Kevin Michelson

From: Peter Thomas <peter@thomasgenshaft.com>
Sent: Saturday, July 28, 2012 9:04 AM
To: Kevin Michelson
Subject: RE: Shield O Terraces Homeowner's Association - Amended Declaration

Good morning Kevin,

Per your request, I have briefly reviewed the draft Amended Declaration, draft Design Guidelines, and draft Amended Rules and Regulations. I have not seen or reviewed the referenced Bylaws. Given my understanding limited scope of work that you wish me to conduct, I have restricted my consideration of these documents to their existing content and am providing no recommendations as to suggested additional content or covenants that I would otherwise advise an Association incorporate into their governing documents. I also have not provided any editorial revisions to spelling or grammar errors and so forth.

As to the basic question of whether these proposed amendments constitute "a legal set of documents," the answer is yes. These are legal and enforceable documents. I have previously advised that a number of additional covenants be incorporated which the Board has chosen not to include in this new set of documents, but that does not affect the "legality" of these documents. My primary concern runs more to the absence of certain covenants or the use of broad and undefined terms which necessarily leave a document open to subjective interpretation, potential abuses of discretion, and later dispute. I understand the Board does not wish to have the level of detail that I or any other attorney would typically recommend, so with these caveats, I have only the following comments regarding the content of these three drafts:

Design Guidelines:
Are these definitions consistent with the parallel definitions in the County Code? Are these requirements (such as setbacks, floor area calculations, etc) consistent with the County Code and any applicable Master Plan? If more or less restrictive, which governs?

Association Rules:

- Section 6: I question the enforceability of charging a 10% administration fee on the gross legal fees charged to an association, and I think you risk having that provision struck. If you want to set out a fee shifting provision as part of your Collection Policy (which I absolutely recommend), then you should include language that clearly shifts fees, costs and expenses associated with collection to the Member in Arrears. If you want to charge a separate Administration Fee, it should be a fixed or flat fee established by the Board that reasonably relates to the administrative costs incurred by the Board, or tie it to the amount in arrearage. The absence of lien rights and the establishment of priorities as between mortgagees and the Association could be problematic.

- Section 12: this section conflates the concept of mediation with the very different process of the Board hearing a dispute and then issuing a binding voting on it. If the Board is to help mediate disputes between owners, then that process should be described. In contrast, If the Board is going to act as an arbiter of disputes by adjudicating the outcome of a dispute, then that process should be described with care taken that the Board is not exposing itself to liability for abusing its discretion in a quasi-judicial capacity. Lastly, Section 12 would not provide an adequate mechanism for resolving disputes between an Owner and the Board. If an owner has a dispute with the Board or Association, the Board would presumably be conflicted from voting on a matter that would bind the complaining party.

Declaration:

- Section 5.2: business use of property is a common source of disputes, primarily due to the difficulty in defining what constitutes an impermissible business use. In other words, at what point does the intensity of use rise to

the level of a prohibited business use? We had an Association in one matter that was sued by a property owner who was using his property as a staging area for all of his landscaping equipment, trailers, and vehicles and claimed it was not a business use because the business was actually conducted off site. Another recent dispute involved the sporadic use of a barn for veterinarian purposes. Home occupations are another fertile ground for disputes.

- Section 5.3: I would be careful about giving a blanket approval of any and all lot line adjustments.

- Section 5.21: I do not know what water rights, if any, may be held by either the Association or any Owners, but obviously the Board would not have the legal right to diminish or divert senior rights or calls that an Owner may be entitled to.

I'll be available next week if you wish to discuss in more detail. Regards, Peter

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From: Kevin Michelson [mailto:kevin@peakvisions.net]
Sent: Wednesday, July 11, 2012 2:10 PM
To: Peter W. Thomas, Esq.
Cc: Dave Nixa (dnixa@skybeam.com); Eric Hansen (ek12hansen@earthlink.net); Joy Hartman (joysan@sopris.net); Kevin Michelson; Margaret Walker (mf.walker@comcast.net); Mark Regan (mregan@sopris.net); Michael Vernon (mvernon@sopris.net)
Subject: Shield O Terraces Homeowner's Association - Amended Declaration

Peter,

Thank you for all you help regarding our amended covenants. We are interested in an hour of your time to review the legality of the most recent proposed amended declaration.

After a few meetings, we decided to take an alternate route to amending our covenants. Instead of begininng from a completely different template, we elected to start with our existing covenants and modify them as necessary to create a document that reflects current law and the wishes of the membership.

We kept the basic structure of our existing covenants aside from removing the design guidelines into a separate document, and made changes as we saw fit.

Will you be able to simply review the legality of the document to ensure that it would serve as a legal set of documents?

Contact me with any questions.

Regards,

Kevin

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