

Spa Rules

Huntington Homeowners' Association

Legal Opinion on Spa Rules

The following is the text of a letter received from the association's lawyer on the question of whether the association can regulate spas in private yards.

To: From: "Ellen de Haan" Subject: Huntington HOA - portable spa Date: Mon, 05 Apr 2004 16:52:21 -0400 Charset: macintosh

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Reply To: Ellen Hirsch de Haan, J.D. edehaan@becker-poliakoff.com

April 5, 2004

HUNTINGTON HOMEOWNERS' ASSOCIATION, INC. c/o Timothy J. Baker, Treasurer 350 2nd Street North, Unit 28 St. Petersburg, FL 33701

RE: Scope of Association Ability to Regulate Alterations and Improvements on Lots

Dear Timothy:

In response to your inquiry regarding whether an owner must be permitted to install a portable spa on his front yard, I have reviewed the Association's Governing Documents, to determine the scope of the Association's ability to regulate use of the property. My findings and comments are as follows:

1. The Declaration of Covenants, Conditions, Restrictions and Easements of the Huntington, Article II., Section 9.(a), provides that the Association is responsible for exterior maintenance on each Lot of:

... lawns, trees, shrubs, landscaped areas including any partially or fully enclosed yards of Lots, . . .

2. The Declaration, Article V., provides that the Association

may create an Architectural Control Committee ("ACC"). Article V., Section 3., provides that no exterior change can be made on any Lot and no "exterior addition to or alteration there of be made" without submission of plans and specifications to the ACC, and approval of the modification. This would apply to portable spas, as well as to modifications of a home.

3. The Declaration, Article V., Section 2., provides for the ability of the ACC to adopt guidelines and standards for alterations and improvements. Accordingly, the ACC could adopt rules prohibiting placement of a spa, or any thing else in the front yard.

4. The Articles of Incorporation, Article III., Section 6., provides that the Board has the ability to make rules and regulations which govern any property which is owned or maintained by the Association. The By-Laws, Article V., Section 2., also provide that the Board has the power to adopt and amend and enforce rules and regulations "governing the use of all or any portion of the Common Area, the Property and the Association's activities." (The "Property" is defined in the Declaration, Article I., Section 22., as all property which is subject to the Declaration. This would include the Lots.) That would mean, the Board could make rules prohibiting placement of a portable spa in the front yard.

At this point, if there are any ACC guidelines or Association Rules which address placement of any improvement or equipment in the front yard, then the guidelines or rules would be enforceable. However, if there are no such regulations, then the only thing in the Documents which might form the basis for prohibiting the spa from being in the front yard would be if it is unreasonably interfering with the ability of the Association to maintain the lawn and landscaping on that Lot.

If there are no rules, it is a good time to consider adopting some. However, the new rules would not apply to a current situation.

When you have had the chance to review this letter, please contact me at your convenience regarding the current ability of the Association to require removal of the spa from the front yard.

Very truly yours,

/S/

Ellen Hirsch de Haan For the Firm