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February 16, 2011

Board of Directors
The Cape Condominium Association
c/o Leadership Management, Inc.
PO Box 307
Hartland, MI 48353

Attention: Cheri Cowlin, Property Manager

Re: Document Review Service

Dear Members of the Board:

I have reviewed your governing document package and following are my comments:

Articles of Incorporation

This is the legal instrument that created your Association as a Michigan nonprofit corporation. Yours has been amended twice; first to change the name from Lake Point Village Condominium Association to The Cape Condominium Association and secondly to add important text to shield volunteer directors from certain liabilities. My only concern is the "action without meeting" text that enables the membership to take official business action without the necessity of actually holding a meeting. The law allows this procedure but we do not recommend it be used as it can be abused. That is because votes of the membership generally should occur after open discussion, etc.

Condominium Bylaws

Back when your project was developed it was customary to create two sets of bylaws; one to satisfy the Condominium Act and a second to satisfy the Nonprofit Corporation Act. You still have two sets. Modern practice would combine the two for the sake of simplicity.

Your Condominium Bylaws were adopted as an amendment back in 1989 and they are quite out of date. Important revision topics are noted below.

Board of Directors

Because of their age, the sequence of topics is unusual. Also, topics are poorly organized and sometimes combined when they should be separated. These Bylaws do not comply with the current requirements for FHA project certification; they include some illegal text and fail to properly address important topics. *Some of these faulty provisions may create serious liability problems.*

Article I No major problems appear here.

Article II Incorrect references to Master deed which should refer to Consolidating Master Deed.
“Confused combination of important topics here; Association, Membership, Voting, Board of Directors, etc.
Your quorum requirement for membership meetings is 33.33% of eligible co-owners which is typical. Text fails to specifically allow the use of written (mail) ballots; they are however allowed by Michigan law.
Section 4 calls for “audited financial statements”. Modern practice is to have a compilation, review or audit performed by a certified public accountant. Audits are not needed annually and are quite expensive.
The text regarding directors fails to (1) establish proper eligibility requirements, (2) require directors and officers liability insurance, (3) require employee dishonesty insurance, (4) address executive sessions and (5) address conflicts of interest, among other shortcomings.

Article III The cap on additional assessments should be deleted.
The Board’s assessment authority is not clearly stated.
The text will have to be amended if the Association ever pursues borrowing.
Text fails to impose interest on delinquent accounts.
The current late charge is fixed at \$10 which is too low and should be made flexible.
The current text is contrary to FHA requirements.
The remedies text needs improvement.

Article IV This arbitration clause is required by the Act but we recommend you not use it.

Article V Your insurance text can be improved but calls for the appropriate scope of the Association’s insurance duties. The text should specifically call for the Association to purchase: (1) workers compensation, (2) directors and officers liability, (3) employee dishonesty and could better detail what the co-owners must purchase.

Article VI Section 1’s restriction will not be enforceable as written regarding business uses of units.
Section 2 requires minimum initial lease terms of 1 year which may not satisfy FHA requirements.
Section 3 fails to address the FCC satellite dish rule and the rights of the disabled to make certain alterations as per the Condominium Act.
Section 8 (vehicles) needs an updating.
Section 11’s text concerning vehicles belongs back in Section 8.
Section 12 is in serious need of updating (co-owner maintenance duties and liabilities).

The text in Section 13 belongs in Section 3 (various building restrictions).
Section 15 has some erroneous text regarding the first annual meeting.
Section 16's text concerning Association access rights needs improvement.
Section 17 should be deleted to help facilitate unit sales and their financing.

Article VIII The current text will not satisfy FHA requirements relating to various notice rights of mortgage lenders.
Section 5 has very bad text concerning the issue of when a foreclosing lender first becomes liable for assessments. As written it could result in the loss of about a year's worth of assessments.
Section 6's text concerning lender rights needs to be updated.

Article XI The amendment requirements are out of date and conflict with the Condominium Act.

Association Bylaws

This document is your "corporate bylaws". As noted above, modern practice would roll all the topics in this document into the Condominium Bylaws. The text concerning the board of directors lacks (1) conflicts of interest, (2) various related insurance requirements, (3) text recognizing executive sessions, (4) non-compensation of directors and (5) proper eligibility requirements.

Consolidating Master Deed

This document replaced the original Master Deed and its attached Condominium Bylaws and Condominium Subdivision Plan. The only changes that might be in order would involve the duty statements at Article IV C but only if you find them (1) incomplete, or (2) at odds with your historical practices, or (3) you want to shift any duties as between the Association and the individual co-owners. The latter two situations arise fairly often in older associations, especially when costly building components (such as windows) reach the end of their useful life but the association has inadequate reserves.

In Conclusion

Your Condominium Bylaws really ought to be updated. Our base fee for a full rewrite and updating is \$. However, we can help you with selected amendments to address the most pressing problems for far less money if that would be the Board's choice. I have enclosed a courtesy copy of an article on amendment projects which will help you evaluate and make your decision. If you have any questions or concerns, please let me know.

Very truly yours,

D. Douglas Alexander

Enclosure

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AMENDING CONDOMINIUM DOCUMENTS

D. Douglas Alexander

I. INTRODUCTION

The following is intended to provide you with an overview of the process involved in amending your condominium documents. As you will see, this is a complex and time consuming task but one that will usually be well worth the time and effort as well as the expense.

Please read this article in its entirety before we meet to review a checklist of specific amendment items. This will help you organize your thoughts and answer some of the questions you probably already have in mind. Next I suggest you read through your document package and look for specific items discussed in this article. Once this is done, we can have a productive meeting to move forward with your amendment goals.

II. WHY SHOULD WE CONSIDER AMENDING OUR DOCUMENTS?

Your documents were written by the developer's attorney. He or she probably never visited your site and the plans that were available at that point in time were probably only proposed and did not reflect the project as it was actually built. Thus, the drafter of your documents lacked all of the relevant facts and details.

Further, the attorneys who draft documents for developers tend to work only for developers and are largely unaware of association administration issues or what life in a condominium is like. Their client had very different objectives in mind when that attorney was retained since developers are primarily interested in selling the units and completing the project.

On January 2, 2001, and again on May 9, 2002, certain parts of the Condominium Act were revised and we need to consider changes in your documents as a result of these new laws.

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If your project is not presently FHA certified and is eligible, amendments to your Bylaws will be needed in order to apply for certification.

You have probably become aware of instances where your documents are:

- unclear
- incomplete
- contradictory
- out of touch with reality
- out of date
- just plain wrong

Before exploring specific changes, it is wise to be aware of the requirements which must be fulfilled to amend your documents.

III. REQUIREMENTS

In order to understand which requirements apply and what they consist of, you need to be aware of the fact that most condominium document packages contain four separate but interrelated documents:

Master Deed
Condominium Bylaws
Association (Corporate) Bylaws
Articles of Incorporation

Each of these documents will have separate amendment requirements. Generally speaking, there are three types of requirements:

- A. Voting/Consent
- B. Recording/Filing
- C. Distribution

None of your documents can be amended solely by vote of the Board of Directors. Rather, the co-owners must always vote on the proposal and in some circumstances, the persons or firms holding mortgages on the units must also vote. The specific voting requirements are listed in each of the four documents, usually near the end. Please be aware that the Michigan Condominium Act has voided amendment provisions that require unanimous approvals. Instead, the Act substitutes its own formula which is 2/3rds of the co-owners in number and in value plus, in some limited instances, 2/3rds of the mortgagees (mortgage holders). Therefore, in some cases, we will use the Act's procedure and in others, we will use the amendment procedure set forth in your documents depending on which is easier.

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Unless the amendment is proposed as a result of a petition brought by the co-owners (usually 1/3rd of them must sign such a petition), the proposal is sponsored by a majority vote of the Board of Directors to get things started. This should be reflected in your minutes.

The Master Deed and Condominium Bylaws are recorded with your County Register of Deeds and thus are matters of public record. Any amendments to these documents must also be recorded. Association or Corporate Bylaws are usually not recorded with the County. Articles of Incorporation are not recorded with the County but are on file with the State of Michigan and therefore, amendments to the Articles of Incorporation must also be filed with Lansing. Recording fees usually total less than \$100.00. Lansing will exact a small fee for amendments to your Articles of Incorporation.

Once you have successfully crossed all of these hurdles, you must distribute copies of the amendments. Copies must be supplied to each co-owner and in many instances, to each mortgage holder. Once distribution has been completed, the amendments finally become legally effective.

IV. WHAT SHOULD WE TRY TO ACCOMPLISH BY AMENDING OUR DOCUMENTS?

First of all, it is usually desirable to dump all of the provisions relating to the developer that are no longer necessary. Some references will have to be kept but a fair amount of verbiage is no longer needed once the developer is out of the picture.

Condominium development in Michigan began with the 1963 Horizontal Real Property Act. It was repealed in 1978 and replaced by the Michigan Condominium Act. That Act has been amended a number of times. Most of the changes in the law automatically apply to your condominium but not all of them. Some that do apply should be written into your documents so that you and future directors and co-owners will be aware of them. Also, your Association is a non-profit corporation and as such is subject to the Non-profit Corporations Act and to some extent, the Business Corporation Act. There are provisions in these laws that should appear in your documents so that you will have their full protection and that you will be aware of them. Also, from time to time, we run across restrictions in Condominium Bylaws which are actually illegal as a result of changes to state and/or federal laws, usually those pertaining to anti-discrimination of one variety or another.

Over the years a particular format has evolved for organizing the subjects dealt with in condominium documents. This is the result of the fact that most developer's attorneys are copying from some of the earlier efforts. We will try to make your documents consistent (if they are not already) with this emerging norm since it will make them easier to understand by lenders, insurers and those familiar with other condominium projects. A table of contents is a big help to most when it comes to finding a particular topic without trudging through the entire stack. To the extent possible, we will try to simplify the wording of your documents. Also, if you have had past amendments, they will be merged into the re-written documents whenever possible.

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Most documents are riddled with problems that can usually be easily resolved via the amendment effort. These include topics that are not covered, contradictions between the documents and just plain bad drafting. We will review your opinion letter history and interview you to discover items you have become aware of over the years in addition to carefully reviewing all of your existing text. We often find that documents fail to mention some construction features (Can you find fireplaces mentioned in your documents?) or seem to assign repair duties to both the Association and the co-owners (windows?). Finally, your documents may have hidden liability traps (Is the Association liable without limit for all damages caused by the common elements regardless of fault?). Some documents have illegal or unenforceable restrictions such as age requirements, bans on pets based on weight, resale restrictions, etc.

We will also make changes in your documents to make them more flexible as well as the procedures used to govern your association's affairs. One example would be to eliminate the use of a specific date for the annual meeting and replace it with a provision which allows the board to pick a date, time and place each year. This is usually a big help when scheduling these events. Other provisions relating to the operation of board meetings and the giving of notice for board meetings will also be included to increase flexibility.

V. ARE ANY PORTIONS OF OUR DOCUMENTS "OFF LIMITS" TO AMENDMENTS?

We are often requested to draft amendments to revise or eliminate the percentages of value assigned to each unit. This cannot be done without the consent of every co-owner whose percentage is to be changed. As you can imagine, changing one percentage usually results in a change to all of the other percentages and thus, this type of change is not generally possible. Other proposed changes are so emotionally charged that co-owners will reject an entire package of documents because of their concerns about one specific issue.

In certain situations, some registers of deeds will refuse to accept revised Master Deeds without new subdivision plans which can be prohibitively expensive to obtain. We can evaluate whether or not that is a risk once we get further into your amendment project.

VI. HOW DO WE PROCEED?

To start, we need a complete set of all of your documents including all past amendments. While we are reviewing these, you should do the same while keeping track of the specific changes you feel are needed. Next we will need to meet with you to go over the checklist, all of our change ideas and to answer your questions.

Once the initial homework has been done, we will prepare a draft which will include a guide to the revisions. People sometimes ask for a line by line comparison of old and new text. This is only possible (or even helpful) if we are making a small number of changes. If this will be a rewrite project, it is best to use the guideline approach. The board will consider the draft, we will make final editing changes and then you will be ready for the board to adopt a sponsoring resolution.

Once the board has approved the draft amendments package, it should be sent to each co-owner along with an appropriate cover letter. Each document being revised should have a guideline

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to help the co-owners understand what changes are being proposed. Many times it is helpful or necessary to schedule an informational membership meeting to present the package and answer questions, usually with my participation.

Most amendment proposals are approved by the co-owners and when necessary, by the mortgagees. It may take some time and effort however, so plan to be patient and persistent.