

LAW FIRM
OF
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June 18, 2021

Lee H. Freedman
Pearson Wollenweber Freedman, LLC
860 Tabor Street, Suite 210
Lakewood, Colorado 80401

Via email: lfreedman@pwflegal.com

Re: Charles and Deborah Nolan; Roosevelt Ridge Homeowners Association, Inc.

Dear Mr. Freedman:

Your correspondence dated June 14, 2021 includes a number of insufficiently supported contentions that seem to be directed at disrupting the upcoming election. The Board has provided every owner with a written ballot at the owner's address on file, worked in good faith to develop a process that treats each owner impartially and that maintains the required secrecy of these ballots. C.R.S. § 38-33.3-310(1)(b)(I)(A). However, my client has requested that I address some upcoming matters asserted in your June 14, 2021 correspondence to avoid unnecessary disruption of the tabulation of votes by your clients.

In your June 14, 2021 correspondence, you write: "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."

You have not cited any authority allowing you access to the offices of Robert & Associates, LLC to "oversee" this election, but my client is concerned about improper owner interference with the tabulation of votes. As you are aware, C.R.S. §38-33.3-310(1)(b)(I)(C) provides:

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 Association has retained the services of Robert & Associates, LLC, a certified public accounting firm, to count the ballots in compliance with §38-33.3-310(1)(b)(I)(C). In this situation, Colorado law does not support Charles and Deborah Nolan "overseeing" this election.

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If you obtain access to the offices of Robert & Associates, LLC and take action to “oversee” this election as indicated in your correspondence, my client will take action to address any of your actions to interfere with the performance of the Robert & Associates, LLC’s duties and/or to exert your “overseeing” presence to influence the election results.

In your June 14, 2021 correspondence, you write: “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.” However, you have not cited any authority in support of your proposition that “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.”

However, this proposition appears to be in direct conflict with C.R.S. § 7-127-109(1): “Unless otherwise provided by the bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the nonprofit corporation delivers a written ballot to every member entitled to vote on the matter.” (emphasis added). The specific language of the statute contemplates that the members can move forward by written ballot “without a meeting.” Further, Section 4.14 of the Bylaws provides: “In addition, any action required to be taken or which may be taken at a meeting of Members may be taken without a meeting if and to the extent permitted by the Colorado Revised Nonprofit Corporation Act.” (emphasis added). If you want to provide a citation to relevant authority that votes must be tabulated at the meeting and in the manner that you suggest, my client will consider it.

However, §38-33.3-310(1)(b)(I)(C) provides:

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.

This provisions does not dictate the time or place of vote tabulation. Further, C.R.S. §38-33.3-310(2) provides:

- (c) 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.
- (d) The association and its officer or agent who accepts or rejects a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation in good faith and in

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accordance with the standards of this section are not liable in damages for the consequences of the acceptance or rejection.

(e) Any action of the association based on the acceptance or rejection of a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise. (emphases added).

This provisions does not dictate the time or place of vote tabulation. The Board will present the tabulation of votes provided by Robert & Associates, LLC and, if any, any information provided related to the rejection of any ballots. Of course, C.R.S. §38-33.3-317(1)(b) outlines the scope of the requirement for the Association to keep a record of actions taken by owners by written ballot and to give owners an opportunity to review the ballots upon request.

Regards,

THE LAW FIRM OF JESSICA H. MILLER, LLC



Jessica H. Miller

cc: Client