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To: Owners at Admiral's Cove:

Our firm represents the Admiral's Cove Homeowner's Association (formerly Admiral's Cove Beach Club). The Board of Directors has asked us to provide an explanation to all owners regarding a recent legal opinion relating to the status of the non-profit corporation and its relationship to the owners of lots in Admiral's Cove. In preparing our opinion, we have reviewed the governing documents of the corporation, including the Articles of Incorporation and the Bylaws, as well as documents recorded against the lots of Admiral's Cove and Tract A (the beach and pool area).

We understand that a number of owners have already received information regarding the circumstances surrounding this issue and that information may be incomplete. The purpose of this letter is to advise you of our legal opinion and to clarify what it means to you as owners and members of the corporation.

Initially, it is important to note that each of you can be identified in two ways: 1) as an owner of a lot in Admiral's Cove; and 2) as a member of the non-profit corporation Admiral's Cove Homeowner's Association (referred to in this letter as the "Beach Club"). It is important to note that we believe the organization is a "homeowner's association" in name only and not as contemplated by Washington Homeowner's Association Act (RCW 64.38, et seq.). The application of the statute is unrelated to the name of the organization.

BEACH CLUB DUES AND ASSESSMENTS

For the past forty years, the Beach Club has proceeded as though there was an obligation for lot owners to pay dues and assessments to provide for the maintenance and repair of the beach and pool area owned by the Beach Club. A number of the organization's documents reflect this obligation, indicating that this was likely the intent of the original developer. It is also our understanding that some purchase and sale agreements and title reports have specifically mentioned an obligation to pay dues and assessments for the maintenance and repair of the beach and pool area.

According to Washington case law, the term covenant generally describes promises relating to real property that are created in conveyances or other instruments. [See for example: *Shafer v. Board of Trustees*, 76 Wn. App. 267 (1994)]. Washington

Courts have established particular criteria for determining the enforceability of restrictive covenants. [See for example: *Lake Arrowhead Cmty. Club, Inc. v. Looney*, 112 Wn.2d 288 (1989).]

Our review of the documents recorded against the lots of Admiral's Cove reveals that there are valid restrictive covenants, but those original covenants do not include the obligation to pay dues or assessments. The Bylaws of the Beach Club recorded in the 1980s included an obligation to maintain membership in the Beach Club and to pay dues and assessments, but there is a risk that these are not effective to obligate unwilling owners to pay dues by virtue of their lot ownership. Typically, an obligation to pay dues and assessments for commonly owned property is established at the time of formation of a homeowner's association and is properly established with the consent of the property owners.

Despite this, the Beach Club *does* have the power to assess dues to **members** of the Club and the owners of lots in Admiral's Cove have historically been **members** of the Club. This obligation is clearly stated in the Beach Club's Articles of Incorporation and Bylaws and the Washington Non-Profit Miscellaneous and Mutual Corporations Act (RCW 24.06 et seq.) grants broad powers for administering and managing property owned by the corporation.

The potential problem for the Beach Club lies only with enforcement of those dues on the basis of lot ownership. As a result, any assessment of past dues is likely enforceable against any **member** of the Club. Because the Beach Club could assess dues against its members, the Beach Club is not obligated to refund those dues now.

The Beach Club also has the authority to refuse access to non paying members and to offer membership to individuals outside the Admiral's Cove community.

COVENANT ENFORCEMENT

Another related issue involves the authority of the Architectural Control Committee ("ACC") to enforce the restrictive covenants. The original covenants provide that the ACC is made up of the Board of Directors of Admiral's Cove, Inc. (the developer). The covenants also provide that the transfer of this authority requires the approval of majority vote of all lot owners at Admiral's Cove. The records of the organization that we have reviewed do not indicate that this approval was ever obtained.

In order to conclusively establish a new ACC with enforcement ability, the owners would need to hold a vote to obtain the required majority approval of all lot owners. If the owners decide to proceed with this vote, you should also consider voting on additional changes to the covenants that would allow the ACC to pursue enforcement of the covenants by means other than legal action which is often prohibitively expensive.

It is important to note that even if the required approval is not obtained and the covenants are not revised, each owner who is subject to the covenants has the right to enforce the covenants against any owner in violation of those covenants by pursuing legal action (filing a lawsuit) against the violating owner.

HOW WE GOT HERE

Upon discovery of potential problems with the organization's documents, the Board proceeded diligently to determine the status and rights of the corporation and to seek advice about how to proceed as an organization. In addition to seeking a legal opinion from our office, the Board sought a second opinion from another attorney to confirm our opinion.

Our opinion is based on our understanding of the related law and our advice is intended to avoid risk to the organization in moving forward including preventing litigation and reducing administrative costs. Ultimately, only a judge's decision could produce some certainty about whether the Association currently has the right to pursue collection of dues and assessments from lot owners at Admiral's Cove.

In order to preserve the existence of the Beach Club and clearly establish the rights of the Club to collect dues and assessments, we recommend preparation and recording of a Supplement to the Restrictive Covenants. The Supplement should include at a minimum the obligation of current and future owners of Lots at Admiral's Cove to maintain the beach and pool area. This would require voluntary participation by all owners who wish to be members of the Beach Club moving forward.

If necessary, the organization has the option of pursuing an opinion from a Court with regard to the Beach Club's ability to collect dues and assessments from all lot owners, but this is often expensive and not guaranteed to be successful. Often, judges are not willing to rule on issues like these unless a lawsuit is filed which includes claims by one party against another.

We encourage you to support the Board in their attempt to move forward either by providing the Board with constructive input about what you would like to see, or by advising them that you do not wish to continue your membership at this time. The Board will need to decide how to proceed in the near future and would like to take into consideration the opinions of the members. Please either contact the Board in writing or attend the Board meeting scheduled for February 9, 2010 so that you may present any questions you may have and participate in the discussion regarding this matter.

Sincerely,
CONDOMINIUM LAW GROUP, PLLC

Theresa M. Torgesen