



April 15, 2021

Via electronic and regular mail

Board President Cynthia Morelli
Alexandria at Hillsborough Condominium Assoc.
c/o Felicia Fishman
Preferred Community Management Services, Inc.
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**Re: Demand to Reschedule Board Election until 14 days after
Written Notice Is Sent Out.**

Dear Chair and all Alexandria at Hillsborough Board members:

I am writing to you on behalf of Kevin Plunkett and Ron Carey, two homeowners who are candidates in the upcoming Board election now scheduled for April 22, 2021, originally set for March 25, 2021. Mr. Plunkett and Mr. Carey recently contacted New Jersey Appleseed Public Interest Law Center because they are very concerned that homeowners have not been properly notified of the rescheduled election, and that all homeowners have been given the opportunity to cast their ballot in accord with state law and regulation.

New Jersey Appleseed Public Interest Law Center is a nonprofit 501(c)(3) organization, which has a Common Interest Association Democracy Project under which we have decided to represent Mr. Plunkett and Mr. Carey. This project was operated jointly with the Rutgers Constitutional Law Clinic prior to Professor Frank Askin's retirement and thus has focused, and continues to focus, on assisting common interest association owners in their efforts to ensure open and fair board elections as well as advocating for the reasonable and nondiscriminatory

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application of association rules and regulations, pursuant to the New Jersey Constitution and the Property Real Estate Development and Full Disclosure Act, or "PREDFDA". In fact, New Jersey Appleseed, in 2012-2013, represented a group of homeowners residing in Alexandria at Hillsborough Condominium Association with respect to their court challenge against the Association for improper management and failure to follow basic governance rules requiring transparency and accountability. Our efforts resulted in a consent order compelling new elections, financial disclosure and open board meetings. See Concerned Owners of Alexandria Assoc. v. Alexandria at Hillsborough Condominium Association, Docket No. SOM-C-12038-13 (Consent Order Oct. 13, 2013).

As you all know, this year's Board election was scheduled to be held on March 25, 2021. Mr. Plunkett and Mr. Carey have informed me that the Board caused to be sent a timely request for nominations and a timely notice of the actual election date. However, on the night of the election, the Association's property manager, Felicia Fishman, announced that the election could not be held since there was no quorum. At that meeting, which was held via zoom due to the pandemic, she announced that the election would be rescheduled for April 22, 2021. Until yesterday, at which time Ms. Fishman sent a phone message to all homeowners, she had not made any public announcement of the newly scheduled election as she had previously committed. More importantly, Ms. Fishman did not send out a written or electronic (e-mail) notice of the election 14 days prior to next Thursday, as is required by the Planned Real Estate Development and Full Disclosure Law ("PREDFDA"), N.J.S.A. 45:22A-45.2(c)(5); N.J.A.C. 5:26-8.9(1)(1)(iii).

This is not a mere technical requirement. Notice of the exact date of the election is very important to ensuring that the upcoming election is fair and inclusive of all homeowners eligible to vote. The 14-day notice period is especially important in this case, where the Board is rescheduling an election that most homeowners thought had already happened. Under these circumstances, homeowners who did not send in their ballot in time for the March 25th election must be informed that there is still time to send in their ballot or request a replacement ballot if they have misplaced the ballot that they previously received.

Furthermore, it is not clear that the Board has complied with PREDFDA with respect to homeowners who are not in good standing. Pursuant to N.J.A.C. 5:25-8.9(1)(1)(v), the

Association must notify residents who are not in good standing at least 30 days prior to an election of the reason why the resident is not in good standing. The notice

shall state the reason why the resident is not in good standing. The notice shall state that residents have the right to contest the board's determination by requesting Alternative Dispute Resolution. Residents shall be allowed to rectify their standing up until five business days prior to the election date.

Id.

Given the fact that a quorum was not reached at the first scheduled election, Mr. Plunkett and Mr. Carey feel that it is very important that homeowners be given the opportunity to cast a ballot if they rectify their good standing status at least 5 days before the election date.

In addition to expressing their demand to reschedule the election until 14 days after proper written notice is sent to all homeowners and people can rectify their good standing status or request a replacement ballot, they want to make sure that the Board is aware of applicable regulations concerning the storing of ballots received by management and the counting of such ballots on the night of election. The regulations issued under PREDFDA require:

The association shall verify the eligibility of the voters and count the ballots in a non-fraudulent and verifiable way.

1. Any depository for physical ballots shall be secured.
2. All ballot tallying shall occur publicly, and the ballots shall be open to inspection by any member of the association for a period of 90 days from the date of the election.
3. All ballots shall be cast in an anonymous manner.
4. If the bylaws permit, and the association member consents, a ballot may be cast electronically if it is administered by a neutral third party and anonymity is maintained.

N.J.A.C. 5:26-8.9(h). In order to ensure that the ballots are counted in a "non-fraudulent and verifiable way,, Mr. Plunkett and Mr. Carey are requesting that management must bring the returned ballots in both envelopes to the meeting on the night of the election, with the outside envelope still sealed. The

inside envelope (containing the ballots) should only be removed when the unit owner's name is checked off a list, so at the end of the evening there is a master list of which homeowners actually voted, and one can affirm their eligibility to vote and that they themselves actually cast their ballot. All inside envelopes should then be mixed randomly and only at that time should the inside envelopes be opened and the ballots counted in front of all people participating in the meeting. If management follows this procedure, all can be assured of the privacy and accuracy of the election.

It appears that Alexandria at Hillsborough has come a long way since 2013 with respect to improving management and holding elections. Nonetheless, the importance of Board elections requires strict adherence to the law, even though the pandemic does pose difficulties with respect to holding the election in person and allowing homeowners to cast their ballots on the night of the election. Nevertheless, Mr. Plunkett and Mr. Carey are looking forward to an election held in a "fair and open manner"¹ in accordance with PREDFDA, N.J.S.A. 45:22A-45.2 and its election regulations, N.J.A.C. 5:26-8.9, where everyone in the community has the opportunity to cast their ballot and be assured that such ballot is accurately counted.

Accordingly, New Jersey Appleseed, on behalf of Mr. Plunkett and Mr. Carey, requests that the Board reschedule the election and send out a timely 14-day written notice of the election and provide homeowners who are not in good standing the opportunity to rectify that status and participate in the election.

Sincerely,

/s/Renée Steinhagen
Renée Steinhagen, Esq.
Ex. Dir. NJA

Cc: Ed Hannaman, DCA

¹N.J.S.A. 45:22A-45.1(d)