

FILED

Superior Court Of California
County Of Riverside
11/23/2015
W. BROWN
BY FAX

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF RIVERSIDE, WESTERN REGION, HISTORIC COURTHOUSE

14 In the matter of:
15 RANCHO SERRANO ASSOCIATION, a
16 California Non-Profit Mutual Benefit
17 Corporation; RON TURCO, an individual,
18
19 Petitioners.

CASE NO. RIC1512975
**EX PARTE APPLICATION FOR ORDER
SETTING A HEARING DATE ON THE
PETITION AND SPECIFYING METHOD
OF NOTICE; MEMORANDUM OF
POINTS & AUTHORITIES [CIV. CODE §
7515]**

Date: November 24, 2015
Time: 8:30 a.m.
Dept.: 2
Judge: Hon. Gary B. Tranbarger

Petition Filed: October 26, 2015

20 Petitioners RANCHO SERRANO ASSOCIATION (“Association”) and RON TURCO
21 (“Turco”), collectively referred to herein as “Petitioners” respectfully request an order,
22 pursuant to Corporations Code section 7515, setting a hearing date on their “Verified Petition
23 for Order Reducing Percentage of Votes Necessary to Amend the Bylaws of a Common
24 Interest Development and for an Order Approving the Amendment,” (“Petition”) filed herein
25 on October 26, 2015, and setting forth the manner in which notice shall be given to the
26 members of the Association.

27 This application is made under Corporations Code section 7515(b) on the grounds that
28 there is a need for this order, as shown in the accompanying declaration of Pejman D.
Kharrazian, Esq. and the Petition filed herein.

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I.
NOTICE AND HEARING REQUIREMENTS UNDER
CORPORATIONS CODE SECTION 7515

Corporations Code section 7515(a) provides that, if it is impractical or unduly difficult for any corporation to obtain the consent of its members in the manner prescribed by its articles or bylaws, “then the superior court of the proper county, may, upon petition of a director, or officer, order that another form of obtaining the vote of members be authorized, in such a manner as the court finds fair and equitable under the circumstances. The Association filed its Petition pursuant to Corporations Code section 7515 to seek Court approval of proposed amendments to its Bylaws where, despite the extensive efforts of the Association (as discussed in detail in the Petition), it was unable to obtain the required approval percentage to amend its Bylaws by a vote of the membership.

Corporations Code section 7515, subdivision (b) requires notice to the Association’s members of the Petition as follows:

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

According to section 4.5 of the Bylaws, members of the Association are entitled to notice of the meeting where the proposed amendments are voted upon. The purpose of this ex parte application is for the Court to approve a method of notice to the members and to set a hearing date for the Petition.

II.
WRITTEN NOTICE AND OPPORTUNITY TO REVIEW THE
PETITION WILL PROVIDE ADEQUATE NOTICE

Corporations Code section 7515 does not specify a specific method of notice, nor does its sister statute, Civil Code section 4275 (which governs court approval of a community

1 association's declaration of restrictions [CC&Rs]), although Civil Code section 4275 does
2 provide for no less than fifteen (15) days' notice. The Association proposes that "a method of
3 notice reasonably designed to give actual notice" would be to provide members of the
4 Association written notice of the hearing on the Petition via first class mail at the addresses on
5 file with the Association (which are regularly used for Association mailings, not to mention the
6 balloting on the Proposed Amendments to the Bylaws) no less than thirty (30) days prior to the
7 hearing. This not only satisfies what the legislature considers reasonable for similar petitions,
8 but also allows fifteen (15) days extra time for mailing, which should be sufficient to permit all
9 interested persons to appear and present any information they believe is relevant to the Court's
10 ruling on the Petition. In order to allow sufficient time for copying and mailing of the notice,
11 Petitioners request that the hearing be set sixty (60) days out from this *ex parte* hearing.

12 *The Petition, with exhibits, is 251 pages long.* Given the size and cost of copying of the
13 Petition and attached exhibits, and the moving papers in support of the Petition, Petitioners urge
14 the Court *not* to require the foregoing documents to be copied and sent to the 120 members
15 entitled to receive notice. (See Declaration of Pejman D. Kharrazian at ¶ 4, filed concurrently
16 herewith). Petitioners request they be allowed to mail to each member of the Association, at his
17 or her last known address on file with the Association, by regular first class mail with postage
18 prepaid, a copy of the "Notice of Hearing on Petition for Order Reducing Percentage of
19 Affirmative Votes Necessary for Amending Bylaws and for an Order Approving the
20 Amendment," a proposed copy of which is attached as Exhibit A to the Declaration of Pejman
21 D. Kharrazian filed concurrently herewith.

22 Petitioners further request that proof of the mailing of the aforesaid notice be provided
23 by means of a Proof of Service by Mail, pursuant to Code of Civil Procedure Section 1013a, to
24 be filed with the Court, specifying how, when, and to whom the aforesaid notice was mailed.

25 For those members or other persons who may wish to examine the Petition and any
26 other documents on file in this action, Petitioners request the Court order that the Petition and
27 other documents on file in this action be made available for inspection by making a request to
28 the Community Association Manager, Sheryl Whitaker, AMS, via email

1 (sheryl@avalonweb.com), by phone (951) 699-2918, or by mail to Avalon Management,
2 43529 Ridge Park Drive, Temecula, California 92590. Alternatively, the Petition and other
3 filings in this matter can be viewed during regular business hours at the Office of the Clerk of
4 the Riverside County Superior Court, located at 4050 Main Street, Riverside, California
5 92501, or the documents can be purchased at the Court's website, [http://public-
6 access.riverside.courts.ca.gov/OpenAccess/CivilMainMenu.asp](http://public-access.riverside.courts.ca.gov/OpenAccess/CivilMainMenu.asp).

7 **III.**


8 **CONCLUSION**

9 For all of the foregoing reasons, Petitioners request that the Court set a hearing date at
10 least sixty (60) days from the date of granting this *ex parte* application and issue an Order
11 allowing Petitioners to serve by mail only the "Notice of Hearing on Petition for Order
12 Reducing Percentage of Affirmative Votes Necessary for Amending the Bylaws and for an
13 Order Approving the Amendments" on the members thirty (30) days prior to the hearing, and
14 that the service of said notice will satisfy the notice requirements under Section 7515 of the
15 Corporations Code.

16 This application will be based on this application, the Declaration of Pejman D.
17 Kharrazian, Esq., and the memorandum of points and authorities included herein, and on the
18 complete files and records of this action.

19 Dated: November 23, 2015

EPSTEN GRINNELL & HOWELL, APC

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21 By: 
22 Rian W. Jones
23 Pejman D. Kharrazian
24 Attorneys for Petitioners
25 RANCHO SERRANO ASSOCIATION and
26 RON TURCO
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