

To the Board of Directors

I don't know if the Board of Directors' decision-making process in its meeting of December 10th was illegal or simply unethical. There is no question that a homeowners association, through its board of directors, has a duty to enforce its governing documents ¹ and that the enforcement of CC&Rs must be "in good faith, not arbitrary or capricious, and by procedures which are fair and uniformly applied."² Although a homeowners' association has discretion to decide whether, and in what manner, to enforce the governing documents, this discretion must be exercised consistent with its fiduciary duties and the plain language of the CC&Rs.³

Our Protective Covenant provides for the appointment of Art Jurors as follows:

(a) Membership. The Art Jury shall be composed of five members appointed by the President of the Association from a list of members of the Association, nominated by the Board of Directors. Such list of nominees shall contain at least two names in excess of the number of appointments to be made.

Rancho Santa Fe Protective Covenant, Par 55. Section 5.

A plain reading of this language would indicate that the only qualification for being appointed to the Art Jury is that one is a member of the Association.

Nowhere does it say that the list of nominees must be a list of qualified nominees. Yet the President of the Association has inserted this language to nullify the list of six self-nominated Association members and instead started the whole selection process over again presumably because he did not like the nominees as presented. As I understand it, he has eliminated 4 of the nominees for the following reasons: "[o]f the six candidates who were interviewed, two were ruled out because of their ongoing real estate activities were deemed to present a potential conflict of interest. Of the remaining four, two are technically not qualified because of residency issues. That leaves two candidates."

Resolution #2017-111 provides the "Policy for the Nomination, Interview and Appointment Process for Members" to the Art Jury. It sets forth the qualifications and ongoing requirements, if appointed, for prospective Art Jury members.

¹ ([Nahrstedt v. Lakeside Village Condominium Assn.](#) (1994) 8 Cal.4th 361, 373-374, 380-383.)

² ([Liebler v. Point Loma Tennis Club](#) (1995) 40 Cal.App.4th 1600, 1610; *Nahrstedt*, supra, 8 Cal.4th at p. 383; [Cohen v. Kite Hill Community Assn.](#) (1983) 142 Cal.App.3d 642, 650-652.)

³ ([Ekstrom v. Marquesa](#) at Monarch Beach Homeowners Assn. (2008) 168 Cal.App.4th 1111, 1121-25; [Ritter & Ritter, Inc. Pension & Profit Plan v. The Churchill Condominium Association](#) (2008) 166 Cal.App.4th 103, 122; [Posey v. Leavitt](#) (1991) 229 Cal.App.3d 1236, 1247; [Lamden v. La Jolla Shores Clubdominium Homeowners Assn](#) (1999) 21 Cal.4th 249, 268.)

2.a) The prospective Art Jury member must be a resident at a building site immediately prior to the nomination.

2.b) Have no pending projects that involve the construction of a new building or enlargement of an existing building with the Art Jury.

There are three other requirements not relevant to this discussion.

Nowhere, is it stated that a potential conflict of interest would disqualify a nominee.

That would be tantamount to saying, presumed guilty. A potential conflict of interest might factor in when weighing the merits of the various nominees but it cannot be used to disqualify nominees.

This means that of the 6 nominees two were possibly legitimately eliminated according to our governing documents. That left four nominees on the list, all qualified.

What becomes painfully obvious is that Mr. Weber did not like any of the remaining 4 nominees and so subverted the process to start again. What I cannot understand is why Mr. Weber contacted me to ask if I would remain as a candidate and said that I was a “strong candidate” when there is no question that he did not intend to appoint me. This strikes me as just plain mean. I started by saying I didn’t know if this was illegal or simply unethical. Either way it is a shameful to treat members and volunteers of this community.

Sharon Ruhnau,
Former Vice President of the RSF Association