



September 4, 2008

Dear Eastbluff Homeowner:

On July 30, 2008, the Association received a petition signed by 46 members of our Association, asking that a special meeting of the Association's members be called for the purpose of voting on a proposed amendment to the Association's Bylaws that would require member approval of certain aspects of the Association's budget.

California Corporations Code Section 7510(e) provides that, "special meetings of members *for any lawful purpose* may be called by 5 percent or more of the members." (Emphasis added)

After consulting with the Association's corporate counsel, a majority of the Association's Board of Directors has concluded that the takeover of budget-making authority by the members that the proposed amendment would implement would be contrary to the delegation of budget-making authority to an association's Board of Directors by the Davis-Stirling Common Interest Development Act, which is the statute governing the operation of community associations in California. Because the Board has concluded that the special meeting of members requested by the petitioners would not be for a lawful purpose, the Board of Directors has determined that the obligation to call a special meeting imposed by Corporations Code Section 7510(e) has not been triggered, and the Board will therefore not call and notice the special meeting requested by the petitioners.

As noted above, the reason that the Board feels that the petition seeks to add an unlawful provision to our Association's Bylaws is because of its interpretation of the Davis-Stirling Common Interest Development Act to the effect that the Act delegates budget-making authority to an association's board of directors. California Civil Code Section 1365 provides in relevant part, that "the association shall prepare and distribute to all of its members" among other items, a budget. Although it is not clear whether use of the term "the association" in Civil Code Section 1365 is a reference to an association's board of directors or its members, Civil Code Section 1366(a) suggests that it is the board of directors, rather than the members, that has the authority to adopt, prepare, and distribute a budget. Specifically, Section 1366(a) provides, in relevant part, that "annual increases in regular assessments for any fiscal year, as authorized by subdivision (b), shall not be imposed unless *the board has complied with subdivision (a) of Section 1365* with respect to that fiscal year" (Emphasis added)

Further, Civil Code Section 1366(b), which imposes limits on year-to-year regular assessment increases and imposition of special assessments during any fiscal year, provides, in

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relevant part, that “the *board of directors* may not impose a regular assessment that is more than 20 percent greater than the regular assessment for the association’s preceding fiscal year or impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year” (Emphasis added)

In the interpretation of the Association’s Board of Directors, these excerpts from the Davis-Stirling Common Interest Development Act delegate budget-making authority for a community association to the association’s board of directors. For this reason, your Board of Directors has concluded that the change to the Association’s budget-making procedures that would be implemented by the proposed Bylaw amendment would be contrary to the statutory delegation of budget-making authority, and therefore unlawful. Consequently, and as noted above, the Board of Directors will not be calling and noticing the special meeting for the unlawful purpose requested by the petitioners.

Very truly yours,

Board of Directors
Eastbluff Homeowners Community Association