

## **Appendix X – December 2018**

**Shirley, Lori**

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**From:** Marybeth Ardike <marybeth.bob@gmail.com>  
**Sent:** Sunday, December 2, 2018 4:55 PM  
**To:** john feldmann; katz@msu.edu; Tom Conger; norman Holly; Darlene Hamilton; Janice McLean; Diane Knott; carolee.rowse@gmail.com; Richard Thornell; Valerie Williams; Fred Shapiro; prchenoweth@verizon.net; jordanharding29@gmail.com; Natalie Brodsky; Sharon Campbell; Maritza M. Carmona; sparky; carole kennon; Timothy Maloney; Carl IMA P C; CCOC@montgomerycountymd.gov; Shirley, Lori  
**Cc:** Marc Elrich; Montgomery County Council; ben kramer; vaughn stewart; bonniecullison@yahoo.com; ben shnider; mark.anders@montgomerycountymd.gov  
**Subject:** LEISURE WORLD...CUT THE NEW COUNTY EXECUTIVE SOME SLACK ...from Bob Ardike

It is Sunday afternoon, December 2. I am sitting in Clubhouse II. It is warm outside. The temperature is in the mid 50s. The fireplace is not lit, no need.

I just begin to read my book. Then a familiar voice rings out. **"Say, Bob. Looks like you have some time? I want to tell you about something that happened last Thursday evening. Mind if I intrude on your reading?"**

I respond, **"Nah!"**

Here is what he says....

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Last Thursday newly elected County Executive Marc Elrich and members of his Transition hosted a public listening forum for Montgomery County (MC) residents to have their voices heard. Some residents of Leisure World attended that forum. **Some were disappointed** when Mr. Elrich responded...

**"I don't know a lot about Leisure World governance."** Maybe it's surprising he knows **"anything"** at all **about Leisure World governance?"**

Bob, here's what I think... **"Cut Marc Elrich some slack!"**

## Perspective

- MC has over a million people
- Leisure World has approximately only 8,000 of the million people
- MC has "scores of issues."
- Everyone who has an issue feels that's the most important issue there is...LW is no different
- Many send letters or email about an issue
- All of us who get email... get way too much email
- **Mr Elrich gets even more email**

So, it's hardly earth shaking to hear he said...**"I don't know a lot about Leisure World governance."** Even in spite of the fact he and his staff have been bombarded... **"for at least the last 2 years and have been addressed in every email re: Leisure World's refusal to hold unit owner elections for BOD representatives, the subsequent CCOC complaint and**

class action suit filed against them and every email re: the administration building site plan dispute, including those to the Montgomery Co. Planning Board staff."

### Let's face facts.

If the truth be told, it might be found that most residents who move into Leisure World, & therefore own homes here,...**"don't know a lot about Leisure World governance?"**

It may also be true that we, Leisure World Residents, do not have a high percentage who bother to vote on election days? This in spite of how convenient Leisure World voting locations are when compared to what other County residents face?

While final voting percentages are not in, the preliminary results for Leisure World appear quite disappointing for a "general election." The Leisure World voting percentage may well show to be quite lower than the County percentage as a whole. This does not auger well for claiming a "sterling voter turnout" record when election times roll around.

On the positive side. It's a good thing we **do not have the percentage of voters** that participated in the **"primary."** Otherwise, the saying, **"Those in Annapolis know about Leisure World"** might need to be dropped **(for obvious reasons)?**

County Executive Marc Elrich has yet to assume office...Hope springs eternal. Let's see what happens?

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**"Bob!** That's it. Get what I said?

I respond, **"Yeah!**

Bob Ardike

**Shirley, Lori**

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**From:** Marybeth Ardike <marybeth.bob@gmail.com>  
**Sent:** Tuesday, December 4, 2018 5:30 PM  
**To:** LW Board of Directors; Leisure World News  
**Cc:** admin JustUs; Montgomery County Council; ben kramer; vaughn stewart; bonniecullison@yahoo.com; ben shnider; mark.anders@montgomerycountymd.gov  
**Subject:** Re: 12-4-18: Order B&T Track Assignment/ Order Scheduling Hearing Civil Track...from Bob Ardike

With foreknowledge that I am going out on a "limb," I will ask. Is it "possible" Leisure World's General Manager "mis-spoke" when he said on November 28, at a Montgomery Mutual monthly meeting?...

"we have not been served - but have answered the complaint - we will be filing for dismissal (of the suit) and reimbursement of legal fees"

Docket Date: **12/04/2018** Docket Number: **27**  
Docket Description: ORDER, SCHEDULING HEARING CIVIL TRACK  
Docket Type: Docket Filed By: Court  
Docket Text: AMENDED NOTICE OF SCHEDULING HEARING AND ORDER OF COURT - TRACK 6 (GREENBERG, J.) , ENTERED. (COPIES MAILED

**Granted!** There could be a very reasonable explanation...

- Leisure World's legal counsel has never filed a "dismissal" before and is seeking information about how to do that?
- The Court does not know what a dismissal means?
- The Judge handling the case does not know what a dismissal means?

**OR**

- As usual the Leisure World General Manager doesn't have a Clue as to what's going on?

Look! If you have questions about any of this, please don't ask me. I'm not an attorney....

Bob Ardike

Shirley, Lori

**From:** Marybeth Ardike <marybeth.bob@gmail.com>  
**Sent:** Tuesday, December 11, 2018 7:05 AM  
**To:** aclwn@lwmc.com; LW Board of Directors; Leisure World News  
**Cc:** Fani-Gonzalez, Natali; Cichy, Gerald; Patterson, Tina; Anderson, Casey; Montgomery County Council; Marc Elrich; ben kramer; vaughn stewart; bonniecullison@yahoo.com; ben shnider; CCOC@montgomerycountymd.gov; Dreyfuss, Norman  
**Subject:** LEISURE WORLD: A COMPARISON...from Bob Ardike

I'm admiring the Holiday decorations in Leisure World's Clubhouse II. A voice rings out. "Bob, look at what I have." It's the Leisure World resident I seem to encounter in various locations.

He's waving a piece of paper. He says it's for the "Thoughts & Opinions" page of the "*Leisure World News*." He's hoping it will be printed in an upcoming issue. Then he asks, "Bob, will you give me your opinion about it?"

I respond, Yeah! Here is what he has written...

#### A COMPARISON

**The Proposed Leisure World Admin. Bldg. v The Proposed Border Wall ( U.S. - Mexico )**

**LW's Governance wants it. v The Mexican government does not want it.**

**LW's Residents will pay for it. v The Citizens of Mexico will not pay for it.**

**LW's Governance says it's needed. v The Mexican government says it's not needed.**

**LW's Governance will waste 7M v The Mexican govt. will not waste a "peso."**

**(\$\$\$)  to build what's not necessary**

**LW's Board does not care to find out v The Mexican govt. knows how its residents feel.**  
 how the LW residents view the  
 proposed project( a referendum?)

**LW's Board could be required to v The Mexican govt. has no option regarding the**  
 seek a "consensus" from the  
 Leisure World residents. matter.

**LW's Board is telling the "dissidents" v Many people already in Mexico feel they fled**  
 of Leisure World to go to an even  
 that "warmer place?"  
 "warmer place?" than Mexico.

**LW's Board does not see an environ- v Most environmentalists oppose the border**  
 mental impact re: its proposal to  
 demolish & build the "unnecessary." barrier.

LW's being granted approval "to build" v Will likely not provide the advertised solution.  
& demolish will further divide a  
divided community.

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At this point, he says. "Bob! Tell me. What do you think about what I've written? Do I stand a zero **Or** an absolute zero( - 460 degrees Fahrenheit) chance of the Leisure World News printing this?"

I respond, Yeah!

Bob Ardike

**Shirley, Lori**

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**From:** Marybeth Ardike <marybeth.bob@gmail.com>  
**Sent:** Wednesday, December 12, 2018 6:08 AM  
**To:** LW Board of Directors; aclwn@lwmc.com; Leisure World News  
**Cc:** Fani-Gonzalez, Natali; Cichy, Gerald; Patterson, Tina; Anderson, Casey; Montgomery County Council; Marc Elrich; ben kramer; vaughn stewart; bonniecullison@yahoo.com; ben shnider; CCOC@montgomerycountymd.gov; Dreyfuss, Norman  
**Subject:** LEISURE WORLD & A "GAME CHANGING" PLAN

Yesterday was a watershed day. "Events" (watch the News) occurring outside of Leisure World are having repercussions inside of Leisure World. Here is what I have been told. Decide for yourself what to take as true?

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It seems that (LW) Leisure World, by that is meant LW management & 8 members of the LWCC, Board of Directors, have decided it is time to stop trying to placate the Montgomery County(MC) Planning Commission. A revised Site plan was submitted by Leisure World on July 2, 2018. The Planning Commission Staff completed a review of LW's submission, for the proposed "new" Leisure World administration building site plan, & provided comments. Well, LW does NOT AGREE with 3 of the comments made and will now "hold fast."

There was an **expectation** that revisions would be made by Leisure World. Well that "expectation" is now "a pipe dream." As far as Leisure World is concerned, it's now "hard ball" time. Yesterday's news events outside of Leisure World have convinced LW that "being Mr. Nice Guy" is not a viable strategy. Instead, Leisure World is now emboldened. Not only will these minor changes not be made, but a new element will be added to the Site plan. So don't even think about what happened to the idea of **CONSENSUS** being mentioned!

That new element will involve enhanced security around the proposed, new administration building. It now appears that an idea "floated" last year is being "resurfaced?" It is about **digging a Moat**, complete with alligators, around the perimeter of the administration building once construction is completed. The belief being that..."One can never have too much security!"

Particulars are being left to the lobby group, or PAC, known as "**Friends of Leisure World.**" The "**found-dress**" of that group has been charged with developing the strategy to be utilized against the MC Planning Commission at the followup meeting. That date has not been announced. But, the "word" is, she plans to be ready. It is said she is conducting daily meetings in Montgomery Mutual, LW'S largest Mutual, to solidify plans...?

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I'll see if I can learn more and report back to you...?

Bob Ardike

**Shirley, Lori**

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**From:** Marybeth Ardike <marybeth.bob@gmail.com>  
**Sent:** Thursday, December 13, 2018 6:12 AM  
**To:** LW Board of Directors; aclwn@lwmc.com; Leisure World News  
**Cc:** Fani-Gonzalez, Natali; Cichy, Gerald; Patterson, Tina; Anderson, Casey; Montgomery County Council; Marc Elrich; ben kramer; vaughn stewart; bonniecullison@yahoo.com; ben shnider; CCOC@montgomerycountymd.gov; Dreyfuss, Norman  
**Subject:** LEISURE WORLD: DETAILS OF A STRATEGY...from Bob Ardike

New details of the LW Management strategy v Montgomery County(MC) Planning Commission have now come to light. The strategy will be employed during the Commission's "reconsideration meeting" regarding the proposal to build a new LW administration building and demolish the current one. So once again I share what has been brought to my attention. Even I am surprised by what is supposedly planned...

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It appears the strategy was spawned after viewing the 1976 film entitled "Network." The "Found-dress" of the unauthorized PAC (political action committee) "*Friends of Leisure World*" can be credited with "hatching" the plan.

Seems the "Found-dress" called a "Friends Meeting." She discovered the movie "Network" was being carried, free of charge, on Amazon prime ( the film was selected for preservation in the United States National Film Registry by the Library of Congress as being "culturally and historically significant) and she wanted the "Friends" to see it. She felt this would set the stage for what she was proposing to have happen at the next Planning Commission meeting.

The movie is most notable for the spoken statement..."I'm mad as hell & I'm not going to take it anymore!" This statement resonated with the "Found-dress."

**Her plan:** "Friends" will be driven in Leisure World owned buses to the next Montgomery County(MC) Planning Commission meeting. The "Found-ress" will be equipped with a "clicker." Once the meeting is underway, everyone in attendance will realize she & her minions are fully prepared for anything not to their liking. Whenever she "double clicks" her clicker, the "Friends" will rise in unison & shout..."I'm mad as hell & I'm not going to take it anymore!"

The "Found-dress" believes this will get the attention of the Commission members. Approval "to build" will assuredly be granted. The shouting of..."I'm mad as hell & I'm not going to take it anymore!" ...will carry the day.

Then, the next day, as a token of appreciation, all "Friends" members will be driven to N.Y. city, on Leisure World buses, to attend the Broadway production of Network. Actor Bryan Cranston, of "Breaking Bad" fame, reprises the famous character of Howard Beale played by Peter Finch in the film version. Finch was the first actor to be awarded an "Oscar" for "Best Actor" posthumously for his performance in the film.

The "Found-dress" is personally exploring the legality of paying for the transportation, Broadway tickets, meals, lodging, etc., using monies coming from Leisure World's "slush fund." So far, however, calls have not been returned from the law office of Michael Cohen...?

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Should more information on this matter come to me, you'll be informed...



**Shirley, Lori**

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**From:** admin@justus.group  
**Sent:** Saturday, December 15, 2018 9:04 AM  
**To:** justus organization; tmo@townmeetingorganization.com; LW Green; LW Board of Directors; Montgomery County Council; vaughn stewart; Marc Elrich; mont.co.planningboard@justus.group; lwdogs@justus.group; Tim Maloney; LW Exec. Committee  
**Subject:** A legally compliant homeowners association operates THIS WAY = Montgomery Village Election--

[montgomeryvillage.com](http://montgomeryvillage.com)

## 2019 MVF Board Election | Montgomery Village

[MVF Board Member Application \(pdf\) and Guidelines](#)

[Online Application](#)

Are you interested in helping to continually make Montgomery Village a terrific place to live? Are you concerned with problems that face communities today and in the future? Then consider service to the community on the Montgomery Village Foundation (MVF) Board of Directors!

In March, three candidates will be elected by the members (homeowners) of MVF to serve three-year terms on the nine member Board of Directors. The Board meets on the fourth Thursday of the month at the North Creek Community Center. These meetings are open to all residents for their ideas, input and support.

The Montgomery Village Foundation provides overall governance to the Village. It interacts with government agencies and oversees proposals for development or legislation affecting the Village. The MVF has two major responsibilities as outlined in its legal documents. First, the MVF has responsibility for management and maintenance of MVF owned properties. These include MVF's recreational areas and facilities such as parks, lakes, ponds, tennis courts and community centers.

Second, the MVF, through the Architectural Review Board, provides guidelines and restrictions on architectural changes with the objective of helping to maintain Village property values.

### Who can run for the Board?

All interested applicants who are owners or residents of residential property in Montgomery Village are welcome to apply. MVF urges residents to share their skills, views and energies by participating in Village governance. The Nominating Committee reviews all applications for nomination and considers applicants based on a number of factors including, but not limited to the following:

- Status as residential property owner or resident
- Length of residency in Montgomery Village
- Previous participation in community affairs
- Academic, professional, or practical experience in such areas as finance, engineering, administration or law, which would assist in the management of a community association

- Must be in good standing with MVF and not in sustained violation of any MVF architectural standard or rule, and current in assessments.
- 18 years of age or above

### How do I run for the MVF Board?

It's easy. Candidates do not need to run an expensive political campaign to serve the community. Space is set aside in the *Village News* for candidate statements, along with photos, so Villagers can get to know the candidates and their views. Also, the MVF Election Committee sponsors a Candidates' Forum and two "Meet the Candidates" events where candidates can talk with Villagers one-on-one about issues of importance. Applicants are provided equal opportunities through the *Village News*, the Meet the Candidates events, and specially prepared Candidate Statements which are forwarded to all Village homeowners with their ballots.

That's all there is to it! Let's hear from you!

Fill out the application (link above), or drop by the MVF Office, 10120 Apple Ridge Road, and pick up an application form and instructions. You can return your application online, by mail, fax or e-mail, or bring it back to the MVF Office for forwarding to the MVF Nominating Committee. **Nominations close at 5 p.m. on Friday, Jan. 11, 2019.**

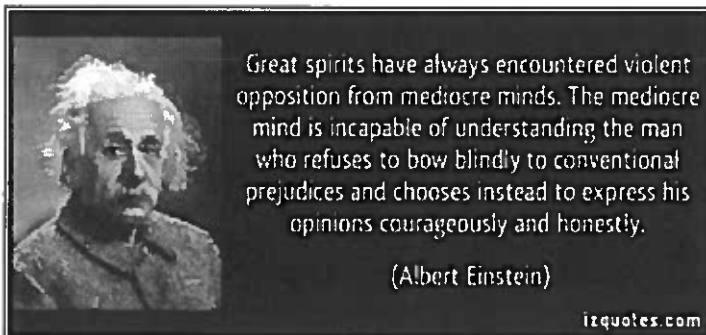
*slkatzman*

President, "*JustUs*"-conscience of the community

"*JustUs*" advocates to enhance the quality of life for all Leisure World residents

website: [www.justus.group](http://www.justus.group)

email: [admin@justus.group](mailto:admin@justus.group)



*town meeting organization (TMO)*

website: [www.townmeetingorganization.com](http://www.townmeetingorganization.com)

**Shirley, Lori**

**From:** Marybeth Ardike <marybeth.bob@gmail.com>  
**Sent:** Monday, December 17, 2018 4:27 PM  
**To:** aclwn@lwmc.com; Leisure World News; LW Board of Directors  
**Cc:** Fani-Gonzalez, Natali; Cichy, Gerald; Patterson, Tina; Anderson, Casey; Montgomery County Council; Marc Elrich; ben kramer; vaughn stewart; bonniecullison@yahoo.com; ben shnider; CCOC@montgomerycountymd.gov; Dreyfuss, Norman  
**Subject:** LEISURE WORLD...IS A SHUTDOWN LOOMING? ...from Bob Ardike

Last Thursday I shared details of a Leisure World( **LW** ) Management strategy, which was **provided to me** Here's the rest.

The strategy will be employed by **LW** during the Montgomery County(**MC**) Planning Commission's "**reconsideration meeting.**" As you may recall? The meeting is a followup to one held in November, 2017. Leisure World is seeking the **MC** Planning Commission's approval to build a new **LW** administration building and demolish the current one. Here is what I am told...

The **MC** Planning Commission will be given an **Ultimatum** at the meeting. **Either approve the construction of the Proposed LW Administration Building, OR (LW) Leisure World will be SHUT DOWN!** Only "essential facilities & services" will be open & continued. All others will be closed. Here is a **partial list** under those **2 categories...**

**Essential Facilities & Services - OPEN    Non Essential Facilities & Services - Closed**

- |                   |                            |
|-------------------|----------------------------|
| 1. Golf Course    | 1. Administration Building |
| 2. Fitness Center | 2. MedStar Health Clinic   |
| 3. Stein Room Bar | 3. Garbage & Trash Pickup  |
| 4. Ping Pong Room | 4. All Security Services   |

Credit for this original & creative idea goes to the "**Found-dress**" of the "Friends of Leisure World." This is the political action committee formed by a **LW** Montgomery Mutual resident. She is prepared to take **full responsibility** for the "**shut down**" of all "non essential" Leisure World services. The **LW** General Manager will be charged with taking the necessary action. Notice is thereby given. There is still time for reasonable "heads" to prevail & yield to the **Found-dress'** demands. Let's see what happens...?

Bob Ardike

Of Note: Look forward to an upcoming issue of Leisure World News with some details about "Friends of Leisure World" ...unless it's cancelled...the newspaper or the article?

**Shirley, Lori**

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**From:** Feldmann <jjf3353@comcast.net>  
**Sent:** Monday, December 17, 2018 9:45 PM  
**To:** Shirley, Lori  
**Cc:** admin@justus.group  
**Subject:** MNCPPC Sign Posting Procedures  
**Attachments:** Sign-Posting-Procedures.pdf; sign info.pdf

Ms. Shirley,

I am writing to inquire if the county has approved a deviation to the signage-installation procedure "Bottom of sign must not be less than 3 feet to the ground.", for Leisure World's new administration building project number 820170120? I have attached a copy of the MNCPPC Sign Posting Procedures.

Also attached, is a PDF file entitled "sign info" that shows the two signs installed for the project at Leisure World. Both signs violate the MNCPPC Sign Posting Procedures. Sign 1, (closet to the existing admin building), is installed at less than 33 inches from the ground and sign 2 is installed at 28 inches from the ground. Please advise. Thank you.

John Feldmann

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## MNCPPC Sign Posting Procedures

*PLEASE NOTE: MNCPPC contact info has been updated. Please update or replace previously used signs.*

### Overview

At the time an application is filed, the applicant will be required to acknowledge that he or she has read this sheet and understands how and where to post the required sign(s). Before the application is accepted, verification of posting has to be provided. Once posted, it is the applicant's responsibility to ensure that the sign(s) remain on the project site for the required time.

### Sign Specifications

- Minimum size 36 inches x 48 inches (1,728 square inches).
- On .063 white aluminum with black lettering.
- Applicant or vendor should apply the specifications of the sample sign located on page 2 of this document. Download our sign template.
- Applicant must insert the following on the sign(s) where appropriate:
  - Project name as it appears on the application
  - Type of plan (i.e. Preliminary, Site, Project, etc.) and Plan number as assigned at time of application
  - Project description as discussed with staff at the time of application
- Bottom of sign must not be less than 3 feet to the ground.
- Stakes (wood, steel, or other similar supports) should be driven approximately one (1) foot or to a depth that assures the sign remains upright.

### Instructions

The applicant is responsible for all costs associated with the sign posting requirements. The sign(s) should not be returned to the Planning Department.

A minimum of one sign must be placed along all adjacent arterial streets. Signs should be posted every 600 feet when a street frontage adjacent to a project exceeds that distance. The sign(s) must be placed parallel to the roadway.

The sign(s) must be placed on the property in the most visible location available in such a manner that landscaping or other obstructions do not impair the visibility of the sign(s) from the street. The sign(s) must not be placed on the public street right-of-way. The sign(s) should not be placed more than 10 feet behind the property line adjacent to the street.

The sign(s) must have a short project description developed between the planning staff and the applicant to include: number and type of dwelling units and a breakdown of commercial uses--office, retail, etc.—by square feet.

The Planning Department may vary any of the above guidelines where there are special circumstances in order to ensure that the sign(s) will be visible to the general public.

Sample Sign

48.0"

0.063 WHITE ALUMINUM

**DEVELOPMENT APPLICATION FOR:**

[project name]

[plan type] Plan Number XXXXXXXXXX

[project description]

36.0"

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**For process and hearing information please contact:**

■ The Maryland-National Capital Park & Planning Commission  
8787 Georgia Avenue, Silver Spring, MD 20910  
[www.montgomeryplanning.org/development](http://www.montgomeryplanning.org/development)  
(301) 495-4550

**LEISURE WORLD Administration Building and Clubhouse 820170120**

**County Requirement: "Bottom of sign must not be less than 3 feet to the ground."**

**Sign 1 bottom installed at 32+ but less than 33" inches from the ground**



**Backside picture for sign 1**



**Sign 2 bottom 28" from the ground.**



**Backside picture for sign 2**





**Shirley, Lori**

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**From:** admin@justus.group  
**Sent:** Tuesday, December 18, 2018 8:34 AM  
**To:** mont.co.planningboard@justus.group; vaughn stewart; Montgomery County Council; Marc Elrich  
**Cc:** justus organization; tmo@townmeetingorganization.com; LW Green; lwdogs@justus.group  
**Subject:** MNCPPC Sign Posting Procedures  
**Attachments:** Sign-Posting-Procedures.pdf; sign info.pdf

**From:** "Feldmann" <jjf3353@comcast.net>  
**Date:** December 17, 2018 9:45:04 PM EST  
**To:** "Lori Shirley" <lori.shirley@montgomeryplanning.org>  
**Cc:** <admin@justus.group>  
**Subject:** MNCPPC Sign Posting Procedures

Ms. Shirley,

I am writing to inquire if the county has approved a deviation to the signage-installation procedure ?Bottom of sign must not be less than 3 feet to the ground.?, for Leisure World?s new administration building project number 820170120? I have attached a copy of the MNCPPC Sign Posting Procedures.

Also attached, is a PDF file entitled ?sign info? that shows the two signs installed for the project at Leisure World. Both signs violate the MNCPPC Sign Posting Procedures. Sign 1, (closet to the existing admin building), is installed at less than 33 inches from the ground and sign 2 is installed at 28 inches from the ground. Please advise. Thank you.

John Feldmann

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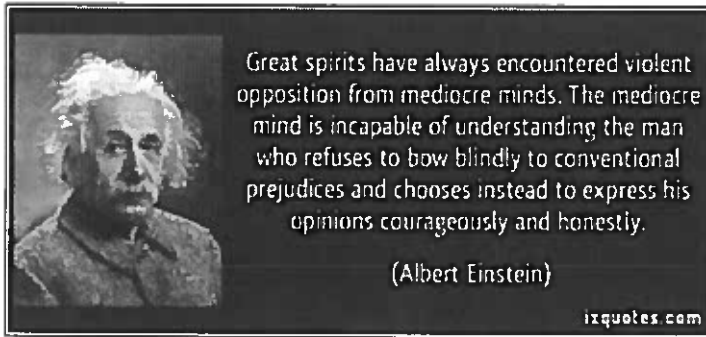
*slkatzman*

President, "*JustUs*"-conscience of the community

"*JustUs*" advocates to enhance the quality of life for all Leisure World residents

website: [www.justus.group](http://www.justus.group)

email: [admin@justus.group](mailto:admin@justus.group)



*town meeting organization (TMO)*

website: [www.townmeetingorganization.com](http://www.townmeetingorganization.com)

**Shirley, Lori**

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**From:** Shirley, Lori  
**Sent:** Tuesday, December 18, 2018 12:32 PM  
**To:** 'Feldmann'  
**Cc:** admin@justus.group  
**Subject:** RE: MNCPPC Sign Posting Procedures

**Importance:** High

Hello Mr. Feldmann,

There has been no deviation from the Planning Department's Sign Posting procedures (Rev. 11/2/2012). Earlier this morning, your below email was forwarded to Mr. Scott Wallace, the Applicant's attorney for Site Plan No. 820170120 Leisure World Administration Building and Clubhouse I. Mr. Wallace was given specific instructions regarding how to have the Applicant's consultant, Stantec, immediately inspect and adjust the two signs at the Application site to comply with the Sign Posting procedures.

Once these signs have been inspected and adjusted for sign posting compliance, more specifically, regarding the bottom of the signs' heights in relation to the ground, photos will be taken (with the date the adjustments were made). After the Area 2 Regulatory Team receives documentation for the sign posting adjustments, these photos will be made available in DAIC for the Site Plan's electronic record.

Please let me know if you have any other questions. Thank you for bringing this matter to our attention.

Lori Shirley  
Planner Coordinator | Area 2 Division | Regulatory Team  
Montgomery County Planning Department  
8787 Georgia Avenue  
Silver Spring, Maryland 20910  
T 301-495-4557  
E [Lori.Shirley@montgomeryplanning.org](mailto:Lori.Shirley@montgomeryplanning.org)  
W [MontgomeryPlanning.org](http://MontgomeryPlanning.org)



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**From:** Feldmann <jjf3353@comcast.net>  
**Sent:** Monday, December 17, 2018 9:45 PM  
**To:** Shirley, Lori <lori.shirley@montgomeryplanning.org>  
**Cc:** admin@justus.group  
**Subject:** MNCPPC Sign Posting Procedures

Ms. Shirley,

## Appendix X

I am writing to inquire if the county has approved a deviation to the signage-installation procedure “Bottom of sign must not be less than 3 feet to the ground.”, for Leisure World’s new administration building project number 820170120? I have attached a copy of the MNCPPC Sign Posting Procedures.

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John Feldmann

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**Butler, Patrick**

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**From:** Feldmann <jjf3353@comcast.net>  
**Sent:** Monday, December 31, 2018 2:49 PM  
**To:** Butler, Patrick  
**Cc:** admin@justus.group; Sanders, Carrie  
**Subject:** RE: MNCPPC Sign Posting Procedures

Hello Mr. Butler,

Thank you for your email, and I appreciate your informing me of the signage adjustments.

Wishing you too a Happy New Year.

John

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**From:** Butler, Patrick <patrick.butler@montgomeryplanning.org>  
**Sent:** Monday, December 31, 2018 2:28 PM  
**To:** jjf3353@comcast.net  
**Cc:** admin@justus.group; Sanders, Carrie <carrie.sanders@montgomeryplanning.org>  
**Subject:** FW: MNCPPC Sign Posting Procedures

Hello Mr. Feldmann,

The signs have been adjusted to meet our requirements. Thank you for letting us know of this issue.

I hope you have a Happy New Year.

Thank you,

**Patrick Butler, AICP**  
Regulatory Supervisor | Area 2 Division  
Montgomery County Planning Department  
8787 Georgia Avenue | Silver Spring, MD 20910  
301-495-4561  
[Patrick.Butler@montgomeryplanning.org](mailto:Patrick.Butler@montgomeryplanning.org)



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**From:** Nicole Gerke <[ngerke@lwmc.com](mailto:ngerke@lwmc.com)>  
**Sent:** Friday, December 21, 2018 3:12 PM  
**To:** Shirley, Lori <[lori.shirley@montgomeryplanning.org](mailto:lori.shirley@montgomeryplanning.org)>; Scott Wallace ([swallace@linowes-law.com](mailto:swallace@linowes-law.com)) <[swallace@linowes-law.com](mailto:swallace@linowes-law.com)>  
**Cc:** Mills, Matthew <[matthew.mills@mncppc.org](mailto:matthew.mills@mncppc.org)>; Sanders, Carrie <[carrie.sanders@montgomeryplanning.org](mailto:carrie.sanders@montgomeryplanning.org)>; Butler,

Patrick <[patrick.butler@montgomeryplanning.org](mailto:patrick.butler@montgomeryplanning.org)>; Brown, Angela <[angela.brown@montgomeryplanning.org](mailto:angela.brown@montgomeryplanning.org)>  
**Subject:** Re: MNCPPC Sign Posting Procedures

Hi Lori

The signs were adjusted to be above 36" at the bottom. The signs were about 5" off.

Attached are photos taken today.

Thanks Nicole

Sent from my Verizon, Samsung Galaxy smartphone

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**From:** Feldmann <[jjf3353@comcast.net](mailto:jjf3353@comcast.net)>  
**Sent:** Monday, December 17, 2018 9:45 PM  
**To:** Shirley, Lori <[lori.shirley@montgomeryplanning.org](mailto:lori.shirley@montgomeryplanning.org)>  
**Cc:** [admin@justus.group](mailto:admin@justus.group)  
**Subject:** MNCPPC Sign Posting Procedures

Ms. Shirley,

I am writing to inquire if the county has approved a deviation to the signage-installation procedure "Bottom of sign must not be less than 3 feet to the ground.", for Leisure World's new administration building project number 820170120? I have attached a copy of the MNCPPC Sign Posting Procedures.

Also attached, is a PDF file entitled "sign info" that shows the two signs installed for the project at Leisure World. Both signs violate the MNCPPC Sign Posting Procedures. Sign 1, (closest to the existing admin building), is installed at less than 33 inches from the ground and sign 2 is installed at 28 inches from the ground. Please advise. Thank you.

John Feldmann

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## Butler, Patrick

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**From:** Feldmann <jjf3353@comcast.net>  
**Sent:** Monday, December 31, 2018 2:49 PM  
**To:** Butler, Patrick  
**Cc:** admin@justus.group; Sanders, Carrie  
**Subject:** RE: MNCPPC Sign Posting Procedures

Hello Mr. Butler,

Thank you for your email, and I appreciate your informing me of the signage adjustments.

Wishing you too a Happy New Year.

John

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**From:** Butler, Patrick <patrick.butler@montgomeryplanning.org>  
**Sent:** Monday, December 31, 2018 2:28 PM  
**To:** jjf3353@comcast.net  
**Cc:** admin@justus.group; Sanders, Carrie <carrie.sanders@montgomeryplanning.org>  
**Subject:** FW: MNCPPC Sign Posting Procedures

Hello Mr. Feldmann,

The signs have been adjusted to meet our requirements. Thank you for letting us know of this issue.

I hope you have a Happy New Year.

Thank you,

**Patrick Butler, AICP**  
Regulatory Supervisor | Area 2 Division  
Montgomery County Planning Department  
8787 Georgia Avenue | Silver Spring, MD 20910  
301-495-4561  
[Patrick.Butler@montgomeryplanning.org](mailto:Patrick.Butler@montgomeryplanning.org)



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**Sent:** Friday, December 21, 2018 3:12 PM  
**To:** Shirley, Lori <[lori.shirley@montgomeryplanning.org](mailto:lori.shirley@montgomeryplanning.org)>; Scott Wallace <[swallace@linowes-law.com](mailto:swallace@linowes-law.com)>  
<[swallace@linowes-law.com](mailto:swallace@linowes-law.com)>  
**Cc:** Mills, Matthew <[matthew.mills@mncppc.org](mailto:matthew.mills@mncppc.org)>; Sanders, Carrie <[carrie.sanders@montgomeryplanning.org](mailto:carrie.sanders@montgomeryplanning.org)>; Butler,

Patrick <[patrick.butler@montgomeryplanning.org](mailto:patrick.butler@montgomeryplanning.org)>; Brown, Angela <[angela.brown@montgomeryplanning.org](mailto:angela.brown@montgomeryplanning.org)>  
**Subject:** Re: MNCPPC Sign Posting Procedures

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**Cc:** [admin@justus.group](mailto:admin@justus.group)  
**Subject:** MNCPPC Sign Posting Procedures

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John Feldmann

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<<...>>



**Butler, Patrick**

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**From:** admin@justus.group  
**Sent:** Saturday, December 22, 2018 9:38 AM  
**To:** mont.co.planningboard@justus.group; Shirley, Lori  
**Cc:** justus organization; tmo@townmeetingorganization.com; LW Green; vaughn stewart; Marc Elrich  
**Subject:** hold your horses Park & Planning: Lawsuit against LW: 2018-12-17 ComplaintV\_LWCC&LWMC-Amended.pdf  
**Attachments:** 2018-12-17 ComplaintV\_LWCC&LWMC-Amended.pdf

oh - and by the way - in case you didn't get the message - in violation of your deferral instruction to Leisure World "go back to the community and gain CONSENSUS" -

Kevin Flannery stated in his dog and pony shows: **"I was not instructed to gain consensus"**

**THERE IS NO CONSENSUS!**

<https://tinyurl.com/y8rvv3n6>

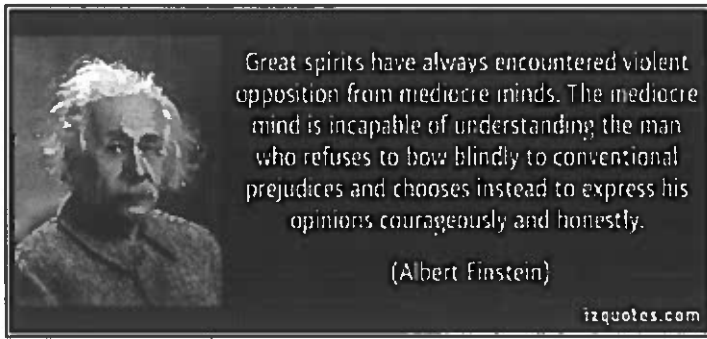
*slkatzman*

President, *"JustUs"*-conscience of the community

*"JustUs"* advocates to enhance the quality of life for all Leisure World residents

**website: [www.justus.group](http://www.justus.group)**

**email: [admin@justus.group](mailto:admin@justus.group)**



*town meeting organization (TMO)*

**website: [www.townmeetingorganization.com](http://www.townmeetingorganization.com)**

IN THE CIRCUIT COURT FOR  
MONTGOMERY COUNTY, MARYLAND

RICHARD P. THORNELL,  
2901 South Leisure World  
Boulevard, #126  
Silver Spring, Md. 20906

and

JORDAN L. HARDING,  
3310 North Leisure World  
Boulevard #308  
Silver Spring, Md. 20906

and

PRISCILLA READ CHENOWETH  
15107 Interlachen Drive  
The Greens Building Two, Apt. 622  
Silver Spring, MD 20906

Plaintiffs

v.

LEISURE WORLD COMMUNITY  
CORPORATION,

Serve  
Leisure World of Maryland  
3701 Rossmoor Blvd.  
Silver Spring, MD 20906

and

LEISURE WORLD OF MARYLAND  
CORPORATION

Serve  
Miles & Stockbridge P.C.  
Suite 700  
11 North Washington Street  
Rockville MD 20850

Defendants.

Case No. 451529-V

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**FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

COME NOW, the Plaintiffs, on behalf of themselves in their individual capacities and on behalf of the entire class of persons similarly situated, by and through counsel, file this First Amended Class Action Complaint, and sue the Defendants for cause, claim damages, and state as follows:

**Introduction**

1. Plaintiffs seeks a declaratory judgment from this court and ask this court to determine that the governing structure of the Leisure World retirement community violates the provisions of the Maryland Homeowners Act, Real Property Article, § 11B-106.1(a), which entitles all members of the homeowners associations in Maryland to directly elect members of their governing board. Leisure World Community Corporation (also referred to as “LWCC”) is a registered homeowners association in the State of Maryland, yet LWCC does not permit direct election of its governing body by members of the homeowners association. Instead, the board of directors of LWCC (also referred to as “Governing Board”) is elected by the boards of the 29 Leisure World housing mutual associations. This governance structure plainly violates Real Property Article, § 11B-106.1(a), which requires that the governing body of a homeowners association be directly elected by the individual homeowners.

2. Plaintiffs bring this action case against Defendant Leisure World Community Corporation and its related entity, Defendant Leisure World Maryland Corporation (also referred to as “LWMC”), seeking a declaration that the governance structure violates the Maryland Homeowners Act, and seeking injunctive relief which: a) compels the adoption of bylaws which comply with RP § 11B-106.1(a); b) enjoins the unlawful elections of the current

board; c) orders an election of the board which complies with RP § 11B-106.1(a); and d) enjoins the extraordinary expenditure of funds by the unlawfully elected board until a lawfully constituted board can be elected and take office. The Governing Board is unlawfully constituted because it does not permit Leisure World homeowners, to directly elect representatives to the Governing Board. Article III of the Bylaws for the LWCC governs the selection process, and states the Governing Board is to be selected by entities, which represent Leisure World's twenty-nine (29) housing associations (hereinafter "Mutuals"). No individual homeowners participate in the election of the LWCC board of directors. The Bylaws do not permit the members or unit owners (hereinafter "homeowners") of Leisure World to directly elect members to the Governing Board.

3. Upon information and belief, the LWCC has been a registered homeowner's association in the State of Maryland, since at least 1988. In letter dated March 9, 2009, counsel for LWCC conceded the entity is subject to the HOA Act. In 2012, the LWCC mandated a Special Committee to Review Governing Documents ("Special Committee"), and appointed Plaintiff Richard P. Thornell as a committee member. The Special Committee found that the selection process for the Governing Board did not comply with the HOA Act and that the homeowners are denied their right to an election, and made recommendations to remedy this, but Defendants ignored those recommendations. Although Defendants have been on notice for several years regarding their noncompliance with the HOA Act, Defendants have continued to violate the rights of Plaintiffs and Class Members by refusing to amend the governing documents, continuing to hold illegitimate annual elections for the Governing Board, and permitting the Board to meet and take actions, including authorizing the expenditure of funds derived primarily from fees charged to the homeowners of Leisure World.

4. As a result of Defendants' actions, Plaintiffs and Class Members have been denied their statutory rights under the HOA Act. The injuries suffered by Plaintiffs and Class Members include the denial of their voting rights under the Act, the enforcement of unlawful Bylaws that deny Plaintiffs and Class Members direct representation on the Governing Board, and waste of funds derived primarily from fees charged to Plaintiffs and Class Members by an unlawfully elected board. The LWCC annual budget is approximately \$25 million, all of which is subject to expenditure by an improperly constituted Governing Board.

5. Plaintiff Richard P. Thornell owns a residential unit in Leisure World and is a member of a Mutual. Other Plaintiffs and Class Members also own residential units in Leisure World and are members of Mutuels. The Plaintiffs and Class Members will suffer immediate, substantial, and irreparable harm to their statutory rights if the selection process for the Governing Board is permitted to remain unchanged and unchallenged. Indeed, the Governing Board is the entity constituting LWCC, and is attempting to secure zoning approval for the construction of a new administration building estimated to cost over \$5 million<sup>1</sup>. As an improperly constituted board, the actions of the Governing Board are invalid, and it does not have the authority to take any action.

6. Plaintiffs bring this action to remedy these harms on behalf of themselves and similarly situated homeowners of Leisure World in Montgomery County, Maryland.

### **The Parties and Related Entities**

7. Plaintiff Richard P. Thornell, Esq.—attorney, Professor of Law Emeritus at Howard University, and former Vice President for Legal Affairs and General Counsel for

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<sup>1</sup> This number is derived from a 2012 study done by A.R. Meyers for LWCC, and would likely be higher in present dollars.

Howard University—is a resident of Montgomery County, and resides at 2901 South Leisure World Boulevard #126, Silver Spring, Md. 20906. He is a member of Mutual 27 in Leisure World. In 2012, the LWCC appointed Mr. Thornell to the Special Committee. Mr. Thornell objects to the legitimacy of the Governing Board.

8. Plaintiff Jordan L. Harding—former Mayor of New Carrollton, Maryland and U.S. diplomat—is a resident of Montgomery County who resides at 3310 North Leisure World Boulevard #308, Silver Spring, Md. 20906. He is a member of Mutual 17B.

9. Plaintiff Priscilla Read Chenoweth, Esq. is a resident of Montgomery County who resides at 15107 Interlachen Drive, The Greens Building Two, Apt. 622, Silver Spring, Md. 20906. She is a member of Mutual 20, a retired member of the New Jersey Bar, and a former editor of the New Jersey Law Journal.

10. Collectively, the Plaintiffs are unit owners of Leisure World who object to the legitimacy of the selection process for the Governing Board on the ground that it violates Maryland law and therefore acts without authority to raise and expend mandatory fees and other income received from Leisure World homeowners. Due to an unlawful selection process, the Governing Board is improperly constituted and without authority to meet or to take any action whatsoever.

11. Defendant Leisure World Community Corporation is a Maryland corporation with its principal place of business located at 3701 Rossmoor Boulevard, Silver Spring, Maryland 20906. LWCC was established in 1980 to serve as the center for management and representation of the community, particularly for the formulation of community policy. A Board of Directors heads the LWCC. It holds monthly meetings, and is responsible for the operation and governance of Leisure World. It is composed of an executive committee and a community-wide Governing

Board. The Governing Board is composed of 34 representatives, representing twenty-nine (29) Mutuels in Leisure World.

12. Defendant Leisure World of Maryland Corporation is a Maryland Corporation with its principal place of business located at 3701 Rossmoor Boulevard, Silver Spring, Maryland 20906. It is a wholly owned subsidiary of LWCC. It was established in 1977. Upon information and belief, it manages the Leisure World Trust and the Mutuels.

13. Plaintiffs bring this action pursuant to Md. Rule 2-231 as a class action on their own behalf and on behalf of an entire class of people similarly situated.

14. All members of the proposed class are citizens of the State of Maryland.

### **Jurisdiction and Venue**

15. This Court has jurisdiction over this action under Md. Code, Cts. & Jud. Proc. §§ 6-102; 6-103.

16. This Court has jurisdiction over the parties to this action under Md. Code, Cts. & Jud. Proc. § 6-102, as the entity parties to this action are organized under the laws of Maryland.

17. This Court is the proper venue for this action under Md. Code, Cts. & Jud. Proc. § 6-203 as all relevant events occurred in Montgomery County, Maryland.

### **Facts Common to All Counts for Individual and Class Relief**

18. Leisure World is an age-restricted, planned retirement community located in Montgomery County, Maryland, and is home to over 8,000 residents aged 55 and older, who live in over 5,000 housing units.

19. Leisure World is composed of twenty-nine (29) Mutuels, and each Mutual can range from an estimated 25 units to 900 units. There are three types of Mutuels: one is a co-



operative; one is constituted as a homeowner's association; and twenty-seven are organized as condominium associations.

20. Each Mutual is governed by a Mutual board of directors ("Mutual Board"). Homeowners of each Mutual participate in elections, and elect representatives to their respective Mutual Board. There are twenty-nine (29) Mutual Boards.

21. Although homeowners can participate in elections for their respective Mutual Board, they cannot participate in elections for the governing board of LWCC, which in fact, manages and operates Leisure World and exercises all the authority and responsibility of a homeowners association for Leisure World, including imposing the assessments for Leisure World and managing the operation of the Leisure World homeowners, including providing common maintenance, security, and common services to the homeowners and residents of Leisure World. In contrast, the twenty-nine (29) Mutual Boards have little, if any, authority or responsibility to manage or operate Leisure World, of the residences within their respective mutual.

22. Elections for each Mutual Board are held annually throughout the year.

23. Annually, each Mutual Board selects a representative(s) to serve on the community-wide Governing Board.

24. On January 2, 2018, elections took place for the Governing Board. In accordance with the Bylaws of the LWCC, Plaintiffs and Class Members were not permitted to participate in these elections.

25. At least as far back as 2012, the LWCC has been on notice that its selection process for selecting representatives of Mutuels to serve on the Governing Board is in direct conflict with Maryland law, specifically the HOA Act.

26. On November 29, 2011, the LWCC mandated a Special Committee, which was tasked with reviewing the LWCC's governing documents, determining whether the LWCC was in compliance with federal, state, and county laws, and to determine what action, if any, was needed to ensure compliance with applicable laws. Plaintiff Richard P. Thornell, two other attorneys, and a management consultant with expertise in governance and strategic planning served on the Special Committee.

27. On October 2, 2012, the Special Committee produced its report. It found the LWCC's Articles of Incorporation and Bylaws were not in compliance with, *inter alia*, the HOA Act. It relied on the plain meaning of the statute as well as an opinion letter of the LWCC's counsel dated March 9, 2009. In an Executive Summary to the Committee's Report and Recommendations dated October 25, 2012 and updated November 1, 2012, the Special Committee found that the LWCC is a homeowners association within the meaning of the HOA Act. The Special Committee recommended that the Defendants adopt a "Bill of Rights for Owners and Residents" to ensure compliance with Maryland law.

28. The Defendants did not implement the recommendations made by the Special Committee, and did not revise its governing documents to ensure compliance with the HOA Act. The members of the Special Committee resigned in protest on February 8, 2013.

29. Mr. Thornell, other Plaintiffs, and Class Members have continued to challenge the legitimacy of the Governing Board, and its ability to meet and to take any actions as a result of being improperly constituted under Maryland law.

30. On December 28, 2016, Leisure World resident Sheryl L. Katzman, on behalf of JustUs, filed a complaint with the Office of the Attorney General's Consumer Protection

Division after having notified the Governing Board and Executive Committee thereof of their continuing violation via email.

31. The Consumer Protection Division declined to investigate or enforce, citing a policy of selective enforcement, despite apparently agreeing that LWCC was in violation of the HOA Act. *See* Exhibit C.

32. Upon information and belief, the Governing Board is authorized to approve Leisure World budget appropriations, contracts, plans of action, and funding.

33. Upon information and belief, on or about September 24, 2013, the Governing Board voted in favor of authorizing management to proceed with new developments, including the construction of a new administrative building (“the Proposed Development”).

34. Upon information and belief, on or about October 29, 2013, the Governing Board authorized “a conceptual project budget of \$5.3 million for a new Administrative Building[.]” The LWCC acting through the Governing Board and its management employees, are attempting to secure zoning approval for the development for the Proposed Development without legal authority.

35. The funds authorized for this conceptual project were derived at least in part from a mandatory 2% transfer fee that is collected from residents at the time of settlement of each property sale, which—prior to July 29 2016—were subject to the restrictions of 12 CFR § 1228.2.

36. Upon information and belief, Defendants and the Governing Board have spent nearly \$1 million for land surveys, permit applications fees, and site plans pertaining to the Proposed Development, which is widely opposed by homeowners of Leisure World.

37. Use of the member funds to construct a new building is not authorized under the Resale Trust governing documents, which—under Section II—provide that the funds are available for “expanding, altering, or improving existing Improvements or other properties of the Trust.”

38. On May 23, 2017, the Governing Board held a meeting, and denied Leisure World Plaintiffs and Class Members, the opportunity to participate in a referendum regarding the Proposed Development despite a petition to do so containing over 2,000 signatures.

39. Plaintiffs as well as many other homeowners living in Leisure World are strongly opposed to the Proposed Development, and object to the Governing Board’s illegitimacy, and by extension, its ability to take any action regarding the Proposed Development or any other matter. Plaintiffs object to an illegally constituted board using funds derived from its homeowners assessment for this project. Plaintiffs also object to having any of its assessments being collected and spent by a board of directors not elected by the homeowners and not directly accountable to themselves and other Leisure World homeowners.

40. Upon information and belief, the LWCC has been registered as a homeowner’s association in the State of Maryland, beginning in 1988, and is subject to the HOA Act.

41. The HOA Act regulates the governance of homeowner associations in the State of Maryland. Specifically, it states:

**(a) A meeting of the members of the homeowners association to elect a governing body of the homeowners association shall be held within:**

- (1) 60 days from the date that at least 75% of the total number of lots that may be part of the development after all phases are complete are sold to members of the public for residential purposes; or
- (2) If a lesser percentage is specified in the governing documents of the homeowners association, 60 days from the date the specified lesser percentage of the total number of lots in the development after all phases are complete are sold to members of the public for residential purposes

Real Property Article, § 11B-106.1(a), attached hereto as Exhibit A (emphasis added).

42. The LWCC's Bylaws conflict with the HOA Act because the Bylaws do not permit Plaintiffs and Class Members to directly elect members to the Governing Board.

Specifically, Article III, governs the selection process for the Governing Board:

Directors and Alternates. **Each Mutual is entitled to select Directors**, qualified under the provisions of Section 2 of this Article, **to cast its votes and otherwise represent it on the Board of Directors**. Each Mutual may also select Alternate Directors who, in accordance with Section 5 of this Article, may represent the Mutual when its Director is absent. Such selections shall be made in accordance with procedures established by the Mutual. A Mutual may select more than one alternate for each Director; if it does so, it shall specify in writing any conditions governing the service of the alternates, including their order of precedence.

Article III, Section 1, Bylaws of the LWCC (revised January 29, 2013), attached hereto as Exhibit B (emphasis added)

43. Absent judicial intervention, the Plaintiffs and Class Members are at risk of immediate, substantial, and irreparable harm.

44. Judicial intervention is required for the purpose of determining a question of actual controversy between the parties and terminating uncertainty and controversy giving rise to this proceeding.

### CLASS ALLEGATIONS

45. The Plaintiffs incorporate by reference the substance of all the foregoing factual allegations.

46. Plaintiffs bring this action pursuant to Maryland Rule 2-231 as a class action on their own behalf and on behalf of the entire class of people similarly situated and seek certification of a statewide Maryland Class as defined below:

All persons residing in Maryland who are unit owners in Leisure World. Exempted from this class is any person who was an employee, officer, member, and/or agent of Leisure World or any of its related entities, affiliates, or

subsidiaries, any members of Plaintiffs' counsel, the Judge(s) presiding over this action and any members of the Judge's immediate family or staff, and any persons who make timely election to be excluded from the Class (the "Maryland Class" or "Class")

47. Plaintiffs hereby reserve the right to amend or modify the class definition with greater specificity or division after having had an opportunity to conduct discovery.

48. This action is properly maintained as a class action under Maryland Rule 2-23(b)(2) in that Defendants have refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

49. The action is also properly maintained as a class action pursuant to Maryland Rule 2-231(b)(1)(A) in that separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the Defendants.

50. This action is also properly maintainable as a class action pursuant to Maryland Rule 2-231(b)(1)(B) in that separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect themselves.

51. This action is also properly maintainable as a class action pursuant to Maryland Rule 2-231(b)(3) in that questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy between the class and the Defendants.

52. The members of the Maryland Class are so numerous that their joinder is impracticable. The Class consists of all Maryland residents who are homeowners in Leisure World, and who have been denied their statutory rights under the HOA Act.

53. Plaintiffs believe and therefore aver that their claims are typical of the Class in that all members are homeowners in Leisure World, and who have been denied their statutory rights under the HOA Act.

54. Plaintiffs believe and therefore aver that a class action is superior to other available methods of adjudicating the alleged controversy, especially considering the size and common interest of the Class, as well as the fact that the amount at stake for individual class members is unlikely that said individuals will pursue a separate action.

55. There are questions of law and fact common to the claims of each and all members of the Class. These common questions include, but are not limited to:

- a. Whether Defendants are subject to the HOA Act;
- b. Whether the selection process for the Governing Board conforms to the HOA Act;
- c. Whether the Defendants were aware the selection process for the Governing Board did not conform to the HOA Act;
- d. Whether the Defendants' conduct in refusing to conform its selection process for the Governing Board to the Act injured the Plaintiffs and Class Members;
- e. Whether Plaintiffs and Class Members were injured and suffered damages or other acceptable losses because of the Defendants' failure to conform to the HOA Act; and
- f. Whether Plaintiffs and Class Members are entitled to relief.

56. These common issues of law and fact predominate over any question affecting only individual Class Members.

57. Plaintiffs' claims are typical of those involving all members of the proposed Class. Plaintiffs are homeowners in Leisure World and have been denied the opportunity to directly elect members to the Governing Board. Plaintiff's damages and injuries are akin to other Class members and Plaintiffs seek relief consistent with the relief of the Class.

58. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs are members of the Class and the interests of the named Plaintiffs and all other members of the Class are identical. Plaintiffs have no conflicts of interest with the Class.

59. Plaintiffs' counsel has substantial experience in complex litigation and class action proceedings and will adequately represent the Class's interests.

60. The members of the Class are so numerous that the joinder of all members is impractical. While the exact number of Class members is unknown to Plaintiffs at this time, the proposed Class consists, upon information and belief, of over 8,000 individuals who are homeowners in Leisure World who are being denied their statutory rights to directly elect members to the Governing Board. Thus, the exact number of Class members is so numerous that joinder of all members is impracticable. Class members may be identified through objective means.

61. This action seeks final injunctive relief or corresponding declaratory relief with respect to the class as a whole, and therefore, a class action is superior to other available methods of fair and efficient adjudication of this litigation.



62. This action also entails questions of law and fact common to Class members that predominate over any questions affecting only individual plaintiffs, and, therefore, a class action is superior to other available methods of fair and efficient adjudication of this litigation.

63. No member of the Class has a substantial interest in individually controlling the prosecution of a separate action, but if he or she does, he or she may exclude himself or herself from the class upon the receipt of notice.

64. Likewise, particular issues in this case are appropriate for certification because such claims present only particular common issues, the resolution of which would advance the disposition of this matter and the parties' interests therein. Such particular issues include but are not limited to:

- a. Whether Defendants are subject to the HOA Act;
- b. Whether the selection process for the Governing Board complies with the HOA Act;
- c. Whether the Governing Board is properly constituted;
- d. Whether the Governing Board has the authority to meet and take action; and
- e. Whether the illegally constituted board has authority to collect assessments and expend the homeowners assessments without being directly elected, and whether they are authorized to use homeowners assessments to fund the Proposed Development.

65. Finally, all members of the proposed Class are readily ascertainable. The Defendants have access to all homeowners in Leisure World, and thus, which individuals are potentially affected. Using this information, the members of the Class can be identified and their contact information ascertained for purposes of providing notice to the Class.

**Count I**  
**(§ 3-406 of the Courts and Judicial Proceedings Article)**  
**(Declaratory Judgment)**  
**(On behalf of Plaintiffs and Maryland Class)**

66. The Plaintiffs incorporate by reference the substance of all the foregoing factual allegations.

67. This declaratory judgment action is brought pursuant to Md. Code, Cts. & Jud. Proc. § Sections 3-406 and 3-407 for the purpose of determining questions of actual controversy between the parties and terminating uncertainty and controversy giving rise to these proceedings.

68. The Plaintiffs and Class Members enjoy legal rights to be free from unlawful governing documents that violate Maryland law.

69. The Defendants' actions are unlawful in that they have enacted governing documents that do not comply with Maryland law as explained in Plaintiffs' memorandum in support of their request for temporary, preliminary, and permanent injunctive relief, which is adopted and incorporated herein by reference.

70. The Defendants' actions are further unlawful in that the governing documents regarding the selection process for the Governing Board prohibit homeowners from directly electing representatives to that Board.

71. Article III, Section 1 of the Bylaws of the LWCC states "Each Mutual is entitled to select Directors . . . to cast its votes and otherwise represent it on the Board of Directors." These actions are unlawful in that it results in indirect governance by homeowners rather than direct governance, which is required by Maryland law.

72. The Defendants' actions are also unlawful because, as an impermissibly constituted Governing Board, any actions the Board undertakes are should be considered void and invalid.

73. Therefore, there exists an actual controversy regarding a justiciable issue between the Plaintiffs, Class Members, and Defendants within the jurisdiction of this Court, involving whether the Defendants' actions were unlawful, and involving the rights and responsibilities of the Defendant, Plaintiffs and Class Members.

74. Antagonistic claims are present between the parties. Those claims indicate imminent and inevitable litigation.

75. A declaratory judgment by this Court will terminate this controversy.

76. Under §§ 3-401 through 3-415 of the Courts and Judicial Proceedings Article, Plaintiffs and Class Members are entitled to a judgment declaring the rights and responsibilities of the Plaintiffs, Class Members, and Defendants, and further settling the legal relations, rights, and responsibilities of the parties.

WHEREFORE, the Plaintiffs, individually and on behalf of all Class Members proposed in this Complaint, respectfully request:

a. That this Court determine and adjudicate the rights of the parties with respect to the legality of Article III, Section 1 of the Bylaws of the LWCC.

b. That this Court find and declare Article III, Section 1 of the LWCC Bylaws of violates the rights of the Plaintiffs and Class Members, under the Maryland Homeowners Association Act, to elect a governing board, and that this Court enter judgment in favor of the Plaintiffs and Class Members, and against Defendants.

c. That the Court issue temporary, preliminary, and permanent injunctive relief enjoining the Defendants from enforcing Article III, Section 1 of the Bylaws or any similar, future version thereof;

d. That the Court issue temporary, preliminary, and permanent injunctive relief:

- a) Enjoining the Defendants from enforcing Article III, Section 1 of the Bylaws of the LWCC or any similar, future version thereof;
  - b) Ordering the Defendants to hold a special election for the Governing Board, which is in compliance with the HOA Act;
  - c) Ordering the Defendants to pay for an impartial election consultant to design and implement adequate election procedures for the special election, and to monitor the special election; and
  - d) Enjoining the Defendants from taking any extraordinary action, including but not limited to pursuing the Proposed Development and expending any funds thereto, until the special election has taken place and a properly constituted Governing Board has been sworn in.
- e. That this Court award Plaintiffs and Class Members attorneys' fees and the costs of these proceedings; and
- f. That the Court award the Plaintiffs and Class Members such other and further relief as in law and justice they may be entitled to receive.

**Count II**  
**(Request for Temporary, Preliminary, and Permanent Injunctive Relief)**  
**(On behalf of Plaintiffs and Maryland Class)**

77. The Plaintiffs incorporate by reference the substance of all the foregoing factual allegations.
78. This is an action for a temporary restraining order and preliminary and permanent injunctive relief under Md. Rules 15-501 through 15-505.

79. As such, Article III, Section 1 of the Bylaws of the LWCC constitutes an unlawful enactment that is in direct conflict with the election procedures in the Maryland Homeowners Association Act.

80. Unless the Defendants are enjoined from enforcing Article III, Section 1 of the bylaws of the LWCC, Plaintiffs and Class Members will suffer immediate, substantial, and irreparable harm.

81. The benefits to Plaintiffs and Class Members in obtaining injunctive relief are equal to or outweigh the potential harm that Defendants would incur if this Court grants the requested injunctive relief.

82. The public interest is best served by granting an injunction.

WHEREFORE, the Plaintiffs, individually and on behalf of all Class Members proposed in this Complaint, respectfully request:

- a. That the Court issue an Order declaring Article III, Section 1 of the Bylaws of the LWCC violates the Maryland Homeowners Association Act;
- b. That the Court issue temporary, preliminary, and permanent injunctive relief:
  - a) Enjoining the Defendants from enforcing Article III, Section 1 of the Bylaws of the LWCC or any similar, future version thereof;
  - b) Ordering the Defendants to hold a special election for the Governing Board, which is in compliance with the HOA Act;
  - c) Ordering the Defendants to pay for an impartial election consultant to design and implement adequate election procedures for the special election, and to monitor the special election; and

- d) Enjoining the Defendants from taking any extraordinary action, including but not limited to pursuing the Proposed Development and expending any funds thereto, until the special election has taken place and a properly constituted Governing Board has been sworn in.
- c. That this Court award Plaintiffs and Class Members attorneys' fees and the costs of these proceedings; and
- d. That the Court award the Plaintiffs and Class Members such other and further relief as in law and justice they may be entitled to receive.

**JURY DEMAND**

COMES NOW the Plaintiffs and Class Members, by and through counsel, and demand a trial by jury on the foregoing Class Action.

Respectfully submitted,

JOSEPH, GREENWALD & LAAKE, P.A.



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301/220-2200

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 17, 2018, a copy of the foregoing was mailed  
first-class, postage prepaid to:

Michael J. Neary  
LERCH, EARLY & BREWER, CHTD.  
7600 Wisconsin Avenue, Suite 700  
Bethesda, MD 20814  
*Counsel for Defendants*

  
Maritza M. Carmona

# EXHIBIT A



**Md. REAL PROPERTY Code Ann. § 11B-106.1**

Chapters effective through July 1, 2018.

**Annotated Code of Maryland > REAL PROPERTY > TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT**

## **§ 11B-106.1. Responsibility for maintenance, repair, and replacement of common elements.**

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**(a) Time of meeting.** --A meeting of the members of the homeowners association to elect a governing body of the homeowners association shall be held within:

(1) 60 days from the date that at least 75% of the total number of lots that may be part of the development after all phases are complete are sold to members of the public for residential purposes; or

(2) If a lesser percentage is specified in the governing documents of the homeowners association, 60 days from the date the specified lesser percentage of the total number of lots in the development after all phases are complete are sold to members of the public for residential purposes.

**(b) Notice to lot owners.** --

(1) Before the date of the meeting held under subsection (a) of this section, the declarant shall deliver to each lot owner notice that the requirements of subsection (a) of this section have been met.

(2) The notice shall include the date, time, and place of the meeting to elect the governing body of the homeowners association.

**(c) Term of members of governing body.** --The term of each member of the governing body of the homeowners association appointed by the declarant shall end 10 days after the meeting under subsection (a) of this section is held, if a replacement board member is elected.

**(d) Delivery of required items to governing body.** --Within 30 days from the date of the meeting held under subsection (a) of this section, the declarant shall deliver the following items to the governing body at the declarant's expense:

(1) The deeds to the common areas;

(2) Copies of the homeowners association's filed articles of incorporation, declaration, and all recorded covenants, plats, restrictions, and any other records of the primary development and of related developments;

(3) A copy of the bylaws and rules of the primary development and of other related developments as filed in the depository of the county in which the development is located;

(4) The minute books, including all minutes;

(5) Subject to the restrictions of § 11B-112 of this title, all books and records of the homeowners association, including financial statements, minutes of any meeting of the governing body, and completed business transactions;

(6) Any policies, rules, and regulations adopted by the governing body;

(7) The financial records of the homeowners association from the date of creation to the date of transfer of control, including budget information regarding estimated and actual expenditures by the

## Md. REAL PROPERTY Code Ann. § 11B-106.1

homeowners association and any report relating to the reserves required for major repairs and replacement of the common areas of the homeowners association;

(8) A copy of all contracts to which the homeowners association is a party;

(9) The name, address, and telephone number of any contractor or subcontractor employed by the homeowners association;

(10) Any insurance policies in effect;

(11) Any permit or notice of code violations issued to the homeowners association by the county, local, State, or federal government;

(12) Any warranty in effect and all prior insurance policies;

(13) The homeowners association funds, including operating funds, replacement reserves, investment accounts, and working capital;

(14) The tangible property of the homeowners association;

(15) A roster of current lot owners, including their mailing addresses, telephone numbers, and lot numbers, if known;

(16) Individual member files and records, including assessment account records, correspondence, and notices of any violations; and

(17) Drawings, architectural plans, or other suitable documents setting forth the necessary information for location, maintenance, and repairs of all common areas.

**(e) Contracts of homeowners association. —**

(1) This subsection does not apply to a contract entered into before October 1, 2009.

(2)

(i) In this subsection, "contract" means an agreement with a company or individual to handle financial matters, maintenance, or services for the homeowners association.

(ii) "Contract" does not include an agreement relating to the provision of utility services or communication systems.

(3) Until all members of the governing body are elected by the lot owners at a transitional meeting under subsection (a) of this section, a contract entered into by the governing body may be terminated, at the discretion of the governing body and without liability for the termination, not later than 30 days after notice.

**(f) Failure to comply with section. —**If the declarant fails to comply with the requirements of this section, an aggrieved lot owner may submit the dispute to the Division of Consumer Protection of the Office of the Attorney General under § 11B-115(c) of this title.

## History

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2009, chs. 95, 96.

## Annotations

## Notes

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Md. REAL PROPERTY Code Ann. § 11B-106.1

**EDITOR'S NOTE. --**

Section 2, chapters 95 and 96, Acts 2009, provides that the act shall take effect October 1, 2009.

## **Research References & Practice Aids**

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**USER NOTE:**

For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland

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End of Document

# EXHIBIT B

Revised 1/29/13

**Bylaws of the Leisure World Community Corporation**

**ARTICLE I. IDENTIFICATION AND PURPOSES**

Section 1. Identification. These Bylaws apply to the operation of the Leisure World Community Corporation (LWCC), established in Maryland as a non-stock membership organization under its Articles of Incorporation. The principal office of the Corporation is 3701 Rossmoor Boulevard, Silver Spring, Maryland 20906.

Section 2. Definitions. The term "Mutual" means a housing cooperative, homeowners' association, or condominium that is a member of the Leisure World Community Corporation; the term "unit owner" means the owner of a membership in a cooperative, homeowners' association, or of a housing unit in a condominium; and the term "Trustee" means the Trustee of the Leisure World of Maryland Trusts referred to in the Articles of Incorporation. Wherever the terms "he", "him", or "his" appear herein, they shall be read as "he/she," "him/her," and "his/hers," respectively. The terms "Board of Directors" and "Board," as they appear herein, are used interchangeably, and both refer to the "Leisure World Community Corporation Board of Directors." On June 27, 2006, the former terms "Councilor," "Councilors," and "Community Council" were changed to "Director," "Directors," and "Board of Directors," respectively, to conform with current and foreseeable usage and to be consistent with the Articles of Incorporation of the Leisure World Community Corporation.

Section 3. Purposes. The purposes of the Corporation are stated in Article Four of the Articles of Incorporation. To further those purposes, the Corporation shall, among other things

- (a) Establish an organization for the formulation and execution of policies and programs;
- (b) Issue rules for the use and preservation of facilities and property in Leisure World and for participation in activities managed by the Corporation, subject to such concurrence by governmental authorities or the Trustee, if other than LWCC, as may be necessary;
- (c) Inform the Trustee, if other than LWCC, Boards of Directors of the Mutuels, and unit owners about community developments, problems and needs, and recommend policies and programs for their consideration; and
- (d) Represent the Leisure World community before private and governmental bodies.

In all of its activities, the Corporation shall give special consideration to the communal nature of its functions and the interdependence of the welfare of the several Mutuals, and shall recognize the high importance of promoting a spirit of unity and a sense of equity and cooperation throughout the community.

## ARTICLE II. CORPORATE ORGANIZATION

Section 1. The Board. The Corporation shall operate under the direction of a Board of Directors comprising Directors chosen by and representing each member of the Corporation, as provided in the Articles of Incorporation and these Bylaws.

Section 2. Officers of the Board. The officers of the Board are a Chairman, a Vice Chairman, an Executive Secretary, who shall also be Treasurer, and such other officers (but not more than two) as the Board determines to be desirable.

Section 3. Committees. The Board shall establish an Executive Committee and standing and other advisory committees in accordance with these Bylaws.

Section 4. Operating Officers and Staff. The Corporation may employ staff and designate officers (including, as necessary, a president, one or more vice presidents, a treasurer, and a secretary) to administer its affairs and promote its purposes in accordance with the decisions of the Board.

## ARTICLE III. THE BOARD OF DIRECTORS

Section 1. Directors and Alternates. Each Mutual is entitled to select Directors, qualified under the provisions of Section 2 of this Article, to cast its votes and otherwise represent it on the Board of Directors. Each Mutual may also select Alternate Directors who, in accordance with Section 5 of this Article, may represent the Mutual when its Director is absent. Such selections shall be made in accordance with procedures established by the Mutual. A Mutual may select more than one alternate for each Director; if it does so, it shall specify in writing any conditions governing the service of the alternates, including their order of precedence.

Section 2. Qualifications of Directors. Any person who is a resident unit owner may serve as a Director, so long as he is not an employee of the Corporation or its subsidiaries, the Trustee, the community developer or one of its affiliates, or an organization that maintains a business office in the community. Each Mutual shall, except in compelling circumstances reported to the Board, appoint to the Board only a person who, at the time of appointment, is a director of a Mutual or has served as a director of a housing cooperative, homeowners' association, or condominium within the community, and ordinarily occupies his unit in the community for at least nine months a year. Any of the foregoing qualifications may be waived by a majority of votes cast, in accordance with Article VI, Section 7.

Section 3. Replacement of Directors. The successor to a Director shall take office following the receipt by the Executive Secretary of written notification from the Mutual the Director is to represent confirming the effective date of his appointment and his eligibility to serve.

Section 4. Term of Office; Removal. Nothing in these Bylaws prevents a Mutual from establishing a fixed term of office for, or from removing, its Director or Directors at any time. The Board, by an affirmative vote of two-thirds of the Directors, may recommend to a Mutual the removal of its Director for cause.

Section 5. Alternate Directors. The provisions of these Bylaws that are applicable to the selection, qualifications, replacement, removal, and other aspects of the position of Director equally apply to the position of Alternate Director. An Alternate Director, when serving in place of a Director, acquires the full status and powers of a Director under these Bylaws, but assumes no other position that may be held by the Director in whose place he serves.

## ARTICLE IV. RESPONSIBILITIES OF THE BOARD

Section 1. Functions and Authority. The Board is responsible for furthering the purposes of the Corporation. To that end, it may perform all the functions of the Corporation under the provisions of any law, the Articles of Incorporation, and these Bylaws. The Board has the authority, among other things—

(a) As agreed with the Trustee, if other than LWCC, to manage, develop, and otherwise care for the real property and other assets of the Leisure World of Maryland Trusts, and to carry out other responsibilities of the Trustee;

(b) As agreed with the Mutual, to manage, develop, and otherwise care for the real property and other assets of the Mutual, and to carry out other responsibilities of the Mutual;

(c) To engage and organize a staff, define standards of performance and conduct, determine rates of compensation, establish programs of employee benefits, and otherwise maintain a system for the employment and termination of personnel;

(d) For its own account, or at the direction and for the account of the Trustee or a Mutual, to contract for construction, for the purchase or rental of materials, equipment, and other facilities, and for the acquisition of professional, technical, or any other necessary services, and to contract for the sale or lease of materials, equipment, and other facilities, and for the supply of services, surplus to current or prospective needs;

(e) To initiate, maintain, intervene in, settle, or appeal legal, equitable, or other governmental or judicial proceedings on behalf of members of the Corporation;

(f) To organize, establish facilities for, and administer programs of education and

recreation, as well as other programs that reflect the interests of Leisure World residents and are designed to promote their health and welfare;

(g) Subject to such concurrence of governmental authorities, the Trustee, if other than LWCC, and Mutuals as may be necessary, to issue rules on the use, conservation, and protection of property and facilities within the Leisure World community for which the Corporation has any responsibility, including measures that may be taken if such rules are violated;

(h) To establish from time to time fees and charges for services and facilities provided by the Corporation to the Trustee, if other than LWCC, the Mutuals, residents of the community, or guests; and

(i) Within any limitations agreed with the Trustee, if other than LWCC, or with any Mutual, to collect funds payable to the Corporation and to deposit, invest, or disburse them for any purpose that is consistent with the budget or is otherwise appropriate to the exercise of its responsibilities.

Section 2. Delegation of Authority. The Board may delegate in writing to an officer or other employee of the Corporation or any of its subsidiaries, or to an officer of the Board, or to the Executive Committee, any of its authority, except the amendment of Bylaws, the election or removal of officers of the Board or other members of the Executive Committee, or the making of a recommendation to a Mutual that it remove a Director, and may withdraw in writing any authority it has delegated.

## ARTICLE V. OFFICERS OF THE BOARD

Section 1. Election. The officers of the Board, as provided for in Article II, Section 2, shall be elected by and from the Directors at the first meeting of the Board in each calendar year. If no candidate receives a majority of the votes cast, an election shall be decided by a runoff of the two candidates receiving the largest number of votes.

Section 2. Term of Office. An officer shall take office upon his election; his term shall end with the election of his successor.

Section 3. Removal. The Board, by an affirmative vote of two-thirds of the Directors, may remove an officer for cause, but only after he has been notified in writing of the charges against him and has been given a reasonable opportunity to reply in writing and appear before the Board.

Section 4. Replacement. When an office established pursuant to Article II, Section 2, is vacated before the term of its incumbent expires, the Board, at its next regular meeting or at a special meeting called for the purpose, shall elect a Director to complete the term.

Section 5. The Chairman. The Chairman of the Board is its chief executive



officer, as well as the Chairman of the Executive Committee. He shall preside at all meetings of the Board and the Executive Committee; appoint all committees (except the Executive Committee), subject to the approval of the Board; and have the powers usually vested in the principal officer of an organization that are consistent with these Bylaws and the decisions of the Board. He may attend any meeting of any committee.

Section 6. Vice Chairman. The Vice Chairman of the Board acts in place of the Chairman whenever the Chairman is absent or unable to act. He shall perform other duties assigned to him by the Chairman with the approval of the Board.

Section 7. Executive Secretary. The Executive Secretary is responsible for providing for the preparation and preservation of adequate records of the proceedings and activities of the Board, the Executive Committee, and other committees of the Board. He shall prepare or have prepared the minutes of the Board and the Executive Committee, and shall direct the distribution of their notices of meetings, agendas, and minutes. He shall also prepare or have prepared reports on the actions of the Board for the information of the Mutuels and the Leisure World community. The Executive Secretary acts in place of the Chairman whenever the Chairman and Vice Chairman are absent or unable to act. The Executive Secretary shall also be Treasurer.

## ARTICLE VI. PROCEEDINGS OF THE BOARD

Section 1. Place of Meeting. Meetings of the Board shall be held at the principal office of the Corporation, unless, because of special circumstances, the Chairman or the Board determines that another site, which shall be reasonably convenient to Directors, must be selected.

Section 2. Agenda. The Chairman shall be responsible for preparing a written agenda for each meeting of the Board. The manner and timing of when agenda submissions are due and who may add items to the agenda will be determined by the Board as part of the current approved operating procedures.

Section 3. Frequency of Meetings. The Board shall meet at least once each month, except that the Board may decide, if no more than two Directors dissent, to omit a monthly meeting. The Chairman may call a special meeting at his own initiative and shall promptly convene a special meeting at the written request of three or more Directors. The purpose of a special meeting shall be stated in the notice of the meeting, and the business of the meeting shall be limited to its stated purpose.

Section 4. Participation in Meetings. Any resident or unit owner or other person entitled by law to attend a Board meeting may, as an observer, attend any such meeting other than a meeting lawfully closed, in whole or in part, by the Board. Participation of such residents, owners or others will be in accordance with the LWCC Board of Directors Open Forum Policy.

Section 5. Notice of Meetings; Waiver. The Executive Secretary shall arrange for

the distribution to Directors, at least 24 hours in advance of a Board meeting, whether regular or special, of a notice of the meeting, including its time and place and its agenda or purpose. In emergency circumstances, notice may be provided to Directors by telephone or email. Attendance by a Director at any Board meeting constitutes a waiver by him of the requirements of this section for that meeting.

Section 6. Quorum. A quorum of the Board means a majority of the Directors whose aggregate voting power exceeds one-half the aggregate voting power of all Directors in office, if a majority of the Mutuals are then represented. For the purposes of this section, a Mutual is considered to be represented if any Director appointed by that Mutual is present. If any meeting of the Board lacks a quorum, the Directors present may adjourn the meeting from time to time without repeating notice of its purpose.

Section 7. Voting. Except for actions under Article III, Section 4, and Article V, Section 3, when each Director shall have one vote, Directors may cast the number of votes provided for in the Articles of Incorporation. Unless otherwise specified in these Bylaws, a majority of the votes cast decides a question before the Board if that majority reflects the position of a majority of the Mutuals as expressed by the votes cast by Directors, proxy voting not being permitted. Whether a Mutual with more than one Director is considered to take an affirmative or a negative position on a question shall be determined by the majority vote of its Directors on that question; if the "yeas" and "nays" of its Directors are equal in number, the Mutual shall be considered to have abstained. Nothing in these Bylaws supersedes or modifies any of the voting provisions of the Trust Agreements referred to in the Articles of Incorporation.

Section 8. Action without a Meeting. The Board may decide a question by mail, telephone, email, or other form of special poll without a meeting if (a) the use of a special poll is authorized in advance at a meeting of the Board, or (b) the Chairman or the Executive Committee determines that a decision of the Board is urgently needed to protect important interests of the Corporation or the community and that sufficient time is not available to follow ordinary Board procedures. A special poll shall be conducted by or under the direction of the Executive Secretary or, in his absence, by or under the direction of the Chairman. The Executive Secretary or the Chairman shall promptly communicate to the Board and record in its minutes the results of a special poll and the reasons for its use.

Section 9. Rules of Procedure. All proceedings of the Board shall be recorded in the Corporation's minutes and, except as the Board may otherwise provide, shall be conducted in accordance with Robert's Rules of Order.

## ARTICLE VII. EXECUTIVE COMMITTEE

Section 1. Functions. The Executive Committee shall prepare, coordinate, and otherwise facilitate the work of the Board. It shall make recommendations to the Board on the annual budget and may make recommendations on other matters requiring Board consideration; it shall investigate or otherwise act on matters as requested by the Board;

and it shall exercise such authority as is delegated to it by the Board.

Section 2. Membership. The Executive Committee comprises the elected officers of the Board and an additional number of Directors determined by the Board so as to constitute a committee with a total membership of at least five and not more than seven. The provisions of these Bylaws that apply to the term of office, removal, replacement, and other aspects of the position of an officer apply equally to members of the Executive Committee who are not officers.

Section 3. Election of Executive Committee Members. In addition to the officers of the Board, who are members of the Executive Committee, the remaining members of that committee shall be elected as follows:

(a) The LWCC Board will be open for nominations for the remaining "at-large" member positions on the Executive Committee. No seconds will be needed and no discussion will be entertained. Board members may vote for candidates who are nominated, or any other member of the LWCC Board. If a Board member is not present, votes for that person will not be counted unless he or she has previously sent the Leisure World General Manager a written statement that he or she is willing to serve if elected.

(b) Each member of the LWCC Board will cast a secret ballot for a number of candidates up to the number of positions to be filled, with each Director entitled to cast a number of votes equal to the number of units in his or her Mutual. (For example, if there are three remaining "at-large" positions on the Executive Committee to be filled, each LWCC Board member may vote for one, two, or three candidates, with each of the candidates he or she votes for receiving the number of votes equal to the number of units in that voter's Mutual. A representative of a Mutual with 250 units may cast 250 votes for one candidate, or 250 votes for each of two or three candidates.)

(c) Mutuels with more than one member on the LWCC Board will have their votes divided equally among their representatives. (For example, if a Mutual has 250 units and two members on the LWCC Board, each of those representatives will be entitled to cast 125 votes. If a Mutual has 900 units and four LWCC Directors, each of those four Directors may cast 225 votes.)

(d) The candidates receiving the highest number of votes will be elected. (For example, if there are five candidates for three positions, and the candidates receive 100, 90, 80, 70, and 60 votes, for a total of 400 votes, the candidates who received 100, 90, and 80 votes will be elected.)

(e) If there is a tie that would affect who is elected, there will be a runoff election among those involved in the tie vote. (For example, if there are three positions open and five candidates receive 100, 100, 90, 80, and 70 votes, the first three will be elected. If they receive 100, 90, 80, 80, and 70 votes, the first two will be elected and there will be a runoff in which the only candidates will be the two who received 80 votes each in the first vote.)

Section 4. Meetings. The Executive Committee shall determine, in accordance with legal requirements, the time and place of its meetings and the persons who may attend. The Executive Secretary shall prepare or have prepared the minutes of Executive Committee meetings, a copy of which shall be made available promptly to each Director.

Section 5. Quorum; Voting. A majority of the members of the Executive Committee constitutes a quorum. Each member of the Executive Committee has one vote. A majority of the votes cast, but not less than three, decides a question before the Executive Committee.

## ARTICLE VIII. COMMITTEES

Section 1. Standing Committees. The Board shall establish standing committees to advise and assist it, the corporate staff, and other instrumentalities of the community in carrying out their functions. The functions and operating rules of the standing committees shall be defined by the Board. The Board may abolish standing committees in the light of changing circumstances.

Section 2. Special Committees. The Board may establish special committees for purposes and for periods of time determined by the Board.

Section 3. Membership. Each standing committee shall include at least five voting members. In addition, it may include a non-voting Director who shall serve as a liaison officer between the Board and the committee. The Chairman of the Board, with the approval of the Board, shall appoint all committee members and shall designate committee chairmen and such other committee officers as he considers desirable. The Chairman of the Board may remove any committee member he appoints; he shall provide the Board, at its request, with the reasons for any such action. With the concurrence of the Chairman of the Board, the principal employee of the Corporation or of its subsidiary entities shall assign a member of the staff to participate, without a vote, in any or all aspects of the work of a committee.

## ARTICLE IX. FINANCIAL ADMINISTRATION

Section 1. Fiscal Year. The fiscal year of the Corporation shall be the calendar year, unless the Board decides otherwise.

Section 2. Budget. The Board shall adopt an annual budget that is consistent with the requirements of these Bylaws and of any agreement to which the Corporation is a party. The budget shall be formulated in accordance with a plan and schedule devised by the staff and approved by the Board. The plan and schedule shall make provision for the earliest feasible consideration by the Board and the staff of the views of any Mutual on the level or quality of facilities and services that the Corporation should provide and on any other corporate policy affecting the budget. The budget shall identify not only the planned expenses of the individual departments and offices of the Corporation but also

planned allocations to and withdrawals from reserve accounts. It shall also show the Corporation's sources of income, including a detailed statement of all types of fees and charges to be payable to the Corporation. The Board may amend a budget at any time to meet unanticipated changes in income or expenses.

Section 3. Payments by Mutuals. The net expenses of the Corporation for a fiscal year shall be allocated among the Mutuals in an equitable manner. The method or methods used in determining such allocations shall be decided by the Board. Each Mutual shall pay to the Corporation for each month in a fiscal year, by a date decided by the Board, one-twelfth, or other fraction determined by the Board, of its allocation of expenses for that year.

Section 4. Delinquencies. If a Mutual fails to pay an allocated amount when due, the Board may impose a late charge, the rate of which may be as high as 110 percent of the rate of return received by the Corporation from its most profitable form of bank deposit or short-term investment, as determined by the Board. Whether or not the Board imposes a late charge, it may suspend the provision of any or all services and facilities to the Mutual and its unit owners so long as the Mutual fails to pay any allocated amount or late charge.

Section 5. Insurance. The Corporation shall obtain and maintain, to the extent required by law or reasonably available, casualty insurance, public liability insurance, workmen's compensation insurance, a legal expense indemnity endorsement or its equivalent for the protection of officers and other Directors and Alternates, and such other forms of insurance as the Board considers desirable. The Board shall decide the conditions or standards for the insurance it obtains.

Section 6. Books and Accounts. The Board may decide from time to time on the form, classifications, procedures, and other standards applicable to its books and accounts, including its accounting for inventories, which, in any case, shall be in accordance with generally accepted accounting principles, consistently applied.

Section 7. Auditing. At the close of each fiscal year, the books and accounts of the Corporation shall be audited by an independent certified public accountant. A copy of the audit shall be promptly furnished to each Mutual, along with an annual financial statement of the Corporation, including its balance sheet and a statement of its income disbursements.

Section 8. Inspection of Books. The books and accounts of the Corporation, all supporting vouchers, and all other records maintained by the Corporation shall be available during normal business hours to all Directors or other authorized representatives or agents of Mutuals, after reasonable notice.

Section 9. Execution of Corporate Documents; Seal. The Board shall decide on the conditions and procedures for the execution by corporate officers in behalf of the Corporation of contracts, notes, checks, or other corporate documents. It may also decide

on the provision, custody, and use of a corporate seal. Except as otherwise provided by the Board, no contract, note, check, or other document that would obligate the Corporation is valid without the signatures of two officers or employees of the Corporation empowered to sign the document.

Section 10. Compensation. No person may receive compensation for service performed as an officer or other Director or member of any committee. With the approval of the Board, a Director or other person may be reimbursed for expenses incurred in behalf of the Corporation or any of its instrumentalities.

## ARTICLE X. LIABILITY AND INDEMNIFICATION

Section 1. Liability and Indemnification of Directors and Officers. The Corporation shall indemnify every officer or other Director and Alternate against any and all expenses, including counsel fees, reasonably incurred by or imposed on him in connection with any action, suit, or other proceeding, if approved by (including the settlement of any such suit or proceeding) the then incumbent Board, to which he may be made a party by reason of being or having been an officer or other Director or Alternate, whether or not he is an officer or other Director or Alternate at the time such expenses are incurred.

Officers and other Directors and Alternates are not liable to the Corporation or a Mutual for a mistake of judgment or for negligence, but that exclusion from liability does not apply to knowing or intentional misconduct or any other commission or omission of an act in bad faith. Officers and other Directors and Alternates have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Corporation, and the Corporation shall indemnify and forever hold them free and harmless against any and all liability to others on account of such contract or commitment. Any right to indemnification provided for in these Bylaws is in addition to any other rights to which an officer or other Director or Alternate, or a former officer or other Director or Alternate, is entitled.

Section 2. Disclosure of Interest. If any matter comes before the Board, in which a Director or a member of his family has a pecuniary or other interest (aside from an interest in a home in which he or the family member resides in Leisure World), he is obligated immediately to disclose that interest to the Board and to the Mutual he represents. His disclosure shall be recorded in the minutes. A Director's failure immediately to disclose such an interest constitutes misconduct.

Section 3. Common or Interested Directors. Directors shall perform their functions in good faith and shall employ their best efforts to promote the interests of the Corporation. No contract or other transaction between the Corporation and any corporation, firm, or association in which one or more of the Directors (or one or more of the members of the family of a Director) are directors, officers, or employees or are pecuniarily or otherwise interested, is either void or voidable because such Director or Directors are present at a meeting of the Board or any of its instrumentalities at which the contract or transaction is authorized or approved, or because his or their votes are counted

for such purpose if—

(a) The fact of the common directorate or interest has been disclosed to the Board, and the Board nonetheless authorizes or approves such contract or transaction; or

(b) The Board determines that the terms of the contract or transaction were commercially reasonable at the time the Board acted on it.

## ARTICLE XI. AMENDMENTS

Section 1. Proposal to Amend. Any Director may propose an amendment to these Bylaws by depositing his proposal in writing with the Executive Secretary, who shall promptly provide each Director with a copy.

Section 2. Time of Voting. Except by unanimous consent of the Directors, no vote on a proposal to amend the Bylaws may be taken by the Board until at least thirty days after the text of the proposal has been mailed or otherwise provided to Directors.

Section 3. Adoption. An amendment of these Bylaws may be adopted by a resolution of the Board, approved by a vote in accordance with Article VI, Section 7.

# EXHIBIT C



**Subject: RE: Case# MU 276774 - Complaint against: David Frager, Chairman LWCC BOD and LWCC Executive Comm.**

**From: Gruhn, William <[bgruhn@oag.state.md.us](mailto:bgruhn@oag.state.md.us)>**

**Date: April 17, 2017 5:01:08 PM EDT**

**To: justus <[justus.lwmd@gmail.com](mailto:justus.lwmd@gmail.com)>**

**Cc: karen straughn <[kstraughn@oag.state.md.us](mailto:kstraughn@oag.state.md.us)>**

Ms. Katzman,

First, Karen Straughn called you to let you know that the Consumer Protection Division was not planning to pursue an enforcement action related to your complaint, but your account of that discussion differs from her recollection of it.

The Consumer Protection Division receives more than 11,000 consumer complaints each year. The Division seeks to mediate individual consumer complaints, as it did with your complaint. However, with limited enforcement resources, it must choose which matters it will pursue through enforcement actions. It does not plan to pursue an action related to your complaint about the governing documents of the Leisure World Community Corporation.

If you believe that you have been injured by a violation of the Maryland Homeowners Association Act and wish to pursue a legal action against the Leisure World Community Corporation, you can consult a private attorney.

Bill Gruhn

William D. Gruhn  
Chief, Consumer Protection Division  
Office of the Attorney General of Maryland  
200 Saint Paul Place  
Baltimore, MD 21202  
(410) 576-6557



IN THE CIRCUIT COURT FOR  
MONTGOMERY COUNTY, MARYLAND

RICHARD P. THORNELL,  
2901 South Leisure World  
Boulevard, #126  
Silver Spring, Md. 20906

and

Case No. 451529-V

CAROLE L. PORTIS,  
2921 North Leisure World  
Boulevard #417  
Silver Spring, Md. 20906

and

JORDAN L. HARDING,  
3310 North Leisure World  
Boulevard #308  
Silver Spring, Md. 20906

and

FREDERICK M. SHAPIRO,  
3200 North Leisure World  
Boulevard #515  
Silver Spring, Md. 20906

and

MARYBETH ARDIKE,  
3240 Gleneagles Drive  
Silver Spring, Md. 20906

and

NATALIE BRODSKY,  
3310 North Leisure World  
Boulevard #509  
Silver Spring, Md. 20906

and

VALERIE WILLIAMS  
2921 North Leisure World Blvd.  
Unit 117  
Silver Spring, MD 20906

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and

PRISCILLA READ CHENOWETH  
15107 Interlachen Drive  
The Greens Building Two, Apt.622  
Silver Spring, MD 20906

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and

MARIAN CAIN HAYDEN  
~~2901 South Leisure World Blvd. Apt.332;~~  
~~Silver Spring, Md. 20906~~

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Plaintiffs

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v.

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LEISURE WORLD COMMUNITY  
CORPORATION,

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Serve  
Leisure World of Maryland  
3701 Rossmoor Blvd.  
Silver Spring, MD 20906

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and

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LEISURE WORLD OF MARYLAND  
CORPORATION

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Serve  
Miles & Stockbridge P.C.  
Suite 700  
11 North Washington Street  
Rockville MD 20850

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Defendants.

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**FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

COME NOW, the Plaintiffs, on behalf of themselves in their individual capacities and on behalf of the entire class of persons similarly situated, by and through counsel, file this First

Amended Class Action Complaint, and sue the Defendants for cause, claim damages, and state as follows:

### Introduction

1. Plaintiffs seeks a declaratory judgment from this court and ask this court to determine that the governing structure of the Leisure World retirement community violates the provisions of the Maryland Homeowners Act, Real Property Article, § 11B-106.1(a), which entitles all members of the homeowners associations in Maryland to directly elect members of their governing board. Leisure World Community Corporation (also referred to as "LWCC") is a registered homeowners association in the State of Maryland, yet LWCC does not permit direct election of its governing body by members of the homeowners association. Instead, the board of directors of LWCC (also referred to as "Governing Board") is elected by the boards of the 29 Leisure World housing mutual associations. This governance structure plainly violates Real Property Article, § 11B-106.1(a), which requires that the governing body of a homeowners association be directly elected by the individual homeowners.

4. Plaintiffs bring this class-action case against Defendant Leisure World Community Corporation ("LWCC") and its related entity, Defendant Leisure World Maryland Corporation (also referred to as "LWMC"), seeking a declaration that the governance structure violates the Maryland Homeowners Act, and seeking injunctive relief which: a) compels the adoption of bylaws which comply with RP § 11B-106.1(a); b) enjoins the unlawful elections of the current board; c) orders an election of the board which complies with RP § 11B-106.1(a); and d) enjoins the extraordinary expenditure of funds by the unlawfully elected board until a lawfully constituted board can be elected and take office. ~~for enforcing unlawful Bylaws, holding illegitimate annual selections in lieu of elections for the Leisure World Board of Directors~~

~~("Governing Board" or "the Board"), and for permitting that Board to meet and take actions, despite the fact that the Board is without any lawful authority to do so.~~

2. The Governing Board is unlawfully ~~improperly~~ constituted because it does not permit Leisure World homeowners, of the twenty-nine (29) housing associations to directly elect representatives to the Governing Board. Article III of the Bylaws for the LWCC governs the selection process, and states the Governing Board is to be selected by entities, which represent Leisure World's twenty-nine (29) housing associations (hereinafter "Mutuals"). No individual homeowners participate in the election of the LWCC board of directors. The Bylaws do not permit the members or unit owners (hereinafter "homeowners") of Leisure World to directly elect members to the Governing Board.

3. ~~The selection process is in direct conflict with the Maryland Homeowners Association Act ("HOA Act" or "the Act"), which expressly states that members of a homeowner's association—thus, members of the 29 Mutuals—shall meet "to elect a governing body of the homeowners association[.]" Real Property Article, § 11B-106.1.~~

4.3. Upon information and belief, the LWCC has been a registered homeowner's association in the State of Maryland, since at least beginning in 1988. In letter dated March 9, 2009, counsel for LWCC conceded the entity is subject to the HOA Act. In 2012, the LWCC mandated a Special Committee to Review Governing Documents ("Special Committee"), and appointed Plaintiff Richard P. Thornell as a committee member. The Special Committee found that the selection process for the Governing Board did not comply with the HOA Act and that the homeowners are denied their right to an election, and made recommendations to remedy this, but Defendants ignored those recommendations. Although Defendants have been on notice for several years regarding their noncompliance with the HOA Act, Defendants have continued to

violate the rights of Plaintiffs and Class Members by refusing to amend the governing documents, continuing to hold illegitimate annual elections for the Governing Board, and permitting the Board to meet and take actions, including authorizing the expenditure of funds derived primarily from fees charged to the homeowners of Leisure World.

5.4. As a result of Defendants' actions, Plaintiffs and Class Members have been denied their statutory rights under the HOA Act. The injuries suffered by Plaintiffs and Class Members include the denial of their voting rights under the Act, the enforcement of unlawful Bylaws that deny Plaintiffs and Class Members direct representation on the Governing Board, and waste of funds derived primarily from fees charged to Plaintiffs and Class Members by an unlawfully elected board. The LWCC annual budget is approximately \$25 million, all of which is subject to expenditure ~~spent~~ by an improperly constituted Governing Board.

6.5. Plaintiff Richard P. Thornell owns a residential unit in Leisure World and is a member of a Mutual. Other Plaintiffs and Class Members also own residential units in Leisure World and are members of Mutuels. The Plaintiffs and Class Members will suffer immediate, substantial, and irreparable harm to their statutory rights if the selection process for the Governing Board is permitted to remain unchanged and unchallenged. Indeed, the Governing Board is the entity constituting LWCC, and is attempting to secure zoning approval for the construction of a new administration building estimated to cost over \$5 million<sup>1</sup>. As an improperly constituted board, the actions of the Governing Board are invalid, and it does not have the authority to take any actions ~~spend funds toward this project or any other activity~~.

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<sup>1</sup> This number is derived from a 2012 study done by A.R. Meyers for LWCC, and would likely be higher in present dollars.

~~7. In light of the clear unlawfulness of the selection process, the Court should immediately and permanently enjoin the activities of this unlawfully constituted entity.~~

8.6. Plaintiffs bring this action to remedy these harms on behalf of themselves and similarly situated homeowners of Leisure World in Montgomery County, Maryland.

## The Parties and Related Entities

9.7. Plaintiff Richard P. Thornell, Esq.—attorney, ~~and Professor of Law Emeritus at Howard University, and former Vice President for Legal Affairs and General Counsel for Howard University~~—is a resident of Montgomery County, and resides at 2901 South Leisure World Boulevard #126, Silver Spring, Md. 20906. He is a member of Mutual 27 in Leisure World. In 2012, the LWCC appointed Mr. Thornell to the Special Committee. Mr. Thornell objects to the legitimacy of the Governing Board.

~~10. Plaintiff Carole L. Portis is a resident of Montgomery County who resides at 2921 North Leisure World Boulevard #417, Silver Spring, Md. 20906. Ms. Portis is a member of Mutual 22, a past president of Mutual 22, and a current Board of Directors representative from Mutual 22.~~

11.8. Plaintiff Jordan L. Harding—former Mayor of New Carrollton, Maryland and U.S. diplomat—is a resident of Montgomery County who resides at 3310 North Leisure World Boulevard #308, Silver Spring, Md. 20906. He is a member of Mutual 17B.

~~12. Plaintiff Frederiek M. Shapiro, MBA is a resident of Montgomery County who resides at 3200 North Leisure World Boulevard #515, Silver Spring, Md. 20906. He is a member of Mutual 24 and former Vice Chair of the Leisure World Board of Directors.~~

13. — Plaintiff Marybeth Ardike, M.A. Ed. is a resident of Montgomery County who resides at 3240 Gleneagles Drive, Silver Spring, Md. 20906. She is a member of Mutual 5 and a co-chair of Leisure World Green, a resident environmental group.

14. — Plaintiff Natalie Brodsky, former Budget Assistant, U.S. Army Research Lab, is a resident of Montgomery County who resides at 3310 North Leisure World Boulevard #509, Silver Spring, Md. 20906. She is a member of Mutual 17B.

15. — Plaintiff Valerie Williams is a resident of Montgomery County who resides at 2921 North Leisure World Blvd., Unit 1-117, Silver Spring, Md. 20906. She is a member of Mutual 22, and a retired finance officer, formerly of the CIA.

16.9. Plaintiff Priscilla Read Chenoweth, Esq. is a resident of Montgomery County who resides at 15107 Interlachen Drive, The Greens Building Two, Apt. 622, Silver Spring, Md. 20906. She is a member of Mutual 20, a retired member of the New Jersey Bar, and a former editor of the New Jersey Law Journal.

17. — Plaintiff Marian Cain Hayden is a resident of Montgomery County who resides at 2901 South Leisure World Blvd. Apt 332, Silver Spring, Md. 20906. She is a member of Mutual 27 and a co-author of the LWCC Special Committee Report concerning the issues in this litigation.

18.10. Collectively, the Plaintiffs are unit owners of Leisure World and members of JustUs who object to the legitimacy of the selection process for the Governing Board on the ground that it violates Maryland law and therefore acts without authority to raise and expend mandatory fees and other income received from Leisure World homeowners. Due to an unlawful selection process, the Governing Board is improperly constituted and without authority to meet or to take any action whatsoever. By extension, the Plaintiffs also challenge the Board's ability



to expend funds derived from, *inter alia*, an annual budget and fees charged to homeowners of Leisure World.

~~19.11.~~ Defendant Leisure World Community Corporation is a Maryland corporation with its principal place of business located at 3701 Rossmoor Boulevard, Silver Spring, Maryland 20906. LWCC was established in 1980 to serve as the center for management and representation of the community, particularly for the formulation of community policy. A Board of Directors heads the LWCC ~~Leisure World community Corporation~~. It holds monthly meetings, and is responsible for the operation and governance of Leisure World. It is composed of an executive committee and a community-wide Governing Board. The Governing Board is composed of 34 representatives, representing twenty-nine (29) Mutuels in Leisure World.

~~20.12.~~ Defendant Leisure World of Maryland Corporation is a Maryland Corporation with its principal place of business located at 3701 Rossmoor Boulevard, Silver Spring, Maryland 20906. It is a wholly owned subsidiary of LWCC. It was established in 1977. Upon information and belief, it manages the Leisure World Trust and the Mutuels.

~~21.13.~~ Plaintiffs bring this action pursuant to Md. Rule 2-231 as a class action on their own behalf and on behalf of an entire class of people similarly situated.

~~22.14.~~ All members of the proposed class are citizens of the State of Maryland.

## Jurisdiction and Venue

~~23.15.~~ This Court has jurisdiction over this action under Md. Code, Cts. & Jud. Proc. §§ 6-102; 6-103.

~~24.16.~~ This Court has jurisdiction over the parties to this action under Md. Code, Cts. & Jud. Proc. § 6-102, as the entity parties to this action are organized under the laws of Maryland.

25.17. This Court is the proper venue for this action under Md. Code, Cts. & Jud. Proc. § 6-203 as all relevant events occurred in Montgomery County, Maryland.

## **Facts Common to All Counts for Individual and Class Relief**

26.18. Leisure World is an age-restricted, planned retirement community located in Montgomery County, Maryland, and is home to over 8,000 residents aged 55 and older, who live in over 5,000 housing units.

27.19. Leisure World is composed of twenty-nine (29) Mutuals, and each Mutual can range from an estimated 25 units to 900 units. There are three types of Mutuals: one is a co-operative; one is constituted as a homeowner's association; and twenty-seven are organized as condominium associations.

20. Each Mutual is governed by a Mutual board of directors ("Mutual Board"). Homeowners of each Mutual participate in elections, and elect representatives to their respective Mutual Board. There are twenty-nine (29) Mutual Boards.

21. Although homeowners can participate in elections for their respective Mutual Board, they cannot participate in elections for the governing board of LWCC, which in fact, manages and operates Leisure World and exercises all the authority and responsibility of a homeowners association for Leisure World, including imposing the assessments for Leisure World and managing the operation of the Leisure World homeowners, including providing common maintenance, security, and common services to the homeowners and residents of Leisure World. In contrast, the twenty-nine (29) Mutual Boards have little, if any, authority or responsibility to manage or operate Leisure World, of the residences within their respective mutual.

22. Elections for each Mutual ~~B~~board-of-directors are held annually throughout the year.

23. Annually, each Mutual ~~b~~Board-of-directors selects a representative(s) to serve on the community-wide Governing Board.

~~28-24.~~ On January 2, 2018, elections took place for the Governing Board. In accordance with the Bylaws of the LWCC, Plaintiffs and Class Members were not permitted to participate in these elections.

~~29-25.~~ At least as far back as 2012, the LWCC has been on notice that its selection process for selecting representatives of Mutuals to serve on the Governing Board is in direct conflict with Maryland law, specifically the HOA Act.

~~30-26.~~ On November 29, 2011, the LWCC mandated a Special Committee, which was tasked with reviewing the LWCC's governing documents, determining whether the LWCC was in compliance with federal, state, and county laws, and to determine what action, if any, was needed to ensure compliance with applicable laws. Plaintiff Richard P. Thornell, two other attorneys, and a management consultant with expertise in governance and strategic planning served on the Special Committee.

~~31-27.~~ On October 2, 2012, the Special Committee produced its report. It found the LWCC's Articles of Incorporation and Bylaws were not in compliance with, *inter alia*, the HOA Act. It relied on the plain meaning of the statute as well as an opinion letter of the LWCC's counsel dated March 9, 2009. In an Executive Summary to the Committee's Report and Recommendations dated October 25, 2012 and updated November 1, 2012, the Special Committee found that the LWCC is a homeowners association within the meaning of the HOA

Act. The Special Committee recommended that the Defendants adopt a “Bill of Rights for Owners and Residents” to ensure compliance with Maryland law.

~~32.28.~~ The Defendants did not implement the recommendations made by the Special Committee, and did not revise its governing documents to ensure compliance with the HOA Act. The members of the Special Committee resigned in protest on February 8, 2013.

~~33.29.~~ Mr. Thornell, other Plaintiffs, and Class Members have continued to challenge the legitimacy of the Governing Board, and its ability to meet and to take any actions as a result of being improperly constituted under Maryland law.

~~34.30.~~ On December 28, 2016, Plaintiff-Leisure World resident Sheryl L. Katzman, on behalf of JustUs, filed a complaint with the Office of the Attorney General’s—Consumer Protection Division after having notified the Governing Board and Executive Committee thereof of their continuing violation via email.

~~35.31.~~ The Consumer Protection Division declined to investigate or enforce, citing a policy of “selective enforcement,” despite apparently agreeing that LWCC was in violation of the HOA Act. See Exhibit C.

~~36.32.~~ Upon information and belief, the Governing Board is authorized to approve Leisure World budget appropriations, contracts, plans of action, and funding.

~~33.~~ Upon information and belief, on or about September 24, 2013, the Governing Board voted in favor of authorizing management to proceed with new developments, including the construction of a new administrative building (“the Proposed Development”).

~~37.34.~~ Upon information and belief, on or about October 29, 2013, the Governing Board authorized “a conceptual project budget of \$5.3 million for a new Administrative Building[.]” The LWCC acting through the Governing Board and its management employees, are attempting

to secure zoning approval for the development for the Proposed Development without legal authority.

~~38-35.~~ The funds authorized for this conceptual project were derived at least in part from a mandatory 2% transfer fee that is collected from residents at the time of settlement of each property sale, which—prior to July 29 2016—were subject to the restrictions of 12 CFR § 1228.2.

~~39-36.~~ Upon information and belief, Defendants and the Governing Board have spent nearly \$1 million for land surveys, permit applications fees, and site plans pertaining to the Proposed Development, which is widely opposed by homeowners of Leisure World of, inter alia, a new administrative building (“the Proposed Development”) in Leisure World.

~~40-37.~~ Use of the member funds to construct a new building is not authorized under the Resale Trust governing documents, which—under Section II—provide that the funds are available for “expanding, altering, or improving existing Improvements or other properties of the Trust.”

~~41-38.~~ On May 23, 2017, the Governing Board held a meeting, and denied Leisure World Plaintiffs and Class Members, the opportunity to participate in a referendum regarding the Proposed Development despite a petition to do so containing over 2,000 signatures.

~~42.—~~ On July 28, 2017, JustUs hosted a town hall meeting to discuss the Proposed Development. Over 300 Leisure World homeowners attended and voiced strong opposition to the Proposed Development. This was one of 3 “JustUs’ resident town hall meetings held in which the majority of those in attendance voiced their strong opposition the using their funds for a new administration building, and demanded an engineering or architectural study of the current administration building to determine the cost of renovation.

~~43. Upon information and belief, on or about November 30, 2017, the Montgomery County Planning Board deferred a vote regarding approval of the Proposed Development.~~

~~44. Upon information and belief, a hearing before the Montgomery County Planning Board has not been scheduled, but is expected to take place in 2018 regarding the Proposed Development.~~

45.39. Plaintiffs as well as many other homeowners living in Leisure World are strongly opposed to the Proposed Development, and object to the Governing Board's illegitimacy, and by extension, its ability to take any action regarding the Proposed Development or any other matter. Plaintiffs object to an illegally constituted board using funds derived from its homeowners assessment for this project. Plaintiffs also object to having any of its assessments being collected and spent by a board of directors not elected by the homeowners and not directly accountable to themselves and other Leisure World homeowners.

46.40. Upon information and belief, the LWCC has been registered as a homeowner's association in the State of Maryland, beginning in 1988, and is subject to the HOA Act.

47.41. The HOA Act regulates the governance of homeowner associations in the State of Maryland. Specifically, it states:

**(a) A meeting of the members of the homeowners association to elect a governing body of the homeowners association shall be held within:**

- (1) 60 days from the date that at least 75% of the total number of lots that may be part of the development after all phases are complete are sold to members of the public for residential purposes; or
- (2) If a lesser percentage is specified in the governing documents of the homeowners association, 60 days from the date the specified lesser percentage of the total number of lots in the development after all phases are complete are sold to members of the public for residential purposes

Real Property Article, § 11B-106.1(a), attached hereto as Exhibit A (emphasis added).

~~48-42.~~ The LWCC's Bylaws conflict with the HOA Act because the Bylaws do not permit Plaintiffs and Class Members to directly elect members to the Governing Board.

Specifically, Article III, governs the selection process for the Governing Board:

Directors and Alternates. **Each Mutual is entitled to select Directors, qualified under the provisions of Section 2 of this Article, to cast its votes and otherwise represent it on the Board of Directors.** Each Mutual may also select Alternate Directors who, in accordance with Section 5 of this Article, may represent the Mutual when its Director is absent. Such selections shall be made in accordance with procedures established by the Mutual. A Mutual may select more than one alternate for each Director; if it does so, it shall specify in writing any conditions governing the service of the alternates, including their order of precedence.

Article III, Section 1, Bylaws of the LWCC (revised January 29, 2013), attached hereto as Exhibit B (emphasis added)

~~49-43.~~ Absent judicial intervention, the Plaintiffs and Class Members are at risk of immediate, substantial, and irreparable harm.

~~50-44.~~ Judicial intervention is required for the purpose of determining a question of actual controversy between the parties and terminating uncertainty and controversy giving rise to this proceeding.

### CLASS ALLEGATIONS

~~51-45.~~ The Plaintiffs incorporate by reference the substance of all the foregoing factual allegations.

~~52-46.~~ Plaintiffs bring this action pursuant to Maryland Rule 2-231 as a class action on their own behalf and on behalf of the entire class of people similarly situated and seek certification of a statewide Maryland Class as defined below:

All persons residing in Maryland who are unit owners in Leisure World. Exempted from this class is any person who was an employee, officer, member, and/or agent of Leisure World or any of its related entities, affiliates, or subsidiaries, any members of Plaintiffs' counsel, the Judge(s) presiding over this action and any members of the Judge's immediate family or staff, and any persons

who make timely election to be excluded from the Class (the “Maryland Class” or “Class”)

~~53.47.~~ Plaintiffs hereby reserve the right to amend or modify the class definition with greater specificity or division after having had an opportunity to conduct discovery.

~~54.48.~~ This action is properly maintained as a class action under Maryland Rule 2-23(b)(2) in that Defendants have refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

~~55.49.~~ The action is also properly maintained as a class action pursuant to Maryland Rule 2-231(b)(1)(A) in that separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the Defendants.

~~56.50.~~ This action is also properly maintainable as a class action pursuant to Maryland Rule 2-231(b)(1)(B) in that separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect themselves.

~~57.51.~~ This action is also properly maintainable as a class action pursuant to Maryland Rule 2-231(b)(3) in that questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy between the class and the Defendants.



~~58-52.~~ The members of the Maryland Class are so numerous that their joinder is impracticable. The Class consists of all Maryland residents who are homeowners in Leisure World, and who have been denied their statutory rights under the HOA Act.

~~59-53.~~ Plaintiffs believe and therefore aver that their claims are typical of the Class in that all members are homeowners in Leisure World, and who have been denied their statutory rights under the HOA Act.

~~60-54.~~ Plaintiffs believe and therefore aver that a class action is superior to other available methods of adjudicating the alleged controversy, especially considering the size and common interest of the Class, as well as the fact that the amount at stake for individual class members is unlikely that said individuals will pursue a separate action.

~~61-55.~~ There are questions of law and fact common to the claims of each and all members of the Class. These common questions include, but are not limited to:

- a. Whether Defendants are subject to the HOA Act;
- b. Whether the selection process for the Governing Board conforms to the HOA Act;
- c. Whether the Defendants were aware the selection process for the Governing Board did not conform to the HOA Act;
- d. Whether the Defendants' conduct in refusing to conform its selection process for the Governing Board to the Act injured the Plaintiffs and Class Members;
- e. Whether Plaintiffs and Class Members were injured and suffered damages or other acceptable losses because of the Defendants' failure to conform to the HOA Act; and
- f. Whether Plaintiffs and Class Members are entitled to relief.

~~62~~56. These common issues of law and fact predominate over any question affecting only individual Class Members.

~~63~~57. Plaintiffs' claims are typical of those involving all members of the proposed Class. Plaintiffs are homeowners in Leisure World and have been denied the opportunity to directly elect members to the Governing Board. Plaintiff's damages and injuries are akin to other Class members and Plaintiffs seek relief consistent with the relief of the Class.

~~64~~58. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs are members of the Class and the interests of the named Plaintiffs and all other members of the Class are identical. Plaintiffs have no conflicts of interest with the Class.

~~65~~59. Plaintiffs' counsel has substantial experience in complex litigation and class action proceedings and will adequately represent the Class's interests.

~~66~~60. The members of the Class are so numerous that the joinder of all members is impractical. While the exact number of Class members is unknown to Plaintiffs at this time, the proposed Class consists, upon information and belief, of over 8,000 individuals who are homeowners in Leisure World who are being denied their statutory rights to directly elect members to the Governing Board. Thus, the exact number of Class members is so numerous that joinder of all members is impracticable. Class members may be identified through objective means.

~~67~~61. This action seeks final injunctive relief or corresponding declaratory relief with respect to the class as a whole, and therefore, a class action is superior to other available methods of fair and efficient adjudication of this litigation.

~~68~~.62. This action also entails questions of law and fact common to Class members that predominate over any questions affecting only individual plaintiffs, and, therefore, a class action is superior to other available methods of fair and efficient adjudication of this litigation.

~~69~~.63. No member of the Class has a substantial interest in individually controlling the prosecution of a separate action, but if he or she does, he or she may exclude himself or herself from the class upon the receipt of notice.

~~70~~.64. Likewise, particular issues in this case are appropriate for certification because such claims present only particular common issues, the resolution of which would advance the disposition of this matter and the parties' interests therein. Such particular issues include but are not limited to:

- a. Whether Defendants are subject to the HOA Act;
- b. Whether the selection process for the Governing Board complies with the HOA Act;
- c. Whether the Governing Board is properly constituted;
- d. Whether the Governing Board has the authority to meet and take action; and
- e. ~~Whether the Defendants and Governing Board's expenditure of funds towards the Proposed Development constitutes waste of the budget and Plaintiffs and Class Members' fees.~~ Whether the illegally constituted board has authority to collect assessments and expend the homeowners assessments without being directly elected, and whether they are authorized to use homeowners assessments to fund the Proposed Development.

~~71~~.65. Finally, all members of the proposed Class are readily ascertainable. The Defendants have access to all homeowners in Leisure World, and thus, which individuals are

potentially affected. Using this information, the members of the Class can be identified and their contact information ascertained for purposes of providing notice to the Class.

**Count I**  
**(§ 3-406 of the Courts and Judicial Proceedings Article)**  
**(Declaratory Judgment)**  
**(On behalf of Plaintiffs and Maryland Class)**

72-66. The Plaintiffs incorporate by reference the substance of all the foregoing factual allegations.

73-67. This declaratory judgment action is brought pursuant to Md. Code, Cts. & Jud. Proc. § Sections 3-406 and 3-407 for the purpose of determining questions of actual controversy between the parties and terminating uncertainty and controversy giving rise to these proceedings.

74-68. The Plaintiffs and Class Members enjoy legal rights to be free from unlawful governing documents that violate Maryland law.

75-69. The Defendants' actions are unlawful in that they have enacted governing documents that do not comply with Maryland law as explained in Plaintiffs' memorandum in support of their request for temporary, preliminary, and permanent injunctive relief, which is adopted and incorporated herein by reference.

76-70. The Defendants' actions are further unlawful in that the governing documents regarding the selection process for the Governing Board prohibit homeowners from directly electing representatives to that Board.

77-71. Article III, Section 1 of the Bylaws of the LWCC states "Each Mutual is entitled to select Directors . . . to cast its votes and otherwise represent it on the Board of Directors." These actions are unlawful in that it results in indirect governance by homeowners rather than direct governance, which is required by Maryland law.

~~78-72.~~ The Defendants' actions are also unlawful because, as an impermissibly constituted Governing Board, any actions the Board undertakes are should be considered void and invalid.

~~79-73.~~ Therefore, there exists an actual controversy regarding a justiciable issue between the Plaintiffs, Class Members, and Defendants within the jurisdiction of this Court, involving whether the Defendants' actions were unlawful, and involving the rights and responsibilities of the Defendant, Plaintiffs and Class Members.

~~80-74.~~ Antagonistic claims are present between the parties. Those claims indicate imminent and inevitable litigation.

~~81-75.~~ A declaratory judgment by this Court will terminate this controversy.

~~82-76.~~ Under §§ 3-401 through 3-415 of the Courts and Judicial Proceedings Article, Plaintiffs and Class Members are entitled to a judgment declaring the rights and responsibilities of the Plaintiffs, Class Members, and Defendants, and further settling the legal relations, rights, and responsibilities of the parties.

WHEREFORE, the Plaintiffs, individually and on behalf of all Class Members proposed in this Complaint, respectfully request:

a. That this Court determine and adjudicate the rights of the parties with respect to the legality~~constitutionality~~ of Article III, Section 1 of the Bylaws of the LWCC.

b. That this Court find and declare Article III, Section 1 of the LWCC Bylaws of the ~~LWCC~~ violates the rights of the Plaintiffs and Class Members, under the Maryland Homeowners Association Act, to elect a governing board, and that this Court enter judgment in favor of the Plaintiffs and Class Members, and against Defendants.

c. That the Court issue temporary, preliminary, and permanent injunctive relief enjoining the Defendants from enforcing Article III, Section 1 of the Bylaws or any similar, future version thereof;

d. That the Court issue temporary, preliminary, and permanent injunctive relief;

a) Enjoining the Defendants from enforcing Article III, Section 1 of the Bylaws of the LWCC or any similar, future version thereof;

b) Ordering the Defendants to hold a special election for the Governing Board, which is in compliance with the HOA Act;

a)c) Ordering the Defendants to pay for an impartial election consultant to design and implement adequate election procedures for the special election, and to monitor the special election; and

—d) e) Enjoining the Defendants from taking any extraordinary action, including but not limited to pursuing the Proposed Development and expending any funds thereto, until the special election has taken place and a properly constituted Governing Board has been sworn in. ;

f.e.) That this Court award Plaintiffs and Class Members attorneys' fees and the costs of these proceedings; and

g.f.) That the Court award the Plaintiffs and Class Members such other and further relief as in law and justice they may be entitled to receive.

**Count II**  
**(Request for Temporary, Preliminary, and Permanent Injunctive Relief)**  
**(On behalf of Plaintiffs and Maryland Class)**

~~83.77.~~ The Plaintiffs incorporate by reference the substance of all the foregoing factual allegations.

~~84.78.~~ This is an action for a temporary restraining order and preliminary and permanent injunctive relief under Md. Rules 15-501 through 15-505.

~~85.79.~~ As such, Article III, Section 1 of the Bylaws of the LWCC constitutes an unlawful enactment that is in direct conflict with the election procedures in the Maryland Homeowners Association Act.

~~86.80.~~ Unless the Defendants are enjoined from enforcing Article III, Section 1 of the bylaws of the LWCC, Plaintiffs and Class Members will suffer immediate, substantial, and irreparable harm.

~~87.81.~~ The benefits to Plaintiffs and Class Members in obtaining injunctive relief are equal to or outweigh the potential harm that Defendants would incur if this Court grants the requested injunctive relief.

~~88.82.~~ The public interest is best served by granting an injunction.

WHEREFORE, the Plaintiffs, individually and on behalf of all Class Members proposed in this Complaint, respectfully request:

a. That the Court issue an Order declaring Article III, Section 1 of the Bylaws of the LWCC violates the Maryland Homeowners Association Act;

b. That the Court issue temporary, preliminary, and permanent injunctive relief;

a) ~~e~~Enjoining the Defendants from enforcing Article III, Section 1 of the Bylaws of the LWCC or any similar, future version thereof; and

b) Ordering the Defendants to hold a special election for the Governing Board, which is in compliance with the HOA Act;

c) Ordering the Defendants to pay for an impartial election consultant to design and implement adequate election procedures for the special election, and to monitor the special election; and

d) Enjoining the Defendants from taking any extraordinary action, including but not limited to pursuing the Proposed Development and expending any funds thereto, until the special election has taken place and a properly constituted Governing Board has been sworn in.

c. That this Court award Plaintiffs and Class Members attorneys' fees and the costs of these proceedings; and

c. That the Court award the Plaintiffs and Class Members such other and further relief as in law and justice they may be entitled to receive.

**~~Count III~~**  
**~~(Breach of Trust)~~**  
**~~(On behalf of Plaintiffs and Maryland Class)~~**

~~89. The Plaintiffs incorporate by reference the substance of all the foregoing factual allegations.~~

~~90. Nearly \$1 million was spent by Defendants and the Governing Board for land surveys, permit applications fees, and site plans pertaining to the Proposed Development.~~

~~91. Use of member funds to construct a new building as contemplated by the Proposed Development is not authorized under the Resale Trust governing documents, which under Section II provide that the funds are available for "expanding, altering, or improving existing Improvements or other properties of the Trust."~~

~~92. The Proposed Development is not an existing Improvement or property of the Trust.~~



93. ~~Any funds spent on the Proposed Development or were therefore spent in breach of the terms of the Resale Trust.~~

94. ~~These improperly spent funds should be returned to Leisure World residents because they were derived from the mandatory 2% transfer fee that is collected from residents at the time of settlement of each property sale in Leisure World.~~

~~WHEREFORE, the Plaintiffs, individually and on behalf of all Class Members proposed in this Complaint, respectfully request that the Court award the Plaintiffs and Class Members an amount equal to the improperly spent funds in compensatory damages and such other and further relief as in law and justice they may be entitled to receive.~~

**REQUEST FOR RELIEF**

~~WHEREFORE, Plaintiffs, individually and on behalf of all Class Members proposed in this Complaint, respectfully request that the Court enter judgment in their favor and against the Defendants as follows:~~

- ~~a. For an Order certifying the Maryland Class, as defined herein, and appointing Plaintiffs and their counsel to represent the Maryland Class.~~
- ~~b. For equitable relief enjoining the Defendants from engaging in the wrongful conduct complained of herein pertaining to the selection process of the Leisure World Board of Directors, and its authority to meet and take any actions.~~

~~For the following equitable relief:~~

- ~~— An Order enjoining compelling the Defendants from spending any funds towards the Proposed Development, and from pursuing this matter with the Montgomery County Planning Board, and to disclosure~~

~~with specificity to the Class Members all funds expended on the  
Proposed Development;~~

~~—An Order compelling the Defendants to hold a special election for the  
Governing Board, which is in compliance with the HOA Act;~~

~~—An Order compelling the Defendants to pay for an impartial election  
consultant to design and implement adequate election procedures for  
the special election, and to monitor the special election; and~~

~~—An Order enjoining the Defendants from taking any action, including  
but not limited to pursuing the Proposed Development and expending  
any funds thereto, until the special election has taken place and a  
properly constituted Governing Board has been sworn in;~~

~~e. For an award of damages, as allowed by law in an amount to be determined;~~

~~d. For an award of attorneys' fees costs and litigation expenses, as allowable by law;~~

~~e. For prejudgment interest on all amounts awarded; and~~

~~f. Such other and further relief as this court may deem proper and justice~~

### **JURY DEMAND**

COMES NOW the Plaintiffs and Class Members, by and through counsel, and demand a  
trial by jury on the foregoing Class Action.

Respectfully submitted,

JOSEPH, GREENWALD & LAAKE, P.A.

Timothy F. Maloney, [tmaloney@jgllaw.com](mailto:tmaloney@jgllaw.com)  
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Greenbelt, Maryland 20770  
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*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 17, 2018, a copy of the foregoing was mailed  
first-class, postage prepaid to:

Michael J. Neary  
LERCH, EARLY & BREWER, CHTD.  
7600 Wisconsin Avenue, Suite 700  
Bethesda, MD 20814  
*Counsel for Defendants*

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Maritza M. Carmona

# EXHIBIT A

**Md. REAL PROPERTY Code Ann. § 11B-106.1**

Chapters effective through July 1, 2018.

**Annotated Code of Maryland > REAL PROPERTY > TITLE 11B. MARYLAND HOMEOWNERS ASSOCIATION ACT**

**§ 11B-106.1. Responsibility for maintenance, repair, and replacement of common elements.**

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**(a) Time of meeting.** --A meeting of the members of the homeowners association to elect a governing body of the homeowners association shall be held within:

(1)60 days from the date that at least 75% of the total number of lots that may be part of the development after all phases are complete are sold to members of the public for residential purposes; or

(2)If a lesser percentage is specified in the governing documents of the homeowners association, 60 days from the date the specified lesser percentage of the total number of lots in the development after all phases are complete are sold to members of the public for residential purposes.

**(b) Notice to lot owners.** --

(1)Before the date of the meeting held under subsection (a) of this section, the declarant shall deliver to each lot owner notice that the requirements of subsection (a) of this section have been met.

(2)The notice shall include the date, time, and place of the meeting to elect the governing body of the homeowners association.

**(c) Term of members of governing body.** --The term of each member of the governing body of the homeowners association appointed by the declarant shall end 10 days after the meeting under subsection (a) of this section is held, if a replacement board member is elected.

**(d) Delivery of required items to governing body.** --Within 30 days from the date of the meeting held under subsection (a) of this section, the declarant shall deliver the following items to the governing body at the declarant's expense:

(1)The deeds to the common areas;

(2)Copies of the homeowners association's filed articles of incorporation, declaration, and all recorded covenants, plats, restrictions, and any other records of the primary development and of related developments;

(3)A copy of the bylaws and rules of the primary development and of other related developments as filed in the depository of the county in which the development is located;

(4)The minute books, including all minutes;

(5)Subject to the restrictions of § 11B-112 of this title, all books and records of the homeowners association, including financial statements, minutes of any meeting of the governing body, and completed business transactions;

(6)Any policies, rules, and regulations adopted by the governing body;

(7)The financial records of the homeowners association from the date of creation to the date of transfer of control, including budget information regarding estimated and actual expenditures by the

## Md. REAL PROPERTY Code Ann. § 11B-106.1

homeowners association and any report relating to the reserves required for major repairs and replacement of the common areas of the homeowners association;

(8)A copy of all contracts to which the homeowners association is a party;

(9)The name, address, and telephone number of any contractor or subcontractor employed by the homeowners association;

(10)Any insurance policies in effect;

(11)Any permit or notice of code violations issued to the homeowners association by the county, local, State, or federal government;

(12)Any warranty in effect and all prior insurance policies;

(13)The homeowners association funds, including operating funds, replacement reserves, investment accounts, and working capital;

(14)The tangible property of the homeowners association;

(15)A roster of current lot owners, including their mailing addresses, telephone numbers, and lot numbers, if known;

(16)Individual member files and records, including assessment account records, correspondence, and notices of any violations; and

(17)Drawings, architectural plans, or other suitable documents setting forth the necessary information for location, maintenance, and repairs of all common areas.

**(e) Contracts of homeowners association. --**

(1)This subsection does not apply to a contract entered into before October 1, 2009.

(2)

(I)In this subsection, "contract" means an agreement with a company or individual to handle financial matters, maintenance, or services for the homeowners association.

(II)"Contract" does not include an agreement relating to the provision of utility services or communication systems.

(3)Until all members of the governing body are elected by the lot owners at a transitional meeting under subsection (a) of this section, a contract entered into by the governing body may be terminated, at the discretion of the governing body and without liability for the termination, not later than 30 days after notice.

**(f) Failure to comply with section. --**If the declarant fails to comply with the requirements of this section, an aggrieved lot owner may submit the dispute to the Division of Consumer Protection of the Office of the Attorney General under § 11B-115(c) of this title.

## History

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2009, chs. 95, 96.

### Annotations

## Notes

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Md. REAL PROPERTY Code Ann. § 11B-106.1

**EDITOR'S NOTE. --**

Section 2, chapters 95 and 96, Acts 2009, provides that the act shall take effect October 1, 2009.

## **Research References & Practice Aids**

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**USER NOTE:**

For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

Annotated Code of Maryland

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End of Document

# EXHIBIT B



Revised 1/29/13

**Bylaws of the Leisure World Community Corporation**

**ARTICLE I. IDENTIFICATION AND PURPOSES**

Section 1. Identification. These Bylaws apply to the operation of the Leisure World Community Corporation (LWCC), established in Maryland as a non-stock membership organization under its Articles of Incorporation. The principal office of the Corporation is 3701 Rossmoor Boulevard, Silver Spring, Maryland 20906.

Section 2. Definitions. The term "Mutual" means a housing cooperative, homeowners' association, or condominium that is a member of the Leisure World Community Corporation; the term "unit owner" means the owner of a membership in a cooperative, homeowners' association, or of a housing unit in a condominium; and the term "Trustee" means the Trustee of the Leisure World of Maryland Trusts referred to in the Articles of Incorporation. Wherever the terms "he", "him", or "his" appear herein, they shall be read as "he/she," "him/her," and "his/hers," respectively. The terms "Board of Directors" and "Board," as they appear herein, are used interchangeably, and both refer to the "Leisure World Community Corporation Board of Directors." On June 27, 2006, the former terms "Councilor," "Councilors," and "Community Council" were changed to "Director," "Directors," and "Board of Directors," respectively, to conform with current and foreseeable usage and to be consistent with the Articles of Incorporation of the Leisure World Community Corporation.

Section 3. Purposes. The purposes of the Corporation are stated in Article Four of the Articles of Incorporation. To further those purposes, the Corporation shall, among other things

- (a) Establish an organization for the formulation and execution of policies and programs;
- (b) Issue rules for the use and preservation of facilities and property in Leisure World and for participation in activities managed by the Corporation, subject to such concurrence by governmental authorities or the Trustee, if other than LWCC, as may be necessary;
- (c) Inform the Trustee, if other than LWCC, Boards of Directors of the Mutuels, and unit owners about community developments, problems and needs, and recommend policies and programs for their consideration; and
- (d) Represent the Leisure World community before private and governmental bodies.

In all of its activities, the Corporation shall give special consideration to the communal nature of its functions and the interdependence of the welfare of the several Mutuals, and shall recognize the high importance of promoting a spirit of unity and a sense of equity and cooperation throughout the community.

## ARTICLE II. CORPORATE ORGANIZATION

Section 1. The Board. The Corporation shall operate under the direction of a Board of Directors comprising Directors chosen by and representing each member of the Corporation, as provided in the Articles of Incorporation and these Bylaws.

Section 2. Officers of the Board. The officers of the Board are a Chairman, a Vice Chairman, an Executive Secretary, who shall also be Treasurer, and such other officers (but not more than two) as the Board determines to be desirable.

Section 3. Committees. The Board shall establish an Executive Committee and standing and other advisory committees in accordance with these Bylaws.

Section 4. Operating Officers and Staff. The Corporation may employ staff and designate officers (including, as necessary, a president, one or more vice presidents, a treasurer, and a secretary) to administer its affairs and promote its purposes in accordance with the decisions of the Board.

## ARTICLE III. THE BOARD OF DIRECTORS

Section 1. Directors and Alternates. Each Mutual is entitled to select Directors, qualified under the provisions of Section 2 of this Article, to cast its votes and otherwise represent it on the Board of Directors. Each Mutual may also select Alternate Directors who, in accordance with Section 5 of this Article, may represent the Mutual when its Director is absent. Such selections shall be made in accordance with procedures established by the Mutual. A Mutual may select more than one alternate for each Director; if it does so, it shall specify in writing any conditions governing the service of the alternates, including their order of precedence.

Section 2. Qualifications of Directors. Any person who is a resident unit owner may serve as a Director, so long as he is not an employee of the Corporation or its subsidiaries, the Trustee, the community developer or one of its affiliates, or an organization that maintains a business office in the community. Each Mutual shall, except in compelling circumstances reported to the Board, appoint to the Board only a person who, at the time of appointment, is a director of a Mutual or has served as a director of a housing cooperative, homeowners' association, or condominium within the community, and ordinarily occupies his unit in the community for at least nine months a year. Any of the foregoing qualifications may be waived by a majority of votes cast, in accordance with Article VI, Section 7.

Section 3. Replacement of Directors. The successor to a Director shall take office following the receipt by the Executive Secretary of written notification from the Mutual the Director is to represent confirming the effective date of his appointment and his eligibility to serve.

Section 4. Term of Office; Removal. Nothing in these Bylaws prevents a Mutual from establishing a fixed term of office for, or from removing, its Director or Directors at any time. The Board, by an affirmative vote of two-thirds of the Directors, may recommend to a Mutual the removal of its Director for cause.

Section 5. Alternate Directors. The provisions of these Bylaws that are applicable to the selection, qualifications, replacement, removal, and other aspects of the position of Director equally apply to the position of Alternate Director. An Alternate Director, when serving in place of a Director, acquires the full status and powers of a Director under these Bylaws, but assumes no other position that may be held by the Director in whose place he serves.

## ARTICLE IV. RESPONSIBILITIES OF THE BOARD

Section 1. Functions and Authority. The Board is responsible for furthering the purposes of the Corporation. To that end, it may perform all the functions of the Corporation under the provisions of any law, the Articles of Incorporation, and these Bylaws. The Board has the authority, among other things—

(a) As agreed with the Trustee, if other than LWCC, to manage, develop, and otherwise care for the real property and other assets of the Leisure World of Maryland Trusts, and to carry out other responsibilities of the Trustee;

(b) As agreed with the Mutual, to manage, develop, and otherwise care for the real property and other assets of the Mutual, and to carry out other responsibilities of the Mutual;

(c) To engage and organize a staff, define standards of performance and conduct, determine rates of compensation, establish programs of employee benefits, and otherwise maintain a system for the employment and termination of personnel;

(d) For its own account, or at the direction and for the account of the Trustee or a Mutual, to contract for construction, for the purchase or rental of materials, equipment, and other facilities, and for the acquisition of professional, technical, or any other necessary services, and to contract for the sale or lease of materials, equipment, and other facilities, and for the supply of services, surplus to current or prospective needs;

(e) To initiate, maintain, intervene in, settle, or appeal legal, equitable, or other governmental or judicial proceedings on behalf of members of the Corporation;

(f) To organize, establish facilities for, and administer programs of education and

recreation, as well as other programs that reflect the interests of Leisure World residents and are designed to promote their health and welfare;

(g) Subject to such concurrence of governmental authorities, the Trustee, if other than LWCC, and Mutuals as may be necessary, to issue rules on the use, conservation, and protection of property and facilities within the Leisure World community for which the Corporation has any responsibility, including measures that may be taken if such rules are violated;

(h) To establish from time to time fees and charges for services and facilities provided by the Corporation to the Trustee, if other than LWCC, the Mutuals, residents of the community, or guests; and

(i) Within any limitations agreed with the Trustee, if other than LWCC, or with any Mutual, to collect funds payable to the Corporation and to deposit, invest, or disburse them for any purpose that is consistent with the budget or is otherwise appropriate to the exercise of its responsibilities.

Section 2. Delegation of Authority. The Board may delegate in writing to an officer or other employee of the Corporation or any of its subsidiaries, or to an officer of the Board, or to the Executive Committee, any of its authority, except the amendment of Bylaws, the election or removal of officers of the Board or other members of the Executive Committee, or the making of a recommendation to a Mutual that it remove a Director, and may withdraw in writing any authority it has delegated.

## ARTICLE V. OFFICERS OF THE BOARD

Section 1. Election. The officers of the Board, as provided for in Article II, Section 2, shall be elected by and from the Directors at the first meeting of the Board in each calendar year. If no candidate receives a majority of the votes cast, an election shall be decided by a runoff of the two candidates receiving the largest number of votes.

Section 2. Term of Office. An officer shall take office upon his election; his term shall end with the election of his successor.

Section 3. Removal. The Board, by an affirmative vote of two-thirds of the Directors, may remove an officer for cause, but only after he has been notified in writing of the charges against him and has been given a reasonable opportunity to reply in writing and appear before the Board.

Section 4. Replacement. When an office established pursuant to Article II, Section 2, is vacated before the term of its incumbent expires, the Board, at its next regular meeting or at a special meeting called for the purpose, shall elect a Director to complete the term.

Section 5. The Chairman. The Chairman of the Board is its chief executive

officer, as well as the Chairman of the Executive Committee. He shall preside at all meetings of the Board and the Executive Committee; appoint all committees (except the Executive Committee), subject to the approval of the Board; and have the powers usually vested in the principal officer of an organization that are consistent with these Bylaws and the decisions of the Board. He may attend any meeting of any committee.

Section 6. Vice Chairman. The Vice Chairman of the Board acts in place of the Chairman whenever the Chairman is absent or unable to act. He shall perform other duties assigned to him by the Chairman with the approval of the Board.

Section 7. Executive Secretary. The Executive Secretary is responsible for providing for the preparation and preservation of adequate records of the proceedings and activities of the Board, the Executive Committee, and other committees of the Board. He shall prepare or have prepared the minutes of the Board and the Executive Committee, and shall direct the distribution of their notices of meetings, agendas, and minutes. He shall also prepare or have prepared reports on the actions of the Board for the information of the Mutuels and the Leisure World community. The Executive Secretary acts in place of the Chairman whenever the Chairman and Vice Chairman are absent or unable to act. The Executive Secretary shall also be Treasurer.

## ARTICLE VI. PROCEEDINGS OF THE BOARD

Section 1. Place of Meeting. Meetings of the Board shall be held at the principal office of the Corporation, unless, because of special circumstances, the Chairman or the Board determines that another site, which shall be reasonably convenient to Directors, must be selected.

Section 2. Agenda. The Chairman shall be responsible for preparing a written agenda for each meeting of the Board. The manner and timing of when agenda submissions are due and who may add items to the agenda will be determined by the Board as part of the current approved operating procedures.

Section 3. Frequency of Meetings. The Board shall meet at least once each month, except that the Board may decide, if no more than two Directors dissent, to omit a monthly meeting. The Chairman may call a special meeting at his own initiative and shall promptly convene a special meeting at the written request of three or more Directors. The purpose of a special meeting shall be stated in the notice of the meeting, and the business of the meeting shall be limited to its stated purpose.

Section 4. Participation in Meetings. Any resident or unit owner or other person entitled by law to attend a Board meeting may, as an observer, attend any such meeting other than a meeting lawfully closed, in whole or in part, by the Board. Participation of such residents, owners or others will be in accordance with the LWCC Board of Directors Open Forum Policy.

Section 5. Notice of Meetings; Waiver. The Executive Secretary shall arrange for

the distribution to Directors, at least 24 hours in advance of a Board meeting, whether regular or special, of a notice of the meeting, including its time and place and its agenda or purpose. In emergency circumstances, notice may be provided to Directors by telephone or email. Attendance by a Director at any Board meeting constitutes a waiver by him of the requirements of this section for that meeting.

Section 6. Quorum. A quorum of the Board means a majority of the Directors whose aggregate voting power exceeds one-half the aggregate voting power of all Directors in office, if a majority of the Mutuals are then represented. For the purposes of this section, a Mutual is considered to be represented if any Director appointed by that Mutual is present. If any meeting of the Board lacks a quorum, the Directors present may adjourn the meeting from time to time without repeating notice of its purpose.

Section 7. Voting. Except for actions under Article III, Section 4, and Article V, Section 3, when each Director shall have one vote, Directors may cast the number of votes provided for in the Articles of Incorporation. Unless otherwise specified in these Bylaws, a majority of the votes cast decides a question before the Board if that majority reflects the position of a majority of the Mutuals as expressed by the votes cast by Directors, proxy voting not being permitted. Whether a Mutual with more than one Director is considered to take an affirmative or a negative position on a question shall be determined by the majority vote of its Directors on that question; if the "yeas" and "nays" of its Directors are equal in number, the Mutual shall be considered to have abstained. Nothing in these Bylaws supersedes or modifies any of the voting provisions of the Trust Agreements referred to in the Articles of Incorporation.

Section 8. Action without a Meeting. The Board may decide a question by mail, telephone, email, or other form of special poll without a meeting if (a) the use of a special poll is authorized in advance at a meeting of the Board, or (b) the Chairman or the Executive Committee determines that a decision of the Board is urgently needed to protect important interests of the Corporation or the community and that sufficient time is not available to follow ordinary Board procedures. A special poll shall be conducted by or under the direction of the Executive Secretary or, in his absence, by or under the direction of the Chairman. The Executive Secretary or the Chairman shall promptly communicate to the Board and record in its minutes the results of a special poll and the reasons for its use.

Section 9. Rules of Procedure. All proceedings of the Board shall be recorded in the Corporation's minutes and, except as the Board may otherwise provide, shall be conducted in accordance with Robert's Rules of Order.

## ARTICLE VII. EXECUTIVE COMMITTEE

Section 1. Functions. The Executive Committee shall prepare, coordinate, and otherwise facilitate the work of the Board. It shall make recommendations to the Board on the annual budget and may make recommendations on other matters requiring Board consideration; it shall investigate or otherwise act on matters as requested by the Board;

and it shall exercise such authority as is delegated to it by the Board.

Section 2. Membership. The Executive Committee comprises the elected officers of the Board and an additional number of Directors determined by the Board so as to constitute a committee with a total membership of at least five and not more than seven. The provisions of these Bylaws that apply to the term of office, removal, replacement, and other aspects of the position of an officer apply equally to members of the Executive Committee who are not officers.

Section 3. Election of Executive Committee Members. In addition to the officers of the Board, who are members of the Executive Committee, the remaining members of that committee shall be elected as follows:

(a) The LWCC Board will be open for nominations for the remaining "at-large" member positions on the Executive Committee. No seconds will be needed and no discussion will be entertained. Board members may vote for candidates who are nominated, or any other member of the LWCC Board. If a Board member is not present, votes for that person will not be counted unless he or she has previously sent the Leisure World General Manager a written statement that he or she is willing to serve if elected.

(b) Each member of the LWCC Board will cast a secret ballot for a number of candidates up to the number of positions to be filled, with each Director entitled to cast a number of votes equal to the number of units in his or her Mutual. (For example, if there are three remaining "at-large" positions on the Executive Committee to be filled, each LWCC Board member may vote for one, two, or three candidates, with each of the candidates he or she votes for receiving the number of votes equal to the number of units in that voter's Mutual. A representative of a Mutual with 250 units may cast 250 votes for one candidate, or 250 votes for each of two or three candidates.)

(c) Mutuals with more than one member on the LWCC Board will have their votes divided equally among their representatives. (For example, if a Mutual has 250 units and two members on the LWCC Board, each of those representatives will be entitled to cast 125 votes. If a Mutual has 900 units and four LWCC Directors, each of those four Directors may cast 225 votes.)

(d) The candidates receiving the highest number of votes will be elected. (For example, if there are five candidates for three positions, and the candidates receive 100, 90, 80, 70, and 60 votes, for a total of 400 votes, the candidates who received 100, 90, and 80 votes will be elected.)

(e) If there is a tie that would affect who is elected, there will be a runoff election among those involved in the tie vote. (For example, if there are three positions open and five candidates receive 100, 100, 90, 80, and 70 votes, the first three will be elected. If they receive 100, 90, 80, 80, and 70 votes, the first two will be elected and there will be a runoff in which the only candidates will be the two who received 80 votes each in the first vote.)

Section 4. Meetings. The Executive Committee shall determine, in accordance with legal requirements, the time and place of its meetings and the persons who may attend. The Executive Secretary shall prepare or have prepared the minutes of Executive Committee meetings, a copy of which shall be made available promptly to each Director.

Section 5. Quorum; Voting. A majority of the members of the Executive Committee constitutes a quorum. Each member of the Executive Committee has one vote. A majority of the votes cast, but not less than three, decides a question before the Executive Committee.

## ARTICLE VIII. COMMITTEES

Section 1. Standing Committees. The Board shall establish standing committees to advise and assist it, the corporate staff, and other instrumentalities of the community in carrying out their functions. The functions and operating rules of the standing committees shall be defined by the Board. The Board may abolish standing committees in the light of changing circumstances.

Section 2. Special Committees. The Board may establish special committees for purposes and for periods of time determined by the Board.

Section 3. Membership. Each standing committee shall include at least five voting members. In addition, it may include a non-voting Director who shall serve as a liaison officer between the Board and the committee. The Chairman of the Board, with the approval of the Board, shall appoint all committee members and shall designate committee chairmen and such other committee officers as he considers desirable. The Chairman of the Board may remove any committee member he appoints; he shall provide the Board, at its request, with the reasons for any such action. With the concurrence of the Chairman of the Board, the principal employee of the Corporation or of its subsidiary entities shall assign a member of the staff to participate, without a vote, in any or all aspects of the work of a committee.

## ARTICLE IX. FINANCIAL ADMINISTRATION

Section 1. Fiscal Year. The fiscal year of the Corporation shall be the calendar year, unless the Board decides otherwise.

Section 2. Budget. The Board shall adopt an annual budget that is consistent with the requirements of these Bylaws and of any agreement to which the Corporation is a party. The budget shall be formulated in accordance with a plan and schedule devised by the staff and approved by the Board. The plan and schedule shall make provision for the earliest feasible consideration by the Board and the staff of the views of any Mutual on the level or quality of facilities and services that the Corporation should provide and on any other corporate policy affecting the budget. The budget shall identify not only the planned expenses of the individual departments and offices of the Corporation but also



planned allocations to and withdrawals from reserve accounts. It shall also show the Corporation's sources of income, including a detailed statement of all types of fees and charges to be payable to the Corporation. The Board may amend a budget at any time to meet unanticipated changes in income or expenses.

Section 3. Payments by Mutuals. The net expenses of the Corporation for a fiscal year shall be allocated among the Mutuals in an equitable manner. The method or methods used in determining such allocations shall be decided by the Board. Each Mutual shall pay to the Corporation for each month in a fiscal year, by a date decided by the Board, one-twelfth, or other fraction determined by the Board, of its allocation of expenses for that year.

Section 4. Delinquencies. If a Mutual fails to pay an allocated amount when due, the Board may impose a late charge, the rate of which may be as high as 110 percent of the rate of return received by the Corporation from its most profitable form of bank deposit or short-term investment, as determined by the Board. Whether or not the Board imposes a late charge, it may suspend the provision of any or all services and facilities to the Mutual and its unit owners so long as the Mutual fails to pay any allocated amount or late charge.

Section 5. Insurance. The Corporation shall obtain and maintain, to the extent required by law or reasonably available, casualty insurance, public liability insurance, workmen's compensation insurance, a legal expense indemnity endorsement or its equivalent for the protection of officers and other Directors and Alternates, and such other forms of insurance as the Board considers desirable. The Board shall decide the conditions or standards for the insurance it obtains.

Section 6. Books and Accounts. The Board may decide from time to time on the form, classifications, procedures, and other standards applicable to its books and accounts, including its accounting for inventories, which, in any case, shall be in accordance with generally accepted accounting principles, consistently applied.

Section 7. Auditing. At the close of each fiscal year, the books and accounts of the Corporation shall be audited by an independent certified public accountant. A copy of the audit shall be promptly furnished to each Mutual, along with an annual financial statement of the Corporation, including its balance sheet and a statement of its income disbursements.

Section 8. Inspection of Books. The books and accounts of the Corporation, all supporting vouchers, and all other records maintained by the Corporation shall be available during normal business hours to all Directors or other authorized representatives or agents of Mutuals, after reasonable notice.

Section 9. Execution of Corporate Documents; Seal. The Board shall decide on the conditions and procedures for the execution by corporate officers in behalf of the Corporation of contracts, notes, checks, or other corporate documents. It may also decide

on the provision, custody, and use of a corporate seal. Except as otherwise provided by the Board, no contract, note, check, or other document that would obligate the Corporation is valid without the signatures of two officers or employees of the Corporation empowered to sign the document.

Section 10. Compensation. No person may receive compensation for service performed as an officer or other Director or member of any committee. With the approval of the Board, a Director or other person may be reimbursed for expenses incurred in behalf of the Corporation or any of its instrumentalities.

## ARTICLE X. LIABILITY AND INDEMNIFICATION

Section 1. Liability and Indemnification of Directors and Officers. The Corporation shall indemnify every officer or other Director and Alternate against any and all expenses, including counsel fees, reasonably incurred by or imposed on him in connection with any action, suit, or other proceeding, if approved by (including the settlement of any such suit or proceeding) the then incumbent Board, to which he may be made a party by reason of being or having been an officer or other Director or Alternate, whether or not he is an officer or other Director or Alternate at the time such expenses are incurred.

Officers and other Directors and Alternates are not liable to the Corporation or a Mutual for a mistake of judgment or for negligence, but that exclusion from liability does not apply to knowing or intentional misconduct or any other commission or omission of an act in bad faith. Officers and other Directors and Alternates have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Corporation, and the Corporation shall indemnify and forever hold them free and harmless against any and all liability to others on account of such contract or commitment. Any right to indemnification provided for in these Bylaws is in addition to any other rights to which an officer or other Director or Alternate, or a former officer or other Director or Alternate, is entitled.

Section 2. Disclosure of Interest. If any matter comes before the Board, in which a Director or a member of his family has a pecuniary or other interest (aside from an interest in a home in which he or the family member resides in Leisure World), he is obligated immediately to disclose that interest to the Board and to the Mutual he represents. His disclosure shall be recorded in the minutes. A Director's failure immediately to disclose such an interest constitutes misconduct.

Section 3. Common or Interested Directors. Directors shall perform their functions in good faith and shall employ their best efforts to promote the interests of the Corporation. No contract or other transaction between the Corporation and any corporation, firm, or association in which one or more of the Directors (or one or more of the members of the family of a Director) are directors, officers, or employees or are pecuniarily or otherwise interested, is either void or voidable because such Director or Directors are present at a meeting of the Board or any of its instrumentalities at which the contract or transaction is authorized or approved, or because his or their votes are counted

for such purpose if—

(a) The fact of the common directorate or interest has been disclosed to the Board, and the Board nonetheless authorizes or approves such contract or transaction; or

(b) The Board determines that the terms of the contract or transaction were commercially reasonable at the time the Board acted on it.

## ARTICLE XI. AMENDMENTS

Section 1. Proposal to Amend. Any Director may propose an amendment to these Bylaws by depositing his proposal in writing with the Executive Secretary, who shall promptly provide each Director with a copy.

Section 2. Time of Voting. Except by unanimous consent of the Directors, no vote on a proposal to amend the Bylaws may be taken by the Board until at least thirty days after the text of the proposal has been mailed or otherwise provided to Directors.

Section 3. Adoption. An amendment of these Bylaws may be adopted by a resolution of the Board, approved by a vote in accordance with Article VI, Section 7.