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ATTORNEYS-AT-LAW

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Francine Cracker
Member of NJ Bar

Intake #: 474712

June 13, 2018

Mrs Mary Mirabello, President, Skippers Cove Beach Club, Inc., 4 Cutlass Way, Waretown, NJ 08758

Mr Roger Ackermann, 1st VP 2017, 12 Jolly Roger Way, Waretown NJ 08758

Ms Bonnie Cullen, 2 VP, 18 Peg Leg Way, Waretown, NJ 08758

Mrs Mary Szolomayer, Treasurer, 16 Bluebeard Way, Waretown, NJ 08758

Ms Carol Stone, Secretary, 11 Cutlass Way, Waretown, NJ 0875

Mrs Lori Geary, Bar Director (2017), 6 Davey Jones Way, Waretown, NJ 08758

Mr Al Giancola, Bar Director (2018). 7 Jolly Roger Way, Waretown, NJ 08758

Mr Nick Cafaro, House Director (2017) 33 Hornblower Dr, Waretown, NJ 08758

Mr Sal Eppolito, House Director (2018), 12 Bluebeard Way, Waretown, NJ 08758

Mr Mike Sabatello, Grounds Director, 5 Cove Drive, Waretown, NJ 08758

Mr Fred Kutner, Marina Director (2018 and acting 2017), 35 Hornblower Dr, Waretown, NJ 08758

Mr Ed Gallagher, Mrs Rita Sweeney, Mrs Marian Recipe, Mrs Rita Sweeney, Mrs Peggy Hendricks, Mr Mark Emr, Ms Denise Portale, Nominating Committee Members (2016)

Re: Portale V. Skippers Cove Beach Club, Inc. Board of Directors & certain committee members and others.

Dear Mrs. Mirabello:

Please be advised that our firm has been contacted by Mr. James Portale with regard to the above referenced matter. It is our understanding that the Home Owners Association (HOA) violated the bylaws and was noncompliant with Roberts Rules of Order, 10th Edition. The HOA was provided a list of concerns and written notice of violations on April 21, 2018 and was asked to respond. On April 21, 2018 the response was tabled to some undetermined future date. A point of order was recognized requiring the BOD to respond to the concerns in writing. An amended motion was then made demanding that you provide a date for compliance. The date for compliance was set for June 16, 2018; the next general meeting of the association. The motion was passed by a show of hands.

As of the date on this letter, no written response has been received by the associations' membership. The Skippers Cove Beach Club, Inc is a Home Owners Association where 100% of the membership are Deed Restricted property owners bound to the bylaws.

This letter is a demand for your written answers to the following alleged violations of current bylaws, Roberts Rules, State law and long standing precedent:

Opportunity to record at a HOA meeting. The association's membership has been free to record general meetings for 58 years. The recent decision to disallow recordings negatively impacts this long standing precedent. It is our understanding that the meetings are now considered private. Membership cards have not been issued. Please explain how you assure only members attend.

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200 Continental Drive
Suite 215
Newark, Delaware 19713
302-658-0200

BYLAWS ART IX, Sec 3(f) states that formal membership approval by written ballot is required for initiating any litigation or lawsuit involving the SCBC, Inc. On March 29, 2018, Mr. Sicheri wrote to Mr. Portale stating that he represents the SCBC, Inc. and he prepared a cease and desist letter and also threatened to file a complaint for harassment. Has Mr. Sicheri been hired by the HOA and in what role?

BYLAWS ART IX, Sec 3(d). The bylaws state that all unbudgeted expenditures over \$1,000, or unusual change in Club practice, require a formal written ballot be delivered to each association member for approval. Federal and State law requires all donations to be reported as income and be deposited into the association's account with all other funds received from any source. All expenses must be recorded and paid from that account. There are budgeted expenses and unbudgeted expenses and this bylaw constrains your access to unbudgeted funds. The land survey, gate removal, fence installation, bar rehab with required permits, and the bylaws revision process are all unbudgeted expenses exceeding \$1,000 in fiscal year 2018. The approved budget of 2017 included an expense of \$2,000 for a water trampoline. The funds were spent but the trampoline was destroyed. No attempt to sell it was initiated and no membership approval was obtained for its destruction. Underinflated water trampolines have been used for 17 years and the water location was inspected and approved each year. The destruction caused the loss of approximately \$2000 to the membership.

Workmen's Comp law requires that SCBC's workmen's comp insurance company be provided an annual list of all employees and workers. The SCBC, Inc is required to assure hired workers have Workmen's Comp insurance and any applicable license. It is our understanding that Karchik Homes is not listed as having Workmen's Comp insurance or a license to operate. Please provide my office with a copy of both.

Additionally, it is our understanding that routinely, many workers are not listed on the SCBC, Inc Liberty Mutual Workmen's Comp policy.

IRS, PROPERTY TAX AND CODE Capital improvement permit jackets include relevant information regarding costs and professionals hired. The subsequent inspections trigger calculation of property tax and include code compliance. Unbudgeted capital improvements impact property taxes, insurance and maintenance just as much as budgeted ones and are one of the reasons unbudgeted expenses over \$1,000 require formal written approval regardless of the funding source. Electrical, plumbing and construction permits incur subsequent inspections for code and safety.

BYLAWS ART IV, Sec 5 and ROBERTS RULES states how votes are taken which include voice vote, standing vote, show of hands, roll call vote, absentee ballots and formal written ballots. The proposal to remove absentee ballots is in direct opposition. In the event you eliminate this requirement a formal complaint may be filed with the State. The purpose is to assure all members have the right to be counted at all votes of the association membership and for compliance with the 1999 directive from The NJ State Department of Community Affairs Planned Real Estate Development Division. This directive resulted in the 2001 bylaws revision to add absentee ballots.

BYLAWS ART IX, SEC 3(c) states when compliance with the circumstances for formal written ballots are needed. One of the requirements are budgets and assessments. The marina refurbishment project was approved in 2016 and was engineered by Alberts Marine, drawn to scale, and presented to the HOA membership for comment and subsequent approval. The budget discussion included the plan to pay for the project over a three year period. That plan was abandoned without membership approval.

After a one year delay, a highly modified plan was implemented without membership approval. The project was not assessed by an engineer. It is our understanding that permits were obtained and that they included the permit to dredge. However, the DEP reports that no permit to dredge was issued. Even with permits, the bylaws require formal written approval for this unbudgeted dredging expense. Please provide a copy of all permits.

REVOCABLE LEASE for the association's property located at 35 Hornblower Drive is missing. This lease was originally created by attorney Russ Cherkos as a 5-year revocable lease approved by Formal Resolution of the BOD and was included in the annual report to the membership. The 18 inch strip of land, bulkhead and dock at 35 Hornblower Drive belongs to the HOA and its use by the home owner is only authorized in accordance with the lease agreement signed by the homeowner and president. An updated and current lease

must be a part of the financial records. The bylaws require a 2/3 majority by formal written ballot for the sale of any real property. Since that has not been done, please present the updated lease agreement that secures the association's ownership rights.

BYLAWS ART VII SEC 1 (h) states that 'additional nominations for any office may be made by written petition, signed by twenty-five (25) voting households'. The nominating committee was presented with a petition signed by 129 households but ignored it, stating there was a 2-term limit. The 2-term limit was eliminated in the 2001 bylaws revision and has not been in effect since. The 2005 and 2011 revisions also allow for more than 2 terms. Due to this bylaws violation, the 2016 election may be invalid and steps should be implemented to secure a valid election.

Section 46 of Roberts Rules states that any member has the right to add a write in vote for any eligible person to any ballot during an election. The BYLAWS SEC IX SEC 1 requires compliance with Roberts Rules. The teller's committee chairman illegally invalidated all election ballots that included write in votes during the 2016 elections and has therefore invalidated the entire election a second time. It was the BOD's obligation to the membership to assure compliance with Roberts Rules, and in this case, Section 46 of Roberts Rules.

BYLAWS ART VII SEC 1 (h) does not require a notarized petition or notarized signature on a petition. To require a notarization would place an undue burden on the community and should be reconsidered.

ROBERTS RULES SECTION 56 and 57 identifies the procedures used during a bylaws revision that requires a written presentation of each existing bylaw, followed by the verbatim language of each proposed bylaw, followed by the rationale for the proposed change. The process is done in a seriatim manner. There was no compliance and the initial reading of the proposed changes led to extreme confusion. Mr. Portale has indicated that a bylaws revision is wholly unwarranted in general terms, and contains specifically inappropriate and illegal wording that do not serve the best interest of the membership and their property rights. This bylaws revision is, in itself, a bylaws violation because it is a large expense that is not in the approved 2018 budget and is not an emergency expense approved by the membership. No laws, or ordinances, have changed justifying the expense. There appears to be no justification for a revision and therefore no reason to spend the funds. Full compliance with bylaws ART IX, Section 3 is demanded. It is recommended that you include a bylaws revision in the 2019 budget for formal adoption by the membership and immediately discontinue the current attempt to make these unauthorized changes and incurred expense.

BYLAWS ART V SEC 5 states that any member has the right to examine the financials of the association upon request. A minimum of 5 days' notice is required. Mr. Portale has made that request on several occasions without response. It is therefore necessary to formalize that request. State a date and time where the financial records of the SCBC, Inc can be reviewed. The place should be the SCBC, Inc facility and the records must include the details of all income, expenses, receipts, invoices and accounts open or closed. It has been noted that treasurer's monthly reports are merely summaries and although many residents have asked for the details at several membership meetings, they were never provided. Failure to comply with this request may result in a state complaint and a request for a thorough state audit. Please provide the information by June 23, 2018.

BYLAWS ART V SEC 5(e) states that the treasurer must be bonded. It is our understanding that you have failed to comply with this section.

BYLAWS ART 1 states that the SCBC, Inc. consists of the parent corporation and three satellites known as the Men's Club, the Skipperettes, and the Beachcombers. The proposed revision states that the Beachcombers are independent. Satellites have their own bylaws and are not incorporated. Incorrectly, testimony was given to the NJ State ABC on page one that the Beachcombers and the SCBC membership are identical which was how the BOD justified allowing the Beachcombers use of the SCBC, Inc tax id number on 'their' application to LGCCC for a gambling license. The Beachcombers is an age restricted, senior citizens subgroup of the SCBC, Inc. There are many members of the SCBC that cannot be members of the Beachcombers. But, for the purpose of this bylaw revision, all three satellite organizations must receive equal identification and treatment in accordance with the articles of incorporation. No satellite should have independent status. The men's club, women's club, and the Beachcombers senior citizens club, are all subsidiaries of the parent corporation and must be equally identified in Art 1.

BYLAWS ART IV, SECTION 3 states that written notice of all general meetings and the annual membership meeting must be mailed or otherwise delivered to each member and it must include a notice of any issue requiring a vote. The HOA is compliant in that written notice is provided in the bylaws which were mailed to every member. The meetings, and time of meeting, are a part of the bylaws. Changes are identified on the entrance sign to Skippers Cove. The proposed revision violates the intent of this bylaw and Roberts Rules. **Electronic notification** is not an approved substitute although it can serve as an additional means to disseminate information. In this deed restricted HOA, the property owners have rights and an obligation to assure they are kept informed. Many residents do not have or use computers. Proper notification is important to the community.

ART IV, SECTION 7 and ART VIII SECTION 2 define "Good Standing" and the penalty for not being in Good Standing. The dates identified in ART VII identify when a member becomes Not in Good Standing. Your proposed revision MUST include a definition. Dues are due Jan 1st but a member has until May 1st before failure to pay causes a status change. An opportunity within a specified time period protects the property owner allowing a resident to become a current.

ART VI, SECTION 2 states that the maximum unbudgeted emergency expense is \$1,000 with formal written approval. As previously stated, any attempt to increase that amount invites the BOD to operate outside of the approved budget at the detriment of the association's membership. The HOA is already over budget this year and not all of the items that were approved in the budget such as sand and groin replacement have been accomplished. Even the expense of this bylaws revision was not included in the 2018 budget. The amount should stay at \$1000 and the BOD should make every attempt to comply. The BOD should pay stricter attention to the budget and expenditures.

ART VI, SECTION 8 (b) provides for term limit relief during years when there is a shortage of volunteers or otherwise qualified persons. The proposed revision causes a hardship for future nominating committees. The existing bylaws provide a solution that protects the association from abuse.

ART VI, SECTION 9 AND ROBERTS RULES state that vacancies will be filled by the BOD and then approved by the membership at the next meeting where a quorum exists. The proposed revision deletes the membership approval. The proposal invites abuse by allowing for hand selected appointees to fill an otherwise elected position. The proposal again dilutes the rights of the property owners in this deed restricted community.

ART VII, SECTION 1. Authorize the Bar Director to set tipping policy. To do so invites an audit where tipping can be calculated for IRS use. Tipping is a personal choice of the customer and not a policy or bylaw.

ART VII, SECTION 1 includes the legally recognized term 'For Action' and directs the BOD to take an action. The proposed revision replaces that term with 'For Information' and dilutes the property owners' rights once again.

ART VII, SECTION 4 includes the ability for the BOD to issue a hardship provision for cases of extreme hardship. This temporary relief allows for a member to remain in Good Standing. The proposed revision eliminates the Hardship Clause and shows a lack of concern for the membership and is a significant diversion from the long standing history. Mr. Portale believes the membership would like for the hardship provision remain. The hardship clause should not be excluded.

ART VII, SECTION 1 (h) contains no requirement for a signed petition to be notarized. The proposal violates this bylaw for reasons already discussed above. Roberts Rules also contain no such requirement.

ART VII, SECTION 3 authorizes the appointment of special committees and is in compliance with Roberts Rules. These are in addition to the ten standing committees identified in the bylaws ART VII Sec 1. The proposed revision attempts to allow the BOD to bypass special committees altogether and report directly to the membership without independent consideration by the current mandate of two persons per special committee. The proposal continues to dilute the property owners' rights to make informed decisions.

ART XI, SECTION 1 includes a requirement for the BOD to provide written notice of a proposed bylaws change. The proposal eliminates the requirement for a written notice and suggests that information be substituted. The result once again dilutes the memberships' legal rights to proper notice and is without justification. Not only must the membership have legal notice but they must receive the written proposed revisions and rational as discussed above.

Should you have any questions regarding the content of this letter, you may respond to our offices in writing to the address above. Please include the intake number [474712] on any correspondence. Should you wish to speak with me, please call 856-298-4223. You will need to provide the intake number when you call so that the matter may be properly routed to me.

Very truly yours,

A handwritten signature in cursive script that reads "Francine Cracker". The signature is written in black ink and is positioned above the typed name.

Francine Cracker
For the Firm

FC/ab
Cc: James Portale