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MEMORANDUM

TO: Board of Directors & Owners at Westlake Village Civic Association, Inc.
FROM: Jessica L. Knox, Esq.
DATE: June 25, 2018
RE: Proposed amendment to the Association's governing documents; Meeting procedure

Dear Owners:

This firm serves as legal counsel to your homeowners association, Westlake Village.

It has been brought to the Board's attention that some owners are concerned about the Board's actions at the recent membership meeting. At that meeting, the Board presented the membership with a proposed amendment to the Association's Declaration of Covenants, Conditions and Restrictions.

However, as is often the case, not enough members submitted their proxies for the vote to pass. "Voter apathy" is a very common problem when community associations are attempting to conduct business. Voter apathy occurs when members do not cast a vote regarding a certain issue. This artificially stifles change in the community.

In the United States, when our elections are held, the decisions are made by those who choose to vote – not by those who choose to stay home. This is a good thing, since so many voters do not cast a vote. In the last two U.S. presidential elections (which usually brings the highest turnout), an estimated 58% of voters cast a vote. In the local elections held on March 13, 2018, in unincorporated Pinellas County, only an estimated 20% of voters cast a ballot. This low turnout did not mean that the elections were cancelled; the votes that were cast were counted and those voters made the decisions. Those who stayed home did not get a voice, by their own choosing.

However, the governing documents of community associations are usually drafted to require a high number of votes in favor of a change (amendment) for the proposal to pass. This has the effect of giving a "no" vote to those who did not cast any vote. This is not usually the intention of those to choose not to vote – just like those who choose not to vote in a local election expect that doing so would be a vote for one of the particular candidates.

Florida homeowners association law specifically addresses this by allowing meetings to be extended to collect more votes. This is noted in Florida Statutes Section 720.306(7), which states, in relevant part, "adjournment of an annual or special meeting to a different date, time, or place must be announced at that meeting before an adjournment is taken, or notice must be given of the new date, time, or place pursuant to s. 720.303(2). Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting."

The proxy form created by the state (and used by Westlake Village) also notifies voting owners that their proxies may be valid for 90 days from the date of the of the original meeting for which it was given.

We have been notified that some owners believe that the extension taken in this case is believed to be a deceptive action by the Board. It is not. This action is so common among homeowners associations that the statute and state proxy form specifically state that it is possible.

There also appears to be some misunderstanding regarding semantics. Certain owners construe different meanings to the terms "adjourn to a later date" and "recess to a later date" as used at an association meeting. However, the meanings of these two terms are legally interchangeable. Any commonly used difference is legally irrelevant for the purpose of the continuance of an association meeting. It is not underhanded or deceitful to use one term versus the other. I have attended many meetings where the meeting was adjourned or recessed to a later date to continue to collect proxies. Sometimes the Board uses the term "adjourn" and sometimes they use the term "recess." It is just not legally relevant. The use of Wikipedia and other webpage definitions are not legal citations and would not serve to successfully challenge the Board's actions.

Certain owners may have believed that the vote was going to be final at the meeting. However, Boards cannot know how many votes are going to be cast until they see how many people attend in person. The Westlake Board's meeting continuance is common and not invalidated by semantics or certain owners' expectations that the final decision would be made at the initial meeting.

As a side note, we often see the thought among non-lawyers that there are many loopholes or very strict readings of the law where actions can be "thrown out" on a "technicality." Really, instances where that can happen are very rare. In the Association context, where Board members are volunteers, it is especially uncommon. I do not believe there is a legal difference between the use of the terms "recess" and "adjourn to a later date" here. However, even if there was a difference, it would be legally insignificant and would not amount to an invalidation of the Westlake Village Board's actions.