

**FILED**

Superior Court Of California  
County Of Riverside  
12/23/2015

**G GRIFFIN**  
**BY FAX**

1 Rian W. Jones, Bar No. 118830  
2 Pejman D. Kharrazian, Bar No. 279260  
3 EPSTEN GRINNELL & HOWELL, APC  
4 10200 WILLOW CREEK RD., SUITE 100  
5 SAN DIEGO, CALIFORNIA 92131  
6 (858) 527-0111/FAX (858) 527-1531  
7 [rjones@epsten.com](mailto:rjones@epsten.com)  
8 [pkharrazian@epsten.com](mailto:pkharrazian@epsten.com)

Attorneys for Petitioners  
RANCHO SERRANO ASSOCIATION and RON  
TURCO

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

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

CASE NO. RIC1512975

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
VERIFIED PETITION TO AMEND THE  
BYLAWS OF A COMMON INTEREST  
DEVELOPMENT AND FOR AN ORDER  
APPROVING THE AMENDMENT  
[CORPORATIONS CODE § 7515]**

Date: January 22, 2016  
Time: 8:30 a.m.  
Dept.: 2

Petition Filed: October 26, 2015

Petitioners Rancho Serrano Association (“Association”) and Ron Turco (“Turco”) respectfully submit their Memorandum of Points and Authorities in Support of the Verified Petition to Amend the Bylaws requesting the Court order the “2014 Amended and Restated Bylaws” (Exhibit 16 to the Petition filed herein) (hereafter “Proposed Amendment”) be approved based on the vote actually received based on Corporations Code section 7515.

**I.**

**BACKGROUND**

Petitioner Association is a common interest development consisting of 120 residential lots located in the City of Temecula, County of Riverside. The community is governed by a Declaration of Covenants, Conditions and Restrictions, Articles of Incorporation, and by its

1 corporate Bylaws.

2 The Association endeavored to amend its Bylaws to update them and bring them  
3 current with the law. Amending the Bylaws required majority approval from the Association's  
4 members. Although the Association went to great lengths to encourage members to vote on  
5 the Proposed Amendment, the vote fell just short of majority approval—at 46% approval. (See  
6 Paragraphs 8-18, and Exhibits 12 through 22 in the Petition). Apathy by members thwarted  
7 the Association's efforts to get the requisite approval to amend, so the Association's only  
8 remaining option was to obtain an order from the Court, approving the Proposed Amendments  
9 based on the "yes" votes actually received.

10 As a result of the Association's inability to reach the majority requirement set forth in  
11 Article XIII of the Bylaws, the Association petitions the Court, under Section 7515 of the  
12 Corporations Code, to find the Proposed Amendment be approved based on the "yes" votes  
13 actually obtained.

14 **II.**

15 **THE PROPOSED AMENDMENT TO THE BYLAWS SHOULD BE APPROVED**  
16 **BASED UPON THE VOTES ACTUALLY CAST**

17 Petitioners ask the Court for approval of the Proposed Amendment based on the votes  
18 actually received by the members.

19 The Association is seeking to amend the Bylaws to bring it up to date with current  
20 law, especially the 2014 revisions to the Davis-Stirling Common Interest Development Act  
21 (Cal. Civ. Code §§ 4000-6150). The Board also addressed issues that became apparent after  
22 the community was developed that were not contemplated by the developer when the Bylaws  
23 were originally drafted. The Board's goal was to revise the Bylaws so that they better address  
24 Association governance, make the Bylaws more user friendly, and comply with the changes in  
25 the law.

26 ///

27 ///

28 ///

1 Article XIII<sup>1</sup> in the Association's Bylaws requires an approval of a majority of the total  
2 voting power in order to adopt, amend or appeal any portion of the Bylaws. The total voting  
3 power is 120 members; therefore, the Association would need the vote of a majority of its  
4 members (or 61 members) to approve the amendment. From December 2014 through April  
5 2015, the Association solicited its members to vote on the Proposed Amendment. Apparently  
6 because of voter apathy, the Association received only 62 ballots out of a total of 120 potential  
7 ballots. Of the 62 members who voted, 55 voted in favor of amendment, which represents  
8 46% of the voting power and *89% of those who voted*.

9 Corporations Code section 7515 states as follows:

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

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

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

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

(e) Any meeting or other method of obtaining the vote of members,  
delegates or directors conducted pursuant to an order issued under this section,

---

<sup>1</sup> Incorrectly cited in the Petition as "Article XII" at page 1, line 21, page 7, line 23, and page 9, line 24.

1 and which complies with all the provisions of such order, is for all purposes a  
2 valid meeting or vote, as the case may be, and shall have the same force and  
3 effect as if it complied with every requirement imposed by the articles, bylaws,  
4 and this part. [*Emphasis added.*]

5 Under Corporations Code section 7515(c), the Court may order the “2014 Amended  
6 and Restated Bylaws” (Exhibit 16 to the Petition) approved based on the vote actually received  
7 by the voting members, because it is impractical and unduly difficult to obtain majority  
8 approval from the membership.

9 As discussed in more detail in the Petition, the Board put forth a significant effort to  
10 obtain member votes. (See Paragraphs 8-18, and Exhibits 12 through 22 in the Petition). In  
11 order to obtain majority approval, almost every single vote that was cast would have had to  
12 have been in favor of the amendment. Unfortunately that was not the case. With only 62 of  
13 the 120 owners casting a vote, voter apathy doomed the Association’s ability to seek member  
14 approval to amend.

15 Accordingly, the Petitioners request that this Court approve the Proposed Amendment  
16 to the Bylaws pursuant to Section 7515 of the Corporations Code based on the actual approval  
17 received from the membership on April 28, 2015.

18 **III.**

19 **CONCLUSION**

20 Based upon the Petition, this Memorandum of Points and Authorities, and the  
21 Declarations submitted in support of the Petition and Ex Parte Application, Petitioners  
22 respectfully request, pursuant to Corporations Code section 7515, that the Court confirm the  
23 Proposed Amendment as being validly approved based upon the majority approval received  
24 from the members.

25 Dated: December 23, 2015

26 EPSTEN GRINNELL & HOWELL, APC

27 By: 

28 Pejman D. Kharrazian  
Attorneys for Petitioners  
RANCHO SERRANO HOMEOWNERS  
ASSOCIATION and RON TURCO