



# Clayton & McCulloh

ATTORNEYS AT LAW  
www.clayton-mcculloh.com

NEAL MCCULLOH  
Attorney & Counselor at Law  
lwood@clayton-mcculloh.com

Clayton & McCulloh, P. A.  
Servicing 25 Counties  
Respond to: Orlando Office

February 16, 2018

*Via E-Mail: palmlakehomeownersassoc@gmail.com*

Palm Lake Homeowners Association, Inc.  
c/o Russ Carlson, President  
8758 Crestgate Circle  
Orlando, FL 32819

**RE:** Palm Lake Homeowners Association, Inc.

Dear Russ,

Pursuant to our conversation and your direction, the following shall reiterating in writing this firms opinion regarding whether the Association or the individual Owners are responsible for the maintenance, repair and replacement of the perimeter wall. As will be more fully explained hereafter, it appears that the perimeter wall is to be repaired, maintained and replaced, as necessary, by the Association, despite it being located on the various Owners' lots.

As the perimeter wall is located on various Owners' Lots, the Association has been granted an easement and license to go on the 10 ft. portion of the Owners' lots where the landscape and wall easement exists. Of course, the purpose of said Easement and License, at least in part, is ostensibly, to maintain the perimeter wall. In fact, that certain Palm Lake Plat recorded in PB 33, PG 83 of Orange County, FL, (hereinafter referred to as the "Plat"), provides for the 10 foot "Landscape and Wall Easement" (hereinafter sometimes referred to as the "Easement"). Moreover, the Plat not only dedicates the Easement but appears to provide for its maintenance to be by the Association. More specifically, Note 6 of the Plat provides:

"10 foot landscape and wall easement is dedicated to and **maintained** by the Palm Lake HOA" (emphasis added)<sup>1</sup>

In addition to the above, please appreciate that the wall appears to have been designated as Common Property of the Association pursuant to the Declaration of Declaration of Covenants, Conditions, Restrictions and Easement and Reservation for Palm Lake recorded in O.R. Book 4822, Page 1381 of Orange County, FL, (hereinafter referred to as the "Declaration"). As such, one can maintain that the wall itself is owned by the Association despite it being located on the Owners' Lots.

---

<sup>1</sup> While Note 6 is poorly worded, it suggests that the wall is to be maintained by the Association.

In fact, Article V, Section 5.1 of the Association's Declaration expressly delineates that:

ARTICLE V  
COMMON PROPERTY

...

Section 5.1 Common Property. ... **Common Property also shall include the ten (10') foot easement reserved on the Plat for construction, maintenance and use as a buffer area including walls or fences as determined appropriate from time to time by the Association (the "Buffer Wall Easement").** (emphasis added)

As such, the perimeter wall, ostensibly, is Association Common Property.

In addition to the above, please appreciate that the Developer, ostensibly, was required to convey the Easement to the Association pursuant to Article V, Section 5.2 of the Declaration which provides:

Section 5.2 Conveyance by Developer. On or before the date of the first conveyance of any Lot by the Developer to any other Owner, Tract A, Tract B and the Buffer Wall Easement hereinabove described in Section 5.1 shall be conveyed by the Developer to the Association... (emphasis added)

The Association's responsibility for the maintenance, repair and replacement of the wall, ostensibly, is also established by Article V, Section 5.7 of the Declaration which provides:

Section 5.7 Administration and Care. The administration, regulation, care, maintenance, repair, restoration, replacement, preservation and protection of the Common Property shall be the responsibility of the Association as more particularly set forth in Article IX of the Declaration and the Articles of Incorporation of the Association. (emphasis added)

Please appreciate that Section 5.7 of the Declaration (reprinted above), ostensibly, makes the Association responsible for the perimeter wall's maintenance, repair and replacement, as the wall, ostensibly, is Common Property, pursuant to Section 5.1 of the Declaration, reprinted in pertinent part above.<sup>2</sup>

---

<sup>2</sup> Note – as you read and digest this letter please pay particular attention to the different terms which are used to, ostensibly, reference the wall. Of course, the different terms could be used to contest the positions asserted herein. The Plat utilizes the term "10' Landscape and Wall Easement" whereas the Declaration uses the terms: "Common Property also shall include the ten (10') foot easement reserved on

Further demonstrating the existence of and purpose for the easement is Article VI, Section 6.6 of the Declaration which provides:

ARTICLE VI  
EASEMENTS

Section 6.6 Walls and Landscape Easements. There is hereby created, declared, granted and reserved for the benefit of the Developer and the Association an easement for landscaping purposes over and upon all Buffer Wall Easement areas shown on the Plat or hereafter declared by the Developer, together with the easement and license to enter upon such Buffer Wall Easement areas for the purposes of installing, maintaining, inspecting, repairing and replacing any and all privacy systems, walls... (emphasis added)

Please note that Section 6.6 not only confirms that the Association has an easement but that its purpose, in part, is for maintaining the wall.

Ironically, even the Association's assessment provision (and in particular the section dealing with reserves) addresses the wall and the Association's maintenance thereof. In fact, Article VII, Section 7.8.9 of the Declaration provides that the Association's assessments are to include amounts for the maintenance of the wall as it provides:

ARTICLE VII  
ASSESSMENTS

Section 7.8.9 Reserves. The regular Assessments shall include reasonable amounts as determined by the Board of Directors of the Association to be collected as reserves against and for the future periodic maintenance, repair or replacement of all or any portion of portions of the Common Property, including, without limitation, the Common Streets, the Retention Area and Common Area Buffer Wall... (emphasis added)

Please note, that even the regular assessments, in part, are for the purpose of maintaining, repairing and replacing the Common Area Buffer Wall.

---

the Plat for construction, maintenance and use as a buffer area including walls or fences as determined appropriate from time to time by the Association (the "Buffer Wall Easement"). Note, while the Plat references "landscape" and "maintenance" it does not reference "construction" or "a buffer". As such, one could allege that the different terms are meant to reference different walls. Accordingly, a challenge to the positions recited herein could be interposed predicated on the different terms and/or references to the wall. However, we do not find such challenges persuasive.

In addition to the above, the Declaration delineates that part of the purpose of the Association is to maintain the wall as it constitutes Association Common Property. In fact, Article IX, Section 9.1 of the Declaration provides:

ARTICLE IX  
ASSOCIATION: PURPOSES, DUTIES & POWERS

Section 9.1 Objects and Purposes and Function. The Association has been created and established for the objectives and purposes of and shall have exclusive jurisdiction over and the sole responsibility for the ownership, administration, management, operation, regulation, care, maintenance, repair, restoration, replacement, preservation and protection of the Common Property, ... (emphasis added)

Please note that Article IX, Section 9.1 of the Declaration expressly imposes on the Association the sole responsibility for the care, maintenance, repair, restoration, replacement, preservation and protection of the Common Property. Of course, the Association's responsibility includes maintenance, repair and replacement of the wall, as it constitutes part of the Common Property, pursuant to Section 5.1, reprinted above in pertinent part. Similarly, Article IX, Section 9.3.1 of the Declaration imposes the responsibility for the wall's repair, maintenance and replacement on the Association as it provides:

Section 9.3 Duties and Powers of the Association. The Association, acting by and through its Board of Directors, shall, in addition to those general and specific duties, responsibilities and obligations imposed upon it by law and those specified in its Articles of Incorporation and By-Laws, have the following specific duties, powers, responsibilities and obligations, to wit:

Section 9.3.1 **Ownership and Management of Common Property.** **To own,** hold, control, administer, manage, operate, regulate, care for, maintain, repair, replace, restore, preserve and protect all Common Property, whether real, personal or mixed, **including,** without limitation, all Common Streets, Retention Area and all sidewalks, signs, landscaping, landscape irrigation systems, street lighting systems, central privacy systems (including gates) walls, ... (emphasis added)

As suggest above, the Association, may actually own the wall despite it being located on the various Owners' lots. To appreciate how this could be, please understand that, pursuant to Section 9.3.1, of the Declaration, reprinted immediately above, the Association owns all of the


Palm Lake HOA, Inc.  
February 16, 2018  
Page 5

Common Property which, ostensibly, includes the wall. Moreover, the Declaration should be superior in authority to, and take precedence over, each Owners deed, as the Declaration, ostensibly, was recorded in the Public Records prior to when each Owner's deed was recorded. As such, each Owner had record title notice of the Declaration, its provisions, its requirements and its superiority.

Given all of the above, the Association, ostensibly, has the responsibility to maintain, repair and replace the wall, despite it being located on various Owners' lots.

If you have any questions regarding the above, please feel free to contact me at your earliest convenience.

**CLAYTON & McCULLOH**



Neal McCulloh, Esquire  
NM/eaw