

Dear Key Allegro Property Owners:

We hope you all are well and staying safe. We wanted to take a moment to update you on a few things, specifically the status of the legal challenges facing our Association and the circumstances preventing us from holding an annual meeting. We are also providing an update on our current projects.

#### Legal Challenge Facing the Association

In summary, the corporate existence of Key Allegro Canal and Property Owners Association Inc. is being challenged. The Association is defending the challenge but is in a precarious situation. On the one hand, the services provided by the Association cannot be put on hold, as owners within Key Allegro rely on these services (which include maintenance of the community's infrastructure). On the other hand, the Association cannot conduct formal business until the entity's existence and validity is no longer in doubt. It is for this reason the Association has been unable to hold an annual meeting.

A little background for those of you who may not know...

The Key Allegro Island Estates subdivision and Key Allegro Canal Owners Association were established in 1962. A few years later, in 1969, the Key Allegro Property Owners Association was established. In 1975, owners from all five units of Key Allegro considered and voted on the proposed merger of the Key Allegro Canal Owners Association and the Key Allegro Property Owners Association to produce one association that would assume the maintenance of the beaches, parks and quasi-public areas of Key Allegro. This combined association would come to be known as Key Allegro Canal and Property Owners Association, Inc. The owners were authorized to conduct such a vote according to a provision in the recorded Agreement Relating to Owners of Property on Designated Canals and Waterways for each Unit in Key Allegro which states:

"In the event the owners of a majority of the lots in the subdivision should at any time desire, the Association may also undertake the maintenance of the beach and park areas of the subdivision, and all owners of the property in the subdivision shall be subject to the rules of the Association..."

More than half of the owners within Key Allegro (55%), including owners from all 5 Units, participated in the vote. Of those, 97.2% voted in favor of the merger. A copy of the meeting minutes documenting the results of the vote can be found [here](#).

Although the merger of the two associations passed by a strong majority of the required quorum of members, the merger documents establishing Key Allegro Canal and Property Owners Association, Inc., were not filed with the Secretary of State and, years later, the merger documents were destroyed during Hurricane Harvey. As a result, the effectiveness of the merger is being challenged.

Since the vote approving the merger, Key Allegro Canal and Property Owners Association Inc. has operated as a non-profit corporate entity for decades, successfully managing the business affairs and day-to-day operations of the subdivision in accordance with the best interests of the owners and to maintain and preserve the subdivision. However, in light of the present challenges and the fact that the 1975 merger was not documented with the Secretary

of State, the Board intends to present the merger to the owners for another vote. The first step will be to have the Key Allegro Property Owners Association reinstated, as it forfeited its corporate existence in the 1980s. The Board has already taken affirmative steps towards this goal. As for the Key Allegro Canal Owners Association, the entity's name was changed to the Key Allegro Canal and Property Owners Association in 2003, and it is currently active with the Secretary of State.

In addition to the challenges regarding the Association's existence, challenges have been made as to the validity of the Association's current governing documents, specifically the Amended and Restated Deed Restrictions, Covenants and Conditions recorded in 2017 ("2017 Restrictions"). The original 1960s Restrictions and Conditions for each Unit in Key Allegro gave the Architectural Control Committee authority "*to make additional rules and regulations with respect to such lots, the activities being constructed thereon, the improvements to be constructed thereon, and the use thereof*" and "*alter or vary the provisions [of the Restrictions and Conditions] by any instrument duly executed and acknowledged by the members of the committee.*" This authority was assigned to the Key Allegro Canal Owners Association and Key Allegro Property Owners Association in 1975. Some members contend the right "to make additional rules and regulations..." only grants the Association the authority to grant variances. However, this interpretation is incorrect as the issue of variances is addressed elsewhere in the document:

"In very exceptional cases only, where the natural beauty and topography of the tract is such as demands slight variation from these covenants and restrictions... the Committee shall have the power to make special exceptions for the mutual benefit of the particular owner and of the surrounding builder site owners and/or occupants."

Some members also assert the right to "alter or vary the provisions" of the Restrictions and Conditions did not authorize the Board of Directors to amend the governing documents. However, the Association maintains that as successors to the Architectural Control Committee, the Board of Directors was authorized to amend the governing documents and create the 2017 Restrictions which currently govern the lots within Key Allegro and enable the Board of Directors of the Association to adopt amendments to the governing documents. In 2020, when the Board of Directors attempted to amend the 2017 Restrictions to require a vote of the *members* to adopt any future amendments, the existence of the Key Allegro Canal and Property Owners Association Inc. was challenged, effectively halting the amendment process.

A meeting will be scheduled in roughly 45 days, at which time the Board believes reinstatement of the Key Allegro Property Owners Association will be complete. The purpose of this meeting will be to confirm the merger vote that occurred in 1975. Shortly thereafter, an Annual Meeting will be scheduled. The Annual Meeting will include the election of Directors. We, your Board of Directors, find ourselves in a difficult position since some parties are threatening to sue if a meeting is *not* held, while others are threatening to sue if a meeting *is* held. Please know we are working diligently and making every effort to ensure these issues do not negatively impact you, your property, or our island community and do not delay the progress we have been making on the improvement projects currently underway. We appreciate your patience and understanding.

While these legal issues remain challenging, the Board is continuing to work on our ongoing improvement projects which are listed below:

## Improvement Projects

In an effort to maintain and improve the beauty of our island paradise and our property values, several projects have been completed or are underway in and around the subdivision, namely:

- The Board of Directors (Board) worked with the City to test new, more attractive LED street lights. The City has instructed AEP to move forward with installing these new lights as the test was a success. The new streetlights offer better lighting and a more residential look. Next year, we will be working with the city to add this lighting in additional areas on the island that need it.
- The fence and landscaping around the pool and clubhouse have been replaced and the pool resurfaced. The Allegro House has been remodeled and is ready for community events.
- All Key Allegro islands and circles have been landscaped and continue to be maintained.
- Blue Heron Park has been landscaped and new lighting installed. It has been great to see kids playing soccer and running among the sprinklers in the park.
- The Board continues to work with the City on bridge plans and update owners concerning the bridge project. New bridge construction is scheduled to begin June 1st and will take 11-14 months to complete. After completion, the Public Realm committee will continue their work on landscaping and signage for Key Allegro's entrance parks.
- The Board has been working with the City on a revetment plan for Bayshore Drive. This revetment plan will keep our shoreline safe. We will follow up with a landscaping plan for that area once the revetment is complete.
- We continue to work on an emergency plan for communication to and between property owners, which will be announced soon.
- In an effort to stay current with all State of Texas laws and filings concerning HOA's, the Board initiated and approved a request for an experienced, professional HOA management company, resulting in the hiring of Spectrum AM.

*Warmest regards,*

Key Allegro Board of Directors

GBM note: Email dated: 5/11/21

also mailed hard copy to owners