

Thomas J. Wilson

ATTORNEY AT LAW
7105 COUNTY FARM
LEXINGTON, MICHIGAN 48450

AREA CODE (810) 359-8235
FAX (810) 359-8235
tjw7105@yahoo.com

September 6, 2017

Lexington Heights, Inc.
Board of Trustees
P.O. Box 580
Lexington, MI 48450

Re: Dues Increase

Dear Board Members:

This writer has been requested to render a legal opinion regarding the logistics of increasing the annual association dues. I have reviewed the relevant Public Act, case law and Attorney General Opinions addressing this issue.

Lexington Heights is a summer resort association incorporated pursuant to Public Act 137 of 1929, being MCL 455.201 et seq. This is commonly referred to as the enabling statute that essentially governs the means by which the Corporation must operate. The statute provides the corporation the power to adopt and enforce bylaws, however, the bylaws are subject to constitutional and statutory limitations. In other words, the bylaw must be consistent with the constitution and enabling statute and to the extent the same is inconsistent with either, that portion of the bylaws are unenforceable. See *Baldwin v North Shore Estates Ass'n*, 384 Mich 42 (1970).

The 2016 Lexington Heights bylaws this writer has been provided indicate at Article X, Section 1. that membership dues and fees are established by the Board of Trustees and voted upon by the general membership. However, the bylaws do not specify what percentage of the general membership is required to vote on the membership dues, i.e. a simple majority of those in attendance or a majority of all members.

This issue was previously addressed in an Attorney General Opinion number 7164 and dated October 7, 2004. Former Section 19 of the enabling statute in 2004 provided that "*The corporation may assess annual dues and special assessments against its members, by a vote of a majority thereof, ...*" (MCL 455.219; emphasis ours). The Attorney General was asked to render an opinion regarding whether "a majority thereof" means a majority of all its members or only a majority of those in attendance at the meeting. Following a lengthy analysis to another section of the statute, specifically Section 8 where it concerned the election of board trustees the statute provided, *inter alia*:

"At each annual meeting there shall be elected such number of trustees as shall be necessary to fill the places of trustees whose terms of office then expire, and all vacancies on such board. Such election shall be by ballot and choice of trustees shall be by a *majority of all votes cast.*"
Emphasis added.

Thus, Section 8 clearly provided that all that was required to elect a trustee is a simple majority of all votes cast and not a majority of all the members. In contrast, Section 19 does not contain the language that dues may be passed by a majority of all votes cast, rather it provides that it requires a vote of the majority of its members. The Attorney General opined that a majority of all its members was required to assess dues and special assessments and not just a simple majority of those in attendance.

Attorney General Opinions are not binding law on our Courts. However, absent binding case law on point, the majority of Courts utilize Attorney General Opinions as a means of guiding it in its decision process and tend to give significant weight to these opinions in rendering decisions. However, this issue was taken even a step further when March 2, 2006, MCL 455.219 was amended to clearly mandate that a majority of all of the members of the corporation is required to assess annual dues or special assessments. The Legislative history concerning the amendment provides that the reason the statute was amended was to reconcile conflicting Attorney General Opinions and thus to ratify Attorney General Opinion 7164 of 2004, discussed above, concerning the appropriate vote of the general membership to assess an annual dues or special assessment.

Amended Section 19 now provides that:

"(2)Unless the members by a vote of a majority of all of the members have by resolution specifically provided for approval by a majority of the votes cast by the members voting, the vote of a majority of all of the members of the corporation is required to approve an action of the board under subsection (1)."

Subsection (1) provides that the board of trustees may require that the members of the corporation pay an annual dues or special assessment. It further provides that the assessment of annual dues or a special assessment requires the approval of the members under subsection (2) that is quoted above. Attached is a copy of MCL 455.219.

There is a method by which the requirement to increase dues only requires the vote of a simple majority of those members in attendance. However, that method requires that a majority of all the members had previously passed a resolution specifically providing that only the approval of a majority of the votes cast by the general members actually voting is all that is required to assess

Lexington Heights, Inc. Opinion
Page 3

an annual dues or a special assessment. A resolution has been defined as a formal expression of the opinion or will of an official body, adopted by a vote. Thus a bylaw can be a resolution. However, the bylaw to qualify under Section 19(2) must have been adopted by a majority of all members at the time of adoption and must specifically provide that a vote concerning dues or special assessment need only be approved by a majority of the vote of the members in attendance. See *Roy v Island & Fonda Lakes Association*, decided November 4, 2014, unpublished Court of Appeals decision No. 315124. This writer's review of the Lexington Heights' Bylaws do not include such language. Absent such a resolution, the statute, at Section 19, mandates the approval of a majority of all its members to assess an annual dues or special assessment.

It is worthy of noting that in order to obtain a majority of the vote of all general members that the Michigan Business Corporation Act applies to summer resort associations which permits voting by proxy. See Attorney General Opinion 7230, issued May 27, 2009. Thus voting by proxy may be a very effective means of obtaining the majority votes of all members. See Attorney General Opinion 5065, issued December 17, 1976.

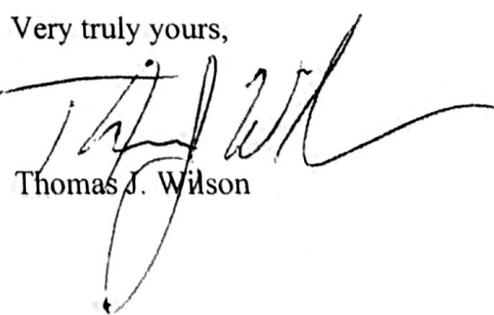
Also note that all owners of real property located within the Corporation's boundaries are entitled to vote. Thus, if there is more than one owner, each owner is entitled to vote. Property held in trust or owned as a business entity may present additional issues, however, those issues would need to be addressed should the need arise.

In reviewing the law in this area, it was noted that there is a provision in the current bylaws that conflict with the present law. At Article IX, Section 6, it provides that no member that owes delinquent dues can vote at any trustee election. Attorney General Opinion 7230, issued May 27, 2009 unequivocally provides that any such provision denying the right to vote due to a failure to pay dues is unlawful. This writer encourages the Board of Trustees to amend this bylaw to rescind that portion of Article IX, Section 6.

I trust the above opinion adequately addresses your concerns, however, should you require any further advice, please advise.

Thank you.

Very truly yours,


Thomas J. Wilson

550

TJW:taw
Enclosure

Michigan Legislature
Senate, Adjourned on Feb 26, 2016

Home Register Why Register? Login New!

NAVIGATE SECTIONS

Section 455.219

INCORPORATION OF SUMMER RESORT OWNERS (EXCERPT)
Act 137 of 1929

Legislature **455.219 Members; dues and assessments.**

Sec. 19.

(1) The board of trustees may require that the members of a corporation pay annual dues and special assessments for any purpose authorized under this act. All of the following apply to an assessment of annual dues or a special assessment under this subsection:

(a) The approval of the members under subsection (2) is required.

(b) With the approval of the members under subsection (2), the board of trustees shall prescribe the time and manner of payment and manner of collection of the annual dues or special assessment.

(c) With the approval of the members under subsection (2), the board of trustees may provide that delinquent annual dues or assessments shall become a lien upon the land of the delinquent member and may provide the manner and method of enforcing that lien.

(2) Unless the members by a vote of a majority of all of the members have by resolution specifically provided for approval by a majority of the votes cast by the members voting, the vote of a majority of all of the members of the corporation is required to approve an action of the board under subsection (1).

Laws

History: 1929, Act 137, Eff. Aug. 28, 1929 ;-- CL 1929, 10381 ;-- CL 1948, 455.219 ;-- Am. 2006, Act 44, Imd. Eff. Mar. 2, 2006

Compiler's Notes: Enacting section 1 of Act 44 of 2006 provides: "Enacting section 1. It is the intent of the legislature to reconcile conflicting opinions of the attorney general in the interpretation of this act, and to ratify the opinion of the attorney general in attorney general opinion no. 7164 of 2004, concerning the appropriate vote of the members required to approve an action of the board under section 19."

More

© 2015 Legislative Council, State of Michigan