



February 10, 2025

Eagle Creek Ranch Property Owner's Association, Inc.
c/o Peggy Kimble
Association President

Via email

Re: *Dissolution of The Eagle Creek Ranch Owner's Association, Inc.*

Dear Board of Directors:

As counsel for *The Eagle Creek Ranch Owner's Association, Inc.*, (hereinafter "Association") we have been asked to provide an opinion regarding the above-referenced matter. In order to respond to the foregoing inquiry we have reviewed the Association's governing documents, current Texas case and statutory law, Texas Business Organizations Code and the relevant portions of Texas Property Code, Section 209, Texas Residential Property Owners Act:

We have also reviewed such other documents, matters, statutes (including the Texas Non-Profit Corporation Act), ordinances, published rules, and regulations, published judicial and governmental decisions interpreting or applying the same, and other official interpretations as we deemed applicable in connection with this opinion. Based upon our review of the Governing Documents and such other instruments, it is our belief and opinion ***that if the membership seeks to dissolve the Association they will need to vote to amend the Declaration before dissolution could occur. In light of same, it is not our recommendation for the Association to dissolve.***

1. Dissolving the Association as a legal entity.

The Uniform Condominium Act provides a detailed procedure for the termination of a Condominium Association. There is not a comparable act or statute for the termination of a homeowners association. Thus, we must first address the Association as a legal entity. The Association is a non-profit corporation pursuant to Chapter 22 of the Texas Business Organizations Code. Therefore, it is possible to dissolve the Association under Chapter 22. However, we strongly advise against this action since this would only remove the Association and not the terms of the Association's governing documents, including the Declaration. The Association is merely an enforcement mechanism for the restricted covenants as provided for in the Declaration. As such, we strongly recommend not dissolving the Association. If the membership insists on dissolution it should do so by amending the Declaration as outlined below. By amending the Declaration, the membership will be able to remove the terms of the restrictive covenants covenants and dissolve the Association in its entirety.

It is our understanding that the Association owns nearly all of the common area property within the Eagle Creek Ranch Subdivision, to include the various parks throughout the subdivision. If the Association seeks to disband or dissolve, then the ownership and responsibility for these common are properties would need to be addressed. It is likely difficult for the Association to simply abandon said properties without repercussion. Further, if the

Association were to sell off the properties, the purchaser would not be bound by the restrictive covenants currently in place. It is possible the purchaser could seek to use the properties for commercial purposes or for purposes not in accordance with the current scope and composition of the Eagle Creek Ranch Subdivision.

Further, the Association would need to address assessments that have been collected before dissolution of the Association. If the Association has excess money from assessments, then that money will need to be distributed. The Association will be required to first pay off its debts and liabilities. If there is any money leftover after satisfying debts and liabilities, then the Association will have distribute the remaining money in accordance with Chapter 22, Section 304 of the Texas Business Organization Code. This will likely require the money to be "distributed for tax-exempt purposes to one or more organizations that are exempt under Section 501(c)(3), Internal Revenue Code, or described by Section 170(c)(1) or (2), Internal Revenue Code, under a plan of distribution adopted under this chapter." It is our recommendation that the Association consult with a Certified Public Accountant before dissolving the Association to ensure the proper forms are filed with the IRS and any money is properly distributed.

2. Amending the Declaration

Before the Association can be dissolved the Declaration will need to be amended to allow for termination of the restrictive covenants. Dissolving the Association without amending the Declaration will not remove the restrictive covenants to which the properties are subject. Dissolving the Association will only remove the enforcement mechanism of these covenants as provided in Articles 12 and 15 of the Declaration, which provide as follows:

"12. . . .Such assessment shall be and is hereby secured by a lien on each lot hereunder, respectively, and shall be payable to Eagle Creek Ranch Owners Association (a Texas non-profit corporation), its successors and assigns, the owner of said assessment funds. . ."

. . .

"15. . . .If any person or entity, as defined hereinafter . . . shall either (i) violate or attempt to violate any restriction or provision herein or (ii) suffer to be violated . . . any restriction or provision herein, it shall be lawful for Eagle Creek Ranch Owners Association and/or any person or entity, as defined hereinafter, possessing rights with respect to any real property hereunder, to prosecute any proceedings at law or in equity against any such person or entity violating, attempting to violate and/or suffering to be violated any restriction or provision herein to (i) prevent such violation, (ii) recover damages or other dues for such violation, and (iii) recover court costs and reasonable attorney's fees incurred in such proceedings. . ."

Further, Article 16 of the Declaration provides as follows:

“16. Invalidation of any one or more of these covenants and restrictions by judgment of any court shall in nowise affect any of the other covenants, restrictions, and provisions herein contained, which shall remain in full force and effect.”

Even if the Association is dissolved as a legal entity, without amending the Declaration, each lot owner in their individual capacity, would still have the ability to seek to enforce the terms of Declaration against any other owner subject to its terms. Likewise, any member could seek to create a new entity to serve as the Association as contemplated by the terms of the Declaration. Therefore the Declaration will need to be amended before the Association can be dissolved as a legal entity.

As the Declaration is silent as to a term of the restrictions, it is our opinion and belief that the original Declarant for the Subdivision envisioned the Association to continue in perpetuity or for such time that the need for the Association no longer existed. As such, if the Association wishes to dissolve permanently, the Declaration would need to be amended.

As the Declaration is also silent as to Amendments, the Association must follow the procedures laid out in Texas Property Code Section 209.0041. The relevant portions of this Section are as follows:

“(b) This section applies to a residential subdivision in which property owners are subject to mandatory membership in a property owners' association.

...

(e) This section applies to a dedicatory instrument regardless of the date on which the dedicatory instrument was created.

(f) This section supersedes any contrary requirement in a dedicatory instrument.

(g) To the extent of any conflict with another provision of this title, this section prevails.

(h) Except as provided by Subsection (h-1) or (h-2), a declaration may be amended only by a vote of 67 percent of the total votes allocated to property owners entitled to vote on the amendment of the declaration, in addition to any governmental approval required by law.

(h-1) If the declaration contains a lower percentage than prescribed by Subsection (h), the percentage in the declaration controls.

(h-2) **If the declaration is silent as to voting rights for an amendment, the declaration may be amended by a vote of owners owning 67 percent of the lots subject to the declaration.**”

Tex. Prop. Code § 209.0041(emphasis added).

To amend the Declaration, the Association will need to draft a proposed amendment for the membership to vote on. As stated above, the vote will require approval by sixty-seven percent (67%, more than 2/3) of the entire membership. The Association will then need to call a special meeting for the purpose of voting on the amendment. Article III, Section 3.4 of the bylaws addresses calling special meetings:

3.4 Special Membership Meetings. Special meetings of the members for any purpose or purposes may be called at any time by the President, or a majority of the Officers or the Board of Directors. Any special meeting must be called for specific purposes, which purposes shall be identified in the call of the meeting and notice of the meeting. No other business shall be conducted at a special meeting that has not been identified in the call of the meeting. If a membership vote is necessary at a special meeting, notice will be provided in accordance with the provisions stated in Section 3.3 above, and a quorum of members will be required to conduct business. If a vote is not required, notice will be provided by postings at common areas at least 72 hours before the date and time of the special meeting, posting to the Association's web site and an email addressed to all member email addresses registered on the books of the Association.

The Association will also have to provide notice to the membership for the special meeting to vote on the proposed amendment. Article III, Section 3.3 provides notice requirements for the Association. However this provision has been superseded by Texas Property Code Section 209.0056, entitled "Notice of Election or Association Vote", which provides in relevant part:

(a) for an election or vote taken at a meeting of the owners, not later than the 10th day or earlier than the 60th day of the election or vote, a property owner's association shall give written notice of the election or vote to:

(1) each owner of property in the property owners' Association, for purpose of an association-wide election or vote...

(a-1) for an election or vote of owners not taken at a meeting, the property owners' association shall give notice of the election or vote to all owners entitled to vote on any matter under consideration. The notice shall be given not later than the 20th day before the latest date on which a ballot may be submitted to be counted.

(b) This section supersedes any contrary requirement in a dedicatory instrument...[Emphasis added]."

If the above requirements for an amendment are met and the members pass the amendment, the membership will be able to dissolve the Association along with terminating the restrictive covenants.

3. Conclusion.

Property Owner's Associations like any thing in life have their drawbacks. However, POAs' are useful since they provide for uniformity and protect property values. By dissolving the Association and removing the restrictive covenants there will not be any method to enforce

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any rules or regulations. Owners will be able to leave burned out cars in their driveways or paint their house hot pink without recourse which can have a steep negative effect on property values.

In summary, if the membership of the Association wishes to dissolve the Association the membership will need to vote to amend the Declaration to allow the restrictions be terminated and for a specified termination date. For the amendment to be successful, the vote will have to conform with Section 209.0041 of the Texas Property Code that sets out the rules and requirements for a vote to amend the Declaration. Finally, dissolution of the Association through Chapter 22 of the Texas Business Organization Code without amendment to the Declaration, will only be detrimental to the Association's membership since this will only remove the Association's corporate status and not the restrictive covenants attached to their properties.

The opinions expressed in this letter are given solely for the benefit of the Association, in connection with the matters referred to herein. The undersigned has never issued a legal opinion for the Association that is inconsistent with the opinions set forth herein. Additionally, the opinions provided above are based upon the information and documents provided. Any additional information received may necessitate updates in the expressed opinions.

Very truly yours,

William D. Crist