OPINION

Proposed RSF Golf Club enrollment fee unlawful on many grounds, contends attorney

Guest Commentary

By Richard Scuba

Congratulations to the [RSF] Golf Club. The club showed an annual surplus of about a million dollars last year but still maintained the course as one of the best in the area and kept the annual fees the lowest of other clubs in the area.

How is the club dealing with its embarrassment of riches? It wants to increase the enrollment fee for the two-thirds of Association members who don't presently belong to the club by $10,000 to $35,000. The limited playing privilege (an Association member can play 6 or 12 times per year without joining the club) has already been increased by 300 percent in the last three years.

Not only is the proposed enrollment fee increase unnecessary and has the appearance of a beggar thy neighbor purpose, the enrollment fee itself is not lawful on a multitude of grounds.

To understand the issue it is important to know a little history. The Rancho Santa Fe Country Club was formed in 1927 as a separate entity to build the golf course. Like other clubs in the area it could then charge anything it wanted for membership. However, the country club had financial trouble and in 1934 agreed to convey title to the RSF Association. The offering letter stated that "...the golf course should belong to the people of this community to be operated as a park by your association." The RSF Association took title and put a provision in the Covenant that assessments for maintenance would not exceed $1 per $100 of assessed valuation.

In other words, in 1934 the golf course became a part of the "common area" of the Association similar to the sidewalks and swimming pool in a condominium. All Association members have an equal right to use the course for its intended use. In fact, the Covenant and the bylaws have specified provisions which provide that all members have an equal interest in Association property.

In 1987 the RSF Association Board established the present golf club. At that time it was made clear that the golf club would be allowed some autonomy but that the RSF Association would and must maintain its fiduciary duty to all the Association members regarding the Association golf course asset worth hundreds of millions of dollars.

The enrollment fee started out as an innocuous little charge of $500. It was $10,000 in 1984. Now the golf club wants to raise it to $35,000.

The initial proposal to the Association board last month had no credible evidence that the money was actually needed. The golf club has now conducted a poll asking members if they would support certain improvements. It was once said that if you make a proposal to rob Peter to pay Paul, you will always get the support of Paul. What was surprising about the results of the golf club survey is that even though the golf club members were told they would benefit and not have to pay any money, a very substantial number still voted against what they apparently thought were unnecessary expenditures.

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By its nature, the RSF Association is governed by its governing documents and several bodies of law, i.e. property law, contract law, condominium law, corporation law, non-profit law and to an extent, governmental law. The enrollment fee uniquely violates each of those bodies of law as well as being a violation of the spirit and letter of the transfer and the Association governing documents.

Property law provides that the course is owned equally by all the Association members. The law regarding co-ownership is membership, which do not have "...the same rights, privileges, preference, restrictions and conditions" unless specifically provided in the governing documents. Here the Covenant and bylaws specifically provide the ownership is equal. Dividing the Association members into two classes of those who have to pay and those who don't is not permitted.

Condominium law mirrors the Covenant and provides that all Association members have an equal right to the Association property, including common areas such as the golf course, and further provides that "an association shall not impose or collect an assessment that exceeds the amount necessary to defray the cost for which it is levied."

Governmental law and the law of fiduciary duty require that Association members be treated fairly and equally. There is specific case law which prohibits laws which unequally burden "newcomers." The enrollment fee which requires new club members to bear a substantial burden of maintaining the course for the benefit of existing members, in my opinion, would not pass the test.

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corporation law, non-profit law and to an extent, governmental law. The enrollment fee uniquely violates each of those bodies of law as well as being a violation of the spirit and letter of the transfer and the Association governing documents.

Property law provides that the course is owned equally by all the Association members. The law regarding co-ownership is settled and very clear. Each co-owner has an equal right to possession of the entire property, and no co-owner has a right to the exclusive possession of the property as against the other co-owners. It is not clear when a "minor inconvenience" becomes an "ouster." However, any action to deter co-owners from using their property by making it financially disadvantageous would be an ouster. Charging someone $35,000 for the only purpose of using their own property is not legal. If you bought your home with another party and they refused to let you in the door unless you paid them an additional $35,000, you would be outraged and may call the police. This is the same type of thing.

Non-profit and corporation law prohibit different classes of

test.

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enrollment fee is a clear violation of each of the grounds discussed, it is important to note that to be unlawful it is only necessary to be a violation of one.

I am not saying that the Association cannot charge a true "user fee," i.e. divide the annual maintenance cost by the people who actually use the course (annual and green fees are fine). However, to charge an Association member and co-owner $35,000 for the only purpose to use the common area property that he/she already owns is not permitted under the Covenant or the related law.

If anyone truly believes that the enrollment fee increase is really a financial necessity the board should vote to require everyone to pay a total of $35,000 to play golf (if you paid $1,500 initially, you would have to come up with an additional $33,500, etc.). It would still be illegal but it would be fair. I expect that the existing members would be outraged at such a plan. Why should they pay thousands of dollars for a right they already have for improvements of questionable need? I agree. That's my point.

Richard Scuba is a local attorney and was president of the RSF Association Board in 1987 when the present golf club was originally formed.