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Camp Branch Acres Subdivision Property Owners Association
125 W Big Lake Rd
Trinity, TX 75862

Dear Camp Branch Acres Subdivision Property Owners Association:

Please be advised that the undersigned and this law firm have been approached by residents relating to the Camp Branch Acres Subdivision Property Owners Association with legal questions. These residents requested a legal opinion regarding some recent matters related to the board that are mentioned below. Fears Law does not represent any individual or party in this matter. This letter offers a legal opinion related to the topic discussed below. Any individual or party with additional legal issues and assistance should seek an attorney.

The two main topics discussed below:

1. Code of Conduct and Board position rights
2. Proxy rights

Based on the information provided, the Board of Directors recently approved a code of conduct to be signed by the board members. This code of conduct outlines numerous bullet points regarding the behavior and conduct of the board members. Many of these points are very common and align with the Texas Business and Property Code as to the ethical and fiduciary duties of board members. It is also common for businesses and organizations to have employees or members read, acknowledge, and sign a code of conduct. One point of particular note and of concern by the residents is point number 8 listed in the presented code of conduct that dictates any board member refusing to sign the code of conduct agrees to immediately resign from the Board.

Unlike employment in a business, directors and board members are not considered to be at-will positions. The election and subsequent removal of directors and/or members is dictated by the organization's by-laws. If the by-laws have no stipulation as to the removal of board members and/or directors, then the organization follows any codes within the Texas Business and Property Code. Thus, it would be a violation of the code to force the resignation of a director and/or board member with or without cause unless proper formal procedure has taken place.

According to the Texas Nonprofit Corporation Act Section 22.211, the removal may be done according to the provisions in the governing documents. Kindly review them and follow the process. If there are no provisions, a director may be removed from office, with or without cause, by the persons entitled to elect, designate, or appoint the director.

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This may mean that if the members elected the director(s), they also have the power to remove the director(s). If the director(s) was elected to office, removal requires an affirmative vote equal to the vote necessary to elect the director. Moreover, according to the Texas Property Code Section 209.0058(a), votes cast by members must be in writing if it is cast for the proposed removal of a board member.

In Section C-3 of the Restrictive Covenants, Reservations, and Provisions for Assessments of Camp-Branch Acres Subdivision, the language dictates:

“an election will be held to elect five (5) directors of said Association, who must be lot owners in said Subdivision, and who shall annually elect a Chairman from their number who shall vote only in cases of ties. Similar elections shall be held each year thereafter. These offices shall thenceforth constitute the governing body of said Association.”

The document gives further stipulations in Section C-6:

“At each election, the owner of each lot shall be entitled to one vote; combined lots are to be treated as one lot. Votes may be cast in person or by the holders of properly executed written proxies.”

These provisions were subsequently amended and C-3 was replaced to show five directors and one secretary. Each director and secretary given a term limit of 2 years, with an additional 2 years in a re-election before requiring a one year break before any re-eligibility. Section C-6 was also adjusted adding certain requirements for a membership vote to be valid.

Unless this document defines and gives information as to the process and procedure of the removal of members/directors, then as above Texas law dictates, the removal of such members/directors shall be handled in accordance and in the same manner with how the members/directors were initially elected.

In conclusion, based on the information provided to me by the residents along with the documents provided to me (code of conducts, restrictive covenants and subsequent amendments), there is no language giving any director/chairman/board member the power to force a resignation of any elected member/director. There is also no language in the restrictive covenant that dictates any elected member shall be automatically removed for any reason.

If a board member is to be removed, then the Association shall go through the same process that the board member was elected. This includes with or without cause.

Second, the residents wanted clarification on proxy rights for residents. Under the amended June 7, 2010 Section C-6, the sentence, “Votes may be cast in person or by the holders of the properly executed written proxies” was removed.

Texas law states that property owners "must be allowed to vote by absentee ballot or proxy." Unless otherwise stated in the governing documents, the association does not have to provide

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more than one voting method. An owner must be allowed to vote by absentee ballot or proxy. This law is in Section 209.00592(a-1) of the Property Code. A vote cast in person supersedes an absentee ballot.

If the language of the action voted on is changed during the meeting, the absentee ballot will not be counted for that section.

Absentee ballots must contain specific information, including:

each proposed action and the opportunity to vote for or against each action;

instructions for how to submit a completed ballot; and

language required by Sect. 209.00592(c)(3).

Thus, even with the sentence being removed in the amended section in 2010, Texas Property Law dictates that absent any language, owners have voting rights per the above stated code.

Sincerely,

Dustin Chimento

Dustin Chimento
Attorney at Law