

Recently one of our resident's hand-delivered a document to each house that included a testimonial from Bill Devers, a commercial real estate broker with Gundaker, and a letter with statements regarding the proposed amendments. This document contained inaccurate statements. The enclosed letter here is from Carrie Timko, the lawyer that represents the Country Creek Homeowners Association, and sets the record straight about these inaccurate statements. If, after reading this letter, you would like a new ballot to update your vote, please contact the trustees through our new website on the "contact" page. For those of you who have not heard, we now have a website for our subdivision: countrycreekballwin.org. Thank you for taking the time to read the enclosed information.

The Country Creek Trustees



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Re: Country Creek Homeowners Association – Vote on Proposed Amendment

Dear Homeowner,

This office represents Country Creek Homeowners Association (“Association”), and I am the attorney who assisted the Trustees with drafting the proposed amendment to the “2006 Revised Indenture of Trust and Restrictions for Country Creek Subdivision,” (“Indenture”) which you have previously received along with a ballot asking for your vote (“Proposed Amendment”). It has come to our attention that all owners have also received a letter from Bill Devers, a commercial real estate broker with Gundaker, and another anonymous letter outlining various opinions and statements regarding the Proposed Amendments. Due to the level of inaccuracy in these letters, I am writing to you directly to further explain why the Proposed Amendment was drafted as it was.

Initially, I do not represent any individual owner, not even those owners who serve as Trustees. I represent your Association, and therefore my goal is to serve the best interest of the Association as a whole. In doing so, I drafted the Proposed Amendments to ensure that everyone is treated equally, and that those who choose not to abide by the rules of the community aren’t given special privileges that other owners do not have, and do not end up costing the owners more money when they refuse to abide by the rules.

I have represented community associations almost exclusively for 20 years. During that time, I have been an active member of Community Associations Institute (CAI) and have served on CAI’s regional educational committees teaching managers, board members, and owners the best practices in our industry. I proudly sign my name to this letter and stand by the amendments I drafted for your community. I question whether any attorney opposing the Proposed Amendment has any experience in this area of law, and how a commercial real estate broker can compare his experience to that of an attorney who has both reviewed and drafted hundreds, if not thousands, of restrictions for communities just like yours and has dedicated a career to serving community associations with regard to a wide-range of issues.

- **Article I – Trustee Representation**

The purpose of the proposed changes to Article I of the Indenture is to ensure the Board can operate with three Trustees even when there are not volunteers to serve from each plat. As you will note, the proposed changes state that:

“A reasonable effort should be made to have a Trustee elected from each of the three (3) plats of the Subdivision; however, if such representation is not reasonably available, then Trustees may be elected from any plat.”

It is not easy to find volunteers who are willing to put the time into being a Trustee. All owners are encouraged to do their part and serve as a Trustee, but in the event no one from a plat is willing to volunteer, there should be three Trustees to operate the Association fairly and effectively (noting that the Nonprofit Corporations Act, which governs associations that are incorporated, requires three trustees). This is in no way intended to exclude representation from a plat....on the contrary – it is intended to encourage participation, but to protect the Association if participation is not forthcoming.

- **Article I – Violations**

One of the allegations made is that the Trustees can discriminate against a person by not allowing someone who is in violation of the Indenture serve as a Trustee. One of the obligations of the Trustees is to enforce the indenture – **this is already in your Indenture at Article III, Section 5. IT IS NOT NEW.** How can a person who does not comply with the Indenture enforce it against other owners? This simply does not make sense. If someone is to serve as a Trustee, it should be a given that they are following the restrictions of the community themselves.

- **Article III, Section 13 – Enforcement**

As stated above, **it is already an obligation of the trustees to enforce the Indenture.** In this regard, the Proposed Amendment provides the Trustees with no additional power than it already has. What it does do is reduce the need for expensive litigation to enforce against violations. Instead, it allows the Trustees, upon a unanimous vote, a procedure to meet with an owner to try to rectify the violation before anything else is done. If the owner continues to refuse to follow the restrictions, (which are already clearly set forth in the Indenture and are already in effect), then the Board can attempt to convince the owner to follow the restrictions through fines rather than spending your assessment money to file an expensive lawsuit. If this firm wanted to encourage more legal fees, this would not be the way to do it.

This amendment also includes a process to protect the owner’s due process rights and complies with the procedures in the Nonprofit Corporation Act, which would apply if the Association was incorporated. The legislature has deemed this process fair, and it is certainly more efficient and cost-effective for both the Association and the owner than a lawsuit. If an owner feels the fines are unwarranted or the violation is not remedied, the matter may still end up in court, but at least the new procedure allows for a resolution that does not involve legal fees.

- **Article IV – Insurance**

Directors and Officers insurance provides protection to the Trustees if they were to be sued for something done or not done in their role as Trustees. Initially, the Association already holds Directors and Officers insurance, so there will be no additional cost to the owners. This is standard in the community association industry and required by some states. Additionally, this insurance protects the owners. If a Trustee is sued in his/her capacity as a Trustee, the Association would be responsible for the cost of legal fees. This means the owners would have to pay for it through an assessment. This insurance is intended to protect the owners as much as the trustees.

- **Nuisance**

As a member of the Association, it is fair to expect peace and enjoyment of your property. No person should suffer from frequent loud parties, noxious odors, or blaring music. A nuisance is defined legally as: “A condition, activity, or situation (such as a loud noise or foul odor) that interferes with the use

or enjoyment of property.” (Black's Law Dictionary 1233 (10th ed. 2014).) This is a provision included in almost every set of restrictions I have ever reviewed, and it is easy to see why.

- **Amendments**

Like anything, the passage of time changes things. New technologies give rise to issues we may have never comprehended. Who would have expected the changes necessitated by the COVID-19 pandemic? Indentures are no exception. As the community changes, owners change, technology changes, and laws change, so does the need for the Indenture to change. The #1 reason associations can't change their indentures is not because people vote “no,” but because people do not care enough to vote at all. If an amendment is presented to the community, it is easy enough to have 1/3 of the owners vote “no” if the amendment is not appropriate. However, the community should not suffer because a large majority of people do not care enough to cast a vote at all.

- **Conclusion**

It appears that the letters sent in opposition to the Proposed Amendment were sent by owners who have a personal agenda. Owners are free to vote however they want on the Proposed Amendment; however, misinformation and untruths should not be ignored. Please review the Proposed Amendment for yourselves and cast your vote in accordance with your own convictions.

Very truly yours,

Carrie M. Timko