

# Falls Run by Del Webb

## A Brief History of Its Creation and Governance

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November 1, 2017

Falls Run was created in 2002 in Stafford County, Virginia, by “Del Webb Communities of Virginia, Inc., an Arizona corporation,” as an age restricted, active adult, property owners’ association community. The community was created in conformity with provisions found in the Code of Virginia, Title 55, Property and Conveyances, Chapter 26, *Property Owners’ Association Act*.

Del Webb, one of the largest developers of active adult communities in the country, was acquired by Pulte Homes, Inc. effective July 31, 2001. As a component of Pulte Homes, the “Del Webb Group of Pulte Homes” is responsible for the development of large-scale active adult communities across the United States. The founder of Del Webb, Delbert E. Webb, developed the active adult community concept in 1960 for the self-contained retirement community named Sun City located near Phoenix, Arizona.

The purpose of Falls Run, as advertised by Del Webb, was to “provide housing primarily for persons 55 years of age or older.” The land on which the entire Falls Run development is situated, a portion of England Run North, was acquired by Trovas Construction Company, a subsidiary of Del Webb, from Silver Retirement Communities, L.L.C. and Silver Retirement Communities II, L.L.C. The tracts of land in England Run North on which the Falls Run community was built were Land Bays 4A, 4B, and 7, comprising a total of approximately 228.33 acres.

The Falls Run community consisted initially of 582 “detached” dwelling units. Although it is not widely known, the majority of the 582 “detached” houses built by Del Webb are actually duplex dwelling units. The duplex dwelling units were constructed with the approval of Stafford County, and they were built by Del Webb in order to increase the density and number of dwelling units on the available land. The duplex dwelling units were built on common foundations and have the appearance of free standing structures.

The Falls Run Community Association, Inc., (FRCA) was created on June 21, 2002, by “Del Webb Communities of Virginia, Inc., an Arizona corporation.” On that date, the FRCA was incorporated by W. Allen Ames. The registered agent of the Association was Christopher J. Ryan, Vice President of Del Webb Communities of Virginia, Inc., an Arizona corporation.

The initial FRCA Board of Directors was appointed by Del Webb and consisted of Christopher J. Ryan, Omar A. Badawi, and Channon E. Rickard. The FRCA was incorporated for the “management, maintenance and care of the Common Area and Neighborhood Facilities and the provision of services to Owners.”

On August 21, 2002, Del Webb acting as Declarant executed a “Declaration of Covenants, Condition, and Restrictions for Falls Run” (hereafter, 2002 FRCA Declaration). The 2002 FRCA Declaration was signed by “Christopher Ryan, Vice President of Del Webb Communities of Virginia, Inc., an Arizona corporation.” The 2002 FRCA Declaration was recorded as land record LR020024438 in Stafford County, Virginia on August 23, 2002.

The Declarant Control Period began on August 23, 2002, and could continue until (1) the end of the Development Period, (2) the expiration of ten (10) years from the date of recording, or (3) the date designated in written notice from the Declarant to each of the owners as being the end of the Declarant Control Period. The exact date on which Del Webb officially ended the Declarant Control Period is not known with certainty, although it probably coincides with the end of the Development Period.

The Bylaws of the FRCA are not included in the Declaration and are not required by law to be recorded as a land record. The original Bylaws for the FRCA were prepared by the Declarant. Curiously, the original FRCA Bylaws are dated December 17, 2001, which makes them approximately eight months “younger” than the original 2002 FRCA Declaration. Perhaps the FRCA Bylaws were simply modified by Del Webb from some other community and adapted for Falls Run.

The 2002 FRCA Declaration included provisions whereby the Declarant could elect to enlarge the Falls Run community through the creation of an “expandable” condominium. The specific provisions may be found in: (1) Article I, Section 1.24 Local Area Association, Section 1.25 Local Area Declaration, and Section 1.48 Supplemental Declaration or Supplement; (2)

Article VII, Annexation and Withdrawal of Property; and (3) Article XV, Condominium and Other Homeowners Associations.

On January 27, 2005, the Declarant controlled Board of Directors, in anticipation of the Declarant soon completing the Development Period, approved the appointment of a Transition Committee consisting solely of dwelling unit owners to help better prepare the owners to assume control of the property. Members of the Transition Committee included Bill Smith, Chair, Stan Tetlow, Secretary, Cork Blaemire, Bob Gilbert, Marv Koontz, and John Lynch.

The Transition Committee first met on March 10, 2005, and an action agenda was developed to help guide the transition of the community from Declarant to dwelling unit owners' responsibility. The Transition Committee issued its final report in early December 2005.

In early March 2005 Del Webb elected to act on provisions contained in the 2002 FRCA Declaration whereby an "expandable" condominium, eventually containing 199 dwelling units, could be created in Falls Run. The condominium was created by "Del Webb Communities of Virginia, Inc., an Arizona corporation," on land that had been acquired previously by Trovas Construction Company, a subsidiary of Del Webb, from Silver Retirement Communities II, L.L.C. The land transaction was recorded as LR020039257 on December 27, 2002.

The specific land on which Del Webb constructed its expandable condominium was a portion of England Run North, Land Bay 4A, subdivided into Parcels 4A1 and 4A2. The two parcels totaled approximately 33.2 acres, and are located adjoining the property on which the "detached" Falls Run dwelling units were built. All of the land on which the condominium was built was eventually annexed to the FRCA through a series of 30 "supplemental" declarations to the 2002 FRCA Declaration.

On March 21, 2005, Del Webb filed a land record titled "Declaration of The Villas at Falls Run Condominium," LR050009485, in Stafford County, Virginia. This Declaration had been signed on March 11, 2005, by "Dennis A. Ouellette, General Manager and Vice President of Operations for Del Webb." The Declaration complied with provisions of law found in the Code of Virginia, Title 55, Property and Conveyances, Chapter 4.2, *Condominium Act*. The

Bylaws of the condominium, as required by Section 55-79.73 of the Virginia *Condominium Act*, are included in LR050009485 as *Exhibit C* of the Declaration of the Villas at Falls Run Condominium.

In conformity with appropriate provisions found in the 2002 FRCA Declaration, the condominium's Declaration provided for the creation of a "Local Area Association" to manage the affairs of the condominium. The Local Area Association was named "The Villas at Falls Run Condominium Unit Owners Association" (VCA). Hereafter, the condominium's original Declaration is referred to as the 2005 VCA Declaration and the condominium's original Bylaws (contained in *Exhibit C* of the 2005 VCA Declaration) are referred to as the 2005 VCA Bylaws.

The Declarant's Control Period for the condominium began on March 21, 2005. Eventually, 199 dwelling units contained in 55 buildings were built in the condominium. The 199 dwelling units were built in 34 Phases of construction and the 2005 VCA Declaration was amended 30 times to accommodate the work schedule and document the sequential expansion of the condominium. The 30 amendments to the 2005 VCA Declaration are recorded as individual land records in Stafford County, Virginia.

Simultaneously, the 2002 FRCA Declaration was modified by the sequential recordation of 30 Supplemental Declarations by "Del Webb Communities of Virginia, Inc., an Arizona Corporation, and the FRCA, Inc., a Virginia non-stock corporation." The 30 Supplemental Declarations to the 2002 FRCA Declaration are recorded as individual land records in Stafford County, Virginia and document sequential annexation of the property to the FRCA and the sequential expansion of the condominium.

Together, the 30 Supplemental Declarations to the 2002 FRCA Declaration and the 30 Amendments to the 2005 VCA Declaration conveyed on the owners of the 199 dwelling units in the condominium full membership in both the VCA and the FRCA. As such, the 199 VCA members are entitled to all the benefits, privileges and services provided by both Associations. Once the condominium was completed, the total membership of the FRCA expanded to 781, comprised of the owners of the 582 "detached" dwelling units and the owners of the 199 dwelling units in the condominium.

On September 6, 2005, Dennis A. Ouellette, General Manager and Vice President of Operations for Del Webb, and Chairman of the Falls Run Community Association Board, informed the Falls Run community that control of the FRCA was now eligible to be passed from the Declarant to a dwelling unit owners Board of Directors consisting of seven members. On that date, invitations were extended to all dwelling unit owners in Falls Run to stand for election to the FRCA Board of Directors.

The deadline for candidates to file for election was October 17, 2005. The election period ran from November 1, 2005, to December 7, 2005. A total of 14 candidates stood for election to the first dwelling unit owners' controlled FRCA Board of Directors. A proxy form was developed and available to FRCA members who wanted to transfer their voting rights to another person, rather than casting their votes on the Official Ballot, or who were unable to attend the election meeting.

On December 8, 2005, at 7:00 PM, the first election meeting of the membership of the FRCA, consisting of dwelling unit owners in the "detached" homes plus the dwelling unit owners in the condominium, was held in Gayle Middle School. At this first meeting of the membership of the Association, the first seven-member FRCA Board of Directors, consisting solely of dwelling unit owners, was announced. The first dwelling unit owners' FRCA Board of Directors was elected to staggered terms; three would serve a one-year term and four would serve a two-year term. Thereafter, all FRCA Directors would serve two-year terms.

The election resulted in the following individuals being elected to the FRCA Board: Nancy Arnn (one-year term), Toni Brown (one-year term), Art Gabler (two-year term), Mal Malo (two-year term), Bill Nosal (two-year term), Dan Owens (two-year term), and Jackie Richards (one-year term). The minutes from the December 8, 2005, election meeting of the FRCA memorialize the selection of these seven Board members.

On December 16, 2005, the first Organizational Meeting of the newly elected FRCA Board of Directors was held in the home of Jacki Richards. At that time, the following officers were named: Bill Nosal-President, Nancy Arnn-Vice President, Toni Brown-Secretary, Mal Malo-Treasurer, Art Gabler-Director, Dan Owen-Director, and Jackie Richards-Director. According to the

recollections of several members from that first Board, no minutes from the informal first Organizational Meeting were prepared.

On December 20, 2005, Dennis Ouellette informed the Villas community that control of the VCA was now eligible to be passed from the Declarant to a dwelling unit owners' Board of Directors. The 2005 VCA Bylaws, Article III, Board of Directors, Section 1. Number and Qualification, specifies the condition under which control of the VCA would pass from the Declarant to unit owners. Once 75% of the units in the condominium had been sold, control of the affairs of the VCA was to be passed from the Declarant to the members (dwelling unit owners) of the VCA, in the form of an elected five-person Board of Directors comprised solely of unit owners and each serving three-year terms.

The length of each term of office for the first VCA Board of Directors was created such that staggered length terms would be served by the first Directors; two would serve for three-years, two would serve for two-years, and one would serve for one-year. Thereafter, all VCA Directors would serve three-year terms.

The December 20, 2005, correspondence from Dennis Ouellette advised that the first meeting of the membership of the VCA was scheduled for 7:00 PM on January 19, 2006, in Gayle Middle School, at which time the first five-member Board of Directors would be elected. Invitations were extended to all VCA members to stand as candidates for election.

A reminder letter from Dennis Ouellette was sent to all Villa dwelling unit owners on December 30, 2005 informing them that a "Meet the Candidates" opportunity was scheduled to be held on January 18, 2006, at 7:00 PM in the Falls Run Community Center.

On January 12, 2006, a letter was sent by Dennis Ouellette to all Villas dwelling unit owners announcing the names of nine individuals who had volunteered to serve on the first VCA Board of Directors. The letter reminded the unit owners that the election would be held on January 19, 2006, at 7:00 PM in Gayle Middle School. A proxy form was developed and included in the January 12, 2006, letter to permit VCA members who wanted to transfer their voting rights to another person, rather than casting their votes on the Official Ballot, or who were unable to attend the election meeting.

On January 19, 2006, the first election meeting of the membership of the VCA was held. A quorum of at least 25% of the membership was present in the form of dwelling unit owners and/or proxies. The election resulted in the first VCA Board of Directors (listed in order of votes received): Paul Niemi (101 votes, three-year term), Joan Bitely (89 votes, three-year term), Nancy Garner (78 votes, two-year term), Hugh Muir (76 votes, two-year term), and Brenda Dudley (59 votes, one-year term). The minutes from the January 19, 2006, meeting of the VCA memorialize the election of these five Board members.

On January 23, 2006, the first Organizational Meeting of the VCA Board of Directors was held. On that date, the following officers were elected: Paul Niemi-President, Joan Bitely-Vice President, Brenda Dudley-Secretary, Nancy Garner-Treasurer, and Hugh Muir-Member at Large. The minutes from the January 23, 2006, meeting memorialize the election of officers.

The 2002 FRCA Declaration was amended by the Declarant, Del Webb, in early 2006. A February 13, 2006, document titled "Amended Declaration of Covenants, Conditions, and Restrictions for Falls Run," signed by Dennis Ouellette, Vice President, was submitted for recordation as a replacement in its entirety for the 2002 FRCA Declaration. The new document, hereafter referred to as the 2006 FRCA Amended Declaration, was recorded on February 14, 2006, as land record LR060005387 in Stafford County, Virginia.

It is surprising that Del Webb, acting as Declarant, promulgated the 2006 FRCA Amended Declaration on February 14, 2006 because control of the Association had already been passed to a dwelling unit owners Board of Directors on December 8, 2005. Presumably, this action probably occurred because Del Webb had not yet "officially" ended the Declarant Control Period even though the FRCA was now under the direct control of the dwelling unit owners in Falls Run.

The 2006 FRCA Amended Declaration supersedes and replaces the 2002 FRCA Declaration. Curiously, the 2006 FRCA Amended Declaration begins by stating "This Declaration of Covenants, Conditions, and Restrictions is made this 10<sup>th</sup> day of January, 2002, by Del Webb Communities of Virginia, Inc., an Arizona corporation (the Declarant)." It is indeed curious that the 2006 FRCA Amended Declaration would include a statement that it was "made this 10<sup>th</sup> day of January, 2002." Nonetheless, the document was signed by Dennis Ouellette and recorded as a land record in Stafford County on February 14, 2006.

On March 22, 2006, the original Bylaws of the FRCA, dated December 17, 2001, were amended by the FRCA Board of Directors (hereafter, referred to as the 2006 Amended FRCA Bylaws). The FRCA Board, in conformity with provisions in the *Property Owners' Association Act*, has the authority to unilaterally amend the Bylaws without submitting the amendment to the entire Association membership for approval.

On a date (perhaps in 2006) not yet identified or documented, Del Webb ended the Declarant Control Period and full control of, and responsibility for, the Falls Run community was passed to the membership of the Association.

On April 22, 2009, the FRCA Board restated and amended the 2006 Amended FRCA Bylaws once again. This document is hereafter referred to as the 2009 Amended FRCA Bylaws. The 2009 Amended FRCA Bylaws are the most current version of the FRCA Bylaws.

Finally, on July 24, 2015, the 2005 VCA Declaration and the 2005 VCA Bylaws contained in *Exhibit C* were amended through the recordation of land record LR150012889 in Stafford County, Virginia. The amendment clarified ambiguities that were contained in "Attachment A" to the original Bylaws.

Hereafter, the Villas current governing document is referred to as the 2015 Amended VCA Declaration and *Exhibit C*, containing the amended Bylaws, is referred to as the 2015 Amended VCA Bylaws.