

NOTES

Paragraph 5 of the TVPOA Contract shown below is somewhat perplexing as to the portion titled as "Cost of Enforcement":

5. Cost of Enforcement: Requesting Member agrees that any breach of the terms of this Agreement may give rise to irreparable harm for which money damages would not be an adequate remedy and accordingly agrees that, in addition to all other remedies available to TVPOA, TVPOA shall be entitled to enforce the terms of this Agreement by a decree of specific performance without the necessity of proving the inadequacy of money damages as a remedy. In the event TVPOA retains an attorney as a result of the breach by Requesting Member of any of the terms, covenants and provisions of this Agreement, the Requesting Member agrees that the member shall be responsible for TVPOA's reasonable attorneys' fees and other costs incurred in connection with the enforcement of this Agreement.

According to the Tennessee Legal Code for Non-Profits, Section 48-66-101 states the following language:

C. A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class showing the number of votes each member is entitled to vote.

Section 48-66-102 further states the following:

D. The right of inspection granted by this section may not be abolished or limited by a corporation's charter or bylaws.

It appears that the TVPOA, by virtue of this Legal Contract is imposing criteria upon a property owner which is not part of the Tennessee Legal Code?

Some might think that the TVPOA has once again over stepped it's authority in creating this agreement and it certainly opens up any property owner (list requestor) for actions by the TVPOA which may not be legitimate nor defensible.

POA
TELLICO VILLAGE
PROPERTY OWNERS ASSOCIATION

June 29, 2010

Mr. Rich Anklin
120 Coyatee Circle
Loudon, TN 37774

Re: Document Access Request dated 06-18-10

Mr. Anklin,

Per your document request of June 18, 2010, attached is a copy of the agreement to be signed by a property owner requesting the POA membership list for purposes as outlined in the Member Inspection Rights section of the TVPOA Policy on the Use of the POA Membership List as stated below:

(B) Member Inspection Rights -- POA members may also inspect and copy the membership list as permitted under the Tennessee Nonprofit Corporation Act, provided the member complies with all of the requirements of that statute and the POA's applicable rules and procedures (e.g., provides at least five business days notice, makes such request in good faith and for a proper purpose, describes with reasonable particularity the purpose of such request, pays the POA's charges for providing the list, etc.). In all such cases, the membership list may not be used for any purpose unrelated to the member's interest as a member of the POA, may not be used to solicit money or property (except as permitted by state law for POA election purposes), may not be used for any commercial purpose, and may not be given or sold to or purchased by any person. Any member requesting a copy of the POA membership shall be required to enter into a written contract with the POA restricting the member's use of the membership list to the purpose approved by the Board of Directors and containing such other provisions as are necessary or desirable to assure compliance with the applicable statutory requirements and the POA's rules, procedures and policies regarding the membership list.

Sincerely,



Winston Blazer
General Manager

WB/ss

Enc.

Agreement for Use of TVPOA Membership List

This Agreement is made as of _____, 20____, between Tellico Village Property Owners Association, Inc., a Tennessee nonprofit corporation with a principal office address of 112 Chota Center, Loudon, Tennessee 377774 (hereinafter referred to as “TVPOA”) and _____, a member of TVPOA whose address is _____ (hereinafter referred to as “Requesting Member”) in consideration of the parties’ covenants expressed below:

1. Purpose of the Agreement: Requesting Member has made a valid document access request under TVPOA’s Document Access Rules and corresponding state law to obtain the TVPOA membership list or some part thereof and TVPOA is willing to provide the information so requested provided Requesting Member agrees that such information shall only be used for the following purpose: _____
_____.
2. Protection of the Membership List: Requesting Member agrees that neither the membership list nor any part thereof shall be used by Requesting Member or any other person for any purpose other than the purpose stated in Section 1 of this Agreement above. Requesting Member also agrees that neither the list nor any part thereof shall be used to (i) solicit money or property; (ii) used for any commercial purpose, or (iii) released, sold or otherwise conveyed or transferred to any other person. Requesting Member agrees to take all reasonable measures required to protect the membership list and other information conveyed therein from any unauthorized use and shall promptly report to TVPOA any occurrence or situation that might give rise to or result in the unauthorized use of the membership list as a result of Requesting Member’s acts or omissions.
3. Entire Agreement. This Agreement embodies the entire Agreement and understanding of the parties with respect to the matters contemplated hereby and supersedes all prior written or oral commitments, arrangements or understandings with respect thereto. There are no representations, restrictions, agreements, promises, inducements, statements of intentions, warranties, covenants or undertakings with respect to the matters or transactions contemplated hereby other than those expressly set forth herein.
4. Amendment. This Agreement cannot be amended, modified or supplemented by any of the parties in any respect except by a subsequent written agreement entered into by both parties.
5. Cost of Enforcement. Requesting Member agrees that any breach of the terms of this Agreement may give rise to irreparable harm for which money damages would not be an adequate remedy and accordingly agrees that, in addition to all other remedies available to TVPOA, TVPOA shall be entitled to enforce the terms of this Agreement by a decree of specific performance without the necessity of proving the inadequacy of money damages as a remedy. In the event TVPOA retains an attorney as a result of the breach by Requesting Member of any of the terms, covenants and provisions of this Agreement, the Requesting Member agrees that the member shall be responsible for TVPOA’s reasonable attorneys’ fees and other costs incurred in connection with the enforcement of this Agreement.

6. Successors and Assigns. Except as otherwise expressly provided in this Agreement, this Agreement shall not inure to the benefit of, or be enforceable by, or create any right or cause of action to, any person or entity other than the parties hereto.

7. Governing Law. Any and all disputes arising out of this Agreement (and all actions relating to the validity, construction, interpretation and enforcement of this Agreement) shall be governed, construed and enforced according to the laws of the state of Tennessee, and shall be instituted and litigated in the courts of the state of Tennessee. In accordance therewith, the parties hereto hereby submit to such jurisdiction in Loudon County, Tennessee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in Loudon, Tennessee, as of the day first above written.

Tellico Village Property Owners Association, Inc.

By: _____
Winston Blazer, General Manager

Date _____

Requesting Member:

Printed Name

Date _____

Signature