LEGAL LAW FIRM, PC
123 MAIN STREET • ANY TOWN, CALIFORNIA 98765 • TEL. 999.999.9999

January 15, 2003

Ms. Ivy Huntington
Malta Corporation
123 Happy Sailing Way
Lovely Beach, California 98765

Re: Status of Commercial Owners Association
666 North Gridlock Street
Lovely Beach, California 98765

Dear Ms. Huntington:

I am sorry to hear that you and the other owners of your beautiful office complex are having so many difficulties. Homeowners and owners associations conflicts are particularly upsetting for property owners as it seems that there is at least one or more person(s) emotionally vested in the outcome. Hopefully, once I have addressed your issues, the owners can move forward amicably.

First, it is my understanding that even though some owners have consulted with other counsel, that the owners unanimously agreed to hire me for the sole purpose of presenting a "second opinion". As a result, this letter is intended for the benefit of all the property owners of the above referenced property.

Please understand that I am more than happy to sort through your issues. However, if the property owners cannot agree on a single course of action, and should this matter proceed to litigation, ethically, I cannot represent any one property owner against another property owner or the owners association. In that unhappy event, I would strongly urge the property owners to participate in mediation and I can certainly facilitate your search for a qualified mediator familiar with owners associations.

Second, I am certain that some may take issue with the relevant facts as I see them. However, it is not the purpose of this letter, or its narration of facts, to fault any owner(s). Rather, it is essential that we have some rationale to base a legal analysis.

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RELEVANT FACTS

The property was purchased in the early 1982 by a partnership formed by Malta Corporation's two principals, yourself and your late husband, Stephen, and the Buffords, Steven and Eileen. Eileen Bufford is now deceased.

At the time of purchase, the property had a recorded subdivision map, the name of the subdivision being "La Maison De Ville". There was only one lot in the subdivision.

It was the intent of the partnership to build a commercial condominium office complex. After more than six months of design development, and after more than an additional two years of hearings and meetings, the City of Lovely Beach finally approved the project under the name of the recorded subdivision of La Maison De Ville. This final approval was essentially a lot split so that the individual units could be separately owned.

While the partnership did not like the name of the subdivision, it was advised that it would take yet an additional year to change the name on the subdivision map and that the project could not commence without a final subdivision map. A delay was unacceptable as several of the prospective purchasers of the commercial condominiums had had their offices displaced by the City of Lovely Beach in an extensive redevelopment project.

One in particular, Barry Hell, CPA, temporarily relocated to an office which proved to be in a high crime area. For that reason, Mr. Hell was set for construction to begin sooner rather than later. Most other prospective purchasers indicated that any further delay would cause them to search for office space more readily available. The partnership decided to go forward with construction under the recorded subdivision name of La Maison De Ville, but referred to the project as "Gridlock Street North" since North Gridlock Street is considered a prime commercial location in the City of Lovely Beach.

Prior to the first office condominium purchase, the partnership hired legal counsel to draft and then record Covenants, Conditions and Restrictions (hereinafter "CC&Rs") for the project. The CC&Rs were recorded as "Covenants, Conditions and Restrictions for La Maison De Ville" since the subdivision map was recorded as La Maison De Ville. Unhappy with the name, the partners were told by counsel that they could refer to the project as "anything you want".

Subsequently, the partnership hired another legal firm to file articles of incorporation for the owners association and to draft corresponding bylaws. This legal counsel insisted that since the owners association was referenced in the CC&Rs as "La Maison De Ville, Inc.", that that was the required name. Again, the partners were unhappy with the name, and again they were told that they could refer to the project by any name of their choosing.

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The marketing of the commercial condominiums was conducted under the partners' preferred name of Gridlock Street North. All purchasers were informed that this was a "working name" for the project and that the recorded name was La Maison De Ville. Additionally, all purchasers received a copy of the CC&Rs for La Maison De Ville with the name of the owners association as "La Maison De Ville, Inc." and signed through escrow that they received same.

It was during this time that several stressful events took place: Mr. Huntington was diagnosed with terminal cancer, the Buffords informed the Huntingtons that they no longer wished to be part of the partnership, and Mr. Hell insisted that he move his office into the condominium office complex even though the parking lot of the building had not been completed and the City of Lovely Beach could not conduct a Final Inspection. Because of these events, the Huntingtons purchased the Buffords partnership share in the project, Mr. Huntington obtained permission from the City of Lovely Beach for Mr. Hell to move into his office, and Mr. Hell moved into his office on a rental basis.

On or about January 1985, the office complex was issued a Final Inspection, Mr. Hell closed escrow and several other purchasers followed suit. In September 1985, the articles of corporation were approved by the California Secretary of State and, with Mr. Hell's permission, Mr. Hell was named president of the owners association, La Maison De Ville, Inc.; Ms. Huntington was named as secretary. Mr. Huntington's health took a severe turn for the worse on Thanksgiving Day 1985 and he died three months later in early March of 1986.

Management of the commercial condominium project was informal during the years that followed Mr. Huntington's death. Since not all the units were sold, Ms. Huntington paid all expenses normally paid by an an owners association with Malta Corporation's funds and every few months divided them up proportionately for the unit owners for reimbursement. However, Ms. Huntington became frustrated by the time lag between certain unit owners being informed of the amount owed for reimbursement and the actual payment of reimbursement.

In 1988, Mr. Hell informed Ms. Huntington that he wished to take over management of the owners association. Ms. Huntington readily agreed. Mr. Hell, and his accountancy firm, Hell & Khronios Accountancy Corporation, managed the owners association until 2002. As part of this management function, Mr. Hell determined the amount of dues to be assessed the unit owners, billed the unit owners in advance on a quarterly basis, provided quarterly Balance Sheets and Income Statements to all unit owners issued by Hell and Khronios Accountancy Corporation for the "Gridlock North Owners Association", and purchased liability insurance for the common area and common area structures under the name of "La Maison AKA Gridlock North". As part of these services, Hell and Khronios Accountancy Corporation charged a nominal fee.

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Every year the assessments exceeded the expenses for the project. By October 2002, there was approximately $40,000 of accumulated funds.

That year, there was a minor slip and fall by a unit owner's patient when she tripped on one of the numerous cracks in the concrete parking lot to the project. (To date, no legal action by this patient has been filed against the owners association or unit owners.) Several unit owners were alarmed over the fall and mystified over the parking lot disrepair as there were funds to make repairs. Two of the unit owners decided it was time to read the insurance policy. However, the insurance broker who sold the policy to the project would not provide a copy of the insurance policy to these unit owners without Mr. Hell's "permission".

Subsequently, Mr. Hell provided these unit owners with a copy of the insurance policy and, to the surprise of these unit owners, only one unit owner was named on the policy, Triple Dippy Enterprises, Inc., and only Mr. Hell's lender was named as a lender. Apparently, Triple Dippy Enterprises, Inc. was named at its request after having a judgment filed against it in a personal injury lawsuit which occurred in a parking lot to another property separate from this project.

Upon receiving a copy of the insurance policy one of the unit owners made an inquiry to the California Secretary of State regarding the status of the owners association corporation, La Maison De Ville, Inc. It was then that it was discovered that La Maison De Ville, Inc. had been suspended for failure to file income tax returns and failure to pay the California franchise tax imposed on all California corporations.

When asked about the status of the owners association corporation, La Maison De Ville, Inc., at an October 1, 2002, meeting of the unit owners, Mr. Hell stated that the corporation was "not doing us any good" and that after discussing the status with another unit owner, Stanley Lackey, E.A., Mr. Hell decided to "get rid of it". However, Mr. Hell made no affirmative act to dissolve the corporation, nor did he inform the remaining unit owners of its status.

At that same meeting, several unit owners discussed the status of the insurance as they were concerned as to whether the insurance policy was valid since the named insured seemed to incorporate both La Maison De Ville, Inc. and Gridlock Street North as "La Maison AKA Gridlock North"; the named owners association corporation in the CC&Rs, La Maison De Ville, Inc., was a suspended corporation; the working name for the project, Gridlock Street North, was not a formal entity, and only one unit owner, Triple Dippy Enterprises, Inc., was individually named on the policy.

One of the unit owners volunteered to make an inquiry as to whether the remaining unit owners could also be named individually on the policy and, since the insurance policy was due for renewal, to obtain bids on another policy.

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Because the insurance broker which sold the policy to the building had been uncooperative, this unit owner contacted the insurance company directly to see if the other unit owners could be named. To her surprise, an adjuster with the company informed her that the policy was not written for a common interest development. Rather, it was written as though the entire building was owned by one entity. Moreover, this adjuster told her that the company did not offer any insurance policies for common interest developments or owners associations. Thus, the named insured was immaterial.

Two weeks later, on October 15, 2002, the unit owners of the condominiums met again. At this meeting several unit owners pressed Mr. Hell as to whether La Maison De Ville, Inc. or Gridlock Street North had a Federal tax identification number in which to open bank accounts for deposit of membership dues and payment of expenses. Mr. Hell indicated that no such Federal tax identification numbers existed, but did state that the Federal tax identification number used for these purposes was his Federal tax identification number. It is not certain whether Mr. Hell meant his personal Federal tax identification number or that of Hell and Khronios Accountancy Corporation.

Mr. Hell was then asked if the accumulated assessments held in a bank account utilizing Mr. Hell's Federal tax identification were in a regular checking account or a trust account. Mr. Hell refused to answer. However, another unit owner, Dwight Pixie, Esq., stated that it did not matter since as an attorney he held client funds in lots of different accounts.

Although there was much discussion on many matters at this meeting, the unit owners did decide to purchase an insurance policy with the named insured as "La Maison De Ville, Inc.". The rationale was that should coverage under the policy be needed while the unit owners were sorting out the owners association corporation issue, the unit owners could revive the suspended corporation. The new policy was purchased the following day.

Even so, the issue of the insurance company is not settled. At least one of the unit owners has telephoned the new insurance broker and requested that the name be changed on the policy to omit the "Inc." in La Maison De Ville, Inc. Upon discovery of the change, the other unit owners changed it back. Eventually, Mr. Hell admitted in written correspondence that he was one of the unit owners causing the surreptitious changes of the policy. It is believed that for now the named insured, La Maison De Ville, Inc., is in place.

There are sixteen office condominiums in the project with eleven owners. Malta Corporation is one of the eleven owners.

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The owners association does not own the common area. Rather, the unit owners of the condominiums own the common area as tenants in common, with management being vested in the owners association in accordance with California's statutory scheme and the CC&Rs.

From 1988 through 2002, Hell and Khronios Accountancy Corporation collected approximately $400,000 from the owners as dues for an owners association. With the exception of one unit owner, all unit owners were current with their owners association dues. That unit owner is now current having paid his six months arrearage. However, the unit owners of three units now refuse to pay owners association dues until the matter of the owners association is resolved. There remains approximately $30,000 in the reserve.

Revival of the owners association, La Maison De Ville, Inc. will be approximately $28,000 in past due franchise tax, penalties and interest. It is not known whether there is additional tax owed the California Franchise Tax Board or the Federal government for the excess dues collected since commercial owners associations are not tax exempt.

In addition to Mr. Hell's relationship with the project, from 1978 to 2002, Mr. Hell was the certified public accountant for Malta Corporation, the Huntingtons, and all of Malta Corporation's employees. He was, and presumably remains, the certified public accountant for several businesses in the project.

Of note, sometime in December 2002, Mr. Hell called a vote and caused a ballot to be sent to every unit owner in the project. The purpose of the vote was whether or not to revive the owners association corporation, La Maison De Ville, Inc.

The vote narrowly passed fifty-two percent to forty-eight percent. However, those that voted for revival crossed out a portion of the ballot prepared by Mr. Hell. That portion of the ballot stated that a vote in favor of revival was also a vote to agree to pay tax preparer fees of $500 per return, or a total amount of $10,000.

Because a portion of the ballot was crossed out, Mr. Hell declared those ballots spoiled and the vote as not having passed for revival of the owners association corporation.

DISCUSSION

The issues which must be addressed, and are the subject matter of this letter, are the insurance policy, delinquent owners association dues, and whether to revive the owners association corporation, La Maison De Ville, Inc. They are discussed below.

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LIABILITY INSURANCE FOR THE COMMON AREAS AND THE BUILDING

Frequent Changing of the Name of the Insured

It should be obvious to all unit owners that a change of the named insured should not be made without consulting the other owners. There are only eleven owners, most of whom have their places of business in the project and are at that location during regular business hours. Consultation with one another is not an onerous task. Moreover, regardless of the new insurance broker's willingness to accommodate everyone, this is disruptive to another business which has no stake in the outcome of your dispute. It is in everyone's best interest to keep the name of the insured intact once it is in place.

Further, this sort of clandestine activity is not helpful to the participant's position should this matter proceed to litigation. As but one other example, Ms. Huntington has provided me with a letter Malta Corporation received several days ago. The letter is two pages long, the second page being the signature page. All but two owners, representing four units, signed the letter. Yet, it is obvious that the first page and second page were not created at the same time since the first page is dated two days *after* the second page, the fonts on the first page are different from those on the second page, and the margins are different. This is precisely the sort of thing that could question the credibility of the person with custody of the letter after the signatures were obtained.

Choosing a Name for the Insured

At the present time, the owners association is La Maison De Ville, Inc. This is the named owners association in your CC&Rs, the CC&Rs being a part of your legal title. *MacKinder v. Osca Development Co.*, 151 Cal. App. 3d 728, 198 Cal. Rptr. 864 (1984). It serves no purpose to remove the "Inc." from the policy's named insured. I would urge the unit owners to utilize La Maison De Ville, Inc., until the matter of its status is resolved. That way, if you need to file a claim or to be defended in a lawsuit, you can revive the corporation. *Peacock Hill Association v. Lagoon Construction Co.*, 8 Cal. 3d 369, 105 Cal. Rptr. 29 (1972). Otherwise, you are simply purchasing a policy with a named insured that does not exist.

Limits of Liability

At least one unit owner has questioned the need, for liability reasons, to bother with revival of the owners association. While it is true that California Civil Code § 1365.9 offers civil liability protection to owners of separate interests in a common interest development that have common areas owned in tenancy-in-common if the association carries a certain level of prescribed insurance, this protection is not applicable in your present situation.

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The reason that it is not applicable in your present situation is that the owners association, not the unit owners, must carry that certain level of prescribed insurance. Here, your owners association is La Maison De Ville, Inc., a suspended corporation. A suspended corporation cannot conduct business. *Palm Valley Homeowners Association v. Design MTC,* 85 Cal. App. 4th 553, 102 Cal. Rptr. 2d 350 (2000). As a result, the suspended corporation cannot carry that certain level of prescribed insurance. Thus, this statute is only helpful to you if you revive La Maison De Ville, Inc., or you somehow free yourselves from that entity in your CC&Rs and form another owners association.

DELINQUENT OWNERS ASSOCIATION DUES

California Civil Code § 1366(a) provides that an owners association may levy regular assessments for the purpose of providing for the maintenance and repair of common areas of a common interest development. Under California statutory law, if an owner does not pay assessments, the owners association may place a lien against the property. Cal. Civ. Code § 1367. The lien must be recorded. *Id*. Thus, under usual circumstances, when an owner of a unit in a common interest development does not pay dues to the owners association, the owners association may impose fines and, ultimately, place a lien on the nonpaying unit.

Here, that is not possible as the owners association, La Maison De Ville, Inc., is a suspended corporation which, as discussed above, cannot conduct business. As a suspended corporation, La Maison De Ville, Inc., cannot even levy assessments let alone impose fines or place a lien on anyone's property. Simply put, your hands are tied.

While an argument may be made that as co-tenants of the common area, these delinquent owners should pay their "fair share", California law does not require a co-tenant of property to contribute to maintenance and support of that property if the co-tenant refuses. Under this circumstance, the only way to protect your common property would be for willing contributors to increase their payments for any costly repairs until there is a viable owners association.

In addition, it is next to impossible to assert any sort of hardship arguments and/or unjust enrichment since there is approximately $30,000 in reserve which should cover the routine maintenance costs of the common area for at least one year.

THE SUSPENDED OWNERS ASSOCIATION CORPORATION

It is obvious to a casual observer that the dispute between unit owners does not really concern the status of the owners association corporation. Rather, the dispute concerns payment of delinquent taxes, penalties and interest which nearly half of the unit owners refuse to pay or, quite possibly, believe that they do not need to pay even though there are funds in your reserve to

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pay them.

Even most of the unit owners who believe the delinquent taxes, interest and penalties should be paid insist that payment should be made outside the accumulated assessments as not all unit owners purchased units at the same time. These units owners have contacted me with several scenarios of who should pay what amount as a separate charge. Of course, what these owners fail to acknowledge is that the accumulated assessments are part of a pro rata share paid by unit owners over time with longtime unit owners paying more into the accumulated assessments than those more recent purchasers. Depending on agreements with individual resale of units, it is entirely possible that the more recent purchasers would receive a windfall if the delinquent taxes, penalties and interest were paid outside the accumulated assessments on a pro rata basis since it would free funds in the accumulated assessments to make present repairs. Yet, because Mr. Hell does not want to pay the delinquent taxes, penalties and interest, and because Mr. Hell has control of the checkbook, payment with the accumulated assessments does not appear to be a present possibility.

Regardless, the best remedy to your problem of a suspended owners association corporation is to pay the delinquent taxes, penalties and interest. Payment of these taxes will enable you to revive La Maison De Ville, Inc. From there the unit owners can decide whether to keep that owners association active, to dissolve that corporation and function under some other entity, or change the name of the owners association corporation, providing that you also amend the CC&Rs. The unit owners will also not have the worry about looking over their collective shoulders until the end of time wondering whether the back taxes will catch up with them, their heirs and assigns.

As for those that insist that the delinquent taxes, penalties and interest should not, or need not, be paid, I have been inundated with their telephone calls since agreeing to write this letter. Many of their "legal" arguments have been creative to say the least. Nevertheless, I have addressed each one so that you may have a starting point for rational discussion:

ARGUMENT ONE*: "The original Declarants may re-record the existing CC&Rs of La Maison De Ville, Inc. and eliminate the 'Inc'."*

In correspondence to Ms. Huntington, Mr. Hell suggested that the original declarants of the CC&Rs simply delete the "Inc." after La Maison De Ville, Inc., and re-record the document. There is no guidance in Mr. Hell's letter as to how to delete the "Inc.".

This certainly would be a simple solution to the suspended owners association corporation were it factually, legally and ethically possible.

Simply put, two of the original declarants are now deceased. It is factually impossible for either

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of them to sign documents before a notary and cause these documents to be re-recorded, nor are they able to authenticate the same. Moreover, it is not legally possible since, with the exception of Ms. Huntington through her interest in Malta Corporation and its one remaining unit, none of the original declarants presently have any interest whatsoever in the project. And finally, whatever the means of deleting the "Inc." in an existing document, and notwithstanding the recordation statutes which will not allow a document to be re-recorded more than twenty years after its original recordation, to simply delete a portion of an existing document, without identifying the change, is tantamount to fraud.

ARGUMENT TWO: *"The owners may amend the CC&Rs to substitute another owners association in the place of La Maison De Ville, Inc."*

Amendment of the CC&Rs is usually a simple matter once the owners agree to a change. In California, there must be approval of a certain percentage of owners as designated in the governing documents, i.e., the CC&Rs, that fact must be certified in a writing by an officer of the association, usually the president, and that writing is recorded in the county (or counties) in which the common area is located. Cal. Civ. Code § 1355(a).

The problem here, again, is that the owners association is a suspended corporation. Suspended corporations cannot conduct business. As a result, unless La Maison De Ville, Inc. is revived, it cannot, through an officer, amend the CC&Rs.

ARGUMENT THREE: *"Taxes are irrelevant because La Maison De Ville, Inc., is a 'walk away corporation' which the owners may disregard."*

The argument has been made by Messrs. Hell and Lackey that La Maison De Ville, Inc., is a "walk away corporation", i.e., it has been abandoned. This argument may have merit from an accounting point of view. Other than the insurance policies purchased by Mr. Hell for the project under the name of "La Maison AKA Gridlock North", it does not appear that this corporation has ever conducted business nor has it ever held any assets since the bank account for the reserve fund utilizes Mr. Hell's Federal tax identification number.

Conversely, from a legal point of view, La Maison De Ville, Inc. is not a stand alone corporation in that it is the designated owners association for the project under the CC&Rs. While it does not own the common area land or buildings, it is, nonetheless, a part of the legal property description. *MacKinder v. Osca Development Co.*, 151 Cal. 3d 728, 198 Cal. Rptr. 864 (1984). You cannot walk away from your recorded CC&Rs. Furthermore, simply walking away does not address the fact that you will have an owners association which cannot impose assessments for maintenance and repairs, nor can it defend itself in a lawsuit or contract for services.

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ARGUMENT FOUR:*"The owners never intended La Maison De Ville, Inc., to be a corporation, so it cannot be a corporation.*

This is a conclusion reached by another attorney outside this office (and not an owner of any unit(s) in the project), which prompted your request for this letter. I have read his correspondence to the unit owners and flatly reject his conclusions as formation of a corporation does not require specific intent of future shareholders, i.e., the purchasers of units in the project.

Formation of a corporation does require that some interested party or parties file articles of corporation with the California Secretary of State and designate an agent for service of process. Once those articles of corporation are approved by the California Secretary of State, the corporation is an active corporation for legal purposes. Cal. Civ. Code § 209, *Barber v. Irving*, 226 Cal. App. 2d 560, 38 Cal. Rptr. 142 (1964). Dissolution of that corporation is also by approval of the California Secretary of State which will only be granted once the corporation receives a tax clearance from the California Franchise Tax Board.

In the same vein, Malta Corporation, as successor to the partnership between the Huntingtons and the Bufords, had a duty to cause the formation of the owners association corporation, La Maison De Ville, Inc. As developer of the project, Malta Corporation sold each unit to each owner with these CC&Rs as part of the legal description to the property. The CC&Rs clearly state that the owners association is a corporation. Had Malta Corporation not incorporated the owners association, it would have been negligent.

It is incredulous that somehow any owner was taken by surprise that the owners association is a corporation. The language in the CC&Rs is not ambiguous concerning the owners association corporate status. Succinctly, each owner, whether an original purchaser or a resale purchaser, had actual notice of La Maison De Ville, Inc. and there is no need for further explanation.

ARGUMENT FIVE: *"The unit owners have not elected a new board of directors, nor have they held annual meetings, so they have pierced La Maison De Ville, Inc.'s corporate veil."*

There seems to be some confusion. The piercing of a corporate veil is a judicial process whereby a court will disregard the usual immunity afforded to corporate officers and shareholders for corporate activities in order to prevent a fraud or injustice committed on a third party *Wilson v. Sterns*, 123 Cal. App. 2d 472, 267, P.2d 59 (1954), *Talbot v. Fresno-Pacific Corporation*, 181 Cal. App. 2d 425, 5 Cal. Rptr. 361 (1960). A court will never disregard the fiction of a corporation to accomplish the reverse. *Id.* Further, the piercing of a corporation's veil does not render the corporation null and void, as the corporation still exists, it is merely a device to reach through to assets of individuals. Simply put, if the owners were successful in piercing the owners association's corporate veil, which is highly doubtful, the outcome would be to hold the

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corporate officers and shareholders personally liable for the delinquent franchise taxes, interest and penalties owed by La Maison De Ville, Inc.

ARGUMENT SIX: *"The California Franchise Tax Board does not know we have funds in reserve so it cannot collect any delinquent taxes, penalties and interest."*

Whether the California Franchise Tax Board knows that you have funds sitting in a bank account utilizing Mr. Hell's Federal tax identification number is immaterial. I cannot and will not advise you to hide funds for the purpose of avoiding payment of taxes.

ARGUMENT SEVEN: *"An owners association is for management purposes only and for taxation purposes individual owners may be treated as a group of property owners sharing expenses."*

Notwithstanding the hurdle which must be overcome regarding the suspended status of La Maison De Ville, Inc. in the CC&Rs, Mr. Hell has distributed materials to the unit owners that the operative owners association these past fourteen years is the "Gridlock Street North Owners Association". That association, according to Mr. Hell, is for management purposes only. For taxation purposes, the unit owners are merely a group of owners managing their common interest property together, sharing expenses.

It is necessary to step back a little here: A common interest development is created whenever there is a separate interest in land coupled with an interest in a common area. Cal. Civ. Code § 1352. A common interest development must be managed by an association which may be incorporated or unincorporated. Cal. Civ. Code § 1363(a). California has not carved out an exception for taxation treatment of owners of common interest property held as tenants in common. The opposite is true.

Section 23701t of the California Revenue and Tax Code provides that association property means "property held by the members of the organization". Cal. Tax and Rev. Code § 23701t(b)(2). Hence, whether the common area property is held by the individual unit owners as tenants in common, as in your situation, or held by the association itself is unimportant for taxation purposes. Conversely, were this a project owned in its entirety, both individual units and common areas, as tenants in common by all eleven owners, Mr. Hell would be correct because there would be no requirement for an owners association. The only requirement would be that you grant individual owners easements to use certain areas of the property which all unit owners would own. However, that does not apply here.

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ARGUMENT EIGHT: *"Individual unit owners may negotiate with the California Franchise Tax Board for their proportionate share of taxes owed."*

The delinquent taxes, interest and penalties is not owed by individual unit owners, it is owed by La Maison De Ville, Inc. Therefore, individual unit owners cannot negotiate a portion of taxes owed as they do not have standing to do so. In addition, representatives on behalf of La Maison De Ville, Inc. cannot negotiate with the California Franchise Tax Board for a reduction of delinquent taxes, interest and penalties because as a suspended corporation, it cannot conduct business. FTB Legal Ruling 395.

ARGUMENT NINE: *"The unit owners may restate the CC&Rs with a different owners association."*

Provided that all the unit owners and all other interested parties, such as lenders, sign the restated CC&Rs, the unit owners may restate the CC&Rs with a different owners association. The new owners association may be a corporation, limited liability company, an unincorporated association or a partnership. All of these entities are subject to the scrutiny of the California Franchise Tax Board and the Internal Revenue Service. However, only corporations and limited liability companies must pay a California franchise tax.

Restating the CC&Rs will meet your goals of a functioning owners association which may impose assessments, contract for services and repairs, and defend in a lawsuit if necessary. Nevertheless, restating the CC&Rs is not without risks as La Maison De Ville, Inc. remains a suspended corporation, remains in your original CC&Rs, and remains in your chain of title.

Delinquent franchise taxes, interest and penalties will continue to accrue for La Maison De Ville, Inc. Without dissolution, the new entity will be nothing more than a continuation of La Maison De Ville, Inc. as it will be the owners association for the same common interest development, providing the same services, with essentially the same membership. *McCellan v. Northridge Park Townhome Owners Association, Inc.*, 89 Cal App. 746, 107 Cal. Rptr. 2d 702 (2001). Accordingly, the issue of delinquent franchise taxes, interest and penalties will not be resolved and will only increase exponentially each year as new franchise taxes become due.

CONCLUSION

In my opinion, revival of the owners association corporation, La Maison De Ville, Inc., provides the best protection to the unit owners and is the easiest to achieve as it is a simple matter of filing back tax returns and paying the delinquent franchise tax, penalties and interest. I would recommend hiring an outside certified public accountant to avoid any appearance of conflict.

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On the other hand, if the unit owners simply cannot agree to revive the owners association corporation, the only realistic option is to restate the CC&Rs providing that every owner and all lenders agree and sign the restated CC&Rs. However, it must be acknowledged that this is not without risks since the delinquent taxes, interest and penalties will continue to accrue along with new taxes, interest and penalties each year.

Moving forward, it is time to obtain a Federal tax identification number, file tax returns (even if no tax is due), and open a bank account in the name of the owners association. Each and every one of you are businesspersons. The need to run your owners association in a businesslike manner should not have to be explained to you.

If you have any questions, please do not hesitate to telephone me.

Very truly yours,

LEGAL LAW FIRM, PC

Arthur M. Attorney, Esq.

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