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December 22, 2025

**VIA CERTIFIED MAIL RRR,
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Jacaranda Country Club Homeowners' Association, Inc.
c/o Raymond C Cahill, CPA, PA.
4801 S University Drive, Suite 200
Davie, FL 33327

**Re: Jacaranda Country Club Homeowners' Association, Inc./Election Deficiencies
Our File No.: 0400-001**

Dear Sir/Madam:

This law firm has the privilege of representing Renata Bergman, the owner of 410 West Lake Dasha Drive, Plantation, FL 33324. Ms. Bergman is a member of the Association and has engaged us to review the election procedures and irregularities related to the upcoming Association's annual meeting and election.

Pursuant to Section 720.306(9)(a), of the Florida Statutes, elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the Association. The Association is not conducting the election in accordance with the Association's governing documents due to the following noted deficiencies with the election and the election materials:

1. Quorum:

- a. Section 720.306(1)(a) states: "Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be 30 percent of the total voting interests." The Association's annual meeting notice states "In order for the meeting to occur, a quorum of 30% of the owners must be in attendance either in person or by proxy."

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- b. The quorum requirement in the annual meeting notice is incorrect. The Association's governing documents state: "The percentage of voting interests required to constitute a quorum at a meeting of the members shall be 20 percent of the total voting interests." Since the quorum is lower in the Association's governing documents, the quorum in the annual meeting notice should be 20%, not 30%. The quorum amount is significant because it establishes whether the association can conduct the election or any other business.

2. Proxy:

- a. Section 2, B. of the Declaration states:

"Members have the right, unless otherwise provided in this subsection or in the Governing Documents, to vote in person or by proxy. To be valid, a proxy must be dated, must state the date, time and place of the meeting for which it was given, and must be signed by the authorized person who executed the proxy. A proxy is effective only for the specific meeting, including but not limited to special meetings, for which it was originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires 90 days after the date of the first meeting for which it was originally given. A proxy is revocable at any time at the pleasure of the person who executes it. The proxy form expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his/her place."

- b. Pursuant to 720.306(8)(a), members have the RIGHT to, unless otherwise provided in 720.306 or the governing documents, to vote in person or by proxy. There is nothing in this Association's governing documents that specifically prohibits proxy voting for elections, in fact, the language very clearly states that all members have the right to vote in person or by proxy unless otherwise provided. Nowhere in the governing documents does the language specifically state that the Members cannot vote by proxy for the election of the board. In contrast, the governing documents state for election of Members of the Board of Directors, homeowners shall vote in person at a meeting of the homeowners or by a ballot that the homeowner personally casts. This language allows two (2) methods of voting:
 - i. Homeowners shall vote in person at the meeting. This language doesn't prohibit nor can it be interpreted to prohibit proxy voting. If the homeowner gives a proxy to a third party, the proxyholder must attend the meeting in person and vote for the election on behalf of the owner the same as the owner would attend in person. The proxyholder steps into the shoes of the homeowner.
 - ii. The homeowner can vote by ballot that the homeowner personally casts. This language is not clear but seems to address an absentee ballot. Even if the homeowner attends in person, the homeowner or the proxyholder would

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still be casting a ballot. For arguments sake let's assume this addresses an absentee ballot, the owner doesn't need a proxy as the owner has the ability to mail in the ballot in advance and vote the ballot himself or herself. Nonetheless, this section doesn't explicit prohibit proxy mail in voting. Personally cast doesn't mean a proxy is prohibited, it means someone must attend and personally cast the ballot, which a proxyholder would be permitted to do.

- iii. Based on the above, without any explicit language prohibiting proxy voting for elections, the board cannot prohibit proxy voting as doing so would disenfranchise the owners from voting for the board of directors and eliminate their right to vote by proxy which is a statutory right and contractual right under the governing documents. Case law has made clear that arbitration will look at the arbitrary prohibition on the use of proxy votes having prevented a full, fair and free expression of the will of the homeowners. The prohibition of the proxy is being used to prevent the free expression of the homeowners to make it harder on them to vote unless they attend in person. In all years past until last year's election, proxies have been used by the Association consistently and for the use of electing the Board of Directors. It appears that proxy use is now not allowed to try to avoid having an election or controlling the ability to vote for nominations from the floor.

In sum, the members have the right to vote for the election by proxy and the Association cannot take away that right unless the governing documents expressly prohibit proxy voting for elections. Language that states the owner must personally cast the ballot is not a prohibition on proxy voting. It simply means the proxyholder must attend the meeting and cast the ballot personally just as the owner would be required to do so.

Since the election proxy specifically states a proxyholder cannot vote for the election in contravention of the law and the governing documents, the Association must reschedule the annual meeting/election, prepare a new notice package which allows proxy voting, otherwise, this election is prime for an election challenge.

3. **Ballot and Voting Procedure:** There are several discrepancies and deficiencies with the election procedure, voting procedure and ballot being utilized in this election as we explain below.

1. Section 3.02 of the Bylaws sets forth the election procedures as follows:

3.02 **Election of Directors by Members.** Election of directors shall be conducted in the following manner:

3.02.1. The members shall elect directors at the annual meeting of members.

3.02.2 Prior to any special meeting or annual meeting at which directors are to be elected by members, the existing BOARD may nominate a committee, which shall nominate at least one person for each director to be elected by the members, on the basis that the number of directors to serve on the BOARD will not be altered by the members at the members' meeting. Nominations for additional directorships created at the meeting shall be made from the floor, and other nominations may be made from the floor.

3.02.3 The election of directors by the members shall be by ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast, each member voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled There shall be no cumulative voting.

While the Association *may* nominate a committee to nominate at least one person for each director to be elected by the members, this Association did not do so. The Association's election procedure does not have a precall for candidates allowing members to submit their notices of intent in advance of the meeting. Therefore, the ballot that was mailed to the owners improperly lists candidates on a ballot in advance of the meeting. No ballot should have been mailed with this annual meeting notice as nominations must still be taken from the floor since there is no procedure in the governing documents that allows ALL owners (as opposed to a nominating committee limited to only the vacant seats) to submit their intent to be candidates. This Association is also not allowed to use a two notice election process similar to a condominium as such process is not set forth in the Association's governing documents.

The election process for this Association is as follows:

- a. If the Board desires to appoint a nominations committee, it may do so at a properly noticed board meeting. The nomination committee would nominate at least one person for each director seat that is up for election, in this case 5 nominations. Those nominations should not be placed on a ballot in advance as the election procedures do not state that a ballot listing the nominations from the nominating committee are to be placed on the ballot and mailed in advance of the meeting. To do so creates an unfair advantage for the 5 candidates selected by the nomination committee as it allows people to vote prior to the meeting without knowing who else may self-nominate.
- b. No nomination committee was appointed this year, therefore, there were no nominations in advance of the nominations from the floor at the election meeting. Therefore, the ballot mailed in the annual meeting package is incorrect as currently there are no nominations. Moreover, since nominations must be taken from the floor, it is inappropriate to send an absentee ballot prior to all members having an opportunity to nominate from the floor.

- c. The ballot has an arbitrary deadline stating that the election ballot with only the 5 candidates (not taking into consideration nominations from the floor) must be received by the Association no later than 5:00 pm on December 26, 2025, even though the meeting does not commence until 6:30 pm December 30, 2025. The Association cannot create arbitrary deadlines to turn in an election ballot and they certainly can't create an arbitrary deadline in advance of taking nominations from the floor disenfranchising every eligible member from self-nominating as a candidate for the board. This Association is requiring that the ballot be turned in 4 days before the annual meeting and before nominations are taken from the floor not allowing owners the opportunity to vote for those members who self-nominate. This reason alone requires that the Association call a new election and send out a new election package as this deficiency would absolutely be ripe for an election challenge.
 - d. The Association cannot create procedures that are not written in the Association's governing documents. No where in the Association's governing documents does it state nominations made by the nominating committee are to be placed on a ballot mailed to owners in advance of the election meeting. No where does it state in the Association's governing documents that the ballot must be turned in by 5:00 p.m. 4 days prior to the actual annual meeting/election if the person is choosing to mail in the ballot versus attending in person. No ballot should accompany this annual meeting notice and all ballots should be handed out at the meeting where owners can write in nominations from the floor. Ballots are due when polls close and not a minute before.
 - e. Ben Blackmore should not be listed on the ballot as it is our understanding that he clearly stated to the Association that he was not interested in accepting candidacy for the Board. In addition, it is our understanding that Robert Hardy and Michael Kaplanidis also expressed that they are not running for the board. By including candidates for election who are not interested in running for the board, is a manipulation of the election with the intention of trying to control the outcome of the election to the detriment of other candidates who are running for the board. Again, there should be no ballot sent with the annual meeting notice since nominations are to be taken from the floor and this association does not have an absentee election ballot process with a process in place so all eligible members to nominate themselves in advance absolving the Association from being required to take nominations from the floor.
 - f. Despite being of the opinion that an absentee ballot should have never been mailed, the Association asked for bios and failed to include them with the mailing of the annual meeting notice. In years' past, the Association also mailed the bios to the membership as part of the annual meeting package, which they failed to do this year.
4. **Nominations:** The Declaration states that all Members of the Association shall be eligible to serve on the Board of Directors, and a Member may nominate himself as a candidate for the board at a meeting where the election is to be held. There is no language in the governing documents that has a precall for candidates or that allows potential candidates to submit their names and bios in advance, yet, the Association is utilizing this type of

procedure which is improper. Nominations must be taken from the floor and absentee ballots should not be utilized since nominations must be taken from the floor since there is no procedure in the governing documents to nominate candidates in advance of the election meeting other than a nominating committee nominating no more than 5 individuals which does not allow for all members to self-nominate in advance of the election.

For the reasons set forth above, the Association must reschedule the annual meeting and conduct the annual meeting and election in accordance with Florida law as follows:

1. Allow owners to vote for the election by proxy as permitted under Florida law and the governing documents and as the Association has allowed in prior elections;
2. Follow the quorum requirement of 20% voting interests as set forth in the governing documents;
3. Not allow advance nominations of candidates prior to nominations from the floor, except by appointing a nomination committee, but those names should still not appear on a ballot in advance of the election meeting;
4. If the Association wants to have a nomination committee to appoint 5 nominations to appear on the ballot at the annual meeting, the Association must appoint a nomination committee to make those appointments but no ballot can be mailed in advance with their names ahead of the annual meeting;
5. Do not include an absentee ballot in the annual meeting notice since there is no procedure in the governing documents that allows ALL members to submit their notice of intent to be a candidate in advance of the annual meeting; and
6. The only eligible candidates are those who accept the nomination to serve on the board.

Lastly, the Association and specifically Mr. VanBaalen are to cease and desist from defaming my client by engaging in a smear campaign and publishing defamatory information about her with the intent to damage her reputation and possibly sway the upcoming election as she is named as a candidate on the election ballot. Owners as well as board members are allowed to raise issues with the Association and the Association's legal counsel. Any owner in this community has the right to address matters concerning their homeowner's association and question the board as well as legal counsel without backlash from the Board of Directors. The board is accountable to the owners and owes each and every owner a fiduciary duty to carry out its duties and responsibilities in the best interest of the members. Demand is being made that you immediately remove the publication the board posted on Association's homepage. Such publication prior to the election is deemed election interference and inappropriately utilizing the association's website to engage in a smear campaign to influence how owners vote in the upcoming election.

If the Association fails to comply with this letter and continues with the election as is, after the election we intend to serve the Association with a presuit arbitration letter followed by an election challenge. Please be aware that any lawsuit my client would bring will include a claim by which my client will seek reimbursement for all their attorneys' fees, court costs and expenses incurred in connection therewith.

PLEASE GOVERN YOURSELF ACCORDINGLY.

Very truly yours,

/s/ Lindsay E. Raphael

Lindsay E. Raphael
For the Firm

Cc: Henry (Hank) VanBaalen, via e-mail
Robert Hardy, via e-mail
Ben Blackmore, via e-mail
Michael Kaplanidis, via e-mail