

## **Peter Kirk Denger HSV POA Board Candidate Appeal 2/22/22**

The Hot Springs Village Property Owners Association (POA) is similar to a municipality but has no authority to make laws and ordinances. The authority the POA has to make and enforce policies is derived from The Declaration of Hot Springs Village Covenants and Restrictions (Declaration). The Declaration is a legally binding contract between Hot Springs Village Property Owners Association and its members. The rights and obligations of the POA and the members are delineated in this document.

The authority of the POA is limited to the authority granted to it in the Declaration and any policy or operating procedure that conflicts with the provisions of the Declaration is unenforceable.

A member's rights, **except for the member's right to ingress or egress over all private ways of access**, are limited by the rights granted to the Association in Article VIII of the Declaration.

The Declaration gives no authority to the Association to limit the member's right of ingress or egress over all private ways of access by suspending the member's rights of enjoyment in Article VIII, Section 3(c) or charging service or use charges, admissions and other fees in Article VIII, Section 3(c).

The POA has no authority to suspend a member's ingress or egress over all private ways of access whether by a security guard at a manned gate or a deactivated gate card at an unmanned gate. This is a right granted to the member by the Declaration not subject to limitation by the POA.

While POA management may say the vehicle decals are “voluntary”, the decal fees amount to a charge or fee to enable members to use the right lane for access while denying unimpaired access to the right lane to members without a sticker. The POA website and POA printed materials do not clearly state that the decal fees are voluntary. The Declaration prohibits use charges or fees related to a member’s ingress over all private ways of access for vehicles for himself and members of his household.

Article VIII, Section 3 states “The rights and easements of enjoyment created hereby **with the exception of the rights and easements created in Section 6** of this Article VIII shall be subject to the following:

(c) the right of the Association to suspend the enjoyment rights of any member or associate member... for any period not to exceed thirty (30) days for any infraction of its published rules and regulations

(d) The right of the Association to charge reasonable service or use charges, admission and other fees for the use, service and enjoyment of the Common Properties

The Declaration gives the POA no authority to limit a member’s ingress and egress to their property. The Declaration does allow the Association to impose limitations on member guests and invitees.

Article VIII, Section 6 – Private Ways of Access for Vehicles states “Each owner shall have a right of ingress and egress and passage over all private ways of access for vehicles for himself, members of his household, and his guests and invitees, subject to such limitations as

the Association may impose from time to time as to **guests and invitees.**

The Ingress and Egress policy in Hot Springs Village, Arkansas Property Owners Association Policy Guide Chapter 3, Article 1, Section 1, conform to the provisions of the Declaration as it states:

The Association maintains gated entrances to Hot Springs Village to assist members, guests, visitors, and others. The number of gates, the type of gate, and the location of each gate will be determined by operating procedures.

**Hot Springs Village property owners have the unimpaired right to ingress and egress to property owned by him/her.**

All Guests of members and Visitors to businesses and other POA approved entities entering Hot Springs Village will be issued an appropriate vehicle identification pass.

The enforcement provision in Chapter 3, Article 1, Section 1 only applies to guests of members and visitors because the POA has no authority to deactivate gate cards of a member under the provisions of the Declaration. Article VIII, Section 6 clearly states “Each owner shall have a right of ingress and egress and passage over all private ways of access for vehicles for himself, members of his household...

Policy, Chapter 3, Article 1, Section 4, Enforcement states :

- (1) Any misuse, or abuse of privileges to use Decals/Passes/electronic Gate Cards may result in confiscation of the Decal/Pass/electronic Gate Card and/or suspension of the privilege for all

Decals/Passes/electronic Gate Cards issued to a party for a period of 30 days for the first offense and indefinitely for any subsequent abuse. (except for the rights in section 6.)

Since the security guards at the front gate are not Arkansas law enforcement officers, it is clear they, like any other citizen, have no legal authority to stop or detain members and require them to show ID or instruct them to pull to the side. The Village Police cannot stop or detain anyone unless they have probable cause to believe the person has committed a crime. The Declaration is the contract between the POA and its members, and the POA's ingress and egress policy does not grant the POA the authority to stop members and demand identification. The security guards at Little Rock Air Force Base may have this authority but the Securitas private security guards at the West gate do not.

I attempted to exercise my unimpaired right of ingress to my residence identifying myself as a property owner and was denied access. The POA contracted personnel denied access to the right lane because I did not purchase a vehicle decal that is not required. The security officer at the West gate detained me, and after her conversation on the phone, asked for my "card" and I told her "I don't have it". She then instructed me to turn around, you can't come in. I told the security guard that I live here. I was then further detained and instructed to pull over to the side. The guard said I will call the cops and I replied call them now. The Guard had seized my person and prevented my right of ingress, along with four of my household. I felt my rights being violated was a crime and did not feel it appropriate to leave the scene of the crime. After being unlawfully detained for 13 minutes, the police arrived and correctly told me to proceed to my residence.

Policy, Chapter 1., Article 15, section 3. ...aggression directed at members and all others is prohibited. I have charged the POA with disorderly conduct, assault, unlawful detainment, causing emotional distress to four children, falsifying reports, releasing personal documentation in excess of contact information without notification according to Policy, Chapter 1, section 3, A., resulting in defamation of character and attempting to rig the election of Directors of a Non-Profit Corporation of the State of Arkansas, by unlawfully suspending my privileges.