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August 30, 2003

Board of Directors  
Lake Barcroft Association, Inc.  
P.O. Box 1085  
Falls Church, VA 22041

Re: Applicability of the Virginia Property Owners Association Act

Dear Members of the Board:

I am writing, as requested, to provide our opinion regarding whether the Virginia Property Owners Association Act ("Act") applies to the Lake Barcroft Association, Inc. ("LBA"). Based on our review of the law and the Association's documents and for the reasons set forth below, it is our opinion that the Act would most likely be deemed by a Court of law to apply to the Association.

Pursuant to Section 55- 508 of the Act, the Act applies to:

- 1) all developments subject to a declaration initially recorded after January 1, 1959;
- 2) all associations incorporated or otherwise organized after such date; and
- 3) all subdivisions created under the former Subdivided Land Sales Act.

With respect to the Lake Barcroft subdivisions, as originally created, the Subdivided Land Sales Act does not apply because that legislation went into effect in 1978. Accordingly, Lake Barcroft subdivision could not have been created under the Subdivided Land Sales Act.

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With regard to the provision related to developments being subject to a “declaration” initially recorded after January 1, 1959, this could be applicable to Lake Barcroft. Although no title search was performed, it is our understanding that there were lots within each of the Lake Barcroft subdivisions which were initially sold after 1959 by the original developers to original purchasers. If these post-1959 lots were sold in the same manner and with the same deed restrictions as the lots sold pre-1959, it is probable that a Court could determine that these “Deed Restrictions,” contained in each of the individual deeds, created a “declaration” post -1959, thus subjecting that Lot to the application of the Act, especially when you consider the broad definition of “declaration” under the Act. If that individual Lot was subject to the Act, then, pursuant to Section 55-508 of the Act, all lots within the subdivision in which that lot was located would be subject to the Act because, pursuant to the Act:

if any one lot in a development is subject to the provisions of this chapter, all lots in the development shall be subject to the provisions of this chapter notwithstanding the fact that such lots would otherwise be excluded from the provisions of this chapter.

Likewise, it is also probable, that a Court would find the Act applicable to the Lake Barcroft development as a result of Lake Barcroft Association, Inc. being the successor-in-interest to Barcroft Lake Management Association, Inc. (“BARLAMA”) and the parent corporation to Barcroft Beach, Inc. (“BBI”). As you are aware, BBI was incorporated in 1951, thus, falling outside of the Act’s applicability. However, both BARLAMA and LBA were created post-1959 for the purposes of taking over the authority of collecting the assessments payable originally to BBI and taking on the responsibilities of BBI to “maintain the beaches.” Pursuant to the Act, an Association is defined as a “Property Owners Association,” which is subsequently defined as:

an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration.

As stated above, the term declaration has a broad definition, and is defined under the Act as:

any instrument, **however denominated**, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of the lots, or on any other entity any mandatory payment of money in connection with the provision of maintenance

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and/or services for the benefit of some or all of the lots, the owners or occupants of the lots or the common area. [Emphasis Added]

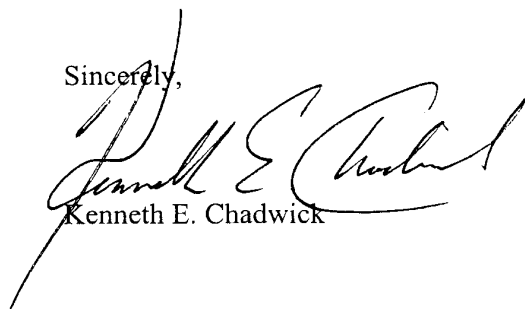
Please note that a recent statutory change, effective July 1, 2003, eliminated the previous \$150.00 ceiling which triggered the applicability of the Act to associations.

Accordingly, based on our review of the Deed Restrictions and the Articles of Incorporation and Bylaws for BARLAMA and LBA, it is our opinion that there is a creation of the authority in the "Association" to impose on lots the mandatory payment of money in connection with the provision of maintenance and or services for the benefit of some or all of the lots. and as a result of their successor-in interest status and being created post-1959. Accordingly, as a result of their successor-in-interest status and post-1959 creation and the fact that the necessary prerequisites exist for the Deed Restrictions to be considered a Declaration for the purposes of this Act, it is our position that a Court could deem that the Act applies to the Lake Barcroft subdivisions and that LBA as the parent of BBI, is a property owners association as defined by the Act.

Although it is our opinion that a Court would find that the Act currently applies to the Lake Barcroft subdivisions and that LBA and BBI are property owners associations under the Act, the only definitive means of clarifying this question would be to submit the question to a Court with competent jurisdiction over this matter. Obviously, some case in controversy would have to exist with an opposing party, however, this could be effected under the appropriate circumstances and facts, through a declaratory judgment action or some other legal proceedings where the Court would be asked to apply the provisions of the Virginia Property Owners Association Act.

I trust that I have responded to the issues raised. Please do not hesitate to call me should you have any questions.

Sincerely,



Kenneth E. Chadwick