

N030000004673

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TALLAHASSEE, FL



FLORIDA DEPARTMENT OF STATE
Division of Corporations

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2022 MAR 15 AM 11:56

SECRETARY OF STATE
TALLAHASSEE, FL

March 2, 2022

BRITTANY J. TOLLETT
9130 GALLERIA COURT
SUITE 201
NAPLES, FL 34109

SUBJECT: POSITANO NEIGHBORHOOD ASSOCIATION, INC.
Ref. Number: N03000004673

We have received your document and check(s) totaling \$43.75. However, the enclosed document has not been filed and is being returned to you for the following reason(s):

You failed to make the correction(s) requested in our previous letter.

Please file the document as either Articles of Amendment or Restated Articles of Incorporation pursuant to applicable Florida Statutes.

You cannot file an Amendment AND Amended & Restated Articles for (1) filing fee.

It appears from the enclosed document, you may be trying to file 'Amended and Restated Articles of Incorporation' or 'Restated Articles of Incorporation'. If this is the intention, the document submitted needs correcting. The document should be entitled 'Amended and Restated Articles of Incorporation' or 'Restated Articles of Incorporation'. The preamble to the articles needs to be replaced with language similar to 'These Amended and Restated Articles or Restated Articles are being submitted pursuant to 607.1007/617.1007, Florida Statutes.

Please note historical information need not be listed. This would include the name of the incorporator and the name and address of the initial registered agent.

The date of adoption and the effective date, if any, will need to be included and who adopted the changes. It also, need to be signed by officer as required by law.

If there are MEMBERS ENTITLED TO VOTE on a proposed amendment, the document must contain: (1) the date of adoption of the amendment by the members and (2) a statement that the number of votes cast for the amendment was sufficient for approval.



RECEIVED

FLORIDA DEPARTMENT OF STATE
Division of Corporations

2022 FEB 24 AM 11:22

SECRETARY OF STATE
TALLAHASSEE, FL

February 16, 2022

BRITTANY J. TOLLETT
9130 GALLERIA COURT
SUITE 201
NAPLES, FL 34109

SUBJECT: POSITANO NEIGHBORHOOD ASSOCIATION, INC.
Ref. Number: N03000004673

We have received your document and check(s) totaling \$43.75. However, the enclosed document has not been filed and is being returned to you for the following reason(s):

Please file the document as either Articles of Amendment or Restated Articles of Incorporation pursuant to applicable Florida Statutes.

If there are MEMBERS ENTITLED TO VOTE on a proposed amendment, the document must contain: (1) the date of adoption of the amendment by the members and (2) a statement that the number of votes cast for the amendment was sufficient for approval.

If there are NO MEMBERS OR MEMBERS ENTITLED TO VOTE on a proposed amendment, the document must contain: (1) a statement that there are no members or members entitled to vote on the amendment and (2) the date of adoption of the amendment by the board of directors.

The date of adoption of each amendment must be included in the document.

If the corporation is a NOT FOR PROFIT corporation it must be signed by the chairman or vice chairman of the board, president or other officer - if directors have not been selected, by an incorporator - if in the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6050.

Querida R Silas
Regulatory Specialist II

Letter Number: 422A00003852

If there are NO MEMBERS OR MEMBERS ENTITLED TO VOTE on a proposed amendment, the document must contain: (1) a statement that there are no members or members entitled to vote on the amendment and (2) the date of adoption of the amendment by the board of directors.

If the corporation is a **NOT FOR PROFIT** corporation it must be signed by the chairman or vice chairman of the board, president or other officer - if directors have not been selected, by an incorporator - if in the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6050.

Querida R Silas
Regulatory Specialist II

Letter Number: 522A00005049



ADAMCZYK LAW FIRM, PLLC
REAL ESTATE, CONDO/HOA & BUSINESS LAW

March 10, 2022

Florida Department of State
Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

**Re: Articles of Amendment
Positano Neighborhood Association, Inc.
Document No. N03000004673**

Dear Sir or Madam:

We are in receipt of your correspondence dated March 2, 2022 and have enclosed a copy herein. We have also enclosed the following:

- (i) Completed application for Articles of Amendment;
- (ii) A copy of the Amended and Restated Articles of Incorporation of Positano Neighborhood Association, Inc. having highlighted portions at the top of the document;
- (iii) A clean copy of the Amended and Restated Articles of Incorporation of Postiano Neighborhood Association, Inc.; and
- (iv) A copy of the Minutes of the Annual Meeting of Positano Neighborhood Association, Inc. reflecting that the amendments contained in the Amended and Restated Articles of Incorporation of Positano Neighborhood Association, Inc. were approved by a proper percentage of the Association's membership.

We would like to clarify that we are not seeking to file an Amendment to *and* a Restatement of the Articles of Incorporation in one filing as referenced in your letter. The enclosed Amended and Restated Articles of Incorporation involved proposed changes that were so extensive that underlining and striking through language would hinder, rather than assist, the understanding of the proposed amendment. Therefore, in accordance with §720.306(1)(e), Florida Statutes, the following text, in substantially the same form, must be immediately preceding the proposed amendment: "[s]ubstantial rewording. See governing documents for current text."

As stated above, this preamble language is required to be included in the articles when the changes are extensive. Moreover, when the documents are rewritten in their entirety, they are presented as "amended and restated" instead of as an amendment in underlined and stricken, or

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black-lined format. Based on the foregoing, we are unable to alter the preamble because the language as currently written must conform with § 720.306(1)(e), Florida Statutes. I am including the pertinent provision herein for ease of reference:

(c) A proposal to amend the governing documents must contain the full text of the provision to be amended and may not be revised or amended by reference solely to the title or number. Proposed new language must be underlined, and proposed deleted language must be stricken. *If the proposed change is so extensive that underlining and striking through language would hinder, rather than assist, the understanding of the proposed amendment, a notation must be inserted immediately preceding the proposed amendment in substantially the following form: "Substantial rewording. See governing documents for current text."* An amendment to a governing document is effective when recorded in the public records of the county in which the community is located.

(Emphasis added).

Additionally, our office has successfully filed Amended and Restated Articles of Incorporation using the Florida Division of Corporations' Articles of Amendment application form on behalf of numerous clients for many years without issue. This is the first instance in which the preamble language contained in any of our filings has been questioned. We kindly request that you please advise if there is a different application form that should accompany the Amended and Restated Articles of Incorporation .

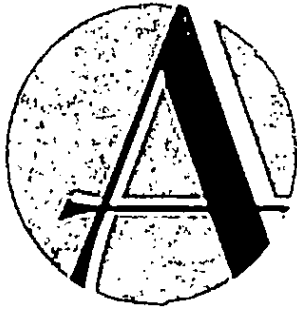
We hope this letter has helped clarify our intent to file amendments to the original Articles of Incorporation. Lastly, we have enclosed a stamped, self-addressed envelope for return of the filed and certified documents. Please do not hesitate to contact our office at (239) 631-6199 with any questions or concerns you may have relating to this request.

Sincerely,



Brittany J. Tollett
Legal Assistant

Enclosures



ADAMCZYK LAW FIRM, PLLC
REAL ESTATE, CONDO/HOA & BUSINESS LAW

February 22, 2022

Florida Department of State
Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

**Re: Articles of Amendment
Positano Neighborhood Association, Inc.
Document No. N03000004673**

Dear Sir or Madame:

We respectfully request you file the enclosed Amended and Restated Articles of Incorporation. We have corrected the application as requested and also enclosed a copy of your correspondence dated February 16, 2022 reflecting that you are in receipt of our payment in the amount of \$43.75 for the filing fee and certified copy fee related to this matter.

Also enclosed is a stamped, self-addressed envelope for return of the filed and certified documents. Please do not hesitate to contact me at (239) 631-6199 with any questions or concerns you may have.

Sincerely,

Brittany J. Tollett
Legal Assistant

Enclosures

FILED

2022 MAR 15 PM 4:16

NOTE: ~~SUBSTANTIAL AMENDMENT OF ENTIRE ARTICLES OF~~
~~INCORPORATION~~ FOR PRESENT TEXT SEE EXISTING ~~ARTICLES OF STATE~~
INCORPORATION. ~~TALLAHASSEE, FL~~

AMENDED AND RESTATED ARTICLES OF INCORPORATION OF
POSITANO NEIGHBORHOOD ASSOCIATION, INC.

Pursuant to Section 617.1007, Florida Statutes, these Articles of Incorporation of Positano Neighborhood Association, Inc., a Florida corporation not for profit, which was originally incorporated under the same name on May 27, 2003, are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 671.1002, Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles other than the inclusion of amendments, adopted pursuant to Section 617.1002, Florida Statutes, and the omission of matters of historical interest. Any capitalized terms herein shall have the same meaning or definition as used in the Amended and Restated Declaration of Covenants, Conditions and Restrictions. The Amended and Restated Articles of Incorporation of Positano Neighborhood Association, Inc., shall henceforth be as follows:

ARTICLE I

NAME: The name of the corporation is Positano Neighborhood Association, Inc., sometimes hereinafter referred to as the "corporation" or the "Association".

ARTICLE II

PRINCIPAL OFFICE: The principal office of the corporation shall be c/o Gulf Breeze Management Services, 8910 Terrence Court, Suite 200, Bonita Springs, Florida, 34135, or at such other address as the Board of Directors determines from time to time.

ARTICLE III

PURPOSE AND POWERS: This Association will not permit pecuniary gain or profit nor distribution of its income to its members, officers or Directors. It is a nonprofit corporation formed for the purpose of establishing a corporate residential community homeowners' association which, subject to the Declaration of Covenants, Conditions and Restrictions for Positano Neighborhood Association, Inc., originally recorded in the Public Records of Lee County, Florida, in Official Records Book 04179, at Page 4257 *et seq.*, (hereafter, the "Public Records"), and as amended, has the powers described herein. The Association shall have all of the common law and statutory powers of a Florida corporation not for profit consistent with these Articles, the Bylaws of the corporation, and with said Declaration and shall have all of the powers and authority reasonably necessary or appropriate for the operation and regulation of a residential

EXHIBIT B

AMENDED AND RESTATED ARTICLES OF INCORPORATION

PAGE 1

community, subject to said recorded Declaration, as it may from time to time be amended, including but not limited to the power:

- (A) to fix, levy, collect and enforce payment by any lawful means all charges, Assessments, or liens pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all license fees, taxes or governmental charges levied or imposed against the property or the corporation;
- (B) to make, amend and enforce reasonable rules and regulations governing the use of the Common Areas, Lots, Units and the operation of the Association;
- (C) to sue and be sued, and to enforce the provisions of the Declaration, the Articles, the Bylaws and the reasonable rules of the Association;
- (D) to contract for the management and maintenance of the Common Areas and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration to be exercised by the Board of Directors or the membership of the Association;
- (E) to employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the properties;
- (F) to dedicate, sell or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication, sale or transfer shall be effective unless first approved by two-thirds (2/3rds) of the voting interests of the Association;
- (G) to borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts;
- (H) to maintain, repair, replace and provide insurance for the Common Areas;
- (I) to acquire, (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the corporation; and
- (J) to exercise any and all powers, rights and privileges which a corporation organized under Chapters 617 and 720 of the Florida Statutes may now or hereafter have or exercise; subject always to the Declaration as amended from time to time.

All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration, these Articles of Incorporation and the Bylaws.

EXHIBIT B
AMENDED AND RESTATED ARTICLES OF INCORPORATION
PAGE 2

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS: Membership and Voting Rights shall be as set forth in the Bylaws of the Association, as they may be amended.

ARTICLE V

TERM; DISSOLUTION: The term of the Association shall be perpetual. The Association may be dissolved with the consent given in writing and signed by not less than two-thirds (2/3rds) of total voting interests of the Association. Upon dissolution of the Association, other than incident to a merger or consolidation, its assets, both real and personal, shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was formed. In the event there is a refusal to accept such dedication, then such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization which is devoted to purposes similar to those of this Association.

ARTICLE VI

BYLAWS: The Bylaws of the Association may be altered, amended or rescinded in the manner provided therein.

ARTICLE VII

AMENDMENTS: Amendments to these Articles shall be proposed and adopted in the following manner:

- (A) Proposal: Amendments to these Articles shall be proposed by a majority of the Board or upon petition of one-fourth (1/4th) of the voting interests and shall be submitted to a vote of the members not later than the next annual meeting.
- (B) Vote Required: These Articles of Incorporation may be amended if the proposed amendment is approved by the affirmative vote of two-thirds (2/3) of the Owners present and voting, in person or by proxy, at a meeting of the members for which proper notice has been given and at which a quorum exists.
- (C) Effective Date: An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Lee County, Florida with the same formalities as are required in the Declaration for recording amendments to the Declaration.

ARTICLE VIII EXHIBIT B

AMENDED AND RESTATED ARTICLES OF INCORPORATION

PAGE 3

DIRECTORS AND OFFICERS:

(A) The affairs of the Association will be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws. Directors must be members of the Association, or a spouse of a member.

(B) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

(C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board.

ARTICLE IX

INDEMNIFICATION:

To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer of the Association against all expenses and liabilities including attorney fees, actually and reasonably incurred by or imposed on him or her in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he or she may be a party because of his or her being or having been a director or officer of the Association. The foregoing right of indemnification shall not apply to:

(A) Willful misconduct or a conscious disregard for the best interests of the Association as determined in a proceeding by or in the right of the Association to procure a judgment in its favor.

(B) A violation of criminal law, unless the Director or officer had no reasonable cause to believe his or her action was unlawful.

(C) A transaction from which the Director or officer derived an improper personal benefit.

(D) Wrongful conduct by Directors or officers, in a proceeding brought by or on behalf of the Association.

In the event of a settlement, the right to indemnification shall not apply unless a majority of the disinterested Directors vote that the settlement is in the best interest of the Association. The

EXHIBIT B

AMENDED AND RESTATED ARTICLES OF INCORPORATION

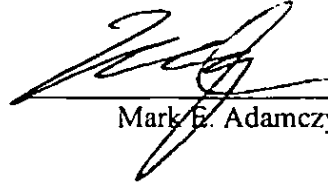
foregoing rights of indemnification shall be in addition to, and not exclusive of all other rights to which a Director or officer may be entitled.

ARTICLE X

REGISTERED OFFICE AND REGISTERED AGENT:

The street address of the registered office of the Association is Adamczyk Law Firm, PLLC, 9130 Galleria Court, Suite 201, Naples, FL 34109, and the registered agent of the Association at that address shall be Mark E. Adamczyk, Esq., or as the same is amended from time to time.

The undersigned hereby accepts the designation of Registered Agent as set forth in Article X of these Articles of Incorporation and acknowledges that he is familiar with and accepts the obligations imposed upon registered agents under the Florida Not For Profit Corporation Act.


Mark E. Adamczyk, Esq.