



LAW OFFICES

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09024-001

November 24, 2014

**VIA ELECTRONIC MAIL ONLY**

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Board of Directors  
Palisair Home Owners Association  
Attention: Francine Kirkpatrick

Re: Palisair Home Owners Association ("Association")/Proposed Amendments to  
Third Modification of Restrictions ("CC&Rs") and Bylaws \_\_\_\_\_

Ladies and Gentlemen:

The Association is considering retaining our firm to draft a set of Amended and Restated CC&Rs ("Amended CC&Rs") and Amended and Restated Bylaws ("Amended Bylaws") for the Association. To assist us in this task, we have prepared this questionnaire for your use. Please be as complete as possible. We understand that some of the questions below may be difficult to answer, so please feel free to contact us with any questions which you might have as you respond to this questionnaire.

1. **Annual Meetings/Board Meetings.**

1.1 When is the Association's annual meeting held each year? \_\_\_\_\_

1.2 Does the Association want to change the month in which it is held? If so,  
to what? \_\_\_\_\_

1.3 Do you want the Amended Bylaws to require that the Board hold monthly  
meetings or do you want to require that the Board meet at least quarterly? \_\_\_\_\_

2. **Fiscal Year.**

2.1 What is the Association's fiscal year? \_\_\_\_\_

2.2 The Amended Bylaws will set forth the fiscal year set forth above, but will  
give the Board the authority to change it. Is this acceptable to you? \_\_\_\_\_

3. **Quorum.** All community associations are occasionally unable to meet quorum. If, however, you are consistently unable to do so, you might consider lowering the quorum requirement necessary to hold member's meetings.

3.1 Do you want to keep the same quorum requirement or do you want to lower it? \_\_\_\_\_

3.2 If you want to lower the quorum requirement, to what level do you want to lower it to? (We generally recommend against lowering the quorum below one-third of the owners)? \_\_\_\_\_

4. **Board Members/Election/Removal.**

4.1 How many directors are currently on the Board of Directors? \_\_\_\_\_

4.2 Do you want to increase or decrease the number of directors? \_\_\_\_\_

If so, to what? \_\_\_\_\_

4.3 The Amended Bylaws can set forth the qualifications to serve on the Board. If a Board member fails to meet such qualifications, the Board will have the ability to declare the Board member's position vacant. What qualifications do you want to Board members to have to serve on the Board? Please answer yes or no to the following:

4.3.1 Should a Board member be an owner of a lot? \_\_\_\_\_

4.3.2 Should a Board member be current in the payment of assessments (i.e., not more than 30 days delinquent)? \_\_\_\_\_

4.3.3 Can a co-owner of a unit serve on the Board if another co-Owner of the same lot is already a member of the Board? \_\_\_\_\_

4.3.4 Should the Board be able to remove a director who misses three (3) regular meetings of the Board within any nine-month period or three (3) consecutive regular meetings of the Board? \_\_\_\_\_

4.3.5 Are there any other qualifications you want? If so, please explain:  
\_\_\_\_\_

4.4 What are the terms of the Board members (e.g., elected annually or staggered Board terms)? \_\_\_\_\_

4.4.1 If you are operating under staggered Board terms, please explain how many directors are elected each year (e.g., 2 directors are elected in odd-numbered years and 3 directors are elected in even-numbered years): \_\_\_\_\_

4.4.2 If Board members are elected annually, do you want to switch to staggered Board terms? \_\_\_\_\_

4.5 The Amended Bylaws will set forth the vote of the owners needed to recall the entire Board.

4.5.1 In an association with less than 50 lots, the California Corporations code provides that a majority of the owners may vote to recall the Board. If your association has less than 50 lots, is this vote acceptable to you? \_\_\_\_\_

4.5.2 In an association with 50 or more lots, there is an ambiguity in the Corporations Code. If your association has 50 or more lots, do you want the entire Board to be able to be removed (A) by the vote of a majority of all owners or (B) a vote of a majority of a quorum of owners (which is a lower threshold)? \_\_\_\_\_

5. **Officers.**

5.1 Does the Association want to require that all officers be members of the Association? \_\_\_\_\_

5.2 Does the Association want to require that all officers be Board members?  
\_\_\_\_\_

6. **Physical Makeup of Project.** Briefly describe the physical makeup of your project.

6.1 How many lots are in the project? \_\_\_\_\_

6.2 Are the houses on the lots connected or attached in any way? \_\_\_\_\_

6.3 Are there any streets in your project? \_\_\_\_\_

6.3.1 If so, are they private or public? \_\_\_\_\_

6.4 Let us know what types of common structures exist in your project:

6.4.1 Recreation rooms, if so, how many? \_\_\_\_\_

6.4.2 Guard houses, if so, how many? \_\_\_\_\_

- 6.4.3 Pools, if so, how many? \_\_\_\_\_
  - 6.4.4 Spas, saunas, cabana rooms, etc., if so, how many? \_\_\_\_\_
  - 6.4.5 Tennis courts, if so, how many? \_\_\_\_\_
  - 6.4.6 Open space/parks \_\_\_\_\_
  - 6.4.7 Other? \_\_\_\_\_
  - 6.4.8 Are there any other unique features of your project? \_\_\_\_\_
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7. **Parking.** Please describe the parking plan at your project.

- 7.1 Is parking in individual garages? \_\_\_\_\_ If not, please describe where residents park: \_\_\_\_\_
  - 7.2 Are there driveways in front of each garage? \_\_\_\_\_
  - 7.3 Are owners allowed to park in the driveways? \_\_\_\_\_
    - 7.3.1 If the streets are private, are owners allowed to park on the streets? \_\_\_\_\_
    - 7.3.2 Are there any limits on where guests may park?
    - 7.3.3 Do want to limit the types of vehicles which may be parked on the street, in driveways or on lots (e.g., boats, RVs, etc.)?
  - 7.3.4 Does the Association have a towing policy? \_\_\_\_\_
  - 7.3.5 Does the Association register vehicles? \_\_\_\_\_
  - 7.3.6 Does the Association want to start doing so (or continue to do so, if applicable)? \_\_\_\_\_ Some associations find this a useful tool in enforcing guest parking restrictions. We want to point out that if a resident refused to provide this information, it is not clear whether the Association could force the resident to do so.
  - 7.3.7 Also, inform us of any particular problems or questions you have relating to parking including guest parking.
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8. **Allocation of Repair and Maintenance.** Please confirm for us whether the owners are responsible to maintain all of the components (dwelling structure, landscaping, etc.) on their lots or whether the Association is responsible for maintaining certain components on owners' lots (e.g., roofing, front yard landscaping, walls, etc.).

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9. **Collection of Assessments.** Let us know if you have been having any problems enforcing or collecting assessments. We already intend to draft the Amended CC&Rs to enhance your ability to collect and enforce assessments. However, if you have specific requests or questions we will be more than happy to accommodate your needs.

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10. **Board Powers.** We intend to broaden the powers of the Association's Board of Directors. If there are any specific powers which you feel the Board should be able to exercise, please let us know. Conversely, you may feel that there are areas where previous Boards have abused their discretion and you can limit the Board's powers accordingly.

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11. **Enforcement Issues.** The Amended CC&Rs will contain significantly enhanced enforcement provisions. We intend to allow the Association to impose substantial monetary penalties (after notice and hearing) against owners for violations committed by such owner's tenants, guests, etc. Furthermore, we intend to provide that any penalties which are not paid can be the basis of a lien placed against the delinquent owner's condominium. California Civil Code Section 1367 prohibits the Association from foreclosing upon such a penalty lien via a trustee's sale, but, by omission, seems to permit the Association to foreclose judicially against such a penalty lien. Accordingly, we believe that the Amended CC&Rs should provide that such penalty liens may be foreclosed upon judicially. Unfortunately, there is no case law interpreting Section 1367. While we believe the Association is likely to win if the Association sought to foreclose judicially on a lien recorded for the failure to pay a fine, we cannot predict how a court

would interpret Section 1367. Please provide us with your comments with regard to recording a lien for unpaid penalties.

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We are going to include provisions in the Amended Bylaws regarding notice and hearing procedures which the Association will have to comply with before imposing any internal discipline, such as the imposition of monetary penalties and/or the suspension of voting rights or common area privileges. Let us know if you have any specific requests or questions regarding enforcement procedures and/or notice and hearing requirements.

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11.1 Do you want the Amended CC&Rs to limit the amount of monetary penalties which can be imposed (e.g. \$100 per violation) or do you want the Board to have the discretion to set the limits as it sees fit from time to time without having to obtain owner approval to amend the Amended CC&Rs?

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11.2 Please advise us whether the Association has adopted Rules and Regulations and a schedule of monetary penalties. If so, please forward a copy of the Rules and Regulations and the fine schedule to us along with your response to the questionnaire. If the Association does not have Rules and Regulations and/or a fine schedule, please advise us whether the Association would like us to prepare such documents for you.

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12. **Architectural Review.**

12.1 There are 2 different ways to conduct architectural reviews: (1) the Board approves or disapproves all architectural requests; or (2) the Board appoints an advisory architectural committee which makes recommendations to the Board and the Board makes the final decision. Please let us know if you would like the Amended CC&Rs to follow (1) or (2).

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12.2 What difficulties (if any) have you had in enforcing architectural control requirements at the Association:

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12.3 Are there particular improvements or alterations which owners frequently make (with or without Association approval) which the Board wants to identify specifically in the Amended CC&Rs and regulate, e.g. patio/balcony enclosures, hard floor surfaces, skylights?

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12.4 What time limit does the Association want there to be on the review of architectural requests? Unless you advise us differently, the Amended CC&Rs will provide for a sixty (60) day deadline. Please state your preference:

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13. **Insurance.**

13.1 **Association Insurance.** The Amended CC&Rs will require that the Association purchase and maintain general liability insurance, a master fire insurance policy, directors and officers liability insurance and workers compensation insurance (to the extent required by law) and give the Board the discretion to purchase whatever other insurance it deems appropriate, including earthquake insurance and fidelity bonds.

13.1.1 Is this acceptable to you? \_\_\_\_\_

13.1.2 If not, please explain:

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We strongly encourage you to provide your insurance broker with a copy of the insurance provisions of the Amended CC&Rs to ensure that your insurance coverage is consistent with the Amended CC&Rs.

13.2 Owner Insurance. The Association's CC&Rs may or may not require owners to maintain insurance on their individual lots. Does the Board want the Amended CC&Rs to require owners to do so? In the aftermath of the Northridge earthquake, owners who had their own insurance generally fared much better because earthquake special assessments were usually paid by the carriers and owners received financial assistance in relocating during the repairs. Accordingly, we believe it is a good idea for owners to maintain their own insurance. While we believe a provision requiring owners to maintain insurance should be enforceable, this is another issue which has not been specifically tested in the courts. We also want to point out that such a provision is only effective if the Board intends to monitor the submission of certificates of insurance diligently. Also, please note that if the Amended CC&Rs included such a provision and the Board fails to enforce it, owners may attempt to hold the Board responsible if a disaster occurs and an owner's failure to maintain insurance hinders or prevents the repair of damage. We ask that the Board discuss these issues and advise us whether the Board wants to require owners to insure their individual lots.

13.2.1 1. Do you want to require that owners maintain insurance? \_\_\_\_

13.2.2 2. If so, what types? For example, fire, liability insurance, loss assessment coverage, earthquake assessment coverage? \_\_\_\_\_.

14. Use Restrictions. Let us know of any suggestions, comments and requirements you have regarding property use restrictions imposed on owners. Carefully consider the Association's history and any particular issues and problems which have arisen regarding use of the project by owners, tenants and guests. Your deliberations should include, but not be limited to, the following issues: leasing of lots, pets, noise abatement, basketball courts, barbecues, modification of lots, storage, placement of antennae, installation and use of utilities, landscaping, pool and recreation facility use and restrictions on guests. We also ask that you advise us specifically on the following issues:

14.1 Pets. What is the Association's current policy regarding pets? How many and what type of pets are owners permitted to keep in their lots?

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14.2 Satellite Dishes. Does the Association presently have a policy relating to the installation of satellite dishes in the common area? If so, please describe such policy. Are there satellite dishes in the common area at this time?

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14.3 Leasing.

14.3.1 Does the Association have any problems with the leasing of lots?

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14.3.2 The Amended CC&Rs will provide, among other things, that owners must notify the Association when there is a change in tenancy at the Association, that owners are responsible for giving their tenants a copy of the governing documents and for ensuring their tenants' compliance with the governing documents.

14.3.3 The Amended CC&Rs can also provide that the Association has the right file an unlawful detainer action against an owner's tenant for violation's governing documents if an owner fails to do so, and that the Association has the right to demand that a delinquent owner's tenant pay rent directly to the Association. Although these 2 provisions have not been tested in California courts, we believe that a court is likely to find them reasonable (although obviously in the absence of any case law, we cannot guarantee this). Do you want to add either or both of these provisions to the Amended CC&Rs? If so, which one(s)? \_\_\_\_\_

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14.3.4 Do you want to set a minimum lease term (e.g., 30 days, 6 months, 1 year, etc.) \_\_\_\_\_

14.3.5 Does the Board want any other provisions added regarding rentals?

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14.4 Other comments regarding use restrictions:

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15. **Bank Accounts.** We intend to draft the Amended CC&Rs to provide that the Association's monies must be deposited into two (2) or more separate commercial and/or savings accounts in a federally insured bank and/or savings and loan association selected by the Board, and that, in addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. Is this acceptable to you? \_\_\_\_\_  
If not, please explain what investment limits you would like:

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16. **Signatories on Bank Accounts.** California law requires that reserve funds shall be deposited in a separate account and the signatures of at least two (2) persons who shall either be members of the Board or one (1) officer who is not a member of the Board and a member of the Board shall be required to withdraw monies from the reserve account. Unless you advise us differently, the Amended CC&Rs will be drafted to conform with California law. We note, however, there are no limitations under California law with respect to the signatures required for the withdrawal of funds from the Association's operating accounts. Do you want to have the flexibility to permit the Association's property manager to be a signatory to the Association's operating accounts or do you want to require that a Board member or Board members sign all checks issued from the Association's operating accounts?

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17. **Utility Easements and Cable Contracts.** In the Amended CC&Rs, we will provide that the Association can grant all necessary or desirable easements for the benefit of the owners. This would, of course, include all utility and cable television easements. In this regard, we generally will provide that the Board can enter into cable service contracts of up to five years in duration. Please let us know if you have any questions or comments on the foregoing.

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18. **Rebuilding After Catastrophe.**

18.1 Many homeowner associations suffered damage from the 1994 Northridge earthquake. The rebuilding process was, for many, quite frustrating. The Amended CC&Rs will provide that the Association must make a decision whether to rebuild within 90 days of destruction or 90 days from the date of determination of the insurance proceeds available for rebuilding, whichever is greater. If the owners vote to rebuild, the Amended CC&Rs will provide that the Association must obtain the bids from at least two reputable contractors and award the work to the bidder the Board believes is best qualified to perform the work at a reasonable price. Please let us know your thoughts on these issues, including whether the Association wants the Amended CC&Rs to address any other destruction-related issues, such as the priority of repairs (common area vs. lot) or payment of the policy deductible. As to damage to houses, the Amended CC&Rs will require owners to remove debris, secure their lots and restore their homes in a timely manner. Is that acceptable to you?

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18.2 The Association's current CC&Rs set forth the manner in which insurance proceeds (if the Association votes not to rebuild after destruction to the project), eminent domain proceeds (if some or all of the project is taken by the government) and sale proceeds (if the project were to be partitioned and sold). Typically, it is based on fair market value or each owner's interest in the common area. The Amended CC&Rs will contain the same formula which exists in your current CC&Rs. Is this acceptable to you? \_\_\_\_\_

18.3 The Association's current CC&Rs set forth a specific manner in which special assessments to rebuild the project would be assessed against all of the lots. The Amended

CC&Rs will contain the same formula which exists in your current CC&Rs. Is this acceptable to you? \_\_\_\_\_

19. **Other Concerns.** Inform us of any general concerns, comments or problems you might have with regard to the amendment of the CC&Rs. You should consider speaking with past Board members regarding their experience in the operation of the project and the management of the Association's affairs.

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After you have filled out this questionnaire, please return a copy to our office.

In about three to four weeks from receipt of this completed questionnaire you can expect to receive a copy of the first draft of the Amended CC&Rs and Amended Bylaws. Upon your receipt of these documents, we request that you review them at your earliest convenience. We have informed you that the cost for this entire project should be approximately \$4,000 to \$5,000. Remember, however, that substantial modifications to the documents could substantially raise your legal fees in this matter. To minimize costs, please try to be as detailed and precise as you can in answering the questions set forth above, and in reviewing the first draft of each of the documents.

After the Board has approved the Amended CC&Rs and Amended Bylaws, we will draft a form letter to the Association's owners which will generally explain the benefits of approving the Amended CC&Rs and Amended Bylaws. If you need assistance in the preparation of documents relating to the passage of the Amended CC&Rs and Amended Bylaws, we will be

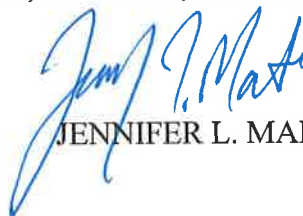
glad to provide such assistance. Occasionally, a client will ask us to provide a detailed letter explaining all of the changes in an amended set of governing documents. This can be a very costly undertaking. If, however, you feel that such a letter is absolutely necessary, let us know now to help keep fees down.

Please note that the CC&Rs provide that any amendments must be approved by more than fifty percent (50%) of the individual homeowners. The Association's Bylaws provide that any amendments thereto must be approved by at least a majority of a quorum of the owners.

If you have any questions or comments relating to the questionnaire or any other matter, please feel free to contact me. We look forward to hearing from you in the near future.

Very truly yours,

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP



JENNIFER L. MARTIN

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cc: Daniel C. Shapiro, Esq.