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December 11, 2023

Sent Via Regular And Email

Lake Cushman Maintenance Company
c/o Jeffery Greb, Registered Agent
3740 N. Lake Cushman Road
Hoodsport, WA 98548-4548

And

Board of Directors & Manager
Lake Cushman Maintenance Company
Attention: Jeffery Greb, President
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Dear Mr. Greb. Other Board Members and Ms. Lower:

I represent Betty Widing, a resident in your community and member of the Lake Cushman Maintenance Company (“HOA”). On behalf of Ms. Widing I am writing to call to your attention that fact that your pending, proposed budget violates your own HOA Bylaws and Articles certainly is not justified or validated by the provisions of RCW 64.90.080 and 64.90.525 upon which you have reportedly relied.

**Your Governing Documents Require A Membership Vote For
This Large Assessment Increase**

As you are doubtless aware, the HOA’s formal, legally binding Bylaws and Articles of Incorporation expressly require a majority vote of the membership to adopt an annual assessment increase that exceeds 5% of the prior year’s assessment amount.

Bylaws §VIII(2):

Regular annual maintenance fee charges shall be limited to an increase equal to not more than 5% without a vote of the members.

Articles of Incorporation §II(14):

14. To fix, establish, levy, and collect annually such charges and/or assessments as may be necessary, in the judgment of the board of trustees to carry out any or all of the purposes for which this corporation is formed, but not in excess of the maximum from time to time established by the Bylaws.

Thus, the HOA Board and its individual members are prohibited from proposing and the HOA is prohibited from adopting an annual budget providing for assessments in excess of 105% of the prior year's assessment amount with an affirmative vote of the entire membership – unless the 2018 Washington Uniform Common Interest Ownership Act (“WUCIOA”) authorizes the Board to ignore those referenced provisions of community's governing documents that expressly restrict increases.

The WUCIOA does not.

The WUCIOA Provisions

While the majority of the 2018 WUCIOA Act does not apply to pre-2018 communities like the Lake Cushman community, a few of its provisions do including these provisions:

RCW 64.90.525 (Budgets-Assessments-Special Assessments):

(1)(a) Within thirty days after adoption of any proposed budget for the common interest community, the board must provide a copy of the budget to all the unit owners and set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than fifty days after providing the budget. Unless at that meeting the unit owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the declaration reject the budget, the budget and the assessments against the units included in the budget are ratified, whether or not a quorum is present.

(b) If the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the unit owners continues until the unit owners ratify a subsequent budget proposed by the board.

And

RCW 64.90.080 (Common interest communities, preexisting):

(1) Except for a nonresidential common interest community described in RCW 64.90.100, **RCW 64.90.095**, 64.90.405(1) (b) and (c), 64.90.525 and 64.90.545 apply, and any inconsistent provisions of chapter 58.19, 64.32, 64.34, or 64.38 RCW do not apply, to a common interest community created in this state before July 1, 2018.

(2) Except to the extent provided in this subsection, the sections listed in subsection (1) of this section apply only to events and circumstances occurring on or after July 1, 2018, and do not invalidate existing provisions of the governing documents of those common interest communities. To protect the public interest, RCW 64.90.095 and 64.90.525 supersede existing provisions of the governing documents of all plat communities and miscellaneous communities previously subject to chapter 64.38 RCW.

The HOA Board, it is my understanding, views the above provisions of RCW 64.90.525 and 64.90.080 as nullifying the cap that the Lake Cushman governing documents place on annual assessments, because they (per 64.90.080(2) quoted above) “supersede existing provisions of the governing documents of all plat communities and miscellaneous communities...”

The Board is incorrect in taking this position as the provisions of the Lake Cushman governing documents quoted above do not in any respect contradict or clash with the provisions of the WUCIOA.

The relevant WUCIOA provisions do not reference, much less prohibit, budget-related parameters or restrictions imposed by a community’s governing documents on the content of the budget or the manner in which the proposed budget is to be constructed by the HOA Board each year. Those WUCIOA only relate to the manner in which the budget, once properly constructed, is to be presented to the members and adopted from a strictly procedural standpoint. The content and substance of the budget, that is what it should and should not include, is simply not addressed by these WUCIOA provisions.

In conclusion, the WUCIOA legislation does not address and does not prohibit an HOA’s governing documents from imposing a cap on annual assessments or requiring an affirmative community-wide vote to exceed a stated percentage increase.

Communities in their governing documents continue, the WUCIOA notwithstanding, to have the authority to specify and restrict the parameters by which each year’s proposed budget is to be constructed.

Board Responsibilities And Potential Liability

Perhaps it is appropriate for me to add that I am counsel for many HOAs and COAs (over 60) and thus advise them as clients regarding their legal responsibilities – even as I am communicating my legal opinion to you on behalf of my HOA member client. I do fully understand that Board members are volunteers who typically have no legal or other training to prepare them for their important responsibilities as Board members. Thus, a bit of confusion on the part of individual Board members (or entire Boards) regarding (a) the Board's legal responsibility in particular situations and (b) the proper procedures the Board must follow in discharging its duties is not uncommon, but Association Boards like yours must take seriously their legal responsibilities. Otherwise, the Board members and the community can face serious consequences – both legal and practical.

Board members can be sued if they fail to fairly and reasonably comply with and enforce the governing documents. Washington courts have made this very clear. *See, e.g., Schwarzmann v. Apartment Owners*, 33 Wn.App. 397 (1982). In the case of *Day v. Santorsola*, 118 Wn.App. 746 (2003) the trial court awarded an individual resident attorney fees in the amount of over \$100,000.00 as a judgment against the Association Board/Committee members who breached their duties.

The Proposed Budget Needs To Be Reformed To Comply With Your Governing Documents

The Lake Cushman community has many seniors living there on fixed budgets, including my client, and they would be very hard hit by the proposed huge assessment increase. Thus, this is not only a legal issue involving legal principles; it is also a very practical issue impacting so many in your community.

I call upon the Board to promptly scale back its proposed budget so as to comply with the Lake Cushman Bylaws and Articles of Incorporation or, alternatively, delay the presentation of the proposed budget to seek to amend the Bylaws by community vote to authorize larger increases. If the Board persuasively explained and justified the sought-after increase, it may well receive the necessary support to legally impose such increase.

Conclusion

If the Board, following receipt of this letter, continues to ignore the provisions of the governing documents by attempting to implement an unauthorized assessment increase, my client (joined by others) will sue to invalidate it and to seek legal fees and damages from the HOA and those Board members who supported the excessive increase.

It is my and my client's hope that the Board as a result of this letter (or upon advice of its own attorney) will do the right thing and, in the absence of a valid amendment to the Bylaws, rescind

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this proposed increase to bring into conformity with the cap imposed by the Bylaws.

Yours very truly,

Stephen W. Hansen

Stephen W. Hansen

SWH/bhs

CC: Client