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August 5, 2019

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Board of Directors
Whispering Lake Umbrella Association

Re: Responses to various legal questions

Dear Board of Directors:

Please accept this correspondence as a response to the various issues recently submitted to our office for inquiry.

The first question you asked is whether it is permissible for the board to install video recording devices on the common area. In Illinois, individuals do not have an expectation of privacy when they are on the common area of a community association. Accordingly, there is no prohibition on the association placing video surveillance on these areas. Of course, the same is not true of the audio recording. Therefore, so long as the camera is not recording audio, it is permissible to utilize the cameras.

The next issue was the effectiveness of a vote recently taken to ban the consumption of alcohol/smoking within the swimming pool. There are nine board members seven of which were present at the board meeting where alcohol and smoking were prohibited. Four voted in favor of prohibiting alcohol and smoking within the pool and three abstained. Apparently someone has objected to the effectiveness of the vote on the grounds that a quorum of the directors did not vote to approve the resolution.

This issue is resolved by examining the Illinois Not-For-Profit Corporation Act Section 108.15 the pertinent provisions provide as follows:

“(a) Unless otherwise provided in the articles of incorporation or the bylaws, a majority of the directors then in office shall constitute a quorum; provided that in no event shall a quorum consist of less than one third of the directors then in office.”

The quorum of the Board of Directors at the Whispering Lake Umbrella Association is five members. As seven members were present, a quorum existed at that meeting.

The Illinois Not-For-Profit Corporation Act further provides:

“(b) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required in the articles of incorporation or the bylaws.”

The majority of the Directors present at the meeting was four. As four directors voted in favor of the resolution, the resolution was properly adopted.

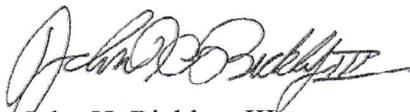
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The final issue pertains to someone's suggestion that drinking might be permitted if the individuals desiring to consume alcohol within the pool area executed a waiver or indemnification agreement. The problem with this suggestion is, with respect to the waiver, is that the waiver would have to be executed not by the individual drinking and presumably causing injury or damage, but by the individual who is injured as a result of this conduct. It would be impractical to attempt to collect waivers from everyone who might possibly be injured as a result of intoxicated individuals in the pool area. With regards to the indemnification issue, obviously someone's financial ability to indemnify the injured party or the Association is limited by their financial ability to comply with this requirement. In the unlikely event that an individual is seriously injured, the intoxicated homeowner who caused the injury may not have sufficient assets to comply with their obligation to indemnify. An indemnification agreement is a contractual obligation which is typically not covered under the individual's homeowners insurance. Accordingly it is only as good as the assets of the individual who causes the damage.

Trusting the above is responsive to your inquiry, I remain,

Very truly yours,



John H. Bickley, III