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*Via First Class Mail*

To Co-owners  
Bloomfield on Square Lake Condominium Association  
3080 Orchard Lake Road, Suite J  
Keego Harbor, MI 48320

Re: Smoking and odor complaints

Dear Co-owners,

Please be advised that this firm represents the Bloomfield on Square Lake Condominium Association. We have been asked by the Board of Directors to address the community regarding the Association's responsibility to take enforcement action in response to complaints about offensive odors from neighboring units. This letter will explain why the Association has limited enforcement abilities when it comes to odors from neighboring units as well as the actions that co-owners themselves may engage in to address these types of dispute.

Smoking within one's home, both tobacco and marijuana, is legal in Michigan. Smoking of any substance within a Unit is not specifically prohibited by the Bylaws. It goes without saying that cooking odors are also legal. When lodging complaints about odors with the Association, co-owners may look to Article VI, Section 4 of the Bylaws which prohibits, "anything to be done which may be or become an annoyance or a nuisance to the Co-owners of the Condominium...." Co-owners who find cooking or smoking odors to be bothersome often look to the Association for enforcement of this restriction.

*Davis v. Echo Valley et al*, 349 F.Supp.3d 645 (6<sup>th</sup> Cir. 2019), is a recent case that analyzes the restriction against an "annoyance or a nuisance" and clarifies that smoking within one's unit likely will not rise to the level of a Bylaw violation. Phyllis. Davis was a cancer survivor living in an apartment style complex who complained about smoking odors from a neighboring unit. Ms. Davis filed a federal lawsuit against her neighbors and the Echo Valley Condominium Association alleging various causes of action, including the Association's failure to enforce the Bylaw prohibition against annoyances and nuisances. In upholding the District Court's decision to summarily dismiss her case, the Court of Appeals held:

Davis chose to live in a condo complex whose bylaws do not restrict smoking. As other courts have found, while even a small amount of smoke

might be a nuisance in a complex that bans smoking, the same cannot be said for a complex that allows it. Indeed, other courts reviewing these claims “have almost uniformly found no right to relief” on nuisance theories.

*Davis v. Echo Valley Condominium Ass’n et al*, 349 F.Supp. 3d 645 (2019)(internal citations omitted)

The *Davis* Court further held that in order for an alleged violation to be a legally actionable annoyance or a nuisance, it must be something that, “most residents would *reasonably* find *significantly* bothersome – in contrast to the activities that can be generally expected in a condo complex.” *Id*, at 494 (Emphasis in original, internal citations and quotes omitted).

In light of this court decision, and beyond sending courtesy letters, the Association will not be taking enforcement actions against co-owners in response to complaints about odor unless it has received numerous written complaints from multiple co-owners. In order for the Association to pursue legal action against a co-owner related to odor complaints, those lodging written complaints against their neighbor will be required to provide sworn affidavits about their odor complaints and may need to testify at trial against their neighbor.

In the event that a co-owner is bothered by odors from a neighboring Unit, the following actions may be taken to address the issue:

1. Co-owners may modify their Units to help prevent odors from escaping or entering their Unit. Modification of the Common Elements requires the written approval of the Board. Co-owners will be responsible for the costs and future maintenance of the requested modifications.
2. Co-owners may seek to modify the Bylaws to prohibit smoking within Units. This office can prepare a proposed amendment and accompanying voting packet at the Board’s request. The co-owner(s) requesting such an amendment would be responsible for the costs of the amendment pursuant to Section 90 of the Condominium Act. The minimum cost for such an amendment and voting packet is \$810.00. The Co-owner(s) would be reimbursed these costs if the amendment is adopted by the community.
3. Pursuant to Article IX of the Bylaws, Co-owners are entitled to take their own legal action against a fellow co-owner to enforce the Bylaws.

Despite the legality of smoking within Units, the Board of Directors requests that co-owners be considerate of their neighbors and be aware of the fact that cooking or smoking odors may be escaping your Unit and unpleasant to others. The Board asks that all Co-owners make efforts to keep Bloomfield on Square Lake a community that everybody can enjoy.

Very truly yours,  
MAKOWER ABBATE GUERRA  
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