



FARR, FARR, EMERICH, HACKETT AND CARR, P.A. • 1924

Earl D. Farr (1900-1988)
Earl Drayton Farr, Jr. (1926-2010)

99 Nesbit Street, Punta Gorda, FL 33950 • 941.639.1158 phone • 941.639.0028 fax
33 S. Indiana Ave., Englewood, FL 34223 • 941.460.9334 phone • 941.460.9443 fax
152 Nokomis Ave. N., Venice, FL 34285 • 941.484.1996 • f: 941.484.9917

Guy S. Emerich, LL.M.*	Roger H. Miller III**	George T. Williamson
Jack O. Hackett II**	Dorothy L. Korszen	Fletcher H. Rush, LL.M.
Charles T. Boyle‡	Will W. Sunter	Brett H. Sifrit, CPA
Darol H. M. Carr	Forrest J. Bass	Sara Potts
David A. Holmes†	Natalie C. Lashway	Ann C. Thompson, Of Counsel

* FL Bar Board Certified in Wills, Trusts & Estates
 ** FL Bar Board Certified in Real Estate
 ‡ FL Bar Board Certified in Marital & Family Law and Certified Family Law Mediator
 † Certified Circuit Court Mediator

May 15, 2014

Mr. Jay Carlson
Carlson and Soforth
P.O. Box 511232
Punta Gorda, FL 33951-1232

Re: Section 23 Property Owners' Association Articles of Incorporation and Bylaws

Dear Mr. Carlson:

You retained the Farr Law Firm to review, analyze, and provide our opinion regarding the Articles of Incorporation and the Bylaws of Section 23 Property Owners' Association.

Given the number of documents included in this review, we have summarized our review, research, and conclusions in the form of two tables on the following pages. The first table describes and provides analysis of Section 23 Property Owners' Association Bylaws and amendments, and the second table describes and provides analysis of Section 23 Property Owners' Association Articles of Incorporation and amendments.

Finally, we have included a more in-depth analysis of the May 26, 1998 Amendment to the Bylaws, which is invalid and requires a explanation beyond that which can be provided within the table.

If you have any questions or regard any clarification on the following, please do not hesitate to contact me.

Section 23 Property Owners' Association Articles of Incorporation and Amendments

<u>Date</u>	<u>Document</u>	<u>Status</u>	<u>Reason</u>
1. 05/22/1984	Articles of Incorporation	Valid	Original articles
2. 05/06/1991	Amendment to Articles	Valid	Amendment to original articles
3. 05/01/1992	Amendment to Articles	Valid	Amendment to original articles
4. 12/02/1997	Amended and Restated Articles	<i>Valid and applicable</i> except for that portion of Article IV(b) prohibiting proxy voting	Court order
5. 11/29/1999	Amendment to Articles	<i>Valid and applicable</i>	States that adopted by unanimous consent of Board of Directors and approved by Association membership in accordance with required procedure in Art. IX of Articles.
6. 03/19/2002	Restated Articles	Void	Not adopted according to required procedure in Art. IX of 1997 Articles.
7. 04/29/2002	Record Notice of Restated Articles and 1992 Bylaws Bk 2033 Pg 1120	Void	Not adopted according to required procedure in Art. IX of 1997 Articles.

Section 23 Property Owners' Association Bylaws and Amendments

	<u>Date</u>	<u>Document</u>	<u>Status</u>	<u>O.R. Bk/Pg</u>	<u>Reason</u>
1.	08/14/1992	Substantial Rewording of Bylaws	<i>Valid and applicable</i>	None	Original bylaws not invalidated by court order
2.	12/09/1997	Amended and Restated Bylaws	Void	1576/1258	Court order
3.	02/25/1998	Amendment to Bylaws	Void	1592/ 658	Court order
4.	05/26/1998	Amendment to Bylaws	Void	1615/1171	<i>See explanation below</i>
5.	07/19/1999	Amendment to Bylaws	Void	1718/2139	Court order
6.	07/19/1999	Amendment to Bylaws	Void	1718/2140	Court order
7.	11/05/1999	Amendment to Amended and Restated Bylaws	Void	1745/2098	Court order
8.	04/29/2002	Record Notice of Restated Articles and 1992 Bylaws	Void	2033/1120	Not adopted according to required procedure in Section 8.B. of the 1992 Bylaws

May 26, 1998 Amendment to Bylaws

The May 26, 1998 Amendment to Bylaws ("1998 Amendment") is void for two reasons. Any amendment to the 1992 Substantial Rewording of the Bylaws ("1992 Bylaws") must be adopted according to the procedure in Section 8.B. of the 1992 Bylaws. In 1998, Florida Statutes Chapter 617 stated that "[u]nless otherwise provided in the governing documents, or required by law . . . any governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association." Fla. Stat. § 617.306(1)(b) (1999). The term "governing

documents” includes the “articles of incorporation and bylaws of the homeowners’ association, and any duly adopted amendments thereto.” *Id.* at § 617.301(6) (1998). In this situation, the procedure for amending the bylaws is “otherwise provided in the governing documents” because Section 8.B. of the 1992 Bylaws prescribes a procedure for amending the bylaws.

The 1992 Bylaws require that an amendment to the bylaws must be by: (i) the affirmative vote of not less than sixty percent of the Board of Directors and not less than sixty percent of the Association membership; (ii) the affirmative vote of not less than 70% of the Association membership; or (iii) by the affirmative vote of all of the Directors until the first election of Directors. Assuming that the 1998 Amendment was adopted with unanimous consent of the Board of Directors, as stated in the amendment, it is not valid unless it was also: (i) adopted before the first election of Directors; or (ii) adopted by the affirmative vote of not less than sixty percent of the Association membership.

Furthermore, the 1998 Amendment is void because it purports to amend the 1997 Amended and Restated Bylaws, which cannot be amended because they were declared *void ab initio* by the 2001 court order.

We trust that this is fully responsive to your inquiry. If you require any additional review or analysis, please advise.

Regards,


Darol H. W. Carr
For the Firm

DHMC/sp
009896.0001.12