

**Subject:** Palisair

**Date:** Monday, November 24, 2014 at 5:35:03 PM Pacific Standard Time

**From:** Jennifer Martin <jmartin@wrslawyers.com>

**To:** 'Francine Kirkpatrick' <DrFKirk@verizon.net>

**CC:** Marc Rohatiner <mrohatiner@wrslawyers.com>

Dear Francine:

Pursuant to our telephone discussion, I am writing to explain my suggested course of action for amending the Association's CC&Rs to strengthen the view protection language currently in effect. Although the Association is considering amending the CC&Rs in their entirety, because of several pending and/or forthcoming applications for construction of new residences, we discussed that the Association should first amend just the view provisions of the existing CC&Rs, then, in perhaps several months, propose an entirely new set of Bylaws and CC&Rs for the members' approval. During your neighborhood canvassing for the view amendment, you can explain to homeowners that further amendments are forthcoming, perhaps minimizing the need for further canvassing when such amendments are proposed.

With regard to the view issue, because each lot and each view is different, the Association has discovered that having a fixed maximum allowable building height, as the Association currently does, is not the best way to protect views within the community. Therefore, the amendment that we will draft will give the Board broad discretion to approve or disapprove plans in order to reasonably minimize the impact on the views of surrounding properties.

You mentioned that the Board is hesitant to have discretion over such matters, because of the threat of litigation from someone who might disagree with the Board's determination. However, the Board members are very insulated from personal liability and the Board is the best entity to make such decisions with the goal of maximizing each lot's view.

As I mentioned in our conversation, I was concerned that the Association may not be subject to the Davis-Stirling Act. However, you informed me that the Association owns three small parcels of land (one in each of the three tracts). Provided that the parcels are actually owned by the Association, they satisfy the statutory requirement that the Association own common area, and the Association is subject to the Davis-Stirling Act.

Additionally, as we discussed, the Board is considering amending the CC&Rs and Bylaws in their entirety. Although the Association is on its "Third Modification" of the CC&Rs, they are largely still based on the original documents from the 1950s and 1960s. The Davis-Stirling Act, which governs common interest developments, was enacted in 1986, has been changed every year since then, and was rewritten in its entirety in 2014. Although the law supersedes your CC&Rs in some respects, in other areas, it defers to an association's CC&Rs. Therefore, while amending your CC&Rs to comport with the law is not necessary, there are many concepts in the law (and in newer sets of CC&Rs) that provide additional protections to associations which are not included in your CC&Rs (e.g., provisions about leasing homes as vacation rentals and disciplinary procedures for violations of the governing documents).

Attached to this e-mail is a questionnaire which you should review. When you decide to proceed with having our firm draft new governing documents for the Association, please return a completed questionnaire to us. It will be our guide in crafting the new documents for your Association. Simply reviewing the questionnaire may raise questions about how you want your Association to operate. Therefore, please feel free to contact me if you have any questions while completing the questionnaire.

Regards,  
Jennifer  
Jennifer L. Martin, Esq.  
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP  
11400 W. Olympic Blvd.  
9th Floor  
Los Angeles, California 90064  
PH: 310-478-4100 ext. 6612  
FAX: 310-478-6363  
E-Mail: [jmartin@wrslawyers.com](mailto:jmartin@wrslawyers.com)

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive e-mails for the addressee), you may not use, copy or disclose to anyone this message or any information contained in this message. If you have received this message in error, please advise the sender by reply e-mail to [jmartin@wrslawyers.com](mailto:jmartin@wrslawyers.com), and delete the message. Thank you.

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by U.S. Treasury Regulation Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.