# The Historian

*Preserving Today for Tomorrow*

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## *The Trust Agreement – An Analysis by George McInnis*

**The continued discussions about the Trust Agreement and direct elections of the Golden Rain Foundation Board of Directors prompted me to reprint the following article written by George McInnis as well as a summary of the conclusions of the April 20, 2012 Paul Hastings, LLP Report.**

**George and Eleanor McInnis made Leisure World their home in 1993. George was one of the drafters of the Davis-Stirling Common Interest Development Act. He served as the First Vice President of GRF in 1999 and was the Society's Honoree for September 2000. George died on December 29, 2001.**

### *Background*

For about a decade after World War II, the new housing market was essentially one for "GI housing;" that is, for tract homes financed by loans to veterans and guaranteed by the Veterans Administration. Then Congress became aware that other important segments of the population were not getting equivalent attention and authorized the Federal Housing Administration (FHA), which had been guaranteeing certain home loans since about 1935, to expand their scope. One of the housing types encouraged was multi-unit cooperatives, for which 97% financing would be available.

Ross Cortese saw the possibilities of developing congregate cooperative housing for the segment of the population who were over 52 years of age, using the FHA cooperative loan guarantee program. Cortese was looking for opportunities in South Orange County. Many sites were offered to him, but the Moulton Ranch property seemed to meet his needs. It was still ranch grazing land. His search ended the day he closed a deal with Mrs. Nellie Gail Moulton for about

### *Highlights*

- The GRF Board administers the GRF Trust. Should the GRF Trust and GRF governing documents conflict, the terms of either the GRF Trust or the GRF Bylaws should be amended to eliminate the conflict; or GRF could seek court intervention.
- GRF Trust can be amended if the changes are approved by GRF and the three Mutuals.
- The GRF Trust may expire on March 2, 2024 or upon the expiration of 21 years from the date of death of the last to die of several persons named in Article VI of the Agreement. The Mutuals have been urged to investigate this issue.
- The Trust can be terminated (dissolved) at any time if United, Third and Mutual 50, independently vote to terminate the Trust.
- On expiration or termination, the Trust assets are to be distributed to the housing mutuals in proportion to their respective "Trusteed Sums"—approximately 58% to United, 40% to Third and 1% to Mutual 50.
- If the GRF Trust is dissolved, GRF would not be permitted to impose a transfer fee, resulting in a loss of about $1.6 million annually ($10.46 per manor/month).
- GRF Trust and the GRF Bylaws allow GRF to enter into a self-management arrangement.
- "Correcting deeds" should be recorded so that title to all GRF property is taken as follows: "Golden Rain Foundation of Laguna Woods, as acting Trustee of the Golden Rain Foundation Trust established March 2, 1964, as amended."
- GRF is authorized to charge a transfer fee by the GRF Trust as well as under the amended section 1368(c) of the Davis-Stirling Act. The housing mutuals do not meet the requirements of section 1368(c). All such collected fees should be placed in a GRF reserve account for maintenance, repair and/or replacement of GRF Trust property.

2,775 acres of the Moulton Ranch for less than $2,200 per acre. Twenty-two hundred acres were used for the Leisure World project.

The land Cortese bought was cheap, because it was considered unsuitable for any purpose other than agriculture. There was almost nothing in the way of facilities—no roads, no water and no sewers. It was many miles from any significant residential development. The Navy was shocked to hear that Cortese planned a large housing development, right under their flight path and tried to block the development. After a couple of years of bickering, the courts told the Navy that they had a choice: buy the land, or let Cortese develop it. The Navy settled with Cortese for approximately $4.2 million, and Cortese agreed to some limitations on his land, including provisions for unpopulated or lightly populated space where troubled aircraft might land. The present golf course was one fortunate result.

### *Leisure World Laguna Hills*

Cortese's concept was to obtain a construction loan to cover the development of the infrastructure (grading, drainage, water distribution, sewers, roads, parks, and fences) of a large parcel. On a portion, such community facilities as a golf course and clubhouses could be built, and on other portions, groups of multi-unit housing. The housing, including the associated land, would be sold to a series of nonprofit corporations (mutuals) for a price which included a proportionate share of the community facilities. The mutual would borrow almost all of the money needed from a private financial institution, originally the United California Bank, with the loan guaranteed by the FHA.

The mutual would then, in effect, rent the individual units (manors) to shareholders. A share, representing a right to occupy a manor, would be sold with a small initial payment together with an obligation to make monthly payments to the mutual corporation on their master loan, for maintenance, and their share of the costs of the Golden Rain Foundation of Laguna Hills (GRF) community facilities. Shareholders of the co-op mutuals were required to be non-voting members of GRF. *In my [McInnis'] opinion it was doubtful there was any thought of utilizing the condominium concept at that time. That would come later, when the FHA was no longer authorized to guarantee loans for cooperative housing, and the funding dried up.*

### *The Plan*

As originally conceived, each mutual corporation would own the land on which their cooperative housing was built (the common area), and would arrange independently for landscaping and maintenance. GRF would independently operate and maintain the community facilities—clubhouses, pools, golf course, stables. Of course, at first there was almost no maintenance, no upgrading, and the landscaping was essentially limited to maintaining lawns and a few small shrubs and trees. Rossmoor Corporation was on site, building additional units and was available if any problem occurred.

The original governance plan was that each mutual corporation was responsible for all aspects of their common area and their manors. They each elected a board. Each mutual corporation was a "corporate member", and was entitled to vote for the members of GRF Board by casting one vote for each manor in their mutual. It was contemplated there might be as many as 18,000 manors, in 60 to 150 such independent mutual corporations, each operating independently and all sharing the community facilities operated by GRF.

Every shareholder of a co-op, and later every owner of a condo, would be a member of GRF. Voting control of GRF is vested in the mutual corporations, each having voting power equal to the number of manors in the corporation. The method of voting was spelled out in GRF Bylaws.

Cortese's plan was for Rossmoor to arrange a construction loan allowing GRF to construct, over a considerable period of time, the infrastructure and community facilities, which would be the property of the Golden Rain Foundation of Laguna Hills Trust (GRF Trust). The trustee of this trust would be GRF, a nonprofit corporation.

First, realize that this was executed *before* there were any mutuals. It was the result of negotiations between Cortese, the FHA and United California Bank. Mutual 1 was planned but not yet built and had no shareholders. It existed as a corporation, with Cortese's people as incorporators and directors. The County of Orange was extremely supportive of Cortese's plan for a real estate development way out in the country that was going to bring the county a lot of revenue in the form of fees and taxes.

### *The Trust Agreement*

The original Trust Agreement document, dated March 2, 1964, set up the GRF Trust, which is administered by GRF. GRF would arrange the construction of all the infrastructure, including that for the future mutuals, and also community facilities. It set up the financial basis for the development of 1,463 acres of Cortese's land, including 511 acres which to be sold off to the proposed mutuals. The mutuals would pay 47.8¢ per square foot ($20,822 per acre) for the land which would become their common area. Mutual 1 would be the first mutual, and others could join later. There was a master plan for the project, but GRF did not have to complete it unless Leisure World developed as planned.

The idea was that each mutual corporation would pay this amount to GRF, in effect "buying" the improvements for their common area, and their proportionate share of GRF's property and community facilities. Apparently, Laguna Hills Mutual 1 was about 29.7 acres, and paid $619,023. The basis for computation of the cost for each new mutual was revised several times since the original Trust Agreement.

The FHA was concerned that Cortese would sell shares in the co-ops, which were priced to include the right of participation in GRF community facilities, and then he might not build these facilities. The Trust Agreement was a way to assure the FHA that community facilities would be build, at least to the extent that cooperatives were built.

According to the Agreement, after March 2, 2003, the Trust would terminate on March 2, 2024. The Trust may be altered or terminated at any time, by the unanimous agreement of all the mutuals contingent upon the agreement of the FHA and any of the master loan lenders. On termination, the Trust assets are distributed to the mutuals, as undivided interests, proportional to what each of them paid. *I [McInnis] think that it would have been preferable to have the assets given to GRF, to be administered as it is now being done for Clubhouse VI, the Community Center and the Library.*

GRF may buy or sell land, improvements and the personal property of the Trust. Sale or transfer to the mutuals is permitted as well as for public or religious use, if it is for the general welfare of the mutuals and members, but adequate compensation is not required. However, if a sale is to GRF itself, adequate compensation is required. GRF is required to provide annual statements audited and certified by a CPA.

### *Amendments and Observations*

The Trust Agreement was amended on March 30, 1964. Essentially, the amendment added three paragraphs that state: GRF receives no profits or compensation for being trustee but shall receive prompt reimbursement for costs incurred; and the services provided in connection with community facilities and the rules and regulations with respect to the use of the common facilities shall be determined solely by GRF. The amendment replaced the word "mutuals" with "cooperatives" in one place. It did not change the financial calculations. *I [McInnis] believe that the amendment was the result of some minor changes requested by the bank or FHA.*

The Amendment dated October 4, 1968, signed by First Laguna Hills Mutual and the individual Mutuals 9 and 11 thru 21 agreed to allow condominiums into the Trust Agreement, on a basis equivalent to that by which the co-ops entered. It recognized that condos would not have master loans guaranteed by the FHA.

A document dated September 29, 1971, signed by First, Second and Third Laguna Hills Mutual and Mutuals 26, 30, 31, 32, and 33 prohibits the GRF Trust from "exercising any power vested in it for the primary benefit of the Trustee or for the benefit of any persons other than the beneficiaries (the mutuals and their members) …" This may have been related to the formation of Saddleback Hospital. *I [McInnis] think the drafters may have been concerned that GRF and GRF Trust were going to go into the public hospital business.*

### *Did It Work?*

The individual mutuals never did really branch out and do their own thing. It was much easier to share. Rossmoor was building additional units during the time the early mutual corporations were learning how to manage their own cooperatives. Having a multitude of mutual corporations was an administrative nightmare for any management agent, and inefficient for the mutuals. The management agent and the mutuals soon concluded that it would be much more efficient and practical if the mutuals consolidated.

Sometime around 1967-68, Congress recognized that the FHA Cooperative Housing Program was generally not working well in the United States. Most of the cooperative housing had in fact become low cost housing, and the concept of self management did not work well. The projects failed. Many of these units were shut down, and quite a few actually razed. Congress discontinued FHA guarantees for new cooperative housing. This meant that Cortese had to find another way to continue to develop and sell his large land holding, and he found that the condominium concept would provide a solution.

As a result, Laguna Hills Mutuals 1-21 are cooperatives and beginning with Mutual 22 the mutuals are condominiums. Mutual 80 is a special case. It was the group of buildings near the library, which were used as models. By the time Cortese was done with them, they had to be sold as condominiums. That is why there is this one group of condos surrounded by co-ops.

During 1967 and 1968, in a succession of moves, Mutual 1 thru 8 and Mutual 10 merged into First Laguna Hills Mutual. This was followed by Mutual 9 and Mutual 11 thru 21 merging into Second Laguna Hills Mutual. In 1975, First and Second merged into United Laguna Hills Mutual—the “cooperative” mutual.

Each mutual that followed Mutual 22 also started out doing their own thing. Third Laguna Hills Mutual, the condominium mutual, was formed in 1970, and gradually between 1970 and 1976 absorbed all the independent condominiums except Mutual 50, the Towers. This was apparently a painful process, and on several occasions, one of the independent mutuals voted against merging into Third. Eventually, all condominium mutuals, except the Towers, joined Third Laguna Hills Mutual.

Since each mutual had a vote in GRF equal to the number of manors in the mutual, when First Laguna Hills Mutual was formed, it gave that mutual a huge advantage in the election process. This was a big factor in forcing the organization of Second and Third, and later, United Laguna Hills Mutual.

### *The Regulatory Agreement*

The Regulatory Agreement (Exhibit C of the original Trust Agreement) was amended and then recorded on February 11, 1966. This agreement required written approval from FHA before GRF could: sell, encumber or transfer any of its real or personal property; amend or deviate from the voting plan defined in GRF’s Articles of Incorporation; amend its Articles or Bylaws; or expend any funds or incur any debt in excess of GRF’s then current budget. [*This Regulatory Agreement is no longer considered operational because the original FHA insured loans, later Department of Housing and Urban Development—HUD, were paid off in their entirety late in 2010.*]

### *Transfer Fee*

The amendment stated that beginning with Mutual 12, $300 of any transfer fee received by GRF for the sale of its memberships to members of the mutuals was to be set aside in a special reserve fund which could be used as determined by the GRF Board and approved by FHA.

This transfer fee, otherwise legal, was prohibited when the California Legislature adopted an amendment to the Davis-Stirling Common Interest Development (CID) Act in 1987 which stated that “an association shall not impose or collect any assessment, penalty, or fee in connection with the transfer of title or any other interest except the association’s actual cost to change its records and that authorized by subdivision.”

GRF promptly questioned whether Davis-Stirling, and this particular section, applied to GRF. Legislative Counsel ruled that GRF was a CID, and Davis-Stirling applied. Collection of the transfer fee was then discontinued. The law was not retroactive, and GRF retained the fees which it collected prior to passage of the law.

*As a sidelight, Clubhouse VI, the original Administration Building, and the Library are not owned by the GRF Trust, but are owned by GRF. GRF bought them from Rossmoor. GRF purchased the Community Center and built the Village Greens using reserve funds.*

## *Paul Hastings, LLP Report*

On September 14, 2011, pursuant to GRF’s authorization, Hart, King & Coldren, LLP (HKC) asked the law firm of Paul Hastings, LLP (Hastings) to answer certain questions relating to the GRF Trust. Hastings issued its final memorandum regarding these questions on April 18, 2012.

***Question 1*: *Please clarify the mutual rights and responsibilities under the GRF Trust Agreement as between GRF, Inc., The GRF Trust, Third LHM, United LHM and Mutual Fifty.***

First, the legal duties of the Trustee, GRF, are governed by California Trust Law. In addition to its legal duties under the law, GRF has certain expressed obligations under the terms of the trust. Generally, these duties include acquiring, constructing, operating and maintaining the community facilities (clubhouses, golf courses, etc.) and providing periodic accountings of these activities and operations. The Trustee’s powers are broad and include, but are not limited to:

A. All powers, rights and privileges provided by law and all powers necessary to carry out the specified duties.

B. The power in its sole discretion to acquire land, interests in land, improvements and personal property and to sell, transfer or dedicate the same either outright to the beneficiaries, or for public use, or to religious organizations for such use, or otherwise as Trustee reasonably deems for the general welfare of the Mutuals and their Members, with or without adequate consideration, or to itself, but only for fair and adequate consideration.

C. The power to employ such assistance, professional and otherwise, as it deems helpful in the affairs of the Trust, and may pay the costs and expenses thereof from the Trust Estate.

D. GRF shall operate and manage the Improvements and provide administrative, recreational services for the benefit of the Members of the cooperatives and their successors and interest at cost and on a non-profit basis…"

E. The extent of the services to be provided by GRF, the rules and regulations with respect to the use of the Improvements, the persons entitled to receive such services or to use said Improvements and the charges therefor shall be determined and established by the Board of Directors of Golden Rain in its sole discretion…

In essence, the Hastings Memo states that GRF's duties as Trustee are to be carried out by the GRF Board, and the Board, in turn, must operate in accordance with the GRF Bylaws.

***Question 2*: *Can the GRF Trust Agreement be amended to create a fairer distribution of assets, and if so, what is the most effective way to amend the GRF Trust Agreement to provide for a fairer distribution of assets among the three housing Mutuals?***

The GRF Trust may be amended by written instrument executed by the Trustee and by all Mutuals. The GRF Trust may be terminated by written election of the Boards of Directors of each and every Mutual. Pursuant to Article VI of the GRF Trust, upon termination of the Trust, its assets are to be distributed to the mutuals in proportion to their respective "Trusteed Sums." [*Approximately 58% to United, 40% to Third and 1% to Mutual 50.*]

In the event that the method of allocation of assets is questioned by the GRF Board, GRF and/or the Mutuals could negotiate an agreement acceptable to all parties; engage a consultant to propose a distribution based upon an economic analysis; or file a petition (lawsuit) in Orange County Superior Court asking the court to determine the allocation of the distribution of assets.

Pursuant to the terms of the Trust, the Trust expires on March 2, 2024 or upon the expiration of 21 years from the date of death of the last to die of the several persons named in Article VI of the Trust Agreement. Current belief is that at least one of the named persons is still alive. If all of those persons are no longer living and 21 years has elapsed since the last to die, then the Trust Agreement has terminated pursuant to the California Trust, Law's "Rule Against Perpetuities." In that event that the beneficiaries and the Trustee then determine that they desire to continue to operate under an Agreement of Trust, they would then need to form a new Trust Agreement. Hastings recommends that this issue be further investigated.

***Question 3*: *Are there any impediments under the GRF Trust Agreement which would prevent either the GRF Trust or GRF, Inc., from entering into a self-management arrangement?***

No, both the GRF Trust and the GRF Bylaws allow GRF to enter into a self-management arrangement.

***Question 4*: *How can the Trust Agreement be amended to more accurately comport with the way title is currently held, and/or should title be transferred to the GRF Trust on all of the subject properties to be consistent, and to realize the best possible property tax treatment?***

The GRF Trust states that the Trustee shall acquire property and hold it for the use and benefit of the Mutuals, and shall continue legal ownership of the Improvements. Hastings believes that all real property was, and is, to be held by GRF as Trustee and recommends "correcting deeds" should be recorded, which would not result in any adverse property tax consequences, so that title is taken as follows: *"Golden Rain Foundation of Laguna Woods, as acting Trustee of the Golden Rain Foundation Trust established March 2, 1964, as amended."*

### *Additional Questions Addressed to Hart, King & Coldren*

On November 23, 2011, GRF asked their attorney, Hart, King & Coldren (HKC) to prepare a legal opinion regarding three interrelated questions pertaining to the present ability of GRF to impose a Facility Fee in conjunction with the sale of residences within Laguna Woods Village. Later, GRF added some additional questions. The response was dated December 1, 2011.

***Does the GRF Trust acting alone have the power to impose a Facilities Fee on the sale of units within the community, or would separating the GRF Trust from GRF thwart the intent of the statute?***

HKC believes that GRF is authorized to impose a Facilities Fee both under the GRF Trust as well as under the Davis-Stirling Act. Senate Bill SB1128, effective January 1, 2011, amended Civil Code section 1368 (c) of the Davis-Stirling Act to expressly provide that the general prohibition against transfer fees "does not apply to a community service organization or similar entity, or to a nonprofit entity that provides services to a common interest development under a declaration of trust" provided that it was established and received a transfer fee prior to January 1, 2004.

*If the GRF Trust is dissolved, the exception in section 1368(c) allowing GRF to impose a transfer fee would not apply, and GRF would* **not** *be permitted to impose a transfer fee because it is neither a community service organization nor a non-profit entity.* [emphasis added]

United, Third and Mutual Fifty did not charge transfer fees prior to January 1, 2004 and do not provide services to a common interest development under a declaration of trust. Therefore, while GRF would be authorized to charge a transfer fee pursuant to the section 1368(c), the three Mutuals would not.

***How should the Facilities Fee be divided between the GRF Trust GRF, Third, United and Mutual Fifty?***

The 1971 Amendment to the Trust Agreement grants express authority to determine all "charges" to the GRF Board, in its sole discretion. GRF may impose a Facilities Fee that is assessed pursuant to properly adopted rules on each transfer of a manor that the GRF Board, in its sole discretion, determines is subject to the fee. All such collected fees would be placed in a GRF reserve account for maintenance, repair and/or replacement of GRF Trust property.

***What is the best way to structure collection of the Facilities Fees so as to simplify the accounting for the receipt of these fees, and preserve the not-for-profit tax benefit for the GRF Trust and GRF, Inc.?***

The Trust is not considered to have non-profit status within the meaning of the Internal Revenue Code or Civil Code section 1368(c). GRF, however, is a non-profit mutual benefit corporation. Facilities Fees that are collected by GRF may be placed in appropriate reserve accounts for future maintenance, repair and/or replacement of GRF Trust property.

***What conflicts exist between the GRF Trust and the GRF Bylaws?***

Section VII of the GRF Trust grants to GRF, acting as Trustee, the "sole" discretion to carry out its duties. GRF's Bylaws, Subsections 2.1.6 and 2.1.4, however, require a vote of the Corporate Members prior to: (1) the creation of new mutuals or manors; (2) the sale or lease of GRF of GRF Trust real estate and improvements; and (3) the acquisition of real estate. There is clearly a conflict between the terms of the GRF Trust and the GRF Bylaws.

Both Hastings and HKC agree that the provisions of the GRF Trust takes precedence over the provisions of the Bylaws, i.e., that GRF has the sole discretion to carry out its duties. Therefore, GRF does not require the approval by majority vote of the Corporate Members before taking any action.

In the event that GRF and the Corporate Members desire that GRF continue to be authorized to act in its sole discretion, both subsections should be deleted from the GRF Bylaws.

Alternatively, in the event that the Mutuals desire the requirement of a majority vote of the Corporate Members for certain matters, as set forth in Bylaw 2.1.6, to govern, it will then be necessary to amend Subsections VII(A) and VII(B) of the GRF Trust. The GRF Trust may be modified by written instrument executed by the Trustee, GRF, and each of the Mutuals. GRF Trust requires an independent vote by the Boards of GRF and each Mutual. All must approve the modification.

## *Direct Elections of GRF*

In April 1983, the question of whether GRF directors should be chosen by direct vote of Leisure World residents, rather than being elected, as they are now, by the directors of the community's mutual boards, got an eloquent going-over at the Community Association's meeting. Two teams of speakers—one for direct election, one against—played to a packed house in the Clubhouse I main lounge.

Dr. David Ast, president of the Association, said the 1962 articles of incorporation for GRF call for both resident and corporate memberships, but specify that only corporate members may vote. Of 12,700 manor owners in 1982, Ast said, there were only 40 corporate members. "You and I and the other resident members have absolutely no legal power" over GRF decisions, he told the crowd. "Not only are we disenfranchised, but representation on the board is disproportionate."

Ast likened the levying of fees by GRF to "taxation without representation." The Leisure World communities in Walnut Creek and Seal Beach both have direct election of their GRF boards. A direct election," he concluded, "is more consistent with the democratic process...this is the real power of the privilege to elect your representatives."

Outgoing GRF president Leon Bosch, the last of the four speakers to take the podium, said, "The question residents must decide is whether the effectiveness of an informed electorate worth the sacrifice of foregoing the fullest extent of the democratic process?"

Leisure World consists of a "conglomerate of special interests," Bosch said, and "resources are not unlimited; all desires and expectations are not affordable." With the many leisure time interests of the community, he added, it is difficult to find qualified people who will devote time to governance matters. "Your mutual directors understand these subtleties and nuances, understand the arena of governance and are likely to make more informed decisions," he said, and predicted that "politicizing" of the community would result from direct election of GRF directors.

In spite of repeated requests over the years from resident owners, the arguments and the manner by which GRF directors are elected has not changed.

### *Direct Elections — 2013*

Direct Elections is as American as apple pie. As a general principle, people overwhelmingly support direct elections

The GRF Trust would have to be amended and approved by **all** four corporate boards in order to allow direct elections. This is unlikely since Mutual 50 has already stated it is unwilling to give up its influential 311 swing votes, and it is unlikely that a majority of GRF board members would be willing to vote themselves out of office. Therefore, the only way to get direct elections is to force termination of the Trust.

### *GRF Borrows Money*

In 1969 Clubhouse III was financed partly by $400,000 from the Facilities Trust Fund and $383,000 from a ten-year bank loan. In 1970 GRF borrowed $1.4, in the form of a $99,000 annual lease, to purchase the golf course from Rossmoor Corporation.

In 1998 GRF borrowed $14 million to upgrade our cable system in order to meet Orange County's minimum service standards and provide Internet connections to residents. In 2002 GRF borrowed $9.5 million to purchase the Community Center.

### *No New Mortgages — Fewer Manor Sales*

The actions taken at United's September 10, 2013 meeting appears to be an attempt by that board to undermine the loan GRF received from Bank of America that will help fund the implementation of the GRF Recreation Master Plan. This could be the first step in a plan to dissolve the GRF Trust and eliminate GRF.

The boards and resident owners will have to decide whether they were willing to give up the annual $1.6 million resulting from Transfer Fees in exchange for direct elections. If this issue cannot be resolved and the GRF Trust is dissolved, for the reasons previously stated, neither GRF nor the Mutuals would be permitted to impose a transfer fee—a loss of about $1.6 million annually, about $10.46 per manor per month.

In the event of dissolution, should the GRF and GRF Trust's assets (recreational facilities, bus system, security, property services, etc.) be divided among the Mutuals in accordance with the terms of the Trust, then United would receive about 58%. It would seem reasonable to expect them to pay 58% of the expenses. This would increase the cost of the 49.6% of the owners who live in United by more than $37.00 per month not including an additional $11 per/manor/per month loss in Transfer Fee revenue.

***Should United force the GRF Trust to be dissolved, the resulting lawsuit, by either owners or the Mutuals, will cause lenders to stop making loans to new buyers.***

The apparent intent of the current United Board is to reduce funding for recreation in order to provide more funds to meet the maintenance requirements of United's nearly 50 year old housing. The directors of the Mutuals face some very difficult decisions.

In 1996, the directors of the Leisure World boards were personally sued by two residents who claimed that the directors had exceeded their authority by approving a contribution of $542,000 to a campaign to stop a commercial airport the Marine Corps Station at El Toro. The trial court found for the plaintiffs, holding that the Directors who voted for the resolution must collectively repay the Mutuals $542,000. Fortunately, upon appeal the court found in favor of the Directors.

Section 5231(a) of the Corporate Code codifies the duties of a director as follows: [emphasis added]

> "A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the *best interests of the corporation* and with such care, including reasonable inquiry, as an ordinarily *prudent person in a like position* would use under similar circumstances."

Section 5239(a) states that there shall be no personal liability to a third party for monetary damages on the part of a volunteer director of a nonprofit corporation caused by the director's negligent act or omission in the performance of that person's duties as a director or officer, if all of several conditions are met. One of the conditions is that the act or omission was not "reckless, wanton, intentional, or grossly negligent." The acts of a director who works with another individual or group in a manner that is not in the best interests of the board could be considered liable.

Dissolution of the GRF Trust, direct management of the community and direct elections are very complex issues. Each and every board member, under the law, must act in the *best interests of their corporation.* Failure to act as a prudent person could potentially make those members personally liable. They would not be protected as volunteers under California Law and would not be insured by the corporation's Director and Officers policies or their personal Home Owners Liability policies.

Keeping informed, and making reasonable inquiries when appropriate, is a key to meeting a director's duty of care.

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# GRF Trust Agreement
# Transfer Fees
# Direct Elections
# New Mortgages

***"Those who cannot remember the past are condemned to repeat it"***

George Santayana (1863 – 1952)

**Editor — Bob Ring**