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VIA E-MAIL TO
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Tree Tops Neighborhood Association, Inc.
Board of Directors
C/o Diane Miragliotta, Manager
Brian Bradway, President

Re: Internet Survey / Amendment to the Declaration

Dear Board of Directors:

I have been asked to render an opinion on the legal efficacy of “voting” that is taking place via the internet for an amendment to the Declaration.

FACTS

A member/lot owner of the Association has e-mailed to all members of the Tree Tops Neighborhood Association, Inc. (“Association”) a link to:

<http://www.surveymonkey.com/s/YBGBTYB>

At the link a page is displayed where the recipient of the e-mail may vote for or against an amendment to the Declaration.¹ The page describes the amendment in the same way the written proxy distributed by the Board of Directors described the amendment some months ago when a Membership vote was taken at a specially called Membership meeting.² There is a box for a name and address, and a button to submit the vote. Absent from this page is any reference to a date, time, and place of a meeting at which the amendment to which reference is made will be voted upon in person or by proxy.

¹ The amendment is commonly known as the “dock amendment.”

² An Amendment to Article 13.2 of the Declaration of Covenants, Restrictions, and Easements of Tree Tops Neighborhood, as amended, that clarifies the requirements for dock submittals, establishes new standards for the location, dimensions, and appearance of docks, and makes other changes pertaining to the construction of docks and the procedures for approving them. The undersigned acknowledges that he/she/they have read the full text of the amendment.

ANALYSIS

The Bylaws allow corporate Membership action to be taken in two ways: First, at a meeting of the Membership,³ or, second, by written consent without a meeting.^{4 5}

The survey vote is ineffective as a proxy vote. It does not state a person who is the proxy holder. It does not state the date, time and place of the Membership meeting for which the proxy is given.⁶ Hence, the survey vote does not comport with the first method of taking Membership action.

Neither does the survey comport with the second method of Membership action: written consent. The elements of written consent without a meeting are generally as follows:

1. A writing,
2. The writing having a date,
3. The writing describing the action to be taken, and
4. Delivery to a listed corporate officer or principal place of business⁷

The governing documents are silent on whether voting by survey through internet communication is the equivalent of a "writing." It has been held by the Department of Business and Professional Regulation, State of Florida, that Homeowner Association e-mail voting cannot serve as a substitute for voting "in writing" when a statute or association governing document

³ Article III, Section 3.4 of the Bylaws.

⁴ Article III, Section 3.7 of the Bylaws.

⁵ There is an issue as to whether an amendment to the Declaration can be done by written consent at all in view of the requirement in the Declaration that amendments be made by "vote" (See, Article XVI, Section 16.5 of the Declaration), and the need to have the amendment run with the land. However, because I conclude in this opinion later that the survey is not "writing," it is unnecessary to consider and resolve this issue.

⁶ §720.306 (8) states as follows: Proxy voting. --The members have the right, unless otherwise provided in this subsection or in the governing documents, to vote in person or by proxy. To be valid, a proxy must be dated, must state the date, time, and place of the meeting for which it was given, and must be signed by the authorized person who executed the proxy. A proxy is effective only for the specific meeting for which it was originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires 90 days after the date of the meeting for which it was originally given. A proxy is revocable at any time at the pleasure of the person who executes it. If the proxy forms expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his or her place.

⁷ Article III, Section 3.7 of the Bylaws states: In order to be effective, the action must be evidenced by one or more written consents describing the action taken, dated and signed by approving Members having the requisite number of votes and entitled to vote on such action, and delivered to the Association by delivery to its principal place of business, the corporate secretary, or another officer or agent of the Association having custody of the book in which proceedings of meetings or Members are recorded. Written consent shall not be effective to take the Association action referred to in the consent unless the consent is signed by Members having the requisite number of votes necessary to authorize the action within 60 days of the date of the earliest dated consent and is delivered in the manner required by this section.

requires that voting be conducted in writing.⁸ The Department held that e-mail can be manipulated to appear that it is coming from an authorized person when in fact it is not. This is particularly so when there is no verification regime in place.⁹

Further, in the instant matter, there is no writing with a dated signature that can be delivered to a corporate officer at a principal place of business.

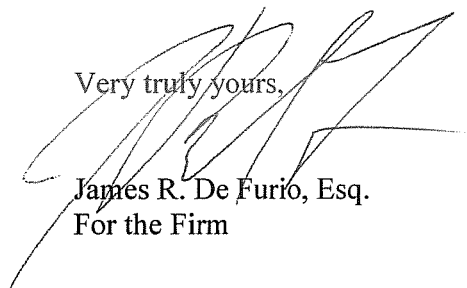
It would appear that the survey through the *surveymonkey* website carries no protections required by DBPR in the *Gatsby* case. There is no system in place to prevent manipulation and ensure verification.

CONCLUSION

It is my legal opinion that the survey taken at <http://www.surveymonkey.com> is not a valid proxy vote at a Membership meeting, nor is it a valid Membership written consent without a meeting to pass an amendment to the Declaration.

Thank you for giving me this opportunity to assist you. Should you have any questions please call me.

Very truly yours,



James R. De Furio, Esq.
For the Firm

JRD:ks

⁸ *Gatsby Condominium Association, inc. v. Unit Owners Voting for Recall*, 2004-03-4272, 2004-03-3311 (August 19th, 2004)

⁹ Id