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VIA EMAIL: jessica@jhmillerlaw.com AND US MAIL

June 14, 2021

Jessica H. Miller, Esq.
LAW FIRM OF JESSICA H. MILLER LLC
595 Canyon Blvd.
Suite 9
Boulder, CO 80302

Re: Roosevelt Ridge Homeowners Association, Inc.
Records Request Pursuant to C.R.S. § 38-33.3-317 and the Association's Inspection and Copying of Records Policy

Dear Ms. Miller:

After sending you my last letter on Friday, additional issues have arisen regarding the upcoming election. We do not understand how the Board continues to modify the rules and regulations and the strict statutory requirements for the upcoming meeting without authority under the Bylaws or Colorado law.

1. Additional Issues Concerning Write-In Candidates

On Friday, the Board sent an email in which they state, "the BOD has gone to great extremes to ensure that the ballots are indeed treated as secret ballots and *that we are complying with every possible interpretation of the applicable statutes and governing documents.*" However, if that were true, they would have raised this proposed rule during the last Board meeting, provide owners the opportunity to address it as required by CCIOA, and then vote to include it. Instead, as I stated in my last letter, the decision to include write-in candidate blanks in the ballots for the upcoming Board election, which were never included on previous ballots, was a decision that clearly was raised without a meeting after the May 28th Board meeting.

However, that is not the end of it. In that same Friday email, the Board states that its decision came on your advice based on the language in CRS 38-33.3-303(3)(a) which, according to the email, states, "The executive board may not . . . determine the qualifications of . . . executive board members" That simply is an incomplete and inaccurate representation of Section 303(3)(a) of CCIOA and a misstatement concerning the actions by the Board.

As you well know, the Board has the right to adopt rules and regulations concerning the running of the election so long as they do not conflict with the governing documents or applicable law

(including the Nonprofit Act and CCIOA). That is what they did on May 28th at the Board meeting. At that meeting, the Board advised that they were setting a date for nominations of candidates for June 3rd because, as they reasoned, they needed to complete the ballots in time to get them to out-of-state and out-of-country owners to give them time to vote. Such is a reasonable ground for the time limit they provided. They gave potential candidates seven days in which to determine if they would run or not. THIS DID NOT DETERMINE THE QUALIFICATIONS OF ANY EXECUTIVE BOARD MEMBERS. IT JUST SET A REASONABLE TIMELINE FOR NOMINATIONS TO BE MADE.

So, what did the Board do – they immediately violated their own rules by providing a method for the nomination of additional candidates after the Board discovered who was running for the open Board positions – AND WITHOUT A MEETING.

Again, we look forward to receiving the emails and other written correspondence concerning the Board's discussions on this issue and their votes taken to approve this procedure, which could benefit Mr. Bertele, especially if the Board allows Mr. Bertele and Lone Pine the right to vote. Section 303(3)(a) actually states in full, "The executive board may not act on behalf of the association to amend the declaration, to terminate the common interest community, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for the unexpired portion of any term." This means the Bylaws may not be amended by the Board irrespective of what the Bylaws say as if they modify the qualifications, powers and duties, or terms of office of the Board. Membership approval is required. It also means the Board may not adopt rules and regulations that change, as to qualifications of directors, the sole current requirement in the Bylaws that Board members must be an owner of a Lot in the community or a designated representative of a business owner of a Lot. It does not mean that the Board is precluded from setting a date for nominations for candidates for the Board. As such, Section 303(3)(a) of CCIOA does not have anything to do with the Board's adoption of rules and regulations on May 28th and does not excuse the Board's decision to violate their own adopted rules and regulations.

As I stated in my last letter, any write-in candidates constitute a late nomination of candidates in violation of the rules and regulations adopted by the Board on May 28th and must be disregarded in the election of directors.

2. Board's Improper Decision to Preclude Acceptance of Ballots Submitted by Email or Other Electronic Means.

The Board's rules, however, seriously prejudiced the ability of out-of-state or out-of-country owners from voting as the Board provided less than two weeks for such owners to receive and return their ballots by mail by June 21st. Apparently the Board believed they made a mistake and sent out new rules today in an attempt to correct this mistake by sending an email attaching the ballot and other information with new directions to keep the secrecy of the ballot. However, the Board also included a new rule which states, "Scanned, emailed or other ballots received electronically are not valid and will not be counted."

This new rule constitutes an improper decision to disregard any votes submitted by electronic means. As you know, CRS 38-33.3-310(2)(c) states, “The association is entitled to reject a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the unit owner new rules were not necessary.” As such, the Board may only reject a vote if, in acting in good faith, the Board has a reasonable basis to doubt the validity of the signature of the signatory’s authority to sign. So long as an owner takes reasonable steps to verify his signature on a ballot emailed to the Board, such as sending a signed ballot to the Board using the same email to which the Board sent the Ballot (or otherwise uses to provide communications to said owner), the Board does not have any reasonable basis to reject the vote.

Nothing in the Bylaws, CCIOA or the Nonprofit Act prohibit any members of the Association from voting by electronic means when mail-in ballots are used. As such, this new rule adopted by the Board after May 28th without a meeting is invalid.

In this same vein, the Board unreasonably and improperly set a deadline for the return of proxies for one day after the sending of the notice of a contested election. However, such a rule conflicts with both CCIOA and the Bylaws. According to Section 310(2)(a) of CCIOA, all “[v]otes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner.” This means that, as long as the right to vote by mail-in ballot remains outstanding, owners may give their right to vote to another owner through a proxy. Here, since ballots are due by June 21st, all owners have until June 21st to provide such proxies. Pursuant to CRS 7-127-203, the Association, through the Board, may not limited the manner in which a member appoints a proxy. According to the Bylaws, a proxy may be appointed by any means. The same would hold true for the submittal of a ballot – it may be submitted by any means.

The right to secrecy as to a member’s vote in a director election belongs to the member not the Board. As such, an owner can waive his right to submit a secret ballot. If an owner chooses to email a ballot by signing it and submitting it through the member’s email account so its validity is verified, the owner does so with the understanding and acknowledgement that the owner is waiving his/her/its right to secrecy.

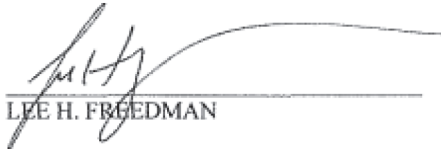
As such, the Association must accept and count any ballot submitted by email or electronic means with a valid signature.

Please confirm the Association will correct their errors immediately.

Please be advised that I intend to be present at the office of the CPA on June 21st to oversee the receipt and handling of all of the ballots received by mail, email or other means. I also intend to be present during the annual meeting to oversee the handling, consideration and counting of ballots submitted, which must take place during the annual meeting. The CPA firm may not complete such count outside of the Annual Meeting. We expect the Secretary will advise the members as to any ballots which were rejected and the reasons why.

As we have advised, our clients simply expect the upcoming election to be run in compliance with Colorado law and are concerned with the Board's continued errors and non-compliance.

Very truly yours,



LEE H. FRIEDMAN

For The Firm

cc: Charles and Deborah Nolan