

E | K
EGGLESTON KOSNIK
A LAW FIRM | LLC

February 16, 2017

VIA EMAIL & U.S. MAIL

Loma Linda Subdivision HOA
Bill Trimarco, Sue Wells, Andrew Jones
Box 1139
Pagosa Springs, CO 81147
lomalindapagosa@gmail.com

Re: Loma Linda Board of Directors Election

Dear Everyone:

Our office is representing 16 Loma Linda owners (Mark Douglass, Don Haywood and numerous others) regarding various Association matters, including reviewing the procedures for the current election of Board Members. You may already be addressing some of our concerns, as there is a rumor to the effect that the Association recognizes the process is flawed, and will be starting the voting process over. I would appreciate your confirmation that such is the case, and offer some guidance below as to the how the process can be properly run.

The Association needs to follow its governing documents and any applicable statutes in conducting the election. **A strictly mail-in election is not permitted.** The HOA Bylaws require that:

1. Elections must be handled at a meeting (Art. IV, Section 2).
2. Special Meetings are permitted (Art. III, Section 2).
3. Notice of the Meeting must be provided to Owners at least 15 days in advance (Article III, Section 3).
4. Voting by person or proxy at the meeting is required (Article III, Sections 4 and 5).
5. Owners may cast their ballots in person or by proxy (Article V, Section 2).
6. A quorum must be present (Article II, Section 4).
7. The Bylaws require the provision of a secret ballot (Article V, Section 2), but the ballot still needs to be cast by the owner or their proxy.

In addition to mailing the ballot envelopes as the Bylaws require, I would highly encourage you to email the ballots as well to insure receipt. That owner, or their proxy at the meeting, can cast the ballot. Regardless, an owner is NOT required to keep its ballot secret for it to be a valid ballot. I am happy to provide additional input re: creating an appropriate ballot/proxy form(s).

There is a second issue that I need to bring to the Association's attention. Having reviewed the various meeting notices and minutes of the Association, it is clear that the Bylaws were not followed when Bill Trimarco purported to join the Board just over a year ago. Mr. Trimarco, and anyone desiring to run against him, must be placed on the same ballot so that the Association

Main Office: 556 Main Avenue, Durango, Colorado 81301
Pagosa Springs Office: 475 Lewis Street, Unit 101, Pagosa Springs, CO 81147
Phone: 970-403-1580 Website: www.e-klaw.com

Board is properly reconstituted. Please note:

- There was a Special Board Meeting noticed and conducted on January 11, 2016. This was a BOARD meeting, not an owners meeting. **See Notice of Special Board Meeting for January 11, 2016.**
- No 15-day notice of a Special OWNERS meeting was provided to the members; therefore no owners meeting could have possibly occurred on January 11th.
- Based on the Minutes of January 11, 2016 Board meeting, regardless, no quorum of owners was present and no owner vote could have been properly conducted.
- None of the procedures set forth above for a proper Board election were followed. A vote by acclamation, without a secret ballot, is not permitted by the Bylaws.
- At most the January 11 Board meeting can be construed as the appointment of Mr. Trimarco to the Board. Indeed, the approved minutes state that “The motion carried **by vote of the board.**”
- In addition, the Trimarco appointment could only have been for one of the vacant board seats, not for the then sole member’s 3 year term slot.
- Assuming Mr. Trimarco was ever properly appointed, the Bylaws require that he stand for election at the next annual meeting (December 2016), which process was not followed. Article IV Section 3 states: “The appointed member shall serve until the next annual election.” Put simply, Mr. Trimarco’s name has never appeared on a ballot for the Owners to elect.

Given the above and that the Association will be going to the trouble of holding a proper election, all three board seats must be included on the ballot. If that does not occur, the new Board’s first order of business is likely to be the validity of Mr. Trimarco’s seat, as opposed to the important business of the Association.

I look forward to hearing from you, and please let me know if I can clarify any of the above or provide any further information.

Very Truly Yours,



Duke Eggleston
Eggleston Kosnik LLC
deggleston@e-klaw.com