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9 SUN CITY SHADOW HILLS COMMUNITY  
10 ASSOCIATION and KIM FULLER

**FILED**  
Superior Court of California  
County of Riverside

6/27/2019

M. Allen

By Fax

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF RIVERSIDE

10 PALM SPRINGS COURTHOUSE

11 In the matter of:

12 SUN CITY SHADOW HILLS  
13 COMMUNITY ASSOCIATION, a  
14 California nonprofit mutual benefit  
15 corporation, and KIM FULLER, an  
16 individual,

17 Petitioners.

CASE NO. PSC1903711

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
VERIFIED PETITION TO AMEND THE  
BYLAWS AND FOR AN ORDER  
APPROVING THE AMENDMENTS  
(CORP. CODE § 7515)**

Date: August 16, 2019

Time: 8:30 a.m.

Dept.: PS2

Judge: Hon. David M. Chapman

Petition Filed: May 31, 2019

19 Petitioners SUN CITY SHADOW HILLS COMMUNITY ASSOCIATION  
20 (“Association”) and KIM FULLER (“Fuller”) respectfully submit their Memorandum of  
21 Points and Authorities in support of the verified Petition to Amend Bylaws (Corp. Code §  
22 7515), filed herein on May 31, 2019 (“Petition”) and request the Court order the amendments  
23 to the 2018 Amended and Restated Bylaws for Sun City Shadow Hills Community  
24 Association be approved based on the votes actually received on January 11, 2019 and on  
25 April 9, 2019, based on California Corporations Code section 7515 (“Section 7515”). (A true  
26 and correct copy of the proposed 2019 Amendment to the 2018 Amended Bylaws is attached  
27 as **Exhibit 9** to the Petition filed herein.)

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I.

**INTRODUCTION**

Petitioner Association is a common interest development consisting of 3,450 residential lots located in the City of Indio, County of Riverside. The community is governed by a 2018 Amended and Restated Declaration of Covenants, Conditions and Restrictions recorded on February 28, 2018, Articles of Incorporation filed on July 21, 2003, and by its 2018 Amended and Restated Bylaws adopted on January 11, 2019 (“2018 Amended Bylaws”).

The Association attempted to amend the provision in its 2018 Amended Bylaws as follows:

**1. The January 11, 2019 Vote**

The January 11, 2019 vote was whether to approve an amendment of the 2018 Amended Bylaws to prohibit cumulative voting. If approved, Sections 7.5.2 and 7.6.6 in the 2018 Bylaws would be deleted in their entirety and Section 4.4.5 would be amended as follows:

~~4.4.5 Cumulative Voting Election of Directors. At an election of directors, each Lot shall be assigned one vote for each Board position to be filled at the election unless voting rights for the Lot have been suspended. Cumulative voting is not allowed. Each Member entitled to vote in any election of directors where more than two (2) positions are to be filled by a vote of the Members may cumulate his or her votes in the election of such directors pursuant to Section 8.5(b) below.”~~

The purpose of this proposed amendment was to simplify voting, which becomes complicated with cumulative voting in a community of over three-thousand homes. Additionally, cumulative voting is currently required every other year for Board elections. (Article 7, Section 7.5.2 of the 2018 Amended Bylaws allows cumulative voting only in elections where more than two directors are elected, so in years where only two directors are elected, cumulative voting is not used.) This adds to the confusion in running elections year-to-year. Doing away with cumulative voting will simplify the voting process and make it less confusing by utilizing the same voting method each year at every election.

The ballots tabulated on January 11, 2019 for the proposed amendment to remove cumulative voting resulted in the following:

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1 Of a possible 3,450 votes, 2,123 ballots were cast (2,052 votes were cast for the  
2 amendment):

- 3 • 1,498 members voted to approve the amendment to the Bylaws (43% of  
4 the total voting power, and 73% of the total votes cast), and
- 5 • 554 members voted to disapprove the amendment to the Bylaws (16% of the  
6 total voting power and 27% of the total votes cast).
- 7 • The remaining ballots abstained or were otherwise invalidated.

## 8 **2. The April 9, 2019 Vote**

9 The April 9, 2019 vote was whether to amend the provision found at Article 14, Section  
10 14.4.1 of the 2018 Amended Bylaws to lower the amendment approval requirement from 51% of  
11 the total voting power to two-thirds of the ballots cast when ballots are received from at least a  
12 majority of the voting power. The purpose of this proposed amendment was to avoid having to  
13 seek court intervention every time an amendment to the bylaws is required. Because the  
14 Association is so large and consists of a significant number of seasonal residents, it is incredibly  
15 difficult to have any amendment pass. In fact, a prior vote that simply revised the CC&Rs and  
16 original bylaws to comply with current laws barely passed. Accordingly, changing the voting  
17 requirement from 51% of all members to two-thirds of the members actually casting a ballot  
18 (assuming at least a majority of the voting power cast ballots) more adequately represents the  
19 desires of the community while allowing amendments to be made.

20 The ballots were tabulated on April 9, 2019 for the proposed amendment to Article 14,  
21 Section 14.4.1 in 2018 Amended Bylaws resulted in the following:

22 Of a possible 3,450 votes, 1,839 ballots were cast (and 1,678 total votes cast for  
23 the Bylaw amendment):

- 24 • 1,487 members voted to approve the amendment to the 2018 Amended  
25 Bylaws - 43% of the total voting power, and 89% of the total votes cast,
- 26 • 191 members voted to disapprove the amendment to the 2018 Amended  
27 Bylaws - 6% of the total voting power and 11% of the total votes cast.
- 28 • The remaining ballots abstained or were otherwise invalidated.

Because Article 14, Section 14.4.1 of the 2018 Amended Bylaws requires approval of  
51% of the total voting power (at least 1,760 votes to approve), the amendments to Sections  
7.5.2, 7.6.6, 4.4.5, and 14.4.1 of the 2018 Amended Bylaws did not pass.

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1 Although the Association went to great lengths to encourage members to vote on the  
2 Amendments to the 2018 Amended Bylaws, the vote fell short of the 51% of the total voting  
3 power to approve the amendment. (See Petition at ¶¶ 5, 6, 9, 13-16; Exhibits 4, 7, 10-12.)  
4 Apathy by members and numerous off-site owners thwarted the Association’s efforts to get the  
5 requisite approval to amend, so the Association’s only remaining option was to obtain an order  
6 from the Court, to approve the amendments to the 2018 Amended Bylaws based on the “yes”  
7 votes actually received. (See ¶¶ 5, 6, 8, 10 in the Petition and Exh. 6 and 8 attached thereto.)

8 As a result of the Association’s inability to reach the 51% requirement set forth in Article  
9 14, Section 14.4.1 of the 2018 Amended Bylaws (See Exhibit 2 to Petition), the Association  
10 petitions the Court, under Section 7515 of the Corporations Code, to order the amendments to  
11 the 2018 Amended Bylaws be approved based on the affirmative votes obtained.

## 12 II.

### 13 **THE AMENDMENTS TO THE 2018 AMENDED BYLAWS SHOULD BE APPROVED** 14 **BASED ON THE VOTES ACTUALLY CAST**

15 Pursuant to the broad discretion granted to the Court under Section 7515, Petitioners ask  
16 the Court approve the amendments to the 2018 Amended Bylaws, based on the votes actually  
17 cast by the members on January 11, 2019 and April 9, 2019.

18 The purpose of the proposed amendments is to: (1) do away with cumulative voting in  
19 order to simplify the voting process and make it less confusing by utilizing the same voting  
20 method at every election; and (2) to reduce the bylaw amendment requirements in order to avoid  
21 having to seek court intervention every time an amendment to the bylaws is required. Because  
22 the Association is comprised of 3,450 members, and consists of a significant number of seasonal  
23 residents, it is often incredibly difficult to have any amendment passed. (See Petition at ¶ 16).  
24 Accordingly, changing the voting requirement from 51% of all members to two-thirds of the  
25 members actually casting a ballot (assuming a majority of the voting power cast ballots) more  
26 adequately represents the desires of the community and allows the Association to move forward  
27 with important amendments without being unduly hamstrung by apathy and seasonal owners.

28 ///

1 The total voting power is 3,450 members; therefore, the Association would need the vote of  
2 a 51% of the voting power of its members (or 1,760 members) to approve the amendments to the  
3 2018 Amended Bylaws. The Association solicited its members to vote on the amendments to the  
4 2018 Amended Bylaws. (See Petition at ¶¶ 13–16, Exhibits 4, 7, 10, 11, 12.).

5 On January 11, 2019, 2,052 votes were cast on the the proposed amendment to remove  
6 cumulative the Association received 1,498 “yes” votes (43% of the total voting power, and 73%  
7 of the total votes cast), and 554 “no” votes (16% of the total voting power and 27% of the total  
8 votes cast). (See Petition at ¶ 8; Exhibit 6).

9 On April 9, 2019, of the 1,679 ballots were cast to change the voting requirement from  
10 51% of all members to two-thirds of the members actually casting a ballot, the Association  
11 received 1,487 “yes” votes and 191 “no” votes on whether to approve the amendments to the  
12 2018 Amended Bylaws. Thus, only 43% of the total voting power voted in favor the  
13 amendment, and of the votes cast 89% of those votes were cast in favor of the amendment;  
14 versus 11% voting against the amendment. (See Petition at ¶ 10; Exhibit 8).

15 Accordingly, well over a majority of the people who voted on the amendments, voted in  
16 favor.

17 Section 7515 states as follows:

18 (a) If for any reason it is **impractical or unduly difficult** for any corporation  
19 to call or conduct a meeting of its members, delegates or directors, or otherwise  
20 obtain their consent, in the manner prescribed by its articles or bylaws, or this part,  
21 then the superior court of the proper county, upon petition of a director, officer,  
22 delegate or member, may order that such a meeting be called or that a written ballot  
or other form of obtaining the vote of members, delegates or directors be  
authorized, **in such a manner as the court finds fair and equitable under the  
circumstances.**

23 (b) The court shall, in an order issued pursuant to this section, provide for a  
24 method of notice reasonably designed to give actual notice to all parties who would  
25 be entitled to notice of a meeting held pursuant to the articles, bylaws and this part,  
whether or not the method results in actual notice to every such person, or  
conforms to the notice requirements that would otherwise apply. In a proceeding  
under this section the court may determine who the members or directors are.

26 (c) **The order issued pursuant to this section may dispense with any  
27 requirement relating to the holding of and voting at meetings or obtaining of  
28 votes, including any requirement as to quorums or as to the number or  
percentage of votes needed for approval, that would otherwise be imposed by  
the articles, bylaws, or this part.**

1 (d) Wherever practical any order issued pursuant to this section shall limit the  
2 subject matter of the meetings or other forms of consent authorized to items,  
3 including amendments to the articles or bylaws, the resolution of which will or  
4 may enable the corporation to continue managing its affairs without further resort  
to this section; provided, however, that an order under this section may also  
authorize the obtaining of whatever votes and approvals are necessary for the  
dissolution, merger, sale of assets or reorganization of the corporation.

5 (e) Any meeting or other method of obtaining the vote of members, delegates  
6 or directors conducted pursuant to an order issued under this section, and which  
7 complies with all the provisions of such order, is for all purposes a valid meeting  
or vote, as the case may be, and shall have the same force and effect as if it  
8 complied with every requirement imposed by the articles, bylaws, and this part.  
[*Emphasis added.*]

9 Under Section 7515(c), the Court has broad discretion to order the amendments to the  
10 2018 Amended Bylaws (See Exhibit 9 to Petition) approved based on the vote actually received  
11 by the voting members, because it is impractical and unduly difficult to obtain majority approval  
12 from the membership. (See Petition at ¶¶ 8, 10, 16).

13 As with Civil Code section 4275<sup>1</sup>, Section 7515 is intended in part to “overcome  
14 membership voting apathy.” (*Greenback Townhomes Homeowners Assn. v. Rizan* (1985) 166  
15 Cal.App.3d 843, 849). As stated in the Petition at Paragraph 16 voter apathy is well  
16 documented. In *Fourth La Costa Condominium Owners Assn. v. Seith*, (2008) 159 Cal.App.4th  
17 563, 583-584, the Court of Appeal held that:

18 Corporations Code [section] 7515[, subdivision] (c), however, permits the  
19 order to ‘dispense with any requirement relating to the holding of and voting  
at meetings or obtaining of votes. Thus, a more reasonable interpretation of  
20 [section] 7515 would be that the court may, as empowered under [Civil  
Code section] 1356 with regard to the declaration, retroactively approve  
21 amendments to the articles and bylaws.’ (2 Sproul & Rosenberry, *supra*,  
§ 9.44, pp. 682–683.)

22 We agree with that assessment, particularly since Civil Code section 1356,  
23 which applies to the amendment of CC&R's, was patterned after Corporations  
Code section 7515. (2 Sproul & Rosenberry, *supra*, § 9.30, p. 660.) The  
24 Owners Association established the apathy of a substantial percentage of  
owners and that the supermajority requirement precluded it from amending  
25 the bylaws as well as the CC&R's. We are unaware of any reason to allow  
relief from the supermajority vote requirement after a vote has already been  
26 taken in the context of CC&R's—which are central to the establishment,  
operation and maintenance of a common interest development and ordinarily  
control in the event of a conflict with the bylaws (Hanna & Van Atta, *supra*,

27 \_\_\_\_\_  
28 <sup>1</sup> Civil Code section 4275 is a sister statute to Corporations Code Section 7515 that deals specifically with  
amendments to community association CC&Rs.

1 § 1.30, pp. 28-29; id., § 18:19, pp. 1103–1104)—but only allow prospective  
2 relief in the context of bylaws. We find no error.

3 As discussed in more detail in the Petition, the Board put forth a significant effort to  
4 obtain member votes. (See Petition at ¶¶ 5, 6, 8, 10, 13-15; Exhibits. 6, 7, 8, 10-12.) In order to  
5 obtain the required approval, almost every single vote that was cast would have had to have been  
6 in favor of the amendment. Unfortunately, that was not the case.

7 Accordingly, changing the voting requirement from 51% of all members to two-thirds of  
8 the members who actually to cast a ballot in an election (assuming a majority of the voting  
9 power cast ballots) more adequately represents the desires of the community in light of apathy  
10 and seasonal owners. Accordingly, the Petitioners request that this Court approve the  
11 amendments to the 2018 Amended Bylaws to the Bylaws pursuant to Section 7515 of the  
12 Corporations Code based on the actual approval received from the membership on January 11,  
13 2019 and April 9, 2019.

14 There is no requirement that the Association notify any lender or mortgagee of the  
15 hearing on the petition. The amendment to the Bylaws is not a material amendment requiring  
16 the lender vote on the amendment. Nor is there any requirement that the Association notify the  
17 city and/or county in which this Association is located. (See Kharrazian Decl. at ¶ 6.)

18 **III.**  
19 **PETITIONER HAS GIVEN NOTICE TO ALL REQUIRED PARTIES AS ORDERED**  
20 **BY THIS COURT AND AS REQUIRED BY ITS GOVERNING DOCUMENTS AND**  
21 **STATUTE**

22 Association has given notice of the Petition and the hearing on the Petition in accordance  
23 with its governing documents, statute, and as ordered by the Court.

24 Section 7515(b) requires that the court:

25 provide for a method of notice reasonably designed to give actual notice to all  
26 parties who would be entitled to notice of a meeting held pursuant to the articles,  
27 bylaws and this part, whether or not the method results in actual notice to every  
28 such person, or conforms to the notice requirements that would otherwise apply.

Pursuant to an ex parte order issued on June 19, 2019, the court determined a fair and  
reasonable method of notification to the owners in the Association, and the Notice of Hearing

1 was mailed to all owners entitled to receive notice, as evidenced by the Declaration of Mailing  
2 filed with the court concurrently with this filing. (See Ayon Decl. at ¶¶ 3-4; Kharrazian Decl. at  
3 ¶¶ 3-5). As stated above and in the declarations filed herewith, there is no requirement to notify  
4 any lender or the city and/or county any amendments to the Association's Bylaws. (See Ayon  
5 Decl. at ¶ 5; Kharrazian Decl. at ¶ 6). Association has, therefore, met the requirements of  
6 Section 7515(b) and this Court's ex parte Order dated June 19, 2019 regarding notice of the  
7 hearing on the Petition, and respectfully requests that the court grant its petition to approve the  
8 Proposed Amendment.

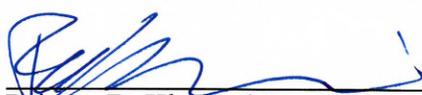
9 **IV.**

10 **CONCLUSION**

11 Based upon the Petition, this Memorandum of Points and Authorities, and the  
12 Declarations submitted in support of the Petition and Ex Parte Application, Petitioners  
13 respectfully request, pursuant to Corporations Code section 7515, that the Court confirm the  
14 Amendments to the 2018 Amended Bylaws as being validly approved based upon the approval  
15 received from the members on January 11, 2019 and April 9, 2019.

16 Dated: June 26, 2019

EPSTEN GRINNELL & HOWELL, APC

17  
18 By: 

19 Pejman D. Kharrazian  
20 Attorneys for Petitioners  
SUN CITY SHADOW HILLS  
COMMUNITY ASSOCIATION and  
KIM FULLER