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March 4, 2024

VIA EMAIL ONLY doreengrandisles@gmail.com

Board of Directors

Grand Isles Master Homeowners Association, Inc.
c/o Doreen Levy, President

**Re: Grand Isles Master Homeowners Association, Inc.
/Directors (Qualifications)**

Dear Ms. Levy:

Thank you for the opportunity to respond to the Association's inquiry regarding director qualifications. The Association advised that Andrew Plevin is not the record title owner of a lot in a Subdivision regulated by the Declaration of Restrictive Covenants, nor has he been while he was recognized as a director.

ISSUE: Whether the Florida Homeowners' Association Act, the Florida Not For Profit Corporation Act, or the Association's "governing documents", bar Andrew Plevin from serving as an Association director because he is not the owner of record title to a lot in the Subdivision known as Orange Point PUD which is regulated by the Declaration of Restrictive Covenants?

OPINION: No; Neither the Florida Homeowners' Association Act, the Florida Not For Profit Corporation Act or the Association's "governing documents", bar Andrew Plevin from serving as an Association director because he is not the owner of record title to a lot in the Subdivision known as Orange Point PUD, regulated by the Declaration of Restrictive Covenants.

RATIONALE: This opinion is based upon Florida statutory law and the Association's "governing documents". As a basic matter, an Association "member" is a lot owner.

The members of this Association shall consist of all owners of record title to Lots in the Subdivision.

Articles of Incorporation, Section 6.1.

- **Florida Statutes.**

The Association is a not for profit corporation and a homeowners' association; thus, this issue is first considered with reference to the more general Florida Not for Profit Corporation Act, Chapter 617, Florida Statutes, and then second with reference to the more specific Florida Homeowners' Association Act, Chapter 720, Florida Statutes. Neither set of laws require a corporation governed by either Act to require directors to be members of the Association.

- Florida Not for Profit Corporation Act.

The Florida Not for Profit Corporation Act provides in pertinent part as follows:

Directors must be natural persons who are 18 years of age or older **but need not be** residents of this state or **members of the corporation unless the articles of incorporation or bylaws so require.** For a corporation organized according to the provisions of s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, but not for a corporation regulated by chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723 or a corporation for which membership in such corporation is required pursuant to a document recorded in the county property records, one director may be 15 years of age or older if so permitted in the articles of incorporation or bylaws or by resolution of the board of directors. The articles of incorporation or the bylaws may prescribe additional qualifications for directors.

Section 617.0802(1) Fla. Stat.(2023) entitled "Qualifications of directors" (Emphasis added.) Thus, unless the Association's Articles of Incorporation or By-Laws requires a director to be a member of the Association, then a director is not required to be a member of the Association. This opinion will address both documents below.

- Florida Homeowners' Association Act.

The Florida Homeowners' Association Act allows all members of the Association to serve as a director, but that Act does not require that a director be a member of the Association.

Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. **Except as provided in paragraph (b), all members of the association are eligible to serve on the board of directors,** and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held; provided, however, that if the election process allows candidates to be nominated in advance of the meeting, the association is not required to allow nominations at the meeting. An election is not required unless more candidates are nominated than vacancies exist. If an election is not required because there are either an equal number or fewer qualified candidates than vacancies exist, and if nominations from the floor are not required pursuant to this section or the bylaws, write-in nominations are not permitted and such qualified candidates shall commence service on the board of directors,

regardless of whether a quorum is attained at the annual meeting. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters. Any challenge to the election process must be commenced within 60 days after the election results are announced.

Section 720.306(9)(a) Fla. Stat. (Emphasis added.) Thus, the above quoted paragraph limits a homeowner's association from restricting owners from being a director; however, in stating that limit, the quoted paragraph does not state a requirement that a director must be an owner of a lot.

Immediately following the above quote, the Florida Homeowners' Association Act provides additional restrictions on who may be a director, as follows:

A person who is delinquent in the payment of any fee, fine, or other monetary obligation to the association on the day that he or she could last nominate himself or herself or be nominated for the board may not seek election to the board, and his or her name shall not be listed on the ballot. **A person serving as a board member who becomes more than 90 days delinquent in the payment of any fee, fine, or other monetary obligation to the association** shall be deemed to have abandoned his or her seat on the board, creating a vacancy on the board to be filled according to law. For purposes of this paragraph, the term "any fee, fine, or other monetary obligation" means any delinquency to the association with respect to any parcel. **A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state**, may not seek election to the board and is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date on which such person seeks election to the board. The validity of any action by the board is not affected if it is later determined that a person was ineligible to seek election to the board or that a member of the board is ineligible for board membership.

Section 720.306(9)(b) Fla. Stat. (Emphasis added.) However, the Florida Homeowners' Association Act does not disqualify a person who is not a member of the Association from being a director.

- **Governing Documents.**

Both the Declaration of Restrictive Covenants Grand Isles, and the Association's Articles of Incorporation, are silent as to the qualifications to be a director, and do not require a director to be a member of the Association. Thus, focus is turned to the Association's By-Laws.

The Association's By-Laws allow a non-member of the Association to be nominated to be a candidate for the Board of Directors. Specifically, the Association's By-Laws Article VI, Section 1 provides in pertinent part as follows:

The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall, in its discretion determine, but not less than the number of vacancies that are to be filled. **Such nominations may be made from among members or non-members.**

(Emphasis added.) Allowing a non-member to be nominated, if any meaning is to be allowed for that last quoted sentence, must allow the non-member to serve as a director.

This conclusion follows a basic court approach to interpreting association documents as contracts which is that “[w]e will not interpret a contract in such a way as to render provisions meaningless when there is a reasonable interpretation that does not do so” *Moore v. State Farm Mut. Auto Ins. Co.*, 916 So.2d 871(Fla. 2^d DCA 2006), *See Publix Supermarkets, inc. v. Wilder Corp. of Del.*, 876 So.2d 652, 654 (Fla. 2^d DCA 2004) (holding that courts must “ ‘construe contracts in such a way as to give reasonable meaning to all provisions’ rather than leaving part of the contract useless”) (quoting *Hardwick Props, Inc. v. Newbern*, 711 So.2d 35, 40 (Fla. 1st DCA 1996)). Thus, to avoid the ability to nominate non-members from being meaningless, that quoted sentence in Section 6.1 would have to be interpreted to allow a non-member to serve as a director.

- **Conclusion.**

It is not uncommon for “governing documents” to authorize non-members of associations to be directors. The goal of not limiting the pool of potential directors is that an association will have enough individuals willing to serve as a director, and also recognizing that frequently family of owners may be desired to be directors even though they not be owners of lots within an association.

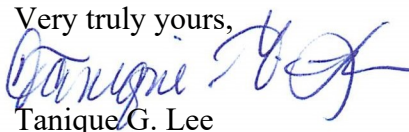
The Association advised that nominating committees are not utilized, and instead candidates are able to nominate themselves before the annual members’ meeting. Thus, the Association may desire to consider amending the By-Laws eliminating the use of nominating committees, and at the same time to clarify the qualifications of a director.

This opinion is based on the “governing documents” being only the Declaration and the Declaration’s Exhibits all recorded September 2, 1997, and no amendments except those to the Declaration recorded: March 16, 2001; December 1, 2001; March 7, 2003; and, December 20, 2022. This opinion also assumes that there is no court or arbitration decision, nor an agreement requiring directors of the Association to be a member of the Association.

Reference is made to Florida Statutes “2023,” and not “2024” because the current years’ legislative session has not concluded and the “2024” edition of Florida Statutes has not been published. To conserve the Association’s legal budget and to retain the issue’s focus, appellate and arbitration decisions have not been researched. If the Association desires an opinion concerning another issue, or research, then please advise the firm and the exact issue and budget can be discussed.

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Again, thank you for the opportunity to assist the Association, and for the directors' understanding that a legal opinion cannot be a guarantee and that final determinations are within the purview of the courts and the legislature.

Very truly yours,

Tanique G. Lee
For the Firm

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