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8 SUPERIOR COURT OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN MATEO
10 (UNLIMITED JURISDICTION)

11 In the Matter of) Case No.: 20-CIV-03926
12 BAYVIEW CONDOMINIUM)
13 ASSOCIATION,) MEMORANDUM OF POINTS AND
14 a California nonprofit corporation,) AUTHORITIES IN SUPPORT OF
15) PETITION TO REDUCE VOTING
16) REQUIREMENTS AND APPROVE
17) AMENDED AND RESTATED
18) DECLARATION
19) (Civil Code section 4275)
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29 STATEMENT OF FACTS

30 Petitioner, BAYVIEW CONDOMINIUM ASSOCIATION, INC. (the "Association") is a
31 homeowners association for a common-interest development, as defined by Civil Code section
32 4100. The Association is a 95-unit condominium development located in the City of Millbrae,
33 San Mateo County. The Association wishes to amend and restate its Declaration of Covenants,
34 Conditions, and Restrictions (the "Original Declaration") to bring it into compliance with current
35 laws and lending requirements. The Association's members voted to approve an Amended and
36 Restated Declaration of Covenants, Conditions and Restrictions (the "Restated Declaration").
37 However, the Original Declaration requires the consent of seventy-five percent (75%) of the
38 holders of first mortgage liens on individual condominiums (hereafter, "Lenders"), in order to

1 approve amendments. Sixty percent (60%) of the Lenders consented. The Association brings
2 this petition to request court approval of the Restated Declaration.

3 AUTHORITIES

4 Before passage of the Davis Stirling Common Interest Development Act (Civil Code
5 section 4000, et seq.) the inability to obtain the required consents from a high percent of owners
6 was often fatal to efforts to amend Declarations of Covenants, Conditions, and Restrictions. Thus,
7 owners in many common-interest developments found themselves hamstrung by onerous
8 declaration provisions that, as a practical matter, could not be changed. In response to this
9 dilemma, the Davis Stirling Act provides in Civil Code section 4275 a mechanism for court
10 ordered approval of amendments to the Declaration, as long as certain requirements are met. See
11 Advising California Common Interest Communities. (2d ed. Cal CEB) § 9.30, et seq.
12

14 Civil Code section 4275(d) permits the Court to dispense with the requirement of the
15 consent of seventy-five percent (75%) of the Lenders, if it makes all of the following findings:

16 (1) The Petitioner has given at least 15 days' written notice of the court hearing to all
17 Association members, or lenders or governmental entities entitled to notice under the Declaration.
18

19 (2) Balloting of the proposed Restated Declaration is conducted in accordance with all applicable provisions of the governing documents and the Davis Stirling Act
20 Civil Code § 4000 et seq.
21

22 (3) A reasonably diligent effort was made to permit all eligible members to vote on
23 the proposed Restated Declaration.
24

25 (4) Members having more than 50 percent of the votes voted in favor of the Restated
26 Declaration.
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28 (5) The proposed Restated Declaration is reasonable.

1 (6) Approval of the proposed Restated Declaration will not (a) change amendment
2 provisions in a two-class voting structure; (b) eliminate any special rights, preferences or
3 privileges belonging to Declarant; or (c) impair the security interest of any mortgage.

4 As shown by the Petition and the supporting Declarations of Attorney Kevin D. Frederick
5 and Property Manager Dave Behling, all the requirements of Civil Code section 4275(c) are met
6 by the Petitioner's proposed Amended and Restated Declaration's and written consent
7 requirements.
8

9 First, Petitioner will give at least 15 days' notice of the court hearing to the Members and
10 all Lenders who are entitled to notice under the terms of the Declaration. The Declaration does
11 not require notice to or approval by the City of Millbrae or the County of San Mateo or any other
12 government entity.
13

14 Second, balloting of the Association's Members was conducted in accordance with the
15 Original Declaration and the Davis Stirling Act. Balloting of the Lenders on the proposed
16 Amended and Restated Declaration were in accordance with the Original Declaration and Fourth
17 La Costa Condominium Owners Association vs. Seith (2008) 159 Cal.App.4th 563, 573.
18

19 Third, all of the Association's Lenders were given an opportunity to consent to the
20 Amended and Restated Declaration. Each Lender was given thirty (30) days to respond.

21 Fourth, sixty percent (60%) of the Association's Lenders voted in favor the proposed
22 Amended and Restated Declaration. The Association's Members approved the Restated
23 Declaration.
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25 Fifth, the proposed Amended and Restated Declaration is not only reasonable, but also in
26 the best interests of the Association, its Members, and Lenders for the reasons set forth in the
27 accompanying Declaration of Attorney Kevin D. Frederick. The original Declaration was
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1 recorded in 1975. Since then, the legislature has completely rewritten the Davis Stirling Act Civil
2 Code sections 4000 et. seq. and the FHA and VA have completely rewritten their loan
3 underwriting requirements, effectively making the old Declaration obsolete. The proposed
4 Restated Declaration addresses those problems. It benefits the Lenders. (See Article XIV of the
5 Amended and Restated Declaration.)
6

7 The Restatement of the Association's Declaration is "reasonable" as required by Civil
8 Code section 4275. In this context, "A CC&R is unreasonable if it is arbitrary and capricious,
9 violates the law or a fundamental public policy or imposes an undue burden on property, and it is
10 reasonable unless it meets those criteria." (Fourth La Costa v. Seith (2008) 159 Cal.App.4th 563).
11

12 The Amended and Restated Declaration is not arbitrary, "that is, bearing no rational
13 relationship to the protection, preservation, operation or purpose of the affected land." (Nahrstedt
14 v. Lakeside Village (1994) 8 Cal.4th 361.) The proposed Restated Declaration meets the needs
15 of the Association to rationally address the protection, preservation, operation of the Property,
16 and the ability of its Members to obtain loans for their condominiums.
17

18 The Restated Declaration does not violate any public policy. The Restated Declaration
19 complies with the Davis-Stirling Act, Civil Code sections 4000 et seq.

20 The Restated Declaration does not place any undue burden on the Property, such as "when
21 a change in surrounding properties effectively defeats the intended purpose of the restriction,
22 rendering it of little benefit to the remaining Property Owners." (Nahrstedt, supra, 8 Cal. 4th at
23 p. 381; Lincoln S&L v. Riviera Estates (1970) 7 Cal.App.3d 449.)
24

25 In fact, the Restated Declaration benefits the owners. As set forth in the Declaration of
26 David Behling, the Association and its members want to (i) bring the Declaration into compliance
27 with current law; (ii) ensure that condominiums within the Association continue to qualify for
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1 conventional mortgage financing; (iii) promote active participation by Owners in the operation of
2 the Association; (iv) preserve the residential quality of the development; and (v) protect and
3 preserve property values. The Restated Declaration achieves those goals.

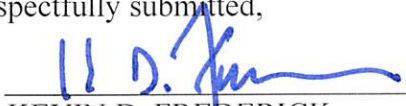
4 Sixth, the Restated Declaration does not violate Civil Code section 4275(e). The
5 Amended and Restated Declaration (1) does not change the two-class voting structure; (2) does
6 not eliminate any special rights, preferences, or privileges designated in the Declaration as
7 belonging to the declarant without the consent of the declaration; and (3) does not impair the
8 security interest of any mortgage or deed of trust encumbering any Condominium in the
9 Association. The rights, privileges and security interest of mortgages and/or deed of trust
10 beneficiaries will remain unchanged.
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13 Therefore, Petitioner meets all of the requirements of Civil Code section 4275 for Court-
14 ordered approval of its Amended and Restated Declaration, and the Court is thereby respectfully
15 requested to grant its order to that effect.
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18 Dated: JANUARY 30, 2020

Respectfully submitted,

19 By


20 KEVIN D. FREDERICK
21 Attorney for Petitioner
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