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December 22, 2015

**VIA E-MAIL AND CONFIRMED VIA U.S. MAIL**

Brant Dveirin, Esq.  
Eric Castro, Esq.  
[Brant.Dveirin@LewisBrisbois.com](mailto:Brant.Dveirin@LewisBrisbois.com)  
[Eric.Castro@LewisBrisbois.com](mailto:Eric.Castro@LewisBrisbois.com)

LEWIS BRISBOIS BISGAARD & SMITH  
633 W. 5th St., Ste. 4000  
Los Angeles, CA 90071

Sidney Croft, Esq.  
[SFCFroftLaw@aol.com](mailto:SFCFroftLaw@aol.com)  
314 Tejon Place  
Palos Verdes Estates, CA 90274

RE: PV Homes Election and Ballot

Dear Messrs. Dveirin, Castro and Croft:

As you know, this office is counsel for Residents for Open Board Elections (“ROBE.”) We are in receipt of your email of December 14, 2015 concerning the ballots for the January 2016 election of the Board of Directors for the Palos Verdes Homes Association (the “Association.”) The Association’s procedures for the election, are, respectfully, a muddled mess. The Association’s website does not provide any notices regarding when elections are held, what rules govern the elections and how nominations are to be handled.

In January 2015 and again following the recent selection of a replacement of Gabriella Holt, Ried Schott went to the Association’s office to inquire about the procedure to be placed on the ballot for the election. He was told by the Association’s staff that the Board decides the nominees and there was no procedure in place to place Mr. Schott on the ballot.

Moreover, for decades, the Association has informed its members that the Association is governed by the Davis Stirling Act. By way of example only, for years, the Association has forced its members pursuant to Association Resolution No. 172 to endure a hybrid mediation/arbitration procedure for resolving view obstruction/tree disputes pursuant to Civil Code, section 5975. For years, the Association has, as part of its past election ballots, made disclosures that any tort actions over common areas may only be brought against the Association pursuant to



Civil Code, section 1365.9<sup>1</sup>. Those two laws apply to common interest developments governed by the Davis Stirling Act. In recent litigation over the Panorama Parkland, the Association, through your office, has represented to the Los Angeles Superior Court that the Association is protected by the Davis Stirling Act.<sup>2</sup> In October, this Office requested that the Association proceed with the election under the procedures guaranteed by the Davis Stirling Act.

It, therefore, came as some surprise, on November 6, 2015, that the Association, through your office, informed us that the Association has no common area and, therefore, that it is not bound by the election procedures in the Davis Stirling Act. Instead, for the first time, on November 6, 2015, the Association took the position that its elections are governed by the law applicable to non profit mutual benefit corporations. On November 16, 2015, the Association provided this office a list of Association members.

The timing of the Association's disclosures made it difficult to obtain the signatures necessary to nominate candidates to the Board within the 50 day window you are now citing. After the Association selected Carol Swets to fill Gabriella Holt's vacant seat, at least one of the candidates interviewed for that position asked if his name could be included on the upcoming ballot; Mr. Schott was told that was not possible, and the Association made no reference that he could be added if he gathered 100 signatures. Moreover, we have not been supplied with any actual resolutions passed by the Association indicating what window of time actually applies to the nomination process. The reference to the body of law governing mutual benefit corporations does not answer the question of what procedures that Association actually adopted, when they were adopted and what departures, if any, were taken from the Mutual Benefit Corporation law. Section 7522 merely states that corporation can adopt in their bylaws or articles a 50 day limitation on nominations; in the absence of some amendment to the Bylaws or Articles, there is no limitation.

By e-mail dated December 14, 2015, Mr. Castro invited ROBE to select among three alternatives to get ballots into members hands that include ROBE-backed candidates: 1) Pay \$12,000 for a PVHA mailing; 2) mail ballots itself; or 3) make nominations at the annual meeting. On December 18, 2015, ROBE accepted the second option.

It is in this context that the Association has now withheld its approval of the ROBE-prepared ballot. ROBE has not been dilatory. It has proactively sought information

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<sup>1</sup> The Association's annual ballot contains a reference to 1365.9 even though that section has been replaced by Civil Code, section 5805 since 2012.

<sup>2</sup> See for example, the May 28, 2015 hearing transcript in which Mr. Dveirin argued "... under the Davis-Stirling act and under corporate law principles, when the homeowners association litigates a case and when it settles a case, it binds not only Mr. Harbison, who's in the courtroom today, but all the other homeowners as a matter of law."



from the Association about how to participate in the election and the information coming from the Association has been, confusing, at best.

The Association has not indicated what changes it would make to the ROBE-prepared ballot. In your December 14 email, you asked that:

“..you may not use PVHA’s logo, nor refer to PVHA as endorsing your nominees. The information sent to the membership by you should not be confusing or misleading in any way, should clearly indicate the mailing is from you and not from PVHA, and should make clear that these are your additional nominees, who are not endorsed by PVHA.”

The version of the ballot that we sent to you on December 18<sup>th</sup> complied with these changes. Yet in your response on December 18<sup>th</sup>, you did not state what was missing or misleading.

Therefore, ROBE intends to proceed with the printing and mailing of its ballots. ROBE’s version of the ballot omits the Association’s logo and includes a prominent disclaimer regarding the origin of the document. We trust that the promised independent election inspector will not arbitrarily discard votes cast in the ROBE-prepared ballots.

A meeting with the Association’s counsel, this office and the inspector in advance of the election might be useful to discuss how ballots will be counted, how membership will be validated, how a quorum will be met and what impact a non-quorum would have on the ballots. Please advise of your willingness to facilitate such a meeting.

ROBE wishes to take this opportunity to remind the Association that corporate board elections are subject to judicial review. (Corp. Code, § 709, subd. (a).) We are hopeful that the election in January is held in a fair and transparent manner and that a lawsuit will be unnecessary.

Very truly yours,

Jeffrey Lewis