



April 2016

Case Law Update: Membership Deposit Refund Amendment Overturned

Verandah Development v. Gualtieri, Florida 2nd District Court of Appeals (February 17, 2016). This case provides insight to clubs with refundable memberships who want to amend a membership document provision related to refunds or resigned membership resale. The plaintiff member's Membership Agreement provided that members who "resign their membership will be refunded their initiation deposit previously paid subject to a 'one in, one out' refund policy." The Club amended the Membership Plan to provide that the Club would pay resigned member refunds on a one in three basis. The plaintiff members resigned their membership after the Membership Plan amendment, and when they were told of the amendment, they filed a breach of contract suit. In support of its position that the plaintiff members were subject to the new one in three refund policy, the Club cited to the provision in the plaintiffs' Membership Agreement in which they agreed "to be bound by the terms and conditions [of the Membership Plan] as the same may be amended from time to time." The trial court entered summary judgment for the members, and the appellate court upheld the decision.

The court reasoned that the club's unilateral Membership Plan amendment right applied to facilities use privileges, not the refund policy, which was a vested right. The appellate court did overturn the trial court's ordering the Club to pay the refund immediately to the plaintiff members. The court explained that an immediate refund would have placed the members in a better position than the members would have been under the one in, one out policy. Although this decision may be cited by members of other clubs that amend membership documents in a manner that impacts membership deposit refunds, it should be noted

that the language of the plaintiff members' Membership Agreement differs from that of most clubs with refundable membership, in that the one in, one out provision was part of the refund provision and was actually in the member's Membership Agreement; whereas, most clubs only include it in the provision for resale of resigned memberships in the Membership Plan. Any club that considers membership document amendments that impact membership deposit refunds should carefully review the refund, membership resale and amendment provisions in both the club governing documents and members' individual agreements with legal counsel.

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