



*The*  
**Community**  
*Association Lawyers*

600 Washington Avenue, 15th Floor • Saint Louis • Missouri • 63101  
Phone: (314) 727-8989, Web: thecalawyers.com

Jason C. Schmidt, Esq.  
Direct: (314) 425-4968  
jschmidt@sandbergphoenix.com  
Licensed in Missouri and California

January 24, 2018  
(via e-mail: secretary@stonecroftsubdivision.com)  
**PRIVILEGED ATTORNEY-CLIENT COMMUNICATION**  
**VIA E-MAIL ONLY**

Board of Directors  
Stonecroft Subdivision Homeowners Association  
c/o Tony Centracchio, Board Secretary  
secretary@stonecroftsubdivision.com

**Re: Stonecroft Subdivision Homeowners Association  
2003 Amendment**

Dear Board:

This responds to a request for guidance by Tony Centracchio, Secretary of the Board of Directors of Stonecroft Homeowners Association, with respect to interpreting the subdivision's May 20, 2003 Amendment to the full Indenture of Trust and Restrictions for Stonecroft ("Indenture").

The comments below contain our analysis and opinion, and constitute a privileged attorney-client communication for the Board's review only.

**A. Background and Source of Authority.** Based upon the information provided, we understand that Stonecroft Subdivision was developed in 2002 as a planned community. Missouri has no statutory framework for planned communities such as Stonecroft. Thus, the primary source for legal authority is the "Indenture of Trust and Restrictions for Stonecroft," recorded in Book 2835, Page 683 of the records of St. Charles County, Missouri, as may be amended ("Indenture").

We further understand the Board intends to assess the current year's annual assessment at the maximum allotted \$300.00. Some owners within the subdivision are concerned that is not permitted by the 2003 Amendment. It is their interpretation that increases can only be incremental over the current assessment, eventually capping at \$300.00.

**B. Questions Presented.** We were asked to interpret the following language from the 2003 Amendment:

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“Annual Assessments. Until increased as herein authorized, the maximum annual assessment shall be Three Hundred and 00/100 Dollars (\$300.00) per Lot; provided, however, that the Directors may increase such assessment for any assessment year by an amount which is equal to the greater of (i) five percent (5%) over the previous year’s assessment, or (ii) the increase in the Consumer Price Index as indicated by the last available Index published prior to the assessment year over the corresponding last available Index published prior to commencement of the first assessment year hereunder. If such Index be discontinued, the Directors shall utilize a successor index, determined by the Directors in their sole judgment to be most similar to the discontinued Index.

The Directors may, after consideration of current maintenance costs and future costs and needs, fix the actual, assessment for any year at a lesser amount. The Directors may change the basis and maximum of assessments provided for herein upon the approval of a majority of the Directors and the assent of a majority of the Class “A” Members voting in person or by proxy at a meeting duly called for such purpose, written notice of which setting forth the purpose of the meetings shall have been sent to all Class A Members at least thirty (30) days in advance.”

**C. Analysis.** In interpreting the language of the Amendment, which is interpreted as a contract, the primary rule in the interpretation is to ascertain the intent of the parties and to give effect to that intent. Speedie Food Mart, Inc. v. Taylor, 809 S.W.2d 126, 129 (Mo.App.1991). Debaliviere Place Association V. Veal, 337 S.W.3d 670 (MoApp.2011). The intent of the parties shall be determined from the instrument alone. Republic Nat. Life Ins. Co. v. Missouri State Bank & Trust Co., 661 S.W.2d 803, 808 (Mo.App.1983). The terms of a contract are to be read “as a whole to determine the intention of the parties,” giving the terms “their plain, ordinary, and usual meaning.” Dunn Indus. Grp., Inc. v. City of Sugar Creek, 112 S.W.3d 421, 428 (Mo. banc 2003).

In this instance, the plain language of the Amendment grants the Directors the authority to assess an annual assessment at an amount at or below the stated maximum of \$300.00. If the Directors intend to increase the assessment *above* the maximum, they may only do so by either one of the two authorized means, i.e. five percent (5%) over the previous year’s assessment or in accordance with the increase in the Consumer Price Index,<sup>i</sup> or by the third means to raise the assessments, which requires approval of a majority of the Directors and assent of a majority of the Class “A” Members.

It would seem to run afoul of both the plain language of the Amendment and the intent of the drafters to suggest that the Directors could not assess the assessment at the maximum amount by any means other than by stair-stepping up over the previous year’s assessment. That could create a situation where the Association was operating at a severe budgetary shortfall simply because the Directors had lowered the assessments in a previous year. Neither the plain language nor the perceived intent of the drafters indicates the Amendment is designed to handcuff the Board in such a manner.

In procuring a legal opinion, the current Board has taken actions that would avail their decision to the protection of the business judgment rule. The business judgment rule protects the

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directors and officers from liability for decisions within their authority and made in good faith, uninfluenced by any consideration other than an honest belief that the action promotes the organization's best interest. Virgil Kirchoff Revocable Trust Dated 06/19/2009 v. Moto, Inc., 482 S.W.3d 834, 841 (Mo. App. 2016). The rule generally precludes courts from interfering with the decisions of officers and directors absent a showing of fraud or an irrational business judgment. Id. at 842.

**D. Conclusion.** We trust the foregoing is responsive to the Board's request and that the Board will contact us if it has any additional questions or desires further assistance. Your attention to this matter is appreciated.

Very truly yours,



Jason C. Schmidt

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<sup>i</sup> It is important to note that, when it comes to CPI provisions, the courts have adopted a "use it or lose it" interpretation, meaning if the option is not enacted from one year to the next, the Board is prohibited from calculating what the current maximum assessment *could have been* had they been opting to increase assessment over the entire span - the board is limited to a single increase over the previous year. (See Davis v. Lakewood Property Owners Association, Inc., 2017 WL 4125663). It is for this reason we recommend the Board utilize this provision and increase the assessments in accordance to it every year.