

*Edgewater Isle South Condominium Owners' Association
c/o PML Management Corporation
655 Mariners Island Blvd., Suite 301
San Mateo, CA 94404*

October 30, 2010

Hearing: November 1, 2010, 1:30 p.m.

Superior Court of San Mateo County
Small Claims Division
800 North Humboldt Street
San Mateo, CA 94401

Re: Case Number SCS 122000

Posner v. Edgewater Isle South Condominium Owners' Association

DEFENDANT'S TRIAL BRIEF

This case was brought by Moxi Posner ("Posner" or "Plaintiff") against the Edgewater Isle South Condominium Owners' Association (the "Association"). Posner claims she is entitled to \$1,500 in penalties from the Association as a result of the Association's refusal to take a member vote regarding earthquake insurance. Posner has also asked the Court to order the Association to conduct the vote.

For the reasons discussed in this Trial Brief, Plaintiff is not entitled to such amounts because (1) the statutes on which she relies do not afford her such relief in Small Claims Court, (2) the Association was in fact *not* asked to take a member vote, and (3) it did not fail to act on a valid member request to do so. Moreover, a member vote is currently in progress.

I. BACKGROUND

Association is a California nonprofit mutual benefit corporation formed to provide for management, administration, maintenance, preservation, and architectural control of condominium units and common areas of the Edgewater Isle South condominium project (the "Project") for the benefit of Association members. Members are the owners of units within the Project. Posner is the owner of a unit within the Project and, as such, a member of the Association. There are a total of 100 units in the Project.

Earlier this year, the Association received a document signed by the owners of seven units containing a concept for changing the Bylaws,¹ the effect of which would be to require member approval of Board of Director decisions on maintaining earthquake insurance. (See Exhibit A.) The document did not ask the board to do anything. The Board scheduled a time to meet to discuss whether and how to conduct a vote for such purposes.

In the meantime, and unbeknownst to the Board, a *non*-homeowner who is on a mission to injure the Association reserved the Association's name when the Association's corporate status was temporarily suspended by the Secretary of State ("SOS"). Its status was suspended because, while certain forms must be filed every two years, the Association's forms had been

¹ "Bylaws" refers to the "Restated Bylaws of Edgewater Isle South Owners' Association" adopted October 21, 1992.

returned for a minor correction and the Association's status was changed while the forms were being fixed and returned for filing. As a result of the suspension, the Board could take no action or conduct business, including with respect to the document received from these members. The only action the Board could lawfully take was to get the Association's corporate status reinstated. (*Corporations Code* §7140.) As such, the subject matter of the board meeting had to be changed to address the corporate status matter.

In order to reinstate its corporate status, the Association was forced to change its name and amend its Articles of Incorporation ("Articles"). This was accomplished by conducting a vote of the members to adopt the new name and amend the Articles, and by filing further papers with the SOS. By law, votes to amend Articles require a minimum thirty-day balloting period. The ballots were mailed on July 15, 2010 and the deadline to return the ballots was August 14, 2010. The Association opened and tabulated the ballots on August 16, 2010 and the amended Articles were then filed with the SOS. (See Exhibit B.)

The Board then took up the issue of the member document and directed the Association's legal counsel to prepare materials for a member vote on the earthquake insurance bylaw amendment. Those materials were prepared and sent to the members on October 5, 2010 and ballots are due back by November 4th, 2010. Plaintiff filed this action alleging that: (1) the Association received a valid petition requesting a homeowner vote; (2) that the Association violated *Civil Code* section 1363.03 and displayed bad faith by denying the petitioners' request for a vote; (3) that the Association ignored two requests that the Board reconsider its decision not to hold a vote; (4) that *Civil Code* section 1363.09 allows penalties for such "election" violations in the amount of up to \$500 per violation; (5) that there were three violations; and (6) that Plaintiff is entitled to receive \$1,500 from the Association. She also requests that the Court order the Association to conduct the vote and that it award her costs to file this action.

II. ARGUMENTS

A. Small Claims Court Lacks Jurisdiction Over Plaintiff's Claims

(1) Civil Code section 1363.09 Does Not Permit the Remedy Being Sought

Plaintiff contends that the Association violated *Civil Code* section 1363.03 by refusing to hold a member vote to amend the Bylaws and that *Civil Code* section 1363.09 allows the Small Claims Court to order the Association to pay penalties to Plaintiff. This is incorrect. Even *if* the Association violated section 1363.03 by refusing to conduct the vote (and we contend it did *not*), it is not one of the limited number of claims that may be filed in the Small Claims Court.

With section 1363.03, the legislature introduced new voting *procedural* requirements for *how* members of homeowners associations decide things. Among other things, it requires associations to adopt voting and election rules, requires the use of mailed secret ballots for certain types of votes, and gives members at least 30 days to return ballots. Section 1363.03 does not require associations to conduct votes, it merely says how certain votes are to be conducted. The issue of taking a member-petitioned vote is governed by the *Corporations Code*. It is only once an association undertakes to conduct a vote on, for example, a bylaw amendment, that section 1363.03's voting procedures and requirements apply.

The Association has not violated the requirements of section 1363.03 but, setting that fact aside for the moment, Plaintiff still cannot bring her claim in this Court. *Civil Code* section

1363.09(c)² describes remedies when an association fails to comply with section 1363.03's provisions for secret balloting elections. With respect to the few types of alleged violations that a Small Claim Court can hear, it reads:

A cause of action under section 1363.03 ***with respect to access to association resources by a candidate or member advocating a point of view, the receipt of a ballot by a member, or the counting, tabulation, or reporting of, or access to, ballots for inspection and review after tabulation*** may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court.

While some section 1363.03 requirements may be enforced in Small Claims Court, all others must be pursued in the Superior Court. As provided above, a member can, under section 1363.09, obtain relief in Small Claims Court for only those claims identified in section 1363.09(c). None of Petitioner's claims are the type identified in section 1363.09(c). This case is not about access to Association resources by a candidate, about the Association conducting a vote in which other members got a ballot but Plaintiff didn't, nor is it about ballot counting issues. As such, section 1363.09 does not afford the type of relief sought by Plaintiff in this Court. The proper court to hear the matters alleged by Plaintiff is the Superior Court, and the Association and its members have the right to a full adjudication of the issues in that Court.

(2) Plaintiff's Remedy Was to Ask the Superior Court to Order the Vote Be Taken

As discussed above, *Civil Code* section 1363.03 is a procedural statute that does not obligate the Association to conduct a vote on member request. *Corporations Code* section 7510 provides that a special meeting of members for any lawful purpose (which can include a vote) may be called by five percent of the members. Upon receipt of such a request, the Association then takes action to provide the members with notice, schedule the meeting, and take other necessary steps following timeframes provided in *Corporations Code* section 7511 and other relevant statutes. When the Association does not comply, the "superior court of the proper county shall summarily order the giving of that notice, after notice to the corporation giving it an opportunity to be heard." (*Corps. Code* §7511(c).) Section 7511(c) further provides:

The court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice.

The "court" referred to above is the Superior Court, not the Small Claims Court. The remedy is equitable relief, not the money damages relief typical of Small Claims Court. As such, Plaintiff's remedy was not to sue in Small Claims Court for money but to ask the Superior Court to order that the vote be taken.

B. The Association Did Not Receive a Valid "Petition"

The Association's Bylaws vest in the Board the sole authority for determining if earthquake insurance is necessary to fully protect the interests of the members. (Bylaws §3.3, cf. subsection 3.3.2(f).) The Association has for many years budgeted for and maintained earthquake insurance, as a significant financial protection of its members and to help it rebuild the members' homes in the event of a major earthquake loss. Earthquake insurance premiums

² A copy of the relevant Civil Code sections is enclosed as Exhibit C.

are paid using assessments collected from the members by the Association. The Association has virtually no delinquencies in the payment of assessments.

The document signed by seven members (including Plaintiff) is referred to by Plaintiff as “a valid petition requesting a homeowner vote whether to keep earthquake insurance.” (See Plaintiff’s Claim.) This is a gross mischaracterization of the document. It neither petitions nor formally requests the Board to take a vote of the members. In fact, it does not ask the Board to take any action at all. The “petition” merely discusses a concept for amending the Bylaws and provides that members who sign the document are agreeing among themselves to “have the proposed bylaw amendment placed on the ballot for a vote of the members.” (See Ex. A.) Of course, given past events, the Board could surmise what the petitioners sought to achieve through the document. However, it is not reasonable to expect the Board to “fill in the blanks” every time a small group of members chooses to unreasonably petition the Board to take actions. Such requests result in spending the Association’s valuable resources and the Board is obligated to consider such costs and likely results in determining how far it will go to read into a document words that aren’t on it. It should be pointed out that Plaintiff was part of another small group that just two years ago urged the Board to take a vote on earthquake insurance. Seventy-five members would have needed to vote yes to approve that measure. It came no where near passage.

Members cannot be asked to vote on a *concept*. In order to conduct a proper member vote on a proposed amendment, members must be sent the exact text of what is being proposed. The “petition” only generally describes what Plaintiff’s goals would be, yet the issue is of vast complexity and, with millions of dollars of property at risk, goes to the heart of members’ financial protection. In order for a vote to be conducted, the Association’s legal counsel would have to be engaged to prepare the text of an amendment and to determine its proper placement in the Bylaws and knowledgeably determine whether any other provisions would be affected. It is manifestly apparent that this was not a simple case of receiving the document and then sending it out with a ballot to each member to vote. On all these bases, the Board was well justified in not moving forward with a concept proposal, even if it had been expressed as a request, which it was not.

C. A Member Vote on the Same Issue Taken in 2008 Failed

In 2008, the Board received a similar document from some of the same members. Pursuant to that document, the Board conducted a member vote on whether to amend the CC&Rs to authorize the owners to vote on earthquake insurance. The membership did not support the proposal and the vote failed to garner enough yes votes. In considering whether to move forward with a vote on a proposed Bylaw amendment, the Board considered many factors.

The Association enjoys nearly perfect assessment participation by the members, indicating both a willingness and ability to pay for earthquake insurance premiums through assessments. The condominium project sits virtually atop the San Andreas fault, on soil that is believed might fail and shift dramatically in the event of a large earthquake. In both 2008 and now, it is believed that for most of the members, their condominium units are the single largest investment they have made and the basis for future financial security. Since the 2008 vote was taken, very few units have changed ownership (in 2009, we understand that real estate information shows as few as three or four). There is no suggestion of new, widespread support for member approval of Board decisions on maintaining earthquake insurance or of any change in the members’ unwillingness to jeopardize the current insurance and financial protections set

in place by the board. These factors support a likelihood that another vote on the same issue is also likely to fail. As such, the Board concluded that taking such a vote was not feasible.

D. The Association Is In the Process of Conducting the Vote

After the Association's corporate status was revived, the Board then examined anew the issue of the document presented to it. After considering various choices, it decided that the best way to show that the membership had not changed its mind was to ask whether the members would in fact support a Bylaw amendment. Although the Board had no reason to believe that the membership is any more interested in approving the issue now than it was two years ago, the Board concluded that it would be less problematic to conduct the vote.

Legal counsel was directed to prepare a Bylaw amendment and voting materials. Those materials were prepared and then mailed to all members on October 5th. (See Exhibit D.) As of today, the Association has received only 51 ballots. The deadline for returning ballots is in three days. Approving this amendment will require at least 67 yes votes. Even if it could be assumed that all 51 ballots were marked "yes" (which they are not), the vote still falls significantly short of the required approval percentage. The insufficient number of ballots received to date only emphasizes the Association's assertion that the membership does not support the proposed changes.

E. Small Claims Court Lacks Jurisdiction Over Individuals Who Were Not Properly Served

Plaintiff's Claim names five individuals as defendants along with the Association. Though these named individuals are members of the Board, there is no indication that they were sued in their capacity as directors of the Association. (See Plaintiff's Claim.) These individuals were not properly served. According to the court docket, Plaintiff claims to have served these individuals by substitute service through Joe D'Agostino. Mr. D'Agostino is an employee of PML Management Corporation, the company retained by the Association to provide property management services; however, it is not proper to serve an individual through the property manager of their homeowner's association.

Personal service likely could have been achieved with reasonable diligence since Plaintiff knows the home addresses of these individuals. In addition, these individuals are present in person at monthly Association meetings which are open and noticed to the members (including Plaintiff). There is no indication that any attempts were made to serve these individuals personally or by substituted service at an appropriate place. Rather, Plaintiff chose to attempt service through the property manager and that is not a proper method of substituted service. (*Code of Civil Procedure* §§415.10 *et seq.*) Without proper service, The Court lacks jurisdiction to issue any order against these individuals.

The Association is the real party in interest in this matter. Because of the corporation's suspended status, it is likely that Posner merely named these five individuals as defendants in an attempt to make sure that the Association was served and her Claim could be heard. The directors appearing on behalf of the Association in this matter are, by their appearance in this Court, in no way acknowledging that proper service has been made upon them or stipulating to this Court's jurisdiction over them. They appear only on behalf of the defendant Association.

III. CONCLUSION

As discussed above, the statutes on which Plaintiff relies to demand the relief sought do not afford her the right to sue for such relief in the Small Claims Court. Her claims should have

been filed with the Superior Court. Notwithstanding the jurisdiction issue, Plaintiff's contention that the Association received a valid petition requesting a homeowner vote whether to keep earthquake insurance is not accurate. It in fact did not receive a petition at all and the document does not ask the Board to do anything. The Association acted reasonably with respect to the document received by the members. Admittedly, there were delays owing to the Association's corporate status issue and the Board's conclusion that the vote was not feasible. There were, however, delays owing to the fact that the document received was not a petition at all and did not actually provide a Bylaw amendment to be voted on. The Association is conducting a vote on the matter.

In no way has the Board acted in bad faith with respect to this matter, as Plaintiff's Claim contends. The Board took a reasonable and fair approach. Plaintiff has not been damaged in any way and is not entitled to the relief sought or the costs of bringing her Claim. As such, the Association asks this Court to find in favor of it and award nothing to Plaintiff.

Sincerely,

EDGEWATER ISLE SOUTH CONDOMINIUM OWNERS' ASSOCIATION

By: James I. Newell Lynn Hanlon
James Newell, *President* Lynn Hanlon, *Vice President*

List of Exhibits

- Exhibit A - Document concerning earthquake insurance bylaw amendment
- Exhibit B - Certificate of Amendment of Articles of Incorporation
- Exhibit C - Relevant Civil Code provisions
- Exhibit D - Proposed Bylaw Amendment Package

Proposed Amendment to Bylaws

Earthquake Insurance

The board must get approval of simple majority of those voting before an earthquake insurance policy can be purchased. This includes any policy that covers the perils of earthquake or earth movement. The following must be included on the ballot:

1. Annual Premium
2. Coverage amount
3. Deductible (in dollar amount and percentage)
4. Insurance company name and AM Best rating
5. Policy exclusions

If such policy is not renewed in any year, monthly dues must be rolled back by the homeowner's pro-rata share of the annual premiums of such policy. The formula used to lower monthly dues would be: previous year's premium divided by 100 units, divided by 12. The exception to this would be if the policy premiums were previously collect by a special assessment and did not come out of the monthly dues.

By signing below, you agree to have this proposed bylaw amendment placed on the ballot for a vote of the members

Name (as it appears on the deed)	Vista Del Mar Address #	Signature	Date
Lois F. Pasner	2247	Lois F. Pasner	3/21/10
ROSA Y. CHEN Rosa Chen	2252	Rosa Chen	3/21/10
John R. Martin	2245	John R. Martin	3/21/10
William Mar	2250	William Mar	3/20/10
UPAY KATHAIYAN Uday Kathaiyan	2256	Uday Kathaiyan	3/21/10

Proposed Amendment to Bylaws

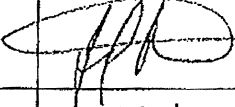

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By signing below, you agree to have this proposed bylaw amendment placed on the ballot for a vote of the members

Name (as it appears on the deed)	Vista Del Mar Address #	Signature	Date
JOSEPH A. TOTAH	2149		3/20/2010
PRASHANT TENKALE	2153		3/20/2010

A0706020

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

AUG 18 2010

**CERTIFICATE OF AMENDMENT OF
ARTICLES OF INCORPORATION**

The undersigned certify that:

1. They are the president and the secretary, respectively, of EDGEWATER ISLE SOUTH OWNERS' ASSOCIATION.
2. Article 1 of the Articles of Incorporation of this corporation is amended to read in its entirety as follows:

ARTICLE I

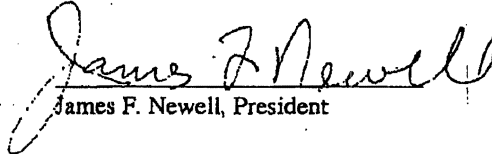
NAME

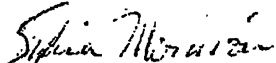
The name of the corporation is EDGEWATER ISLE SOUTH CONDOMINIUM OWNERS' ASSOCIATION (hereinafter referred to as the "Association").

3. The foregoing amendment of Articles of Incorporation has been duly approved by the board of directors.
4. The foregoing amendment of Articles of Incorporation has been duly approved by the required vote of the members.

We declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: August 16, 2010


James F. Newell, President


Sylvia Morrison, Secretary



I hereby certify that the foregoing transcript of _____ page(s) is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.

AUG 18 2010

Date: _____

SWS

Debra Bowen
DEBRA BOWEN, Secretary of State

CALIFORNIA CIVIL CODE SECTIONS
SECTIONS 1363.09 & 1363.03
AND
CALIFORNIA CORPORATIONS CODE SECTION 7511(c)

Civil Code §1363.09

(a) A member of an association may bring a civil action for declaratory or equitable relief for a violation of this article by an association of which he or she is a member, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date the cause of action accrues. Upon a finding that the election procedures of this article, or the adoption of and adherence to rules provided by Article 4 (commencing with Section 1357.100) of Chapter 2, were not followed, a court may void any results of the election.

(b) A member who prevails in a civil action to enforce his or her rights pursuant to this article shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member of the association equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

(c) A cause of action under Section 1363.03 with respect to access to association resources by a candidate or member advocating a point of view, the receipt of a ballot by a member, or the counting, tabulation, or reporting of, or access to, ballots for inspection and review after tabulation may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court.

Civil Code §1363.03

(a) An association shall adopt rules, in accordance with the procedures prescribed by Article 4 (commencing with Section 1357.100) of Chapter 2, that do all of the following:

(1) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or Internet Web sites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the board, for purposes that are reasonably related to the election. The association shall not edit or redact any content from these communications, but may include a statement specifying that the candidate or member, and not the association, is responsible for that content.

(2) Ensure access to the common area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election.

(3) Specify the qualifications for candidates for the board of directors and any other elected position, and procedures for the nomination of candidates, consistent with the governing documents. A nomination or election procedure shall not be deemed reasonable if it disallows any member of the association from nominating himself or herself for election to the board of directors.

(4) Specify the qualifications for voting, the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close, consistent with the governing documents.

(5) Specify a method of selecting one or three independent third parties as inspector, or inspectors, of election utilizing one of the following methods:

(A) Appointment of the inspector or inspectors by the board.

(B) Election of the inspector or inspectors by the members of the association.

(C) Any other method for selecting the inspector or inspectors.

(6) Allow the inspector, or inspectors, to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate, provided that the persons are independent third parties.

(b) Notwithstanding any other law or provision of the governing documents, elections regarding assessments legally requiring a vote, election and removal of members of the association board of directors, amendments to the governing documents, or the grant of exclusive use of common area property pursuant to Section 1363.07 shall be held by ~~secret ballot~~ in accordance with the procedures set forth in this section. A quorum shall be required only if so stated in the governing documents of the association or other provisions of law. If a quorum is required by the governing documents, each ballot received by the inspector of elections shall be treated as a member present at a meeting for purposes of establishing a quorum. An association shall allow for cumulative voting using the secret ballot procedures provided in this section, if cumulative voting is provided for in the governing documents.

(c) (1) The association shall ~~select~~ an independent third party or parties as an inspector of election. The number of inspectors of election shall be one or three.

(2) For the purposes of this section, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member of the association, but may not be a member of the board of directors or a candidate for the board of directors or related to a member of the board of directors or a candidate for the board of directors. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the association for any compensable services unless expressly authorized by rules of the association adopted pursuant to paragraph (5) of subdivision (a).

(3) The inspector or inspectors of election shall do all of the following:

(A) Determine the number of memberships entitled to vote and the voting power of each.

(B) Determine the authenticity, validity, and effect of proxies, if any.

(C) Receive ballots.

(D) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

(E) Count and tabulate all votes.

(F) Determine when the polls shall close, consistent with the governing documents.

(G) Determine the tabulated results of the election.

(H) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this section, the Corporations Code, and all applicable rules of the association regarding the conduct of the election that are not in conflict with this section.

(4) An inspector of election shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical. If there are three inspectors of election, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the inspector or inspectors of election is prima facie evidence of the facts stated in the report.

(d) (1) For purposes of this section, the following definitions shall apply:

(A) "Proxy" means a written authorization signed by a member or the authorized representative of the member that gives another member or members the power to vote on behalf of that member.

(B) "Signed" means the placing of the member's name on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the member or authorized representative of the member.

(2) Proxies shall not be construed or used in lieu of a ballot. An association may use proxies if permitted or required by the bylaws of the association and if those proxies meet the requirements of this article, other laws, and the association's governing documents, but the association shall not be required to prepare or distribute proxies pursuant to this section.

(3) Any instruction given in a proxy issued for an election that directs the manner in which the proxyholder is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxyholder to retain. The proxyholder shall cast the member's vote by secret ballot. The proxy may be revoked by the member prior to the receipt of the ballot by the inspector of elections as described in Section 7613 of the Corporations Code.

(e) Ballots and two preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the association to every member not less than 30 days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The association shall use as a model those procedures used by California counties for ensuring confidentiality of vote by mail ballots, including all of the following:

(1) The ballot itself is not signed by the voter, but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left-hand corner of the second envelope, the voter shall sign his or her name, indicate his or her name, and indicate the address or separate interest identifier that entitles him or her to vote.

(2) The second envelope is addressed to the inspector or inspectors of election, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of election. The member may request a receipt for delivery.

(f) All votes shall be counted and tabulated by the inspector or inspectors of election or his or her designee in public at a properly noticed open meeting of the board of directors or members. Any candidate or other member of the association may witness the counting and tabulation of the votes. No person, including a member of the association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated. The inspector of election, or his or her designee, may verify the

member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the inspector of elections, it shall be irrevocable.

(g) The tabulated results of the election shall be promptly reported to the board of directors of the association and shall be recorded in the minutes of the next meeting of the board of directors and shall be available for review by members of the association. Within 15 days of the election, the board shall publicize the tabulated results of the election in a communication directed to all members.

(h) The sealed ballots at all times shall be in the custody of the inspector or inspectors of election or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed by Section 7527 of the Corporations Code for challenging the election has expired, at which time custody shall be transferred to the association. If there is a recount or other challenge to the election process, the inspector or inspectors of election shall, upon written request, make the ballots available for inspection and review by an association member or his or her authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

(i) After the transfer of the ballots to the association, the ballots shall be stored by the association in a secure place for no less than one year after the date of the election.

(j) Notwithstanding any other provision of law, the rules adopted pursuant to this section may provide for the nomination of candidates from the floor of membership meetings or nomination by any other manner. Those rules may permit write-in candidates for ballots.

(k) Except for the meeting to count the votes required in subdivision (f), an election may be conducted entirely by mail unless otherwise specified in the governing documents.

(l) The provisions of this section apply to both incorporated and unincorporated associations, notwithstanding any contrary provision of the governing documents.

(m) The procedures set forth in this section shall apply to votes cast directly by the membership, but do not apply to votes cast by delegates or other elected representatives.

(n) In the event of a conflict between this section and the provisions of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) relating to elections, the provisions of this section shall prevail.

(o) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2006.

Corporations Code §7511

(c) Upon request in writing to the corporation addressed to the attention of the chairman of the board, president, vice president, or secretary by any person (other than the board) entitled to call a special meeting of members, the officer forthwith shall cause notice to be given to the members entitled to vote that a meeting will be held at a time fixed by the board not less than 35 nor more than 90 days after the receipt of the request. If the notice is not given within 20 days after receipt of the request, the persons entitled to call the meeting may give the notice or **the superior court of the proper county shall summarily order the giving of the notice**, after notice to the corporation giving it an opportunity to be heard. The court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice.

Edgewater Isle South Condominium Owners' Association
c/o PML Management Corporation
655 Mariners Island Blvd., Suite 301
San Mateo, CA 94404

MEMORANDUM FROM THE BOARD OF DIRECTORS TO EDGEWATER ISLE SOUTH HOMEOWNERS

October 5, 2010

Fellow Members,

Seven members have petitioned the Association to take a vote to amend the Association's Bylaws. The amendment sought by the petitioners would provide that purchasing or renewing earthquake insurance would hereafter require the approval of the Members. The Association has for many years budgeted for and maintained earthquake insurance to help it rebuild in the event of a major earthquake loss. If this amendment is approved, a majority of a quorum of Members could vote not to have such insurance.

Please note that the Board of Directors does not endorse this proposal.

Your ballot and voting envelopes are enclosed. Those voting should mark their ballot, place the ballot in the small envelope, place the small envelope inside the larger mailing envelope, complete the information required on the larger envelope, and mail or hand-deliver the large envelope to PML Management's office. The deadline for receiving your ballot is Thursday, November 4, 2010 at 5 pm.

Approval of the petitioned measure will require the affirmative vote of 67% of the Members (67 yes votes). The reason for this is that the amending provision in the Bylaws defers to the CC&Rs. Insurance is an important issue, and Section 10.1.2 of the CC&Rs (which provides special protections for lenders' security in our units) provides that 67% of the Members must approve Bylaw changes that relate to policies of insurance.

Sincerely,

Board of Directors
Edgewater Isle South Condominium Owners' Association

Enclosures

BYLAW AMENDMENT PROPOSED BY PETITION

October 5, 2010

Seven members have petitioned the Association to take a vote to amend the Association's bylaws. The amendment would provide that purchasing or renewing a policy or policies of earthquake insurance would hereafter require the approval of the Members, and related changes.

AMENDMENT TEXT

Section 3.3.2 [Types of Coverage] of Article III of the Bylaws would be amended, to read as follows (the substance of petitioners' proposed change is shown in bold italics below):

3.3.2 Types of Coverage: At least the following kinds and amounts of insurance shall be obtained:

(a) Property Insurance: A policy or policies of all risk property insurance for all insurable Common Area Improvements, including fixtures and building service equipment, against loss or damage by fire or other casualty, in an amount equal to at least ninety percent (90%) of the current full replacement cost (without respect to depreciation) of the Common Area, and exclusive of land, foundations, excavation and other items normally excluded from coverage. A replacement cost endorsement shall be part of the policy.

(b) Liability Insurance: A combined single limit policy of public liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) covering the Common Area and all damage or injury caused by the negligence of the Association, the Board or any of its agents or the Members against any liability to the public or to any Member incident to the use of the or resulting from any accident or intentional act occurring in or about any Common Area. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

(c) Worker's Compensation: Worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

(d) Fidelity Bond: A fidelity bond naming the Board, the Members, the Association and such other persons as a majority of the Members may designate as obliges, in an amount equal to at least one-fourth (1/4) of the total sum budgeted for the Current Operation Account and Reserve Account for the current fiscal year. The fidelity bond shall contain a waiver of any defense based on the exclusion of persons serving without compensation.

(e) Directors and Officers: Errors and omissions insurance covering Directors and officers, if reasonably available, in types and amounts as the Board determines to be appropriate.

(f) Earthquake and Earth Movement: *With the approval of the Members, a policy or policies of insurance to protect the units and common area from damage due to earthquake or earth movement. Unless a different process is required by law or the Governing Documents, the vote of the Members shall be conducted by written ballot in accordance with Section 7513 of the Corporations Code. The voting materials shall include a statement of the amount of insurance proposed to be purchased, applicable deductibles (in dollar amount and percentage), premium amount, insurance company and its AM Best rating, policy exclusions, and any other information about the policy or policies that the Board deems appropriate. The Board shall set a reasonable time within which ballots will be returned.*

Such vote shall be commenced no later than 30 days after the Association purchases or renews a policy or policies of earthquake insurance and the cost of such policy or policies is definitively ascertained. If the Members do not approve the purchase or renewal of such policy or policies, the Board shall promptly cancel such policy or policies and reduce the Regular Assessment by the amount budgeted for the remaining premium cost for such policy or policies, allocated over the remaining month or months of the current fiscal year. If the premium is being paid by Special Assessment approved by a Member vote in accordance with applicable law, such approval shall constitute approval of the purchase or renewal of such policy or policies and no further approval of the Members shall be required.

In the event the Members do not approve the purchase, the Board of Directors shall have no liability for claims arising out of the failure of the Association to maintain earthquake insurance for the Project or any inability of the Board to reasonably obtain earthquake insurance thereafter.

This provision shall apply upon the expiration or renewal of an earthquake insurance policy or policies after 2010.

(g) Other Insurance: Other types of insurance as the Board determines to be necessary to fully protect the interests of the Members.