



Allie Jett  
Licensed in GA & SC  
404.369.0388  
allie@jettlawgroup.com

March 15, 2021

**VIA EMAIL**

Mr. Jimmy Bailey  
KICA COO  
[jimmy.bailey@kica.us](mailto:jimmy.bailey@kica.us)

Re: Definition of "member" under the KICA Covenants

Dear Mr. Bailey:

I understand that there is some effort by one or more members of the Kiawah Island Community Association, Inc. (KICA) to initiate a petition for referendum on the KICA Board of Directors' decision to expand the size of the Board and appoint individuals to fill those vacancies. Accordingly, we have previously discussed the process for petitioning for a referendum. I understand that many members of the community have expressed confusion or consternation at their eligibility to sign a petition calling for a referendum and how that differs from their voting rights as established by the KICA Covenants. This letter is intended to offer an explanation of that process and why there are differences between the signing of a petition calling for a referendum versus the voting on the referendum itself.

Under Article III, Section 5 a referendum on any Board action can be triggered "by presenting to the secretary of the Board within thirty (30) days of the taking of such action or ratification by the Board of its intent to take such action a petition signed by not less than twenty-five per cent (25%) of the Members." Importantly, the act being performed here is not a vote, but rather a signing of the petition. Qualification to sign the petition is reserved to "Members" as defined by the KICA Covenants.

Article I(n) of the KICA Covenants provides that "'Member';" shall mean and refer to all those Owners who are Members of the Association as defined in Section 1 of Article III." That Article III, Section 1 defines membership as follows: "Every Owner except Owners which are exempt from the payment of assessments shall be a Member of the Association. The Company shall be a Member of the Association."

This provision defining a Member as an Owner (with capitalization as a defined term), takes us therefore, to the definition of “Owner” in the KICA Covenants. That definition can be found at Article I(1) and reads as follows:

"Owner" shall mean and refer to the Owner as shown by the real estate records of Charleston County, South Carolina, whether it be one or more persons, firms, associations, corporation, or other legal entities, of fee simple title to any Residential Lot, Family Dwelling Unit, Multiple Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, or Unsubdivided Land situated upon the Properties but, notwithstanding any applicable theory of a deed of trust, shall not mean or refer to the mortgagee, his or its successors or assigns, unless and until such mortgagee has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. In the event that there is of record a deed granting one or more parties life estate in any lot or parcel of land within the Properties, the Owner of such lot or parcel of land shall be the holder or holders of the life interest, regardless of who holds the fee interest. In the event that there is of record a long-term contract of sale covering any lot or parcel of land within the Properties, the Owner of such lot or parcel of land shall be the purchaser under said contract and not the fee simple title holder. A long-term contract of sale shall be one where the purchaser is required to make payments for the property for a period extending beyond nine (9) months from the date of the contract, and where the purchaser does not receive title to the property until such payments are made but the purchaser is given the use of said property.

Therefore, under this series of provisions and definitions, any petition calling for a referendum of a Board action must be signed by not less than 25% of those individuals or entities who hold fee simple title to Residential Lot, Family Dwelling Unit, Multiple Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, or Unsubdivided Land situated upon the Properties (as those terms are defined in the KICA Covenants), those who hold a life estate interest, or those who hold a long term contract for the sale of one of those properties.

If a petition for referendum is presented to the Secretary of the Board within the requisite 30 days that meets the 25% of the Members threshold, then there is to be a vote on whether or not to approve the action taken by the Board. The action taken by the Board will be sustained if “51%, or more, of the votes actually returned to the Association within the specified time<sup>1</sup> shall be in favor of such action....” A vote is a very different action under the KICA Covenants than

---

<sup>1</sup> The “specified time” is not spelled out in the KICA Covenants. Rather, this refers to the referendum vote setting a deadline within which the ballots must be returned in order to be counted.

Jimmy Bailey  
March 15, 2021  
Page 3 of 3

the signing of the referendum petition. The KICA Covenants in Article III, Section 2 establish 5 separate types of voting rights, denominated as Type A, B, C, D, and E. It is my understanding that the Kiawah community understands how voting rights are calculated and allocated to individual properties. As such, I will not be reiterate that structure here.

I hope that this discussion helps. Certainly, if you have any questions about the contents of this letter or any other matter, please do not hesitate to let me know.

With best regards,

/s/  
*Allison C. Jett*

CC: DAVE MORLEY, CHAIR