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MAR 06 2014

OPINION COMMITTEE
February 28, 2014

JOHN E. DAVIS
STATE REPRESENTATIVE
DISTRICT 129

FILE # ML-47530-14
I.D. # 47530

RQ-1190-GA

The Honorable Greg Abbott
Attorney General of Texas
300 West 15th Street
Austin, Texas 78701

Attention: Opinion Committee

RE: Request for AG Opinion pertaining to Texas Property Code §209.00591(c)

Attorney General Abbott and Members of the Committee:

On behalf of a Harris County property owner, I respectfully request your opinion regarding §209.00591(c) of the Texas Property Code.

The French Quarter on Lake Conroe is a Montgomery County development that traces its origins to 2001. It is a gated community of approximately one hundred fifty (150) lots. As you are aware, Section 209.00591(c) was added into the Texas Property Code by House Bill 2761 in 2011. This provision provides that, once requisite criteria have been met, at least one third of the Home Owners' Association (HOA) board members must be elected by property owners other than the declarant. In this instance, two (2) of the five (5) seats should be filled by election of the property owners rather than by the declarant.

Section 209.00591(c) provides for a period of declarant control of the association during which declarant, or persons designated by the declarant, may appoint and remove board members and officers of the association other than board members, or officers elected by members of the HOA. Regardless of the period of declarant control provided by the declarant, on or before the 120th day after the date seventy-five percent of the lots that may be created and made subject to the declaration are conveyed to owners other than the declarant, at least one-third of the board members must be elected by owners other than the declarant. If the declaration does not include the number of lots that may be created and made subject to the declaration, at least, one-third of the board members must be elected by owners other than the declarant not later than the tenth anniversary of the date the declaration was recorded.



CHAIR: ECONOMIC & SMALL BUSINESS DEVELOPMENT

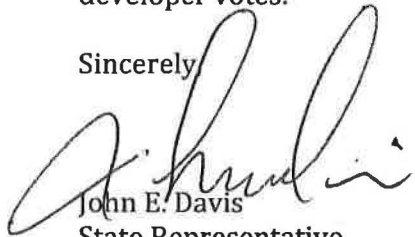
MEMBER: PUBLIC EDUCATION

Although the developer's declarant period ended in December of 2010, the declarant has continued to exercise control over the selection of HOA board members during the last two elections by voting his twenty-eight (28) unsold lots, upon which he does not pay HOA dues.

The HOA attorney, hired by the declarant, has informed property owners that Section 209.00591(c) does not apply, because the declarant period has past. He argues further that the declarant is not now voting his lots as the developer, rather merely as a resident with multiple lots.

Accordingly, I respectfully ask the Office of the Attorney General to determine (i) whether the declarant is following the spirit and letter of §209.00591(c) of the Texas Property Code by continuing to essentially control the outcome of the elections by voting his unsold lots; and (ii) whether the declarant must pay HOA dues on his properties if his votes are to be counted as resident votes, rather than as developer votes.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Davis". The signature is fluid and cursive, with a large initial "J" and "D".

John E. Davis
State Representative
House District 129