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August 24, 2020

Roosevelt Ridge Homeowners Association  
1630A 30th Street #442  
Boulder, CO 80301

*Re: Director Elections for the Roosevelt Ridge Homeowners Association  
("Association"), a Colorado Nonprofit Corporation*

Dear Board:

It is my understanding that:

1. In correspondence dated April 26, 2020, Kate Anderson as Secretary of the Association, stated to members of the Association:
  - a. The time and date of the upcoming Members' Annual meeting;
  - b. "As HOA Secretary, I will oversee the director election and tally the votes;" and
  - c. "In order to be a valid voting member, your quarterly common assessment fee payments must be current."
2. In the Notice of Annual Meeting of Members, the Notice stated:
  - a. "All common assessment fee payments must be current to vote."
3. At the Association's Annual election of 2020-2021 held on May 14, 2020, the Members cast their ballots and the Secret Ballot Committee counted ballots and declared Mike Wallace, Lee Mayberry, and Ted Bertele as elected to the Association 2020-21 Board of Directors.
4. On August 5, 2020, the Secret Ballot Committee was notified by Kate Anderson, the Association's Secretary, that Audit Committee verified that Lots 1, 2 and 3 were not current with their quarterly common assessment at the time of the vote.
5. The Secret Ballot Committee met on August 10, 2020 and verified that Lots 1, 2 and 3 all cast votes in the election.
6. On August 17, 2020, by email, the Board of Directors offered the individuals who had served on the Association's Secret Ballot Committee for the election of 2020-2021 and the Association's Audit Committee Chair to have call with the Board and the Association's attorney, stating that "[t]he purpose of the call is to allow the Ballot Committee to share their story (facts, timeline, perspective, etc.) supplemented by the same information from the Member Audit Committee."
7. On August 17, 2020, by email from Kathy Sharma, the Ballot Committee Members and Audit Committee Chair declined this offer to meet and share their perspective.

8. On August 17, 2020, Christine Twining sent an email to the Board, the Association's attorney, Dorinda Graff, and Sheri Keller stating "After much debate and research, the Secret Ballot Committee sent out an email to the community naming Eric Anderson a member of the BOD. We opted to not meet with Jessica Miller as we did not want to spend anymore HOA funds on this issue. Please see our timeline and thought process below" and "The Ballot Committee, as an independent body from the BOD, decided to discard the ballots for Lots 1, 2, and 3, which changed the BOD."
9. The owners of Lots 1, 2, and 3's ballots were discarded by the Secret Ballot Committee without the Association first providing the Owner with Notice and Hearing on the issue of whether their assessments were in arrears.

**1. Secret Ballot Committee was able to track the ballots cast by Lots 1, 2, and 3.**

**The ballots should be inspected to determine how the Secret Ballot Committee was able to track the ballots cast by Lots 1, 2, and 3.**

C.R.S. § 38-33.3-317 requires that the Association keep records for the production to owner, including:

the association must maintain the following, all of which shall be deemed to be the sole records of the association for purposes of document retention and production to owners...  
(1)(n) Ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate.

The Board should inspect all the ballots cast in the May 14, 2020 Director election to determine how the Secret Ballot Committee was able to determine which ballots were cast by what Members. The Board is entitled to these records in their capacity as both Directors and Members. The Board should investigate how the process allowed the Secret Ballot Committee to track votes so the issue can be addressed before the next election, including, but not limited to: if it is due a flaw in the ballot's design, if they were improperly marked, or if the Secret Ballot Committee did not follow the Association's Secret Ballot Requirements. In an email dated May 6, 2020, Ted Bertele, on behalf of the Board, explained to Christine Twining the Association's Secret Ballot Requirements before the election. In all the communications I have received on this issue, the Secret Ballot Committee has not explained how they are able to track votes or how they knew they were discarding the ballots actually cast by Lots 1, 2, and 3.

**2. The Secret Ballot Committee has met without providing notice, allowing attendance of members, and/or keeping proper records.**

**The Secret Ballot Committee has violated C.R.S. § 38-33.3-308(2)(a), Section 5.11 of the Bylaws, and C.R.S. § 38-33.3-317(1)(c) by not providing notice, allowing attendance of members, and/or keeping proper records.**

The Association's Committees are required to comply with Colorado law and the requirements of the Association's governing documents. In her correspondence dated April 26, 2020, Secretary Kate Anderson declared that "As HOA Secretary, I will oversee the director election

and tally the votes,” it is my understanding that it was in fact done by a committee created by the Board pursuant to C.R.S. § 38-33.3-310(1)(b)(I)(C). Section 38-33.3-310(1)(b)(I)(C) provides for the creation of the Secret Ballot Committee:

Ballots shall be counted by a neutral third party or by a committee of volunteers. Such volunteers shall be unit owners who are selected or appointed at an open meeting, in a fair manner, by the chair of the board or another person presiding during that portion of the meeting. The volunteers shall not be board members and, in the case of a contested election for a board position, shall not be candidates.

Based upon communications from the Secret Ballot Committee, “The Ballot Committee met on August 10, 2020 and verified that Lots 1, 2 and 3 all cast votes in the election.” C.R.S. § 38-33.3-308(2)(a) requires:

All regular and special meetings of the association's executive board, or any committee thereof, shall be open to attendance by all members of the association or their representatives. Agendas for meetings of the executive board shall be made reasonably available for examination by all members of the association or their representatives.

Likewise, Section 5.11 of the Bylaws provides:

The provisions of these Bylaws with respect to notice of meeting, waiver of notice, quorums, adjournments, vote required and action by consent applicable to meetings of Directors shall be applicable to meetings of committees of the Executive Board.

In addition, C.R.S. § 38-33.3-317(1)(c) requires that the Association keep of committee records. See also Bylaws Section 9.3 (“The Association shall keep correct and complete books and records of account, shall keep minutes of the proceedings of its Members, its Executive Board, and any committee having any of the authority of the Executive Board...”). It appears that this Committee has been meeting and acting in violation of Colorado law by failing: to provide proper notice of its meetings, to allow attendance of the Members, and/or to keep proper records to determine if the Committee has made these meetings open to attendance by all Members of the Association, provided proper notice under the Bylaws (e.g. §6.5), and kept proper documentation as required by the Colorado law and the Association’s governing documents.

**3. The Secret Ballot Committee has announced: “The Ballot Committee, as an independent body from the BOD, decided to discard the ballots for Lots 1, 2, and 3, which changed the BOD [Board of Directors].”**

**The Secret Ballot Committee violated § 38-33.3-310(1)(a)(I)(D) by announcing the change in vote tabulation and purported Board of Director’s composition by announcing how it was calculating votes in reference to Lots 1, 2, and 3.**

Under the statute, the results of a vote taken by secret ballot must be reported without reference to the names, addresses, or other identifying information of owners participating in that vote. C.R.S. § 38-33.3-310(1)(a)(I)(D). However, the Secret Ballot Committee has announced:

“The Ballot Committee, as an independent body from the BOD, decided to discard the ballots for Lots 1, 2, and 3, which changed the BOD [Board of Directors].”

By announcing the change in vote tabulation and purported Board of Director composition by announcing how it was calculating votes in reference to Lots 1, 2, and 3, the Secret Ballot Committee has violated § 38-33.3-310(1)(a)(I)(D).

**4. The Secret Ballot Committee purports to have the authority invalidate an election, recount votes months after the vote was counted, and replace the Director it had declared as victorious as a result of the election with another candidate.**

**Colorado law and the Association’s governing documents do not provide the Secret Ballot Committee this authority.**

I have not found any support in Colorado law for this Secret Ballot Committee to invalidate an election. As detailed above, Section 38-33.3-310(1)(b)(I)(C) provides for the creation of the Secret Ballot Committee:

Ballots shall be counted by a neutral third party or by a committee of volunteers. Such volunteers shall be unit owners who are selected or appointed at an open meeting, in a fair manner, by the chair of the board or another person presiding during that portion of the meeting. The volunteers shall not be board members and, in the case of a contested election for a board position, shall not be candidates.

The Board should immediately put the members of this Secret Ballot Committee on notice about their participant’s actions exceeding their authority. Ultimately, they are putting the entire Association at risk with their ultra vires acts and violations of Colorado law and the Association’s governing documents as detailed above. The Committee has refused to meet with me to explain their perspective, which I would like to consider in formulating my opinions. However, while the Committee asserts the ability to invalidate an election that they counted and called months ago, its emails lack critical references to authority for their actions.

**5. The Ballot Committee decided to discard the ballots for Lots 1, 2, and 3 without providing these Owners with notice and hearing.**

**Section 7.18 of the Declaration provides the Association may only suspend an Owner’s vote after first providing the Owner with Notice and Hearing.**

Based upon the information provided, I have not seen documentation that: all three lots (Lots 1, 2 and 3) were in arrears at the time of the election; the Owners of these lots received notice from the Association that they were in arrears at the time of the election; and the Association knew about the alleged past due balances for all these lots at the time of the election. Furthermore, I have not seen any documentation that the Owners of these lots were provided with notice of default and hearing before the voting rights were suspended. Section 7.18 of the Declaration provides:

the Association shall have the power to enforce the provisions of this Declaration and of Rules and Regulations of the Association by any one or more of the following means:...(d) by suspension, after Notice and Hearing as defined in this Declaration, of the voting rights of a Member of the Association during and for up to sixty (60) days following any breach of such Member or a Related User of such Member of this Declaration or such Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues;...

See also Section 10 of the Bylaws. The Association has not followed its own process for refusing to count an Owner's vote, and by denying this due process to an Owner, the Association has not even produced proper documentation that all three of these lots were in arrears at the time of the vote. It is my understanding that the Owner of Lot 1 has never been received any type of statement from the Association that dues and fees for Lot 1 were ever in arrears (including, but not limited to, late, missing, and/or unpaid) as even the date of this correspondence, and therefore, it is even more concerning that the vote associated with Lot 1 has been discarded in light of the failure of the Association to provide this Owner notice and hearing before the Secret Ballot Committee discarded the ballot for Lot 1.

**6. Prior to annual meeting of members, the Association is required to prepare a list of the names of all members who are entitled to vote at the meeting.**

**The Association did not prepare this list, and therefore, there is not a record of members who are entitled to vote in violation of C.R.S. § 7-127-201(1).**

Prior to annual meeting of members, the Association is required to prepare an alphabetical list of the names of all members who are entitled to vote at the meeting. C.R.S. § 7-127-201(1) of the Colorado Non-Profit Act provides, in part:

after fixing a record date for a notice of a meeting or for determining the members entitled to take action by written ballot, a nonprofit corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of, and to vote at, the meeting or to take such action by written ballot. The list shall show the address of each member entitled to notice of, and to vote at, the meeting or to take such action by written ballot and the number of votes each member is entitled to vote at the meeting or by written ballot.

It is the Association's obligation to prepare this list because the terms of the Association's Bylaws do not alter this obligation. The purpose of this list is to create a record list of eligible votes in advance of the election. Based upon the allocation of work between the Associations' Officers in the Bylaws, I would suggest that the Treasurer and Secretary prepare this list for the Board's review prior to the Annual Meeting to prevent ballots being provided to and cast by Members not entitled to vote.

Simply put, the Declaration defines the Association's and Members' rights, and those cannot be altered through inaccurate or vague statements in a Notice of Annual Meeting for 2020 or from the Secretary's April 26, 2020 correspondence. Pursuant to Section 4.4, "Each Membership shall

be entitled to one vote, regardless of the number of Owners of the Lot to which the Membership is appurtenant” except as specifically provided by Colorado law or the Association’s governing documents.

Attached, please find copies of all the statutes cited in my correspondence so that they can be verified easily as accurate quotes of Colorado law. Given the large number of issues with the handling of this 2020-2021 Director election, it will allow easy reference for the next election and allow each Member review these provisions to independently evaluate the actions of the Secret Ballot Committee, the Board, and the Association. I believe reference to applicable Colorado law has much to offer this community in this situation.

Sincerely,

THE LAW FIRM OF JESSICA H. MILLER, LLC

A handwritten signature in black ink, appearing to read "J.H. Miller", with a stylized, looping flourish at the end.

Jessica H. Miller