

Reply to: 2566 Overland Ave., Suite 730
Los Angeles, CA 90064
(800) 464-2817

November 2, 2017

Via Email Only (crystalfallsranch@att.com)

Owners
Crystal Falls Association
21725 Crystal Falls Dr.
Sonora, CA 95370

Attn: Rich Painter

RE: Crystal Falls Association
- Accepting Nominations at the October 19, 2017 Meeting

Dear Owners,

Allow me to introduce myself. My name is Aaron Schwarzkopf and I am an attorney with Adams Stirling PLC who serves as general counsel for the Crystal Falls Association (“Association”). Earlier this week, the Board informed me that there is a bit of a controversy involving the upcoming election, specifically related to the decision to accept certain nominations and asked me to prepare a response discussing the legality of that decision. In short, not only are there no legal issues with the decision to accept nominations submitted after 6pm on October 19, 2017, but the Board made the right decision to do so.

As I understand it, this controversy is related to the Association’s October 19, 2017 meeting held at 6pm where the Board intended on announcing the nominations for the upcoming director election. In preparation of that, the Board asked in its fourth quarter newsletter for all eligible owners who wished to run for the three open director seats to submit a “statement of interest (200 words or less) to the office no later than October 19, 2017 at 6pm.” At approximately 7pm during the portion of the meeting where the candidates for the upcoming election would be announced, two owners requested they be considered as candidates as well. When this occurred, several other owners protested that because they submitted their names after 6pm, they should not be eligible to run.

While I can appreciate the argument that the newsletter set a deadline of 6pm and therefore any nominations submitted afterwards should not be considered, this is not in fact the case. This is because the newsletter did not establish a deadline for nominating oneself to run for one of the open Board seats. Rather, all it did was request that any eligible owner who wanted to be a candidate in the election *submit a statement of interest* by 6pm. While the two owners in question did not submit a statement of interest by 6pm, that has no bearing on their candidacy because the Association’s Bylaws do not require candidates to submit such a statement to be

eligible to run for the Board.

Even if the newsletter did say that 6pm was the deadline for people to submit their intention to run for the Board, it would still not be legally enforceable. Under Civil Code §5105(a)(4), all qualifications for running for the Board must be included in the Association's Election Rules. According to Section II(A) of the Association's Election Rules, a person need only be an "adult regular members who are in good standing of the Association on a date at least ten (10) days prior to the printing of the ballot" in order to be eligible to run for a seat on the Board. Civil Code §4355(a)(7) also states that any rule governing elections must be formally adopted by the Board. As the Board has not adopted any deadlines with respect to elections, such a deadline can legally only be construed as a guideline, not a binding requirement. As a result, to enforce it as binding would be legally improper and could open the Association up to liability.

From a more practical standpoint, it simply makes sense for the Board to allow these owners to run for the Board. First, accepting these nominations harms nobody. In fact, it is in everybody's best interest that more rather than less people run for the Board because it provides more choices and ensures the maximum number of voices are being heard. Second, lack of participation is a universal problem for homeowners associations, particularly when it comes to finding people willing to serve on the Board. With that in mind, Associations should do whatever they legally can to allow as many people who want to run to be included on the ballot as possible. Second, imposing a hard, arbitrary deadline like the one in question here imposes unnecessary inflexibility on the Association, which is exactly what the Davis-Stirling Act was designed to eliminate.

I hope this letter adequately addresses the concerns raised on this issue and explains why it is in the Association's best interest to allow these two owners to run for the open board seats. Please understand that while the Board asked me to prepare this letter to ensure the owners had all of the facts on this issue, it is intended as a one-time courtesy to help control legal costs. For that reason, I am unfortunately not able to respond to any owners who reach out to me about this or any other issue. As a result, please feel free to reach out to the Association's President Rich Painter via email at crystalfallsranch@att.com with any questions you might have.

Very truly yours,



Aaron T. Schwarzkopf, Esq.
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