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*Governor*

LT. GOVERNOR SHEILA Y. OLIVER  
*Commissioner*

February 9, 2021

Pulkit Desai  
President, Lake Parsippany POA  
e-mail pulkit@yahoo.com

(Regular mail to follow as courtesy)

Re: Lake Parsippany Property Owners Association  
Members' Election Rights Complaint

Dear Mr. Desai:

This agency received a complaint relating to the voting rights of owners deemed to be members of the Lake Parsippany Property Owners Association (LPPOA) which consists of 2,204 homes. Specifically, there is a two-tier payment/member system in which all owners must pay a basic \$115.00 member fee for their lake rights. In addition to their title rights and obligations, tract owners who pay an additional \$230.00 can use the beach and clubhouse (recreational facilities also open to non-tract owners). The LPPOA Invoice states: "Payment of the Basic Membership fee will confirm the member's waiver of rights of Full Membership, including the right to vote and serve on the Board." Thus, the association does not provide owners with election rights unless they pay an additional recreation fee unrelated to the basic fee for maintenance of the common element, in this case the lake.

For the reasons stated below, LPPOA's position denies members their statutory election rights granted to those who are obligatory members of a homeowner's association. Voting and concomitant election rights set forth in the election law (N.J.S.A. 45:22A-23q, 23r and 45.2 et seq) are not "perks", as LPPOA's counsel asserted in litigation, but guaranteed rights that are inextricably linked to membership and cannot be denied except in strict conformance to the statute. Election rights in mandatory homeowner associations are not and cannot be dependent on voluntary payments for extraneous privileges, such as the use of recreational facilities. Similarly, in common interest communities there is no such status as a "basic" member or "full" member-according to the choice of payments; there is only "membership".

Any tract owners paying the basic LPPOA \$115.00 assessment, whether under protest or not, are legally in good standing and entitled to full election rights.



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In 2019, an owner of property in LPPOA brought an action in the Superior Court, Law Division in Morris County contesting the association's authority to charge mandatory fees. In a Summary Judgment decision in October 2019, the court decided that, based on the law of servitudes, those owning tracts in the LPPOA with easements to use Lake Parsippany were obligated to pay for the right.

The Judge noted in his Statement of Reasons that defendant's counsel stated at oral argument; "...they had researched the chains of title for approximately twenty-five (25) properties in various locations throughout the tract [also referencing an Exhibit]. \* In those cases, the title search revealed the Easement, granting the privilege, 'together with the right to use, in common with others, the waters of Lake Parsippany for bathing, boating and fishing.'" (Statement p.7)

The Statement included the following assertion on behalf of LPPOA:

"As Defendants' counsel asserted at trial, residents can become full members of LPPOA, and through this expanded membership they can gain additional perks, such as the ability to vote in association meetings. Residents can decide whether they want to take advantage of these benefits of full membership, which requires paying an additional fee on top of the \$115.00 annual charge. See *id.* Non-residents do not even have the option of voting or engaging in other activities as full, resident LPPOA members do; non-resident privileges are limited to recreational use of the Lake." (Statement p.9)

In sharp contrast to the Defendant counsel's reference to voting as an "additional perk", the Judge stated:

"It is similarly clear that Tract residents derive multiple benefits from the Easement language, such as the ability to vote in LPPOA elections, that non-residents do not have." He also concluded that those residents "...can be compelled to pay for the burden that accompanies the benefit." (Statement p.13). The benefit in this case is the Easement shown in title searches to "...use, in common with others, the waters of Lake Parsippany for bathing, boating and fishing." (Statement p.3)

\*The Bureau of Homeowner Protection is on record through a publicly available December 28, 2020 letter to LPPOA's counsel relating to another lake community that memberships in a PRED are not optional and no liens on an owner are effective absent a judicial determination based on that individual's title. Based on the litigation record, LPPOA is approximately 2,179 units short of meeting this agency's standard. In the instant case we defer to the court's determination as to LPPOA based on the law of servitudes and thus will exercise jurisdiction over the election rights of owners in the LPPOA.

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Plaintiff moved for reconsideration of the Summary Judgment decision and sought action regarding owner election rights. In his November 2019 Statement of Reasons denying the Motion, the Judge justifiably declined to make a determination regarding voting rights because the issue had not been specifically raised by plaintiff in the Motion for Summary Judgment stating: “The Court, therefore, declines to opine as to the adequacy of Defendants’ easement assessment proposal or Defendants’ ‘intent’ in implementing a two-tiered approach, other than to state that Defendants must comply with all applicable laws, including N.J.S.A. 45:22A-45.1” (Statement p.4)

N.J.S.A 45:22A-45.1 states that community associations are “creatures of State law and “American democratic values require these communities, such as LPPOA, to be “governed by trustees “...elected in a fair and open manner”. It is unfair, as well as a violation of law to deprive mandatory members who paid their common expense assessment their election rights because they decline to also pay a separate recreation fee unrelated to the very essence of the servitude underlying the association’s authority

With his citation to the introductory findings which form the basis for the provisions in the Election Law, the judge did as much as possible pursuant to court rules to call attention to the flawed voting scheme that Defendant’s counsel incorrectly characterized as a “perk”. The Election Law is applicable to owners whose title obligates them to adhere to an association in a common interest community which the court found LPPOA to be. Owners in such communities are obligated to pay the common area assessment linked to the servitudes to be in good standing for election purposes.

The Election Law grants members full election rights if a member is “...current on the payment of common expenses, late fees, interest on unpaid assessments, legal fees, or other charges lawfully assessed, and which association member has not failed to satisfy a judgment for common expenses, late fees, interest on unpaid assessments, legal fees, or other charges lawfully assessed.” The law provides the same standard regarding settlement agreements “... with respect to the payments of assessments...” (N.J.S.A. 45:22A-23r). Members’ payment of costs directly related to their title benefit, in this case \$115.00 for the use of Lake Parsippany, entitle them to full election rights.

Any optional payment entitling one to use recreation facilities, which can also be enjoyed by “non –tract” members who also pay that fee, is not equivalent to an assessment to offset common element obligations such as maintenance of a lake. \* A homeowners’ association with

\*The concept of one not owning property but being a “member” in a common interest community, which the court found this to be, is foreign to the entire concept of such communities. One is either a member through their individual title or not. One cannot simply pay to become a member in a common interest community.

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mandatory membership that deliberately denies election rights to a member who pays the basic assessment to maintain common elements, as is the case with LPPOA, blatantly violates that owner's statutory election rights. Any classification of "full" voting membership in LPPOA based on payment for recreational use of a beach or clubhouse is a violation of the Election Law. Those costs are not part of the owners' title obligations, in contrast to their payment for use of the lake. The only fee required for owners in LPPOA to pay to be in good standing for election purposes is the \$115.00 to manage and maintain common elements, in this case, the lake.

In its initial Summary Judgment Motion Statement, the court noted that the \$115.00 was directed "...toward 'specific expenses related to maintenance of the common areas of Lake Parsippany,' such as taxes and water quality management." (Statement p.12). That is the quintessential assessment which a mandatory association is entitled to impose, the payment of which satisfies the election law's status as being in "good standing. It is entirely unrelated to any recreational extras that also may be available even to non-tract owners.

Defendant's letter to owners that referenced an option to become "full recreational members" "entitling them to additional privileges beyond the bare minimum Lake maintenance requirements" (Id.) is inconsistent with the very nature of a common interest community and the specific rights and obligations of the LPPOA tract owners. The concept that voting is a "privilege" likened to an optional recreation fee is abhorrent to owners' election rights. Pursuant to the Election Law, members current in the \$115.00 payment are association members with full election rights whether or not they choose to pay for additional recreation opportunities.

The Judge characterized the recreation fee option as a positive in that the LPPOA did "...not attempt to unfairly charge Tract residents more than what was necessary." "for the reasonable maintenance of the Lake." (Id). Although the court viewed the \$115.00 as the Easement assessment" and alluded to the recreational fees as, "an additional membership fee", that is not dispositive. The key is the court's recognition of the "Easement assessment" as the only mandatory payment. The payment of the easement fee confers election rights.

Reference to the voluntary recreation payment as "an additional membership fee", is inconsistent with mandatory association assessments. A voluntary fee is, by its very nature, irrelevant to and inconsistent with membership status. There are no partial, additional or enhanced memberships in mandatory homeowner associations, which are entitled to assess for common element costs only. LPPOA can offer additional services for additional fees, but that does not and cannot undermine owners' statutory election rights which rest on payment of the assessment for lake maintenance, currently \$115.00.

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Chapter III, Article 1 of the LPPOA Bylaws supports this position by stating members are in good standing if they "...have paid all dues, assessments fines, late payment charges and collection costs, and are in compliance with all By-Laws, Rules, Regulations and Policies of LPPOA." Those who have done so receive badges and "...are entitled to the privileges of the LPPOA." Although this Article (as do others in the bylaws) contains inconsistencies with the election law, (notably as to impermissible conditions for good standing) it establishes that good standing is unrelated to an optional recreation payment. This is consistent with Bylaw Chapter IV, Article 1 which authorizes the Board to determine the manner of collecting "common expenses." Obviously, common expenses are distinguishable from optional "recreation fees", which have nothing to do with good standing under the election law.

Chapter VI, Article 1 of the LPPOA bylaws provides for election notices to be sent to members. In accordance with the Election Law, those are the owners bound by their title to be members of the LPPOA. As noted above, members who have paid their common expense assessment are in good standing for election purposes. (Notably, Chapter VI Articles 9, 10 and 11 contain provisions either directly contrary to or inconsistent with the election law and must be revised.)

There are no membership "tiers" in mandatory associations, a status that LPPOA successfully sought and was acknowledged to have in a court action. In such entities, one owning property is a "member", whether or not that person chooses to exercise a "perk" of membership to also pay to use amenities available to non-tract owners-who are not thereby members of any common interest community. Any characterization or treatment of Election Rights as a "perk" is an insult to the fundamentals of democratic governance protected by the Election Law.

This agency is charged with the responsibility and accorded the enforcement authority to protect owners' election rights. Thus, if LPPOA persists in denying those rights as it is currently doing, this agency will take whatever formal action is necessary to compel the association to comply by recognizing that all those members who pay the basic assessment of \$115.00 are eligible to vote, run for and be elected to the LPPOA governing board. Formal action can include Orders to Comply and the imposition of monetary Penalties on any person acting to obstruct a member's election rights.

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This agency anticipates that associations wish to voluntarily comply with the law to the benefit of its members. There is no more fundamental law regarding owner rights than that guaranteeing their right to fair elections. Thus, we look forward to a written acknowledgment within 30 days from the date of this letter that LPPOA will act in accordance with the law and afford election rights to those owners paying the \$115.00 assessment.

Absent that assurance, or if LPPOA disputes the owner rights as explained above, this agency will proceed according to its mandate to take action it deems necessary to protect owners' election rights. We appreciate your prompt attention to this important matter.

Very truly yours,  
s/

Edward R. Hannaman, Esq.\*  
Supr., Association Regulation Unit  
Bureau of Homeowner Protection

c. Eileen McCarthy Born, Esq., LPPOA attorney  
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\*An attorney at law of New Jersey but not a member of the Attorney General's office. Only attorneys in that office are authorized to provide legal guidance to or representation of agencies or act as the State's attorney. Thus, I am not acting as the agency's or State's attorney and this writing does not constitute same.