

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**  
BRANT H. DVEIRIN, SB# 130621  
2 E-Mail: Brant.Dveirin@lewisbrisbois.com  
SARA E. ATSBABA, SB# 310049  
3 E-Mail: Sara.Atsbaha@lewisbrisbois.com  
633 West 5<sup>th</sup> Street, Suite 4000  
4 Los Angeles, California 90071  
Telephone: 213.250.1800  
5 Facsimile: 213.250.7900

6 Attorneys for Respondent, PALOS VERDES  
HOMES ASSOCIATION  
7

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
9 CENTRAL DISTRICT – STANLEY MOSK COURTHOUSE  
10

11 RESIDENTS FOR OPEN BOARD  
ELECTIONS, an unincorporated association;  
12 L. RIED SCHOTT, an individual,

13 Petitioner(s),

14 vs.

15 PALOS VERDES HOMES ASSOCIATION,  
a California non-profit mutual benefit  
16 corporation, ,

17 Respondent(s).  
18  
19  
20  
21  
22

CASE NO. BS169638

Assigned for All Purposes to:  
JUDGE: Hon. Ruth A. Kwan  
DEPT.: 72

**RESPONDENT'S OPPOSITION TO  
PETITIONER'S BRIEF RE: LOWER  
QUORUM OF HOMEOWNERS  
ASSOCIATION**

[Corp.Code Section 7515 ]

Hearing Date: November 30, 2017  
Time: 9:00 a.m.  
Dept.: 72

[Filed Concurrently with Declaration of  
Sidney Croft in Support of Respondent's  
Opposition, Objections and Motion to  
Strike]

Action Filed: May 17, 2017

23  
24 Respondent PALOS VERDES HOMES ASSOCIATION ("Respondent," "PVHA," or the  
25 "Association") hereby submits its Opposition to Petitioner's Brief Regarding Lower Quorum of  
26 the Homeowners Association dated October 27. This Brief explains why Petitioner REID  
27 SCHOTT, ("Petitioner," or "SCHOTT") still does not have standing to pursue changes to the  
28 Association's Bylaws, and provides other grounds for dismissing SCHOTT's Petition.

4823-4016-9294.21

TABLE OF CONTENTS

	<u>Page</u>
1	
2	
3 I. INTRODUCTION.....	4
4 II. STATEMENT OF FACTS.....	5
5 A. History and Role of the Association .....	5
6 B. The Association’s Bylaws.....	6
7 C. Prior Litigation .....	7
8 1. <i>Palos Verdes Peninsula Unified School District v. Palos Verdes</i>	
9 <i>Homes Association</i> , Los Angeles Superior Court Case No.	
BC431020.....	7
10 2. <i>Citizens for Enforcement of Parkland Covenants v. City of Palos</i>	
11 <i>Verdes</i> Los Angeles Superior Court Case No. BS142768 .....	8
12 D. 2016 and 2017 Board Elections .....	9
13 III. SCHOTT, LIKE ROBE, LACKS STANDING TO PURSUE CHANGES TO THE	
ASSOCIATION’S BYLAWS; ONLY THE ASSOCIATION HAS STANDING.....	10
14 IV. AS DRAFTED, THE HOA BYLAWS PROVIDE NECESSARY	
15 INSTITUTIONAL STABILITY AND ARE CONSISTENT WITH CALIFORNIA	
CORPORATIONS CODE AND BEST PRACTICES .....	14
16 A. The Bylaws Were Drafted to Provide Stable, Consistent Governance .....	14
17 B. The Bylaws are Consistent with the Corporate Code and the DSA.....	15
18 V. SOME OF PETITIONER’S REQUESTED CHANGES ARE COSTLY,	
19 IMPRACTICAL OR ILLEGAL .....	16
20 A. Petitioner’s Requested 25% Quorum Allows Agitators to Control the HOA.....	16
21 B. Petitioner’s Request for Proxy Voting Violate the Bylaws and the	
Corporations Code.....	16
22 VI. THE ASSOCIATION HAS REACHED QUORUMS IN THE PAST .....	17
23 VII. THE BYLAWS REPRESENT 100 YEARS OF SUCCESSFUL ASSOCIATION	
24 GOVERNANCE, AND COURT INTERFERENCE IS NOT WARRANTED .....	18
25 VIII. CONCLUSION .....	18
26	
27	
28	

1 TABLE OF AUTHORITIES

2 Cases

3 *American Center for Education, Inc. v. Cavnar*

4 (1978) 80 Cal.App.3d 476..... 11, 12

5 *Fourth La Costa Condominium Owners Association v. Seith,*

6 (2008) 159 Cal.App.4th 563..... 12, 13

7 *Greenback Townhomes Homeowners Association v. Rizan*

8 (1985) 166 Cal.App.3d 843..... 4, 10, 11, 12, 13

9 *Lamden v. La Jolla Shores Clubdominium Homeowners' Ass.*

10 (1999) 21 Cal.4th 249..... 13

11 *Patton v. Sherwood*

12 (2007) 152 Cal.App.4th 339..... 12

13 *Sealand Investment Corp. v. Emprise, Inc.*

14 (1961) 190 Cal.App.2d 305..... 12

15 *Smith v. Laguna Sur Villas Community Association.*

16 (2000) 79 Cal.App.4th 639..... 11

17 *Windham Carmel Mountain Ranch Association v. Superior Court*

18 (2003) 109 Cal.App.4th 1162..... 14

19 Statutory Authorities

20 Civ. Code, §4000..... 15

21 Civ. Code, §5115(b)..... 15

22 Corp. Code, §7510(d)..... 16

23 Corp. Code, §7512(a)..... 15

24 Corp. Code, § 7515 ..... 4, 5, 10, 11, 12, 13, 14, 18

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 This case arises from Petitioner’s dissatisfaction with the existing Palos Verdes Homes  
4 Association’s (“Respondent,” “PVHA,” or the “Association”) Board of Directors, and the Board’s  
5 approval of a 2012 multi-party Memorandum of Understanding (“MOU”) adopted to settle costly  
6 litigation with the Palos Verdes Peninsula Unified School District. Shortly thereafter, an activist  
7 group with essentially the same membership as non party ROBE, of which Petitioner L. Reid  
8 Schott (“SCHOTT”) is a member of both groups, filed suit to challenge the MOU (the “CEPC  
9 Litigation”). The matter is currently pending on appeal, with oral argument set for December 14,  
10 2017. See Notice of Oral Argument attached to this brief as Exhibit 1.

11 At the last hearing in *this* case, the Court dismissed the Petition due to lack of standing of  
12 ROBE, so Petitioner now sues solely in the name of SCHOTT. Petitioner however ignores the  
13 ruling of the court on Page 3, fn. 3, which states that that “[t]he language of Subdivision (a) of  
14 section 7515 makes clear that the corporation [here the Association] is the entity directly  
15 interested in and benefited by the action.” (Emphasis in original; citing *Greenback Townhomes*  
16 *Association v. Rizan* (1985 166 Cal. App. 3d, 843, 848-849.) (See Courts Ruling dated October 2,  
17 attached to this brief as Exhibit 2.) The court’s ruling on Page 4 states “[t]he statute’s evident  
18 purpose is to facilitate the initiation of an action, *in the name of the corporation*, by any of the  
19 designated parties to deal with a situation where approvals cannot be obtained from those  
20 ordinarily empowered to bring an action on behalf of the corporation. *In essence, the statute*  
21 *specifies who shall sign a petition, not who shall be the party bringing the action.* (Emphasis in  
22 original; citing *Greenback* at 849.) Page 5 of the ruling concludes, “under Corporations Code §  
23 7515 and *Greenback*, Schott, as a member of the Homes Association, could have signed the  
24 petition and brought it on behalf of Homes Association.” **Petitioner failed to follow this court’s**  
25 **order and instead sued only in the name of SCHOTT, thus ignoring the court’s directive that**  
26 **the pleading be filed in the name of the Association with SCHOTT just signing the petition.**  
27 **The Petition must again be dismissed for this reason alone.**

28 While the CEPC Litigation is pending, SCHOTT and non party ROBE have attempted to

1 circumvent the MOU by replacing the incumbent Board of Directors. However, Petitioner has  
2 been unsuccessful in securing sufficient support to reach a quorum from the Association  
3 Members, as required by the Association's Bylaws. Petitioner now seeks to change the  
4 Association's Bylaws in order to lower the quorum requirements for Board elections, among other  
5 costly, impractical, and in some instances, illegal changes to the Association's election procedures.

6 SCHOTT still does not have standing to pursue changes to the Association's Bylaws (the  
7 "Bylaws"). The Petitioner has to be the Association with an authorized party signing the Petition  
8 on the Association's behalf. Petitioner's argument that it has standing under Corp. Code Section  
9 7515(a) is inconsistent with case law interpretation of this provision. As explained below, only a  
10 party with consent of the Association can sign the Petition on the Association's behalf.

11 Otherwise, any member at any time, and multiple times, could just keep suing the Association and  
12 there is no authority that allows for such member filed suits. Petitioner is arguing for a citizen  
13 suit right for any member of the Association, and no authority exists for that.

14 Assuming *arguendo* that Petitioner SCHOTT has standing under Corp. Code Section  
15 7515(a), this standing is limited to petitioning the Court when it is impossible to hold a meeting or  
16 other impossible compliance with the Association's Bylaws. Section 7515(a) standing does not  
17 allow SCHOTT to petition for changes to the Association's Bylaws, particularly without support  
18 from the Association. This alone provides another reason to dismiss the petition.

19 SCHOTT's Petition should also be dismissed because it is merely an attempt to resolve the  
20 pending CEPC litigation. Because SCHOTT's petition is a byproduct of previous litigation, it is  
21 crucial to understand the history of the related litigation, the Association, and the Association's  
22 governing documents in order to fully understand the complexities of this case.

## 23 **II. STATEMENT OF FACTS**

### 24 **A. History and Role of the Association**

25 The Association was created in the early 1920s to govern and enforce land use policies and  
26 construction in the City of Palos Verdes Estates (the "City"). (Declaration of Sidney Croft ("Croft  
27 Decl." ¶ 6; *see also* Exhibits A, B to Croft Decl.). The Association's Board of Directors selects  
28 the Art Jury, which governs architecture, construction practices, and design approval within the

1 Association's jurisdiction. (Croft Decl. ¶ 6). The Association and the Art Jury share the roles of  
2 preserving the quality and character of new developments, and the unique charm and aesthetics of  
3 the neighborhood. (Croft Decl. ¶¶ 6; 52). The Association is also responsible for governing  
4 parcel use for recreation and open space within its jurisdiction. (*Id.*). These roles are vested in the  
5 Association and its Board of Directors as described in the Association's Bylaws and the Articles  
6 of Incorporation. For this reason, the Association's institutional stability and consistency of the  
7 Association's land use policies are necessary to serve the Association's purpose, and the founder's  
8 intentions. (Croft Decl. ¶ 52). The Association's founders provided several mechanisms in the  
9 Bylaws in order to maintain this institutional stability.

10 **B. The Association's Bylaws**

11 The Association is a non-profit, cooperative association and subject to the California  
12 Corporations Code. (Croft Decl. ¶ 10). The Association's Bylaws were drafted to protect  
13 democratic election procedures while preserving institutional stability. (Croft Decl. ¶¶ 10, 52;  
14 Exhibit C). For example, in order to validate an election to the Association's Board of Directors,  
15 the Bylaws require a majority quorum. (Article IV, Section 1)<sup>1</sup>. The Bylaws also state that no  
16 Association business can be conducted without titleholders representing a majority of building  
17 sites within the Association's jurisdiction. (Article V, Section 1). These measures were included  
18 to promote democratic governance of the Association by ensuring that the Association's policies,  
19 including its land use policies, are supported by a majority of members. The Bylaws also provide  
20 for staggered elections in order to prevent mass turnover on the Board of Directors. (Article IV,  
21 Section 1). Directors must be elected by secret ballot. *Id.*

22 When there are vacancies on the Board, the existing Directors appoint interim Directors to  
23 serve until the election at the next annual or special meeting. (Article IV, Section 2). Because  
24 these meetings and elections are annual, the interim Directors do not serve for longer than one  
25 year. (Croft Decl. ¶ 11). However, if no quorum is reached at the next annual or special meeting,  
26 the existing Directors again appoint interim Directors who serve until the next election. This cycle

27 <sup>1</sup> All citations in this brief to Articles and Section are to the Association's Bylaws attached as Exhibit C to the  
28 Declaration of Sidney Croft filed concurrently.

1 continues until a quorum of Members is motivated to change the status quo at the next annual or  
2 special meeting. (Croft Decl. ¶ 18). In order to change the Bylaws, a quorum of 2/3 is required.  
3 (Article XXII). Petitioner is the first to take issue with the structure of the Bylaws regarding the  
4 Association's election procedures in nearly 100 years of governance. (Croft Decl. ¶ 56).

5 **C. Prior Litigation**

6 1. *Palos Verdes Peninsula Unified School District v. Palos Verdes Homes*  
7 *Association, Los Angeles Superior Court Case No. BC431020.*

8 In 1938, the Association conveyed 13 parcels of property to Palos Verdes Peninsula  
9 Unified School District (the "District"). (Croft Decl. ¶ 21; Exhibit D). These parcels were  
10 conveyed subject to a deed restriction prohibiting any use beyond "the establishment and  
11 maintenance of public schools, playgrounds, and/or recreation areas." *Id.* The Association  
12 determined that this language prohibited the District from selling these parcels or portions thereof  
13 for development purposes. (Croft Decl. ¶ 21). By 2010, the District suffered from significant  
14 financial burdens, and intended to sell two lots titled Lots "C" and "D" to developers in order to  
15 raise funding for District operations. (Croft Decl. ¶ 23). However, Lots C and D were also  
16 subject to the restrictions in the 1938 Deed. On February 1, 2010, the District filed suit for a  
17 declaratory judgment that the 1938 Deed restrictions were inapplicable to the District, *Palos*  
18 *Verdes Peninsula Unified School District v. Palos Verdes Homes Association*, Los Angeles  
19 Superior Court Case No. BC431020 (the "District Litigation").

20 While the District Litigation was pending, the City was negotiating a similar dispute with  
21 private residents, the Luglianis. (Croft Decl. ¶ 24). Over the years, a retaining wall and other  
22 prohibited improvements had been developed on the steep hillside property adjacent to the  
23 Lugliani's property known as "Area A." (Croft Decl. ¶ 24). Area A was also subject to the 1938  
24 Deed restrictions and designated as "open space." *Id.* Shortly after the 1938 conveyance to the  
25 District, the Association conveyed all areas designated as "open space" to the City because the  
26 Association did not have the resources to operate or maintain the open space properties. (Croft  
27 Decl. ¶ 22). On receiving the open space properties from the Association, it became the City's  
28 responsibility to maintain these properties and enforce the development restrictions. During the

4823-4016-9294.21

1 City's dispute with the Luglianis, the City attempted to enforce the development restrictions as to  
2 Area A. However, these attempts resulted in threats of litigation. (Croft Decl. ¶ 24).

3 In the course of these disputes, the Association incurred costs in excess of \$450,000, and  
4 determined that settlement of the matter would be in the best interest of the Association because of  
5 the costs of continuing litigation, and the related political rifts within the community. (Croft Decl.  
6 ¶ 26). On April 19, 2012, the Association's Board approved a Memorandum of Understanding  
7 ("MOU") with the District and the Luglianis to reiterate that the 1938 Deed restrictions continued  
8 to apply to the District, and to resolve the Luglianis' encroachment into Area A. (Croft Decl. ¶¶  
9 27-32; Exhibit F). The MOU required that the District convey Lots C and D back to the  
10 Association that all lots conveyed to the District were subject to the 1938 Deed restrictions, and  
11 that the District would comply with these restrictions. (Croft Decl. ¶ 27). The MOU also  
12 provided that the Association trade Lots C and D to the City, subject to use for open space or  
13 recreation in exchange for the City's transfer of Area A to the Association. (Croft Decl. ¶ 27).  
14 The Association then sold Area A to the Luglianis for \$500,000, subject to an open space  
15 easement. *Id.* The Luglianis also donated \$1.5 million to the District, although not part of the  
16 terms of the MOU. *Id.* Pursuant to the MOU, the 1938 Deed restrictions were preserved, the City  
17 received two additional lots for use as open space, the District received the funding that it needed,  
18 and the Luglianis received Area A, allowing continued use of some of their existing improvements  
19 while preserving the remainder of the parcel with an open space easement. *Id.* These provisions  
20 allowed for all aspects of the threatened litigation with the Luglianis and the litigation with the  
21 District to be resolved without further expense.

22 2. *Citizens for Enforcement of Parkland Covenants v. City of Palos Verdes*  
23 Los Angeles Superior Court Case No. BS142768

24 In 2013, a group of citizens called "Citizens for Enforcement of Parkland Covenants"  
25 ("CEPC") and Association Member John Harbison, ("Harbison") challenged the MOU on the  
26 grounds that the Association's conveyance of Area A to the Luglianis was an "ultra vires" act, and  
27 violated the 1938 Deed restrictions. (Croft Decl. ¶¶ 34-36). Although the Association has broad  
28 authority under the Bylaws and Articles of Incorporation to buy, sell, or otherwise govern land use



1 policies within the Association, the trial court rejected the Association's argument that  
2 participation in the MOU was an appropriate exercise of the Association's business judgement,  
3 and well within the Board's authority. (Croft Decl. ¶¶ 35-36). The trial court found for CEPC and  
4 Harbison on the grounds that the Board's actions relating the MOU were "ultra vires" acts. This  
5 matter is currently pending in the Court of Appeal. (Croft Decl. ¶ 36).

6 While this appeal is pending, CEPC, Harbison and Petitioners have lobbied the Palos  
7 Verdes City Council and the Association to dismiss the appeal, which would effectively nullify the  
8 MOU. (Croft Decl. ¶ 37). The membership of CEPC and ROBE overlaps significantly, and these  
9 organizations have partnered with Harbison in past attempts to circumvent the MOU by replacing  
10 the Association's Board of Directors. *Id.* To date, these efforts have been unsuccessful.

11 **D. 2016 and 2017 Board Elections**

12 ROBE, Harbison, and members of CEPC have attempted two unsuccessful campaigns to  
13 replace the incumbent Directors. ROBE's first campaign began in late 2015 for the January, 2016  
14 annual meeting. (Croft Decl. ¶¶ 38; 39). However, ROBE waited until mere weeks before the  
15 scheduled election to begin campaigning. *Id.* For the 2016 election, four ROBE members in  
16 collaboration with Harbison began an aggressive, but short campaign strategy for the incumbent  
17 Directors' seats. This strategy included multiple statements to local media outlets and mailings to  
18 Association Members, claiming (incorrectly) that the Board was giving away the Association's  
19 parkland. (Croft Decl. ¶ 40; Exhibit J).

20 Dedicated to the integrity of the Association's elections process, the Association made  
21 multiple efforts to accommodate ROBE during the 2016 election, including allowing ROBE to  
22 provide its own ballots, providing ROBE with the Association's membership list, and hiring Judge  
23 Michael Latin as an election monitor after ROBE's unfounded accusations that the Association  
24 was mishandling the election ballots. (Croft Decl. ¶¶ 39-42; *see also* Exhibits G, H and I to Croft  
25 Decl.). Hiring Judge Latin cost the Association and its Members \$26,000.00, of which ROBE  
26 contributed nothing. (Croft Decl. ¶ 42). Despite the Association's attempts to work with ROBE  
27 during the election, ROBE's efforts failed to persuade the Association's Members, and the ROBE  
28 challengers received only approximately 1900 ballots of the required 2711 required to reach a

1 majority quorum in accordance with the Association's Bylaws. (Croft Decl. ¶ 43).

2 ROBE tried campaigning again in 2016 for the 2017 Annual Meeting using the same  
3 arguments that the Board was selling the Association's parkland. However, this time, ROBE  
4 **received even fewer ballots than in the previous election**, reaching approximately 1700 ballots  
5 of the required 2711. (Croft Decl. ¶ 45). The Association hired Judge Latin for a second time,  
6 again with no contribution from ROBE. *Id.* Having failed to gain the support of the Association's  
7 members in the past two elections, and with the recent election results indicating that ROBE's  
8 support is waning, ROBE now files suit to lower the quorum requirements for Board Elections.

9 **III. SCHOTT, LIKE ROBE, LACKS STANDING TO PURSUE CHANGES TO THE**  
10 **ASSOCIATION'S BYLAWS; ONLY THE ASSOCIATION HAS STANDING**

11 This court already ruled that ROBE does not have standing to petition the Court to change  
12 the Association's Bylaws. New Petitioner SCHOTT similarly lacks standing, and the first  
13 amended petition filed by SCHOTT remains deficient. This Court's order filed on October 10,  
14 2017, *Corporations Code* section 7515, and *Greenback Townhomes Homeowners Association v.*  
15 *Rizan* (1985) 166 Cal.App.3d 843, all require the Homes Association to be the petitioner. *See*  
16 Court's October 10 Ruling attached hereto as Exhibit 2.

17 As this Court observed on page 4 of its order, "Corp. Code section 7515's use of the  
18 language, 'upon petition of a director, officer, delegate or member' *does not confer standing on*  
19 *such individuals.*" (Emphasis added.) (Order at p. 4.)

20 This Court went on to state in its order that "[t]he statute's evident purpose is to facilitate  
21 the initiation of an action, in the name of the corporation by any of the designated parties to deal  
22 with a situation where approvals cannot be obtained from those ordinarily empowered to bring an  
23 action on behalf of the corporation. *In essence, the statute specifies who shall sign a petition, not*  
24 *who shall be the party bringing the action.*' (*Greenback*, 166 Cal.App.3d at 849.) Homes  
25 Association, as the corporation affected by this petition to lower the quorum and modify the  
26 election procedures, is the real party in interest *and the proper party to petition the court.*"  
27 (Emphasis in order and added.) Order at p. 4, citing *Greenback* at 849.

28 This Court's determination that the Palos Verdes Homes Association has standing to file a

1 petition is further supported by the Court of Appeal’s conclusion in *Greenback* “that a corporation  
2 is the proper party to petition the court for an order pursuant to subdivision (a) of section 7515.”  
3 Order at p. 5 quoting *Greenback* at 846. As this Court observed, the appellate court in *Greenback*  
4 determined “that both ‘section 7515 and the legislative history indicate the real party in interest is  
5 the corporation’ and consequently, the petition was properly brought in the corporation’s name.”  
6 Order at p.5, citing *Greenback* at 847-848. The California Official Reports Summary of the  
7 *Greenback* case, states that “[t]he President of a homeowners’ association, which was a mutual  
8 benefit corporation, filed a petition in the superior court in the name of the association for relief  
9 under Corp. Code §7515...”<sup>2</sup> Accordingly, the Homes Association must be the petitioner, not  
10 SCHOTT, and the first amended petition must be dismissed, again, for lack of standing.

11 Indeed, SCHOTT cannot sign the first amended petition on behalf of the Association,  
12 much less be the petitioner. SCHOTT is not authorized to initiate an action on behalf of the  
13 Association. The first amended petition contains no allegation that the Homes Association ever  
14 authorized Mr. Schott to file a petition on behalf of the Homes Association. There has been no  
15 formal vote for authorization. SCHOTT is not a corporate officer or a director. He has no  
16 involvement with the running of the Association. The corporate Bylaws do not confer the power  
17 to file actions upon SCHOTT. It cannot be assumed that he has the authority to speak for the  
18 Association. A member of a corporation cannot just file a lawsuit on behalf of a corporation  
19 without permission from the corporation to do so. To do so would invite chaos, a multiplicity of  
20 suits by members in the name of the Association, and turn corporate law on its head.

21 A corporation is a separate legal entity distinct from its shareholders or members. See  
22 *Smith v. Laguna Sur Villas Cmty. Ass’n.* (2000) 79 Cal.App.4<sup>th</sup> 639. In *American Center for*  
23 *Education, Inc. v. Cavnar* (1978) 80 Cal.App.3d 476, the managing officer was removed from the  
24 corporation and sought to file a lawsuit on behalf of the corporation against those who ousted him  
25 from office. The Court of Appeal held that he lacked standing to bring suit on behalf of the

26 <sup>2</sup> Counsel for the Association has requested from the Sacramento Superior Court, a copy of the trial court Petition  
27 filed in *Greenback* and should have it by the time of the hearing in this matter, and it will be provided to the Court  
with a Request for Judicial Notice.

1 corporation. *Id.* at 498, superseded by statute on other grounds as stated in *Patton v. Sherwood*  
2 (2007) 152 Cal.App.4<sup>th</sup> 339. In *Sealand Inv. Corp. v. Emprise, Inc.* (1961) 190 Cal.App.2d 305,  
3 the court held that a secretary-treasurer who owned 50 of the corporate stock and is a director and  
4 a second director could not initiate an action on behalf of and in the name of the corporation  
5 against the other two directors who owned the other 50 percent of the stock in the corporation, for  
6 the alleged violation of their fiduciary duties to the corporation and defrauding the corporation.

7 Under *American Center* and *Sealand*, a member may not institute a legal proceeding on the  
8 corporation's behalf just by virtue of being a member. The member must be authorized to do so  
9 by the corporation. Here, SCHOTT, nowhere alleges, claims or proves, that he received  
10 permission from the Association, or was authorized to file the petition.

11 Assuming, *arguendo*, that SCHOTT has standing under Section 7515, SCHOTT's is  
12 required to show "it is impractical or unduly difficult" to hold a required meeting of members as  
13 required under the Bylaws, which does not exist here. Corporations Code Section 7515 states that:

14 "If for any reason it is **impractical or unduly difficult** for any corporation to call or  
15 conduct a meeting of its members, delegates, or directors, or otherwise obtain their  
16 consent, in the manner prescribed by its articles or bylaws or this part, then the superior  
17 court ... upon petition 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** ... be authorized, in such a manner as the court finds **fair and equitable** under  
the circumstances." (emphasis added).

18 This means that the Association has standing to petition the court to call a meeting, or to  
19 hold a vote when it is otherwise "impractical or unduly difficult" to comply with an association's  
20 bylaws. This argument is consistent with the two cases citing Section 7515. In *Greenback, supra*,  
21 the Court held that an association had standing to challenge the Bylaws where an  
22 association had decided to reduce its 75% quorum. Similarly, in *Fourth La Costa Condominium  
Owners Ass'n v. Seith*, the association sought to reduce its own 75% quorum, and upon failing to  
23 reach the necessary quorum to implement changes, the association petitioned the Court on its own  
24 behalf to reduce the quorum requirement. *Fourth La Costa Condominium Owners Ass'n v. Seith*,  
25 (2008)159 Cal.App.4th 563. ("Fourth La Costa").<sup>3</sup> (See footnote on next page.)

27 There is a crucial distinction between the petitions in these cases, and SCHOTT's petition.

28 The petitions in *Greenback* and *Fourth La Costa*, had the support of their associations, but the

4823-4016-9294.21

1 *associations* were unable to change the bylaws to reflect this support due to a lack of  
2 quorum. In each of these cases, the association filed a petition on its own behalf to change the  
3 quorum requirements. By contrast, SCHOTT's petition is not supported by the Association, or a  
4 majority of the Association's members. (Croft Decl. ¶¶ 46; 54-55). Instead, SCHOTT seeks to  
5 change the Bylaws to lower the quorum requirement on his own behalf. SCHOTT does not have  
6 support from the Association or its members to pursue these changes to the Association's Bylaws.  
7 Instead, SCHOTT seeks to lower the Association's quorum requirements because of its waning  
8 support in the past two Board elections. Furthermore, in both *Greenback*, and *Fourth La Costa*,  
9 the quorum requirements were a significant 75%, so the associations took initiative to lower them  
10 in order to facilitate operations. Here, the Association Bylaws require a mere majority of title-  
11 holders of buildable property within the Association's jurisdiction in order to reach a quorum, or  
12 2722 votes of the 5442 eligible voting Members. (Article V, Section 1). Unlike the associations  
13 in *Greenback*, and *Fourth La Costa*, the PVHA has reached multiple quorums in the past, and the  
14 Association's operations, including its Board elections are not impeded by the Bylaws. To extend  
15 Section 7515 standing to SCHOTT in these circumstances would enable a vocal minority of  
16 disgruntled members to speak for the entire Association. This premise is not supported by either  
17 the *Greenback Townhomes* or *Fourth La Costa* cases.

18         Additionally, Corporations Code Section 7515 applies only when "it is impractical or  
19 unduly difficult for any corporation to call or conduct a meeting." Petitioner has provided no  
20 evidence that the majority quorum required by the Association's Bylaws is "impractical" or  
21 "unduly burdensome." In fact, the Association continues to call and conduct its regularly  
22 scheduled Annual Meetings in accordance with the Bylaws. The fact that Petitioner has failed to  
23 gain member support in the past two Board elections is not indicative of a problem with the

24 \_\_\_\_\_  
25 <sup>3</sup> There is relatively little case law because courts are generally loathe to become involved in such disputes and will  
26 instead defer to the presumption of the validity of the acts of homeowners associations. A homeowner's association  
27 board wields considerable power as it manages and regulates development and enforcement of its rules and  
28 regulations. Thus, all owners buy units knowing of this discretionary power and accepting the risk that the  
association's decisions may benefit the group as a whole and not necessarily advance the interest of individual  
owners. Allowing individual owners to impose their will on all other owners and in contravention of the good faith  
decision by the leadership of the association would turn this principle on its head. *Lamden v. La Jolla Shores  
Clubdominium Homeowners' Ass.* (1999) 21 Cal.4th 249, 270, fn. 10.

1 Association's election procedures. For example, the Association has reached multiple quorums in  
2 the past, and Petitioner is the first in nearly 100 years to have filed a Court objection to the  
3 election procedures. (Croft Decl. ¶¶ 53-56). Furthermore, Petitioner's dwindling support in the  
4 recent Board elections suggests that the Association's Members are satisfied with the status quo.  
5 (Croft Decl. ¶ 55).

6 Absent relevant legislative history, courts will consider a statute's apparent purpose and  
7 public policy factors. See *Windham Carmel Mountain Ranch Association v. Superior Court*  
8 (2003) 109 Cal.App.4th 1162, 1173. Finally, SCHOTT's interpretation of Corporations Code  
9 Section 7515(a) is impractical for policy reasons. If, as SCHOTT asserts, Corp. Code Section  
10 7515(a) extends standing to any delegate, officer, director or member for any purpose, then every  
11 Board decision would be subject to litigation because of internal Association politics. This would  
12 create unreasonable barriers for the function or operation of any association, including PVHA.  
13 This would also discourage dispute resolution using the mechanisms provided in the Association's  
14 Bylaws, such as the Annual Meetings, Special Meetings and elections. Petitioner's interpretation  
15 of the Code enables any aggrieved party tied to the association to "skip" internal dispute resolution  
16 mechanisms and pursue litigation, creating a significant burden on the courts, as well as other  
17 association members. The California Legislature cannot have intended that internal association  
18 governance be stymied in this way. For these additional reasons, the Petition should be dismissed.

19 **IV. AS DRAFTED, THE HOA BYLAWS PROVIDE NECESSARY INSTITUTIONAL**  
20 **STABILITY AND ARE CONSISTENT WITH CALIFORNIA CORPORATIONS**  
21 **CODE AND BEST PRACTICES**

22 **A. The Bylaws Were Drafted to Provide Stable, Consistent Governance**

23 Because the Board of Directors is responsible for governing the Association's land use  
24 practices, institutional continuity and stable governance are crucial to preserving the character and  
25 charm of the Palos Verdes neighborhood. Anticipating the importance of this stability, the  
26 founders implemented several measures to prevent wholesale turnover amongst the Board of  
27 Directors, and encourage consistent land use governance. (Croft Decl. ¶¶ 15-18). For example,  
28 the Bylaws provide for staggered elections, which require at least two annual election cycles to

1 elect a new majority (Croft Decl. ¶ 10, Exhibit C; Article IV, Section 1). To prevent any  
2 prolonged vacancies on the Board, the Bylaws also allow the Board to fill any vacancies with  
3 interim Directors, who serve until the next Annual or Special Meeting. (Article IV, Section 2). If  
4 a quorum is not reached at the next Annual or Special Meeting, the incumbent Directors again  
5 select interim Directors to serve until the next election, or for up to one year. This provides stable  
6 governance on the Board, while allowing annual opportunities for challengers to campaign for  
7 vacant or termed-out seats.

8 To ensure that this stability weathered future elections, the founders incorporated into the  
9 Bylaws a majority quorum requirement to elect new members to the Board of Directors. (Article  
10 IV, Section 1). Maintaining at least a majority quorum requirement preserves stable governance  
11 of the association by ensuring that a majority of members are interested in changing the status quo  
12 before significant changes are made. (Croft Decl. ¶ 16). Because changes to the Bylaws represent  
13 a significant shift in the Association's governance, the quorum requirements for changing the  
14 Association's Bylaws require a 2/3 vote from the Association's Members. (Article XXII).

15 **B. The Bylaws are Consistent with the Corporate Code and the DSA**

16 The Association is a non-profit, cooperative association subject to the Corporations Code.  
17 (Croft Decl. ¶ 10). Although the Association is not subject to the Davis-Sterling Act, (Cal. Civ.  
18 Code Sections 4000 et. seq.) (the "DSA") which governs common interest developments such as  
19 homeowner's associations, the Bylaws are consistent with the DSA, indicating consistence with  
20 industry "best practices." For example, the DSA requires compliance with any quorum  
21 requirement in the governing documents. Civ. Code Section 5115(b). Similarly, the Corporations  
22 Code establishes a one-third quorum, unless the bylaws provide otherwise. Corp. Code Section  
23 7512(a). The Association's majority quorum requirement is consistent with both the DSA and the  
24 Corporations Code because the Bylaws require a majority quorum for Board elections. (Article  
25 IV, Section 1). The Association strictly complies with this requirement in its election procedures.  
26 By contrast, Petitioner has asked the Court to impose a mere 25% quorum requirement for Board  
27 elections, significantly less than the default quorum requirement in the Corporations Code. As  
28 drafted, the Association's Bylaws comply with the both California Code and industry "best

1 practices” as demonstrated by the Association’s discretionary compliance with the DSA.  
2 Petitioner’s requests are less mindful of restrictions imposed by the Corporations Code, the  
3 Bylaws, or the DSA. Accordingly, it is important that any adjustments to the Association’s  
4 Bylaws comply with the relevant laws.

5 **V. SOME OF PETITIONER’S REQUESTED CHANGES ARE COSTLY,**  
6 **IMPRACTICAL OR ILLEGAL**

7 **A. Petitioner’s Requested 25% Quorum Allows Agitators to Control the HOA**

8 Petitioner’s requested changes to the Association Bylaws conflict with the founder’s  
9 intention to preserve stable governance for the Association. For example, Petitioner’s request to  
10 reduce the quorum from 50% to 25% is an extreme measure which would allow a subset of  
11 agitators to elect new members to the Board of Directors every time they are dissatisfied with a  
12 Board decision. This low quorum requirement undermines the stable, efficient governance that  
13 has allowed the Association to thrive for nearly 100 years. (Croft Decl. ¶ 4). Furthermore,  
14 allowing merely 25% of members to validate a Board election strikes the wrong balance between  
15 encouraging participation in Association elections, and representing the will of the majority of the  
16 Association’s members. Petitioner’s requested changes to the Bylaws risk overwhelming the  
17 preferences of the majority.

18 **B. Petitioner’s Request for Proxy Voting Violate the Bylaws and the**  
19 **Corporations Code**

20 The Corporations Code also restricts proxy voting unless so provided in an association’s  
21 bylaws. Corp. Code Sections 7510(d); 7613(a). The Association’s Bylaws also mandate that the  
22 Directors be elected only by secret ballot. (Croft Decl. ¶10; Exhibit C; Article V, Section 1).  
23 Secret ballots is why voting is by regular mail and cannot be by fax and email. Because the  
24 Association’s Bylaws do not provide for proxy voting, and because voting by proxy does not  
25 constitute a “secret ballot” SCHOTT’s requests require alteration to the Association’s bylaws in  
26 order to comply with the Corporations Code. The Association’s Bylaws can be changed only by a  
27 2/3 vote. (Article XXII). However, SCHOTT has failed to secure even a majority vote in its  
28 recent election campaigns. (Croft Decl. ¶ 46). Changing the Bylaws to permit proxy voting



1 would require a two-part change, including: (1) removal of the secret ballot requirement, and (2)  
2 providing for proxy voting in the Bylaws. The Association's Members have been satisfied with  
3 the status quo regarding proxy voting since the Bylaws were adopted. Furthermore, SCHOTT has  
4 produced no evidence that there is Member support for changing the Bylaws to accommodate a  
5 proxy vote. For these reasons, changing the Association's election procedures with regard to  
6 proxy voting should be left to the Association's Members, and cannot be accomplished legally  
7 without the 2/3 vote required in the Bylaws.

8 The Association's Bylaws were drafted to strike a delicate balance between the needs of  
9 the community for stable governance, and compliance with the relevant statutes regarding election  
10 procedures. Of note, in nearly 100 years of governance, Petitioner presents the first challenge ever  
11 in court to an election proceeding. (Croft Decl. ¶ 56). If granted, Petitioner's request will destroy  
12 this delicate balance without consideration for the legality or functionality of its requested  
13 changes, or the impacts that these changes will impose on the community.

14 **VI. THE ASSOCIATION HAS REACHED QUORUMS IN THE PAST**

15 SCHOTT, as part of non party ROBE has only attempted to reach a quorum twice. (Croft  
16 Decl. ¶ 46). In 2015, while the CEPC Litigation was pending in trial court, four members of  
17 ROBE unsuccessfully attempted to secure seats on the Association's Board of Directors. (Croft  
18 Decl. ¶ 38). However, ROBE was unable to reach a quorum. (Croft Decl. ¶ 43). ROBE tried to  
19 secure seats on the Association's Board of Directors for the second time in 2016, but again, was  
20 unable to reach a quorum. (Croft Decl. ¶ 45). Of note, ROBE received fewer ballots in the recent  
21 election than it did in 2015, indicating that the Association Members are interested in preserving  
22 the status quo. (Croft Decl. ¶¶ 45;55). In past elections, a quorum has been reached when the  
23 community is dissatisfied with the status quo. For example, 14 quorums were established between  
24 1981 and 2001. (Croft. Decl. ¶ 53). It is not the Association's responsibility to establish a quorum  
25 for Petitioner. The Association has reached a quorum before, indicating that it is not the Bylaws  
26 that inhibit Petitioner's election success, but rather the member's interest in preserving the status  
27 quo and stability provided by the existing Board. (Croft Decl. ¶ 53). Petitioner has several  
28 effective campaigning options to facilitate reaching a quorum that it has not used. For example,

1 Petitioner could coordinate additional mailings, phone-banking, and other community outreach  
2 efforts, but has not done so. Petitioner may also wish to begin campaigning earlier in the season.  
3 This may explain why Petitioner has been unable to secure sufficient votes from Association  
4 members to reach a quorum, and why Petitioner received fewer ballots in the most recent election.

5 While the Association has committed to upholding the Bylaws and election requirements,  
6 it is Petitioner's burden to secure the votes of interested members. To date, Petitioner has been  
7 unable to do so. Petitioner is not an HOA, and therefore has more flexibility to pursue other  
8 avenues of reaching a quorum than changing the Bylaws. It would be prudent for Petitioner to  
9 attempt other means of securing the necessary votes instead of attempting to change the Bylaws  
10 and restructuring the Association. The Association cannot be expected to change the Bylaws  
11 every time an agitated vocal minority is unable to secure the requisite number of votes.

12 **VII. THE BYLAWS REPRESENT 100 YEARS OF SUCCESSFUL ASSOCIATION**  
13 **GOVERNANCE, AND COURT INTERFERENCE IS NOT WARRANTED**

14 As noted above, the Association's governing documents, including the Bylaws are  
15 consistent with the relevant provisions of the Corporations Code and the Davis Sterling Act. The  
16 Bylaws have served the Association's needs successfully for nearly 100 years. (Croft Decl. ¶ 54).  
17 It is telling that in nearly a century, Petitioner is the first to take issue with the election procedures.  
18 Petitioner would have the Court interfere to restructure the Association's Bylaws, threatening the  
19 purpose of the Association and the stable, effective governance that the founders sought to  
20 provide. (Croft Decl. ¶ 52). Instead, it would be more prudent for Petitioners to increase their  
21 election campaign efforts, or accept that the majority of Association Members do not appear  
22 interested in ROBE's cause. This solution protects the will of the majority without forcing the  
23 Association to restructure otherwise effective governance. It is crucial that any resolution of this  
24 matter maintains the delicate balance between the needs of the community, and the complexities  
25 of relevant code restraints.

26 **VIII. CONCLUSION**

27 For the reasons stated, SCHOTT's Petition should be dismissed. SCHOTT lacks standing  
28 and cannot otherwise meet the requirements under Corporations Code Section 7515.

1 DATED: November 22, 2017

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

By:



BRANT H. DVEIRIN  
SARA E. ATSBABA  
Attorneys for Respondent.  
PALOS VERDES HOMES ASSOCIATION

# EXHIBIT 1

Jeffrey Lewis  
Attorney at Law  
699 Deep Valley Drive, Suite 200  
Rolling Hills Estates, CA 90274

1 Jeffrey Lewis (Bar No. 183934)  
2 609 Deep Valley Drive, Suite 200  
3 Rolling Hills Estates, CA 90274  
4 Tel. (310) 935-4001  
5 Fax. (310) 872-5389  
6 E-Mail: Jeff@JeffLewisLaw.com

7  
8 Attorneys for Petitioners  
9 RESIDENTS FOR OPEN BOARD  
10 ELECTIONS and L. RIED SCHOTT

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES - CENTRAL DISTRICT

11 RESIDENTS FOR OPEN BOARD ) Case No.: BS169638  
12 ELECTIONS, et al., )  
13 Petitioners, ) NOTICE OF RULING  
14 v. ) (Assigned for all purposes to the  
15 PALOS VERDES HOMES ) Hon. Ruth Ann Kwan, Dept. 72)  
16 ASSOCIATION, ) Date: October 10, 2017  
17 Respondent. ) Time: 9:00 a.m.  
18 ) Department: 72  
19 ) Filed: May 17, 2017  
20 ) Trial: None Set  
21  
22  
23  
24  
25  
26  
27  
28

Jeffrey Lewis  
Attorney at Law  
600 Deep Valley Drive, Suite 200  
Rolling Hills Estates, CA 90274

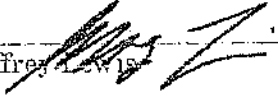
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TO ALL PARTIES AND THEIR COUNSEL OF RECORD, YOU ARE  
HEREBY NOTIFIED THAT on October 10, 2017, a hearing was held in  
department 72 of the above-entitled Court on the Petitioner to Lower the Quorum of  
Homcowner's Association. Jeffrey Lewis appeared on behalf of Petitioners Resident's  
for Open Board Elections and L. Reid Schott. Brant Dveirin of Lewis Brisbois  
Bisgaard & Smith, LLP appeared on behalf of Respondent Palos Verdes Homes  
Association.

Following discussion with counsel in chamber, the Court adopted its tentative  
ruling as the final order of the court, a true and correct copy of which is attached  
hereto as Exhibit "1." Petitioners' counsel indicated an amended petition would be  
filed by Friday, October 13, 2017.

DATED: October 11, 2017

Respectfully submitted,

By:  \_\_\_\_\_  
Jeffrey Lewis

Attorneys for Petitioners  
RESIDENTS FOR OPEN BOARD  
ELECTIONS and L. RIED SCHOTT

## Exhibit 1

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

DEPARTMENT 72

TENTATIVE RULING

RESIDENTS FOR OPEN BOARD  
ELECTIONS, an unincorporated  
association, et al.,

Case No.: BS169638

vs.

PALOS VERDES HOMES  
ASSOCIATION, a California non-profit  
mutual benefit corporation, et al.

Hearing Date: October 10, 2017

Petitioners Residents for Open Board Elections and L. Ried Schott's verified petition to lower quorum of Palos Verdes Homes Association and modify election procedures, pursuant to Corporations Code §7515, is denied *without prejudice*.

Petitioner L Ried Schott, as a member of Palos Verdes Homes Association, may bring a petition *on behalf of Palos Verdes Homes Association*, the real party in interest under Corporations Code §7515. Petitioner shall file and serve an amended petition on or before \_\_\_\_\_.<sup>1</sup>

Petitioners Residents for Open Board Elections, an unincorporated association ("ROBE"), and L Ried Schott ("Schott") (collectively "Petitioners") petition the Court for an order reducing the quorum required for the annual election

<sup>1</sup> Petitioner Residents for Open Board Elections, on the other hand, may *not* bring a petition on behalf of Palos Verdes Homes Association. Petitioner Residents for Open Board Elections is not a "director, officer, delegate or member" of Palos Verdes Homes Association. (Verified Petition §3). See Corporations Code §7515



of the members of the Board of Directors ("Board") for the Palos Verdes Homes Association ("Homes Association") and modifying election procedures.

Petitioners request the Court "lower the quorum and modify the election procedures so that an actual election may be held and the 5,400 members of the Homes Association can be given a voice on the Board." (Verified Petition, pgs. 1-2). Petitioners also request, with respect to the most recent election attempted to be held in January 2017, the Court direct the Homes Association to open the 1,589 ballots currently held by the public accounting firm and allow those votes to be taken and the votes to be determined valid, direct the Homes Association to install as members of the Board of Directors the top five candidates receiving votes in January 2017, and make such other orders as the Court finds fair and equitable under the circumstances pertaining to the January 2017 ballots. Petitioners represent Schott, Richard Fay, and Marlene Breene are ready, willing, and able to serve if elected. (Verified Petition §16a). Additionally, Petitioners request that, as to all future meetings and board elections, the Court lower the quorum for annual meetings and elections of board of directors from 50% to 25%, direct the Homes Association to conduct at least 3 mailings of ballots each year in the four month period before the January election (unless a quorum is achieved after 1 or 2 mailings), allow for cumulative voting, allow for voting by written proxies, allow for votes by members appearing in person at the January annual meeting, allow for voting by members dropping ballots off in a lock-box at the Homes Association office, require that as to Resolution 177 or any future procedures to nominate a candidate for Director – that incumbent Directors comply with the same requirements as non-incumbent Directors (such as requiring 100 signatures on a notarized petition) – and not support an invalid process or supply an unfair advantage to the incumbent directors, and allow for By-Law amendments to be approved by Homes Association members if there is a vote by 40% of all members. (Verified Petition §16b).

Corporations Code §7515(a) provides, as follows: "If for any reason it is impractical or unduly difficult for any corporation to call or conduct a meeting of its members, delegates or directors, or otherwise obtain their consent, in the manner prescribed by its articles or bylaws, or this part, then the superior court of the proper county, upon petition 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."

Corporations Code §7515(b) provides, as follows: "The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably

designed to give actual notice to all parties who would be entitled to notice of a meeting held pursuant to the articles, bylaws and this part, whether or not the method results in actual notice to every such person, or conforms to the notice requirements that would otherwise apply. In a proceeding under this section the court may determine who the members or directors are."

Corporations Code §7515(c) provides, as follows: "The order issued pursuant to this section may dispense with any requirement relating to the holding of and voting at meetings or obtaining of votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this part."<sup>2</sup>

Corporations Code 7515(e) provides, as follows: "Any meeting or other method of obtaining the vote of members, delegates or directors conducted pursuant to an order issued under this section, and which complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this part."

Petitioners lack standing to pursue changes to the Homes Association's By-Laws under Corporations Code §7515. The real party in interest (i.e. the proper party to bring an action) is Homes Association. See Greenback Townhomes Homeowners Association v. Rizan (1985) 166 Cal.App.3d 843, 847-848 ("We conclude, however, that section 7515 does not intend to modify well-established rules specifying that the real party in interest is the proper party to bring an action. Both section 7515 and its legislative history indicate the real party in interest is the corporation.") (Citations Omitted).<sup>3</sup> Petitioners argue the "express terms of the

<sup>2</sup> Corporations Code §7515(d) provides, as follows: "Wherever practical any order issued pursuant to this section shall limit 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."

<sup>3</sup> See Greenback Townhomes Homeowners Association at 848-849 ("We perceive no intent, either express or implied, in section 7515 to eliminate the corporation as the real party in interest and, therefore, the proper party to petition the court. *The language of subdivision (a) of section 7515 itself makes clear that the corporation is the entity directly interested in and benefited by the action; it is, after all 'any corporation' that finds itself unable to function in the ways described. The remedial measures prescribed by the statute inure, first and foremost, to the benefit of the corporation in that these measures enable the corporation to do its business.*

statute authorize[] this Court to lower the quorum "upon petition of a director, officer, delegate or member..." (Petitioners' Brief, pgs. 8-9). Petitioners contend that Schott is a Homes Association member and ROBE is "an unincorporated association of Homes Association members," either of which are sufficient to serve as petitioners. (Petitioners' Brief, pgs. 8-9)(Verified Petition §§2, 4). However, Corporation Code §7515's use of the language, "upon petition of a director, officer, delegate or member," does not confer standing on such individuals. "The statute's evident purpose is to facilitate the initiation of an action, *in the name of the corporation*, by any of the designated parties to deal with a situation where approvals cannot be obtained from those ordinarily empowered to bring an action on behalf of the corporation. *In essence, the statute specifies who shall sign a petition, not who shall be the party bringing the action.*" *Id.* at 849 (Emphasis Added). Homes Association, as the corporation affected by this petition to lower the quorum and modify the election procedures, is the real party in interest and the proper party to petition the court. *Id.* at 849.

The *Greenback Townhomes Homeowners Association ("Greenback")* case is instructive. In *Greenback*, the Association's board of directors decided to revise its bylaws and CC&Rs to conform them to a revision of California's Nonprofit Corporation Law. *Id.* The "revisions required a vote of the members," the Association delivered proposed bylaws and CC&Rs to each lot owner along with ballots and summaries of the documents, and, at the conclusion of the balloting period, 121 members out of 155 voted on the CC&Rs, with 94 in favor and 27 in opposition. *Id.* "Since the CC&Rs provided they could only be amended by a vote of 75 percent of *all* members, the membership thus failed to approve the revised CC&Rs." *Id.* A petition, pursuant to Corporations Code §7515, was brought in the name of the Association. The petition, signed by the Association's president, was granted by the trial court. *Id.* "The order modified the voting requirement for amending the CC&R's so as to allow approval of amendments by a written ballot of 75 percent of those voting, so long as the total ballots cast represented at least a majority of the total membership." *Id.* at 846-847. Rizan filed a motion to vacate

---

*Moreover, the legislative history of section 7515 implicitly treats corporations as proper parties to bring petitions. The Assembly Select Committee on Revision of the Nonprofit Corporations Code addressed in its report problems of nonprofit corporations which section 7515 was specifically intended to remedy. "Due to poor record keeping, inactivity for a period of time, or other reasons, some nonprofit corporations are unable to obtain a quorum of members or directors, accurately identify their members or directors, or comply with various provisions of their articles or bylaws. The New [Nonprofit Corporation] Law allows a corporation, upon obtaining court approval, to extricate itself from this situation and restore regularity in its organizational structure and operations. Sections 5515 and 7515."*(Citations Omitted)(Emphasis Added).

the order granting the petition on the ground that the trial court lacked subject matter jurisdiction pursuant to Corporations Code §7515(a). The trial court denied the motion and Rizan appealed. *Id.* at 847. Rizan argued that "because the Association was the only party petitioning the court, and because no director, officer, delegate or member was a party, no proper party brought the action and the court had no jurisdiction to grant relief under section 7515." *Id.* The California Court of Appeal, Third Appellate District held "that a corporation is the proper party to petition the court for an order pursuant to subdivision (a) of section 7515." *Id.* at 846. The Court of Appeal determined that both "section 7515 and its legislative history indicate the real party in interest is the corporation" and, consequently, the petition was properly brought in the corporation's name. *Id.* at 847-848. The Court of Appeal stated the "statute's evident purpose is to facilitate the initiation of an action, in the name of the corporation, by any of the designated parties to deal with a situation where approvals cannot be obtained from those ordinarily empowered to bring an action on behalf of the corporation." *Id.* at 849. The Court of Appeal stated that, in essence, "the statute specifies who shall sign a petition, not who shall be the party bringing the action." *Id.* The Court of Appeal recognized the "subject matter of the litigation and the relief sought directly affected the vitality and day-to-day operation of the Association." *Id.* at 849. According to the Court of Appeal, the "Association, as the corporation affected by the petition, was the real party in interest and the proper party to petition the court" and since "the petition was signed by an officer of the Association – its president – the petition satisfied subdivision (a) of section 7515." *Id.* (Emphasis Omitted). The Court of Appeal concluded Rizan's motion was properly denied. *Id.*

Petitioners argue Homes Association is estopped from claiming that it should have been the petitioner in this action because it rejected Petitioners' request that it be the petitioner in this action. (Petitioners' Brief, pgs. 9-10)(Petition §18; Exhibits 1-2). However, Petitioners did not cite to on-point case law or authority to support the estoppel argument. Moreover, under Corporations Code §7515 and *Greenback*, Schott, as a *member* of Homes Association, could have signed the petition and brought it on behalf of Homes Association. (Verified Petition §2).

Based on the foregoing, the petition is denied *without prejudice*.

Dated: October \_\_\_\_\_, 2017

Hon. Ruth A. Kwan  
Judge of the Superior  
Court

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PROOF OF SERVICE

*Residents for Open Board Elections, et al. v. Palos Verdes Homes Association*  
Los Angeles Superior Court Case No.: BS169638

I, Jason R. Ebbens, declare that I am over the age of 18 years, employed in the County of Los Angeles, and not a party to the within action; my business address is 734 Silver Spur Road, Suite 300, Rolling Hills Estates, CA 90274.

On October 11, 2017, I served the foregoing; NOTICE OF RULING on the interested parties in this action by placing  the original  a true copy thereof, enclosed in a sealed envelope with postage pre-paid, addressed as follows:

Brant H. Dveirin, Esq.  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
633 West 5<sup>th</sup> Street, Suite 4000  
Los Angeles, CA 90071

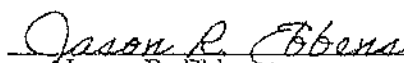
*Attorneys for Respondent*

BY MAIL. I am readily familiar with this law firm's practice for collection and processing of correspondence for mailing with the U. S. Postal Service. The within correspondence will be deposited with the U. S. Postal Service on the same day shown on this affidavit, in the ordinary course of business. I am the person who sealed and placed for collection and mailing the within correspondence on this date at Rolling Hills Estates, California, following ordinary business practices.

COURTESY COPY BY ELECTRONIC SERVICE. I served the foregoing document(s) on interested parties via email to each of the parties listed in the service caption above. A true and correct copy of the transmittal will be produced if requested by any party or the Court.

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 11, 2017, in Rolling Hills Estates, California.

  
Jason R. Ebbens

Jeffrey Lewis  
Attorney at Law  
605 Deep Valley Drive, Suite 200  
Rolling Hills Estates, CA 90274

# EXHIBIT 2

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
JOSEPH A. LANE, CLERK  
Division 2      November 15, 2017

CITIZENS FOR ENFORCEMENT OF PARKLAND COVENANTS et al.,  
Plaintiffs and Appellants,  
v.  
ROBERT LUGLIANI et al.,  
Defendants and Appellants.  
B267816 / BS142768

This case is ordered on calendar for: **December 14, 2017 at 09:00 AM.** (See Cal. Rules of Court, rule 8.256.) Although it is possible that the panel will change, the following justices are presently assigned to hear the case: Ashmann-Gerst, Chavez, Goodman.

**You must complete this form and return it via email with proof of service on all interested parties within ten (10) days to: 2D1.CLERK2@JUD.CA.GOV.** Please confer with all counsel before completing this form. Failure to return this form within ten days will be deemed a waiver of oral argument.

The court welcomes oral argument when it will be of assistance in reaching an informed decision.

\_\_\_\_\_ I waive oral argument.

\_\_\_\_\_ I request oral argument.

Amount of time requested: \_\_\_\_\_ (30 min. max. per side)

Firm name: \_\_\_\_\_

Attorney appearing for argument: \_\_\_\_\_

For: Appellant \_\_\_ Respondent \_\_\_ Petitioner \_\_\_ RPI \_\_\_

Signature: \_\_\_\_\_

PLEASE NOTE: Usually the calendar will be called with shorter arguments at the beginning and longer arguments at the end. Revised estimates will not be requested at oral argument, and cases will be called in the order they appear on calendar. Please take this into account when estimating the time you require.

Completed forms (with proof of service on all interested parties) should be returned electronically or via U.S. mail to: Court of Appeal, 2nd Appellate Dist., Div. Two, 300 S. Spring St., Los Angeles, CA 90013.

The courtroom is located on the 3rd floor. For the Court's policy on electronic devices, see [www.courts.ca.gov/documents/2DCA-Hours-Courtroom.pdf](http://www.courts.ca.gov/documents/2DCA-Hours-Courtroom.pdf).

cc: Kelly B. Dunagan  
Gregory Thomas May  
Gregg W. Kettles  
Jeffrey Lewis  
Christi Hogin  
Allison A. Arabian  
Roy G. Weatherup  
Damon P. Mamalakis

Kent L. Richland  
Kent L. Richland  
Jenny Y. Li



1 **CALIFORNIA STATE COURT PROOF OF SERVICE**

2 *L Reid Schott. v. Palos Verdes Homes Association, et al.*  
3 *Case No. BS169638 - File No. 38009-02*

4 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

5 At the time of service, I was over 18 years of age and not a party to the action. My  
6 business address is 663 West 5th Street, Suite 4000, Los Angeles, California 90071.

7 On the below date, I served the following document(s) described as: **RESPONDENT'S  
8 OPPOSITION TO PETITIONER'S BRIEF RE: LOWER QUORUM OF HOMEOWNERS  
9 ASSOCIATION** on the following persons at the following addresses (including fax numbers and  
10 e-mail addresses, if applicable):

11 Jeffrey Lewis, Esq.  
12 LAW OFFICES OF JEFFREY LEWIS  
13 Deep Valley Drive, Suite 200  
14 Rolling Hills Estates, CA 90274  
15 Telephone: (310) 935-4001  
16 Facsimile: (310) 872-5389  
17 Email: jeff@jefflewislaw.com  
18 *Attorneys for Petitioners, RESIDENTS FOR  
19 OPEN BOARD ELECTIONS and L. RIED SCHOTT*

20  **(BY U.S. MAIL)** I enclosed the above-stated document(s) in a sealed envelope or package  
21 addressed to the person(s) at the address(es) listed by placing the envelope or package for collection  
22 and mailing, following our ordinary business practices. I am readily familiar with the firm's  
23 practice for collection and processing correspondence for mailing. Under that practice, on the same  
24 day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of  
25 business with the U.S. Postal Service, in a sealed envelope of package with the postage fully prepaid  
26 thereon. I am aware that on motion of the party served, service is presumed invalid if postal  
27 cancellation date or postage meter date is more than one day after date of deposit for mailing in  
28 affidavit.

29  **(VIA ELECTRONIC MAIL)** Based on a court order or an agreement of the parties to accept  
30 service by e-mail or electronic transmission, I caused the above-stated document(s) to be sent to the  
31 person(s) at the e-mail address(es) listed. I did not receive, within a reasonable time after the  
32 transmission, any electronic message or other indication that the transmission was unsuccessful.

33  **(BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package  
34 provided by an overnight delivery carrier and addressed to the persons at the addresses listed above.  
35 I placed the envelope or package for collection and delivery at an office or a regularly utilized drop  
36 box of the overnight delivery carrier.

37 I declare under penalty of perjury under the laws of the State of California that the  
38 foregoing is true and correct.

Executed on **November 22, 2017**, at Los Angeles, California.

39   
40 \_\_\_\_\_  
41 NANCY VALENZUELA