
MEMORANDUM



CONFIDENTIAL

ATTORNEY/CLIENT PRIVILEGED COMMUNICATION

TO: THE RANCHES AT PINEHURST PROPERTY OWNERS’ ASSOCIATION

DATE: FEBRUARY 27, 2023

RE: MEMBER PROXIES

I. BACKGROUND

The Ranches at Pinehurst Property Owners’ Association (the “Association”) is the property owners association for The Ranches at Pinehurst, Sections 1 and 2, and Ranchos Los Encinos, a subdivision in Montgomery County, Texas (the “Subdivision”). The Board of Directors (the “Board”) of the Association has inquired as to certain matters of interpretation concerning the Association’s governing documents, namely, that certain Declaration of Covenants, Conditions & Restrictions for the Ranches at Pinehurst, recorded under Montgomery County Clerk’s File No. 9153386 of the Real Property Records of Montgomery County, Texas, as amended and supplemented by that certain First Amendment to Declaration of Covenants, Conditions & Restrictions and Supplemental Declaration of Conditions and Restrictions for the Ranches at Pinehurst, recorded under Montgomery County Clerk’s File No. 9661252 of the Real Property Records of Montgomery County, Texas (collectively, the “Declaration”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Declaration and/or the Associations Bylaws (as amended).

The Strong Firm P.C. has prepared this memorandum of its findings with regard to the above-referenced inquiry based on its past knowledge and experience, legal research, and investigation of publicly available information. The information provided in this memorandum is prepared for the exclusive use of the Association, and no party other than the Association is entitled to rely on this memorandum. The contents of this memorandum are confidential and may not be

used by or disclosed to any person or entity, in whole or in part, without the express prior written consent of The Strong Firm P.C.

II. SUMMARY OF FINDINGS

A. What are the limits of a Member proxy?

Article I, Sections 6 and 9 of the Bylaws generally reference the right of Members to issue proxies in order to appear at a meeting, constitute a quorum, and cast a vote of such Member. Said Article I, Sections 9 then specifically dictates that (i) “[n]o proxy shall be valid after eleven (11) months from the date of its execution unless specifically provided in the proxy;” and (ii) “[a]ll proxies must be filed with the Secretary of the Association before the appointed time of such meeting.”

Section 209.00592 of the Texas Property Code then affirms such provisions of the Bylaws in providing that “the voting rights of an owner may be cast or given... by proxy,” and that “[a]n owner must be allowed to vote by absentee ballot or proxy.”

Finally, Sections 22.159 and 22.160 of the Texas Business Organizations Code, which speak to State corporate law governing nonprofit corporations (which the Association is), provides that Members may appear at a meeting, constitute a quorum, and cast a vote of such Member by proxy, so long as such proxy is “executed in writing by the [M]ember or the [M]ember’s attorney-in-fact.” Such provisions of the Code go on to say that “[u]nless otherwise provided by the proxy, a proxy is revocable and expires 11 months after the date of its execution,” and “[a] proxy may not be irrevocable for longer than 11 months.” For the avoidance of doubt, we also note that the Code speaks separately to director proxies, which have separate statutory terms applicable to them.

As to the scope of a proxy, other than addressing appearance, quorum establishment, and voting, both State corporate and property law and the Association’s governing documents are silent on proxy scope. In fact, it is well established corporate practice that a proxy may either be limited or broad, with discretion falling to the proxy grantor. Therefore, both as a matter of applicable law and in accordance with the Bylaws, it is clear that the Members may issue proxies as they deem fit, with the scope and duration (and revocability) of such proxy being up to the granting Member, and without any required form or content, other than being an executed writing. As such, duly executed and delivered proxies should be interpreted by the Association based on the express terms of such proxy.

We hope the above summary adequately addresses the questions presented. Please direct any additional questions or concerns regarding this matter to the undersigned.

THE STRONG FIRM P.C.



BRIAN ALBERT