Lodge Association, Inc. (the “Association”) asked its counsel, Darby Kolter & Roberts, LLP, to provide a report on the chronology of events in the foreclosure and sale (the “Paulsen Foreclosure”) of the ownership interests of Neil Paulsen (the “Paulsen Ownership Interests”) including a conclusion on whether the buyer of the foreclosed-upon ownership interests, Gary Gagnon, violated any applicable Vermont laws. Our conclusion is that he did not.

The Paulsen Ownership Interests are those ownership interests that were owned by Neil Paulsen being:

1. a Fractional Interest in unit V1-G8/29; and
2. a Fractional Interest in unit V1-G9/30.

Mr. Paulsen acquired the Paulsen Ownership Interests on June 27, 2018. Based on information provided to us by TFL, Mr. Paulsen never paid any fees owed to the Association stemming from the Paulsen Ownership Interests.

Chronology of Foreclosure

Below is a chronology of the material events of the Paulsen Foreclosure.

November 19, 2021 – The Association’s then-President, Walter Frame, notified the Association’s Board that Mr. Paulsen, along with two other owners, had been given notice under the Association’s Collection Policy for past due accounts which may result in foreclosure. The rest of the Board indicated to Mr. Frame that proceeding with foreclosure of the Paulsen Ownership Interests was appropriate in his discretion and consistent with the Collection Policy. The minutes for that meeting indicate that Mr. Gagnon was not present at the meeting.

June 17, 2022 – The Association’s counsel sent a notice of default letter and demand for payment to Mr. Paulsen. The amount owed to the Association at that time was \$46,707.63 in assessments for the Ownership Interests.

Waterbury Location

CC Warren House
89 South Main Street
Waterbury, VT 05676
Phone (802) 244-7352
Fax (802) 244-5954

Stowe Location

(By Appointment Only)
166 South Main Street
Stowe, VT 05672
Phone (802) 253-7165
Fax (802) 253-7468

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February 23, 2023 – The Association’s counsel again sent a notice of default letter and demand for payment to Mr. Paulsen after further collection efforts stalled. The amount owed to the Association at that time was \$59,161.28 in assessments for the Ownership Interests.

April 21, 2023 – After not hearing from Mr. Paulsen, the Association’s counsel commenced a foreclosure action in Vermont Superior Court to initiate the Paulsen Foreclosure.

May 16, 2023 – Mr. Paulsen was served with the legal papers for the Paulsen Foreclosure action.

June 20, 2023 – The Association’s counsel moved for a default judgment against Mr. Paulsen because he had failed to respond to the Paulsen Foreclosure action.

August 6, 2023 – The Vermont Superior Court issued a Default Judgment in the Paulsen Foreclosure action, finding that Mr. Paulsen owed the Association at that time an aggregate of \$83,446.51 in assessments, interest and late fees.

August 21, 2023 – The Superior Court issued a Judgement Order and Decree of Foreclosure and Judicial Sale, allowing the Paulsen Ownership Interests to be sold at public auction if not redeemed pursuant to Vermont law.

October 16, 2023 – A Certificate of Non-Redemption was filed in the Vermont Superior Court, allowing the public auction of the Paulsen Ownership Interests to be scheduled.

November 3, 2023 – A Notice of Sale with the date of the sale was sent to Mr. Paulsen giving him the last opportunity to redeem the Paulsen Ownership Interests or otherwise address the deficiency before or at the auction.

November 16, 2023, November 22, 2023 and November 30, 2023 – A Notice of Public Sale of the Paulsen Ownership Interests was published in the News & Citizen of Morrisville, Vermont pursuant to Vermont law which requires that such notice be published in a newspaper of general circulation in the town where the property is located.

December 22, 2023 – A public auction of the Paulsen Ownership Interests was held. A requirement of such an auction is that a winning bidder be present, have a certified check in the amount of \$10,000 for each ownership interest sold as a non-refundable deposit and sign a purchase agreement presented to the buyer at the auction. The auctioneer’s Report of Sale indicates that there were two (2) qualified bidding parties present in addition to the Association and that Gary Gagnon was the winning bidder with a bid of \$20,000 for each of the Ownership Interests. Mr. Gagon also paid \$5,082.50 for each ownership interest (for a total of \$10,165.00) in past due assessments which was the amount subject to a lien under Vermont law.

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Discussion

You asked for an analysis under Vermont law of Mr. Gagnon's involvement in the Paulsen Foreclosure, specifically with respect to him being the winning bidder at the auction. Mr. Gagnon was on the Board of Directors at all times during the Paulsen Foreclosure.

As an initial matter, the Association entering into a foreclosure action against any owner is a drastic measure and only initiated as a last resort. Based on the amount owed by Mr. Paulsen and the fact that he had not paid any assessments or dues to the Association during his years of ownership, it certainly seems justified in this case.

The Association's then-President took the lead on initial collection efforts and only after those had met with no response, he informed the Board on November 19, 2021 that foreclosure on the Paulsen Ownership Interests was a possibility. Mr. Gagnon, although not present for that meeting, would have become aware of the potential for foreclosure actions on the Paulsen Ownership Interest around that time either through reviewing minutes or through discussion and update with other directors. As the meetings of the Board of Directors are open to all owners and the minutes of Board of Director meetings are available on the owner portal, any interested owner could have learned of those foreclosures through attendance or later seen the discussion in those meeting minutes of the potential for the three foreclosures mentioned at that meeting.

With respect to further notice of foreclosures of Association properties to the owners, minutes from past owner and director meetings often indicate that the Association was updated on the status of foreclosures, particularly as it relates to payment of assessments from other owners and the effect the Association's finances. Although the December 2023 owner meeting minutes do not expressly note that there was an update on foreclosures at that meeting, many attendees of that meeting recall such comments from Walter Frame and Treg Boerger, including several board members and the Association's counsel who as present at that meeting. In addition, Treg Boerger, a real estate broker frequently engaged in sales and re-sales of the Association's properties, as a matter of practice mentions at each owner meeting that there are always opportunities to buy additional ownership interests in the Association, including through the foreclosure process and fields inquiries from owners frequently on those opportunities. Mr. Boerger also reported to us that he frequently apprises owners who have indicated to him an interest in knowing about foreclosed properties of the status of them, including the Paulsen one, when he is able to do so based on his obligations under listing agreements.

As a result of all of this disclosure and opportunities for inquiry, the Paulsen Foreclosure was never hidden from owners and neither Mr. Gagnon nor any member of the Board of Directors had any information about its existence that was not available to an owner who was interested in purchasing other properties of the Association, including foreclosed ones. Accordingly, Mr. Gagnon did not take advantage of his status as a director in knowing about the existence of the Paulsen Foreclosure or in pursuing the purchase of the Paulsen Ownership Interests.

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With respect to the result of the Paulsen Foreclosure of the Paulsen Ownership Interests, it is clear that Vermont law was followed throughout, concluding with a public auction of the Paulsen Ownership Interests after notice of sale was provided to Mr. Paulsen and published, in accordance with Vermont law. The auctioneer's report indicates that several qualified bidders attended the auction, including a representative from the Association to protect its interests. Any individual, owner or otherwise, who complied with the requirements noted above for a bidder at auction could have been a bidder for the noticed auction of the Paulsen Ownership Interests and ultimately it was Mr. Gagnon was the winning bidder. Being the winning bidder at a properly noticed public auction certainly does not violate any Vermont laws, including those applicable to being a director.

In conclusion, we do not find that Mr. Gagnon violated his fiduciary duty as a director of the Association or any other Vermont law in connection with the Paulsen Foreclosure. To the contrary, in being the winning bidder at auction, he provided the Association with the highest amount of money for the sale of the Paulsen Ownership Interests that were to be sold at the auction. What is unusual about this case is that it went all the way to a public auction, principally due to the non-responsiveness of Mr. Paulsen. Usually in the case of foreclosures, the owner engages a real estate broker to sell the property before it gets to that step. There are a few instances, however, where an Association's property interest is sold at auction. TFL provided a summary of the results of seven sales of recently foreclosed-upon ownership interests (see attached), including five that did go to a public auction. In four of those, the buyer was an existing Trapp property owner and in the two that did not get to public auction, the buyers were existing Trapp property owners. The price paid by Mr. Gagnon at this auction for the Paulsen Ownership Interests was not inconsistent with the prices paid at those auctions.

Recommendation

As there seems to be some concern about the availability of information on the existence of foreclosures of Association properties, the Association could implement a procedure to provide greater notice of the existence and status of foreclosures to all owners. We understand that the governance committee is working on such a policy and that the Board of Directors will review it at its May 16 meeting.

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Summary of Other Recent Foreclosure Sales

- Paulding. Foreclosure on 2 1/24th shares. The Association bid \$15,001 at an auction held on January 27, 2023 where there was one other bidder.
 - Jezeph. Foreclosure on 1/12th share. The Association bid \$100 at auction held on October 21, 2022.
 - Polzler. Foreclosure on 1/24th share. The ownership interest was sold prior to public auction on or about December 1, 2022 for \$8,000 and payment of \$10,000 in dues owed. The buyer was an existing Association owner.
 - Diaz. Foreclosure on 1/12th share. Union Bank was winning bidder at auction held on July 9, 2021 for \$40,000.
 - Mahoney. Foreclosure on 1/24th share with time on New Year's Eve. The ownership interest was sold prior to public auction on or about June 21, 2020 for \$50,000. The buyer was an existing Association owner.
 - DeFrancesco. Foreclosure on 2 1/24th shares. The Association bid \$1 at public auction held on May 24, 2019.
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PROXY

The undersigned, Member(s) of The Villas at Trapp Family Lodge Owners Association, Inc. (“Association”), do(es) hereby constitute and appoint Dean Scarborough as the undersigned’s(s’) proxy to attend the Special Meeting of the Members of the Association to be held on May 14, 2024 at 4:00 p.m. or any continuation or adjournment thereof, with full power to vote the voting rights which the undersigned is entitled to vote at said meeting in accordance with the following instructions and to act for the undersigned to the same extent that the undersigned might were the undersigned personally present, giving the said Dean Scarborough full power of substitution and revocation.

1. To vote **FOR** ___ or **AGAINST** ___ or **ABSTAIN** ___ for the removal of current Director Gary Gagnon;

and with discretionary authority to vote upon such other matters as may properly come before the Meeting as to which the undersigned is entitled to vote upon.

Any Member who has given a proxy has the right to revoke it at any time prior to its exercise either by written notice or by attending the Meeting and, after revoking such proxy, voting in person. You are urged to sign the proxy and mail it promptly to Owner Services. **The preferred delivery of the proxy is online at <https://www.surveymonkey.com/r/villa514>.** Alternatively, the proxy can be scanned and emailed to, or returned by fax to 802-253-5788, or mailed to Trapp Family Lodge, Inc., PO Box 1428, Stowe, Vermont 05672. Attn: OWNER SERVICES.

If you are voting online, in order to calculate the votes, please vote by 8:00 A.M. on May 13, 2024 and if you are delivering your proxy by mail, e-mail, fax or in hand, please do so by 12:00 P.M. on May 13, 2024 to facilitate counting of the votes by the Association.

Executed this ___ day of _____, 2024.

Printed Name(s)

Signed Name(s)

Email address(es):

Fractional Interest(s) or Villa _____

Fractional Interest(s) or Villa _____