

January 15, 2015

Via Certified Mail

Board of Directors
ArrowCreek Homeowners' Association
c/o Associa Sierra North
Attn: Jeanne Tarantino
10509 Professional Circle, Suite 200
Reno, Nevada 89521

**Re: Complaint Alleging Violation of Governing Documents
Request for Placement on Board Agenda**

Dear Ms. Tarantino:

Pursuant to NRS 116.31087(1), we, the undersigned owners of lots in ArrowCreek, hereby submit this complaint alleging that the Board of Directors of the ArrowCreek Homeowners Association (Board) intends to violate a certain governing document of the Association.

NRS 116.31087(1) provides:

If an executive board receives a written complaint from a unit's owner alleging that the executive board has violated any provision of this chapter or any provision of the governing documents of the association, the executive board shall, upon the written request of the unit's owner, place the subject of the complaint on the agenda of the next regularly scheduled meeting of the executive board.

NRS 116.049(2) defines "governing documents" to include articles of incorporation. We allege that the Board intends to violate the Articles of Incorporation for ArrowCreek Homeowners Association filed May 9, 1997 with the Nevada Secretary of State. ArrowCreek Homeowners Association is a Nevada nonprofit corporation. Article VIII states, "Every record owner of a lot in ArrowCreek ("subdivision") is entitled to membership and voting rights of the corporation." Therefore, all lot owners in ArrowCreek are members of this corporation, including us.

We allege three (3) separate and distinct violations of Article IX, which states:

The corporation reserves the right to amend, alter, change or repeal any provisions contained in these Articles of Incorporation in the manner now or hereafter provided by statute, upon the affirmative vote of two thirds of the members of the corporation and all rights conferred upon officers, directors and members herein are granted subject to this reservation, provided that no such amendment shall permit this corporation to engage in business for profit or permit the net earnings of the corporation to inure to the direct financial benefit of any officer, director, member of the corporation, or the Declarant.

I. Alleged Violation No. 1: Amending the Articles to Engage in Business For Profit.

The Board, through its Community Club Committee, recently published answers to frequently asked questions (FAQs). In response to FAQ No. 18, the Board acknowledges:

The Articles of Incorporation and Bylaws will need to be changed to reflect a “For Profit” HOA as allowed under NRS 116 and the State of Nevada Incorporation Statutes.

While a homeowners association may be organized as a profit or nonprofit corporation under NRS Chapter 116, this corporation’s Articles of Incorporation expressly forbid it from being for profit. Article IX allows amendments to the Articles, but “*no such amendment shall permit the corporation to engage in business for profit.*”

We suspect that the reason the Articles of Incorporation prohibit engaging in business for profit is to prevent the corporation from losing its tax-exempt status or other tax advantages under federal law. As a nonprofit corporation, we presume that its main source of revenues from homeowner dues and assessments are *not* subject to federal income tax. If the Articles of Incorporation were amended to permit business for profit (which is expressly prohibited), we believe that income of the corporation which previously was not taxable will become so. We implore the Board to consult with its CPA or seek a legal opinion from a qualified tax attorney to examine the adverse tax consequences of attempting to convert to a for profit corporation.

By pursuing a course of action in changing the corporation’s non-profit status, the Board is violating the plain language of Article IX.

II. Alleged Violation No. 2: Amending the Articles to Permit Net Earnings to Inure to the Direct Financial Benefit of Members of the Corporation.

The Board’s response to FAQ No. 3 confirms that the Friends of ArrowCreek, LLC (“FOA”) is offering to sell the golf course assets to the corporation for a purchase price that includes the “total of all acquisition costs incurred . . . plus twelve percent (12%) interest per annum.” According to

published news articles, the FOA consists of a group between 32 and 36 homeowners. Although FOA will not disclose the identity of all of its stakeholders, information from the Nevada Secretary of State identifies five managers who are record owners of lots in ArrowCreek (Tom Gurnee, Alan Humphrey, Gary Pestello, Joseph Petite, and Mark Wimbush). These five FOA managers are therefore members of the corporation, and we believe the vast majority if not all of the FOA stakeholders are also members of the corporation.

While Article IX authorizes amendments to the Articles of Incorporation, any amendments which “*permit the net earnings of the corporation to inure to the direct financial benefit of any ... member of the corporation*” are expressly prohibited. Under the proposed transaction, the net earnings of the corporation will be used to repay a proposed loan to pay the purchase price demanded by the FOA. This will result in a direct financial benefit to FOA stakeholders who are members of the corporation, in particular a twelve percent (12%) return on their investment.

Again, we suspect that the prohibition on amendments which provide a direct financial benefit to corporation members was intended to prevent the corporation from losing federal tax advantages accorded to a nonprofit homeowners association. The Board’s pursuit of a transaction which permits a direct financial benefit to FOA stakeholders who own lots in ArrowCreek constitutes a violation of the express provisions of Article IX.

III. Alleged Violation No. 3: Holding a Vote To Amend the Articles Requiring Approval By Vote of Less Than Two Thirds of the Members of the Corporation

If the Board, after consulting with a qualified corporate tax attorney, believes it can still amend the Articles of Incorporation to change its non-profit status in a manner that permits a direct financial benefit to its members, the Board will nevertheless violate Article IX if it continues its course of action of requiring approval of this transaction by only a majority of its members.

The Board released a letter dated November 12, 2014 from the law firm of Maddox, Segerblom, and Canepa, LLP, enclosed herein, stating:

It is our opinion, based upon applicable Nevada law and the Association’s Governing Documents, that an amendment of the Declaration & Bylaws may proceed if at least a majority of the Owners with a voting power vote in favor of the amendment. That is, at least fifty percent (50%), plus one (1), of the Owners with voting power must vote in favor of the proposed amendment to the Declaration and Bylaws.

This legal opinion is incomplete because counsel only considered the Declaration (CC&Rs) and the Bylaws. However, the legal definition of “governing documents” under NRS 116.049(2) includes the Articles of Incorporation. The Board has acknowledged that the Articles of Incorporation need to be amended. The plain language of Article IX requires “*the affirmative vote of two thirds of the*

members of the corporation” to approve an amendment. Therefore, by pursuing a course of action in amending the Articles of Incorporation based only on a majority vote of its members, the Board is violating the plain language of Article IX.

IV. Request for Placement on the Agenda at the Next Board Meeting.

Pursuant to NRS 116.31087, the undersigned hereby request that the subject of this complaint be placed on the agenda of the next regularly scheduled meeting of the Board to discuss the following issues:

1. Whether the proposed amendment to convert the corporation from non-profit to for-profit violates Article IX;
2. Whether the proposed amendment will provide a direct financial benefit to FOA stakeholders in a manner that violates Article IX;
3. Whether a vote to approve the proposed amendment by only a majority of the members of the corporation violates Article IX.

We thank you for your prompt attention to this matter and look forward to receiving your acknowledgment of this complaint and confirmation that these issues shall be placed on the agenda of the next regularly scheduled Board meeting.

Sincerely,

Ronald Duncan
363 Nambe Dr.
Reno, NV 89511

Sincerely,

Wayne Krachun
3458 Forrest View Ct.
Reno, NV 89511

Sincerely,

Dr. Forrest Patin
5764 Indigo Run Dr.
Reno, NV 89511

Enclosure

- the three complainants’ signatures are on file