

Barefoot Resort Nonresidential Owners' Association, Inc.
Special Meeting of the Board of Directors
July 14, 2025

I. CALL TO ORDER

A Special Meeting of the Nonresidential Owners Association, Inc. was called to order by Mr. Couture at 10:03 a.m. at the Ponderosa Management Office located at 4876 Barefoot Resort Bridge Road, Suite C, North Myrtle Beach, SC 29582.

Board Members Present: Rick Couture, Tom Staats, Joy Cottle, and Rick Rapant

Board Members Present Via Zoom: Holly Casper

Board Members Absent: Fred Caruso

Also Present: Kelly White, Ponderosa Management

II. ESTABLISHMENT OF A QUORUM

The roll was called and it was established that a quorum of the Board of Directors was present.

III. UNFINISHED BUSINESS

Upon a motion made by Mr. Springs, seconded by Mr. Staats, and carried, it was MOVED: To move into Executive Session.

A. Waiver of Conflict of Interest

Following discussion, upon a motion made by Mr. Staats, seconded by Ms. Casper, and carried, it was **MOVED: To sign the Waiver of Conflict of Interest Documents as provided by Attorney Alicia Thompson with Mullen Wylie SC Attorneys law firm attached as Exhibit "A". Voting in Favor of the Motion: Mr. Springs, Mr. Staats, Ms. Casper, and Mr. Couture. Opposed to the motion: Mr. Rapant and Ms. Cottle.**

Attached as Exhibit "B" to these Minutes is Mr. Rapant's "Position Statement of Legal Representation for Master and Sub-Associations".

Attached as Exhibit "C" to these Minutes is Ms. Cottle's Formal Objection to "Proceeding with Vote -Procedural Grounds".

Attached as Exhibit "D" to these Minutes is Ms. Cottle's "Objection to Mr. Couture, Mr. Staats, and Ms. Casper's casting a vote due to an unresolved conflict of interest in this matter".

Attached as Exhibit "E" to these Minutes is Ms. Cottle's and Mr. Rapant's "Demand that the Vote be Postponed Until All Cross-Entity and Dual Representation Coordination is Completed".

B. Board Member Suggestion for the Reimbursement of funds paid to Mullen Wylie, SC Attorneys

Following discussion, upon a motion made by Mr. Staats, seconded by Ms. Casper, and carried, it was **MOVED: That the Board would not seek reimbursement from Mullen Wylie, SC Attorneys for legitimate expenses remitted to the firm. Motion approved by Mr. Springs, Mr. Staats, Ms. Casper, and Mr. Couture. Motion was opposed by Mr. Rapant and Ms. Cottle.**

C. Review of Proposal from Toohey Diez, CPA for the Counting of Annual Election Ballots

Those present concurred that it was not necessary to have Toohey Diez, CPA count the Annual Election Ballots providing the Board adopted procedures were formulated and for the counting of ballots. This item is tabled until the procedures is formatted.

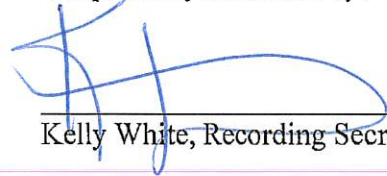
D. Appointment of Nominating Committee for the Annual Board Member Election

The Board concurred that it would not appoint a Nominating Committee for the 2025 Annual Board Member Election. The Board will impose a "self-nomination" process, thereby all owners submitting an application to serve on the Board would be placed into nomination. This item is closed.

IV. ADJOURNMENT

Upon a motion made by Mr. Staats, seconded by Mr. Springs, and carried, it was **MOVED: To exit Executive Session and adjourn the meeting at 10:31 a.m.**

Respectfully submitted by:



Kelly White, Recording Secretary

8/29/25
Date of Approval

Approved by:



Rick Couture, President

Aug 29, 2025
Date of Approval

Position Statement on Legal Representation for Master and Sub-Associations

As a board member and fiduciary representative of Barefoot Resort Nonresidential Properties, I submit this position regarding the proposed or current legal representation shared between the Master Association, Barefoot Resort Joint Committee, Inc. and Sub-Association Barefoot Resort Nonresidential Properties.

It is my position that it is not in the best interest of either association for the Master HOA and the Sub-HOA to be represented by the same legal counsel. While the intention may be to streamline communication or reduce legal expenses, the risks and potential consequences of shared representation significantly outweigh any perceived benefits.

Conflict of Interest

The Master Association and the Sub-Association are separate legal entities, each with distinct fiduciary duties, governing documents, and member interests. Situations may arise such as disputes over financial responsibilities, enforcement actions, or allocation of maintenance obligations where the interests of the two associations diverge. A single attorney cannot represent both parties in such matters without compromising ethical obligations.

When board members serve on both the Master and Sub-HOA, they have dual fiduciary duties that may conflict and the potential for bias is magnified. An attorney representing both associations cannot ethically navigate these waters without risking favoritism or ethical violations.

The attorney's loyalty could be seen as compromised. The same attorney cannot give independent advice to each HOA when some board members are sitting on both sides of the table. The lawyer may unconsciously or strategically favor relationships with the board members making true neutrality impossible.

Property owners may rightly question whether decisions are being made in the best interest of the associations or to protect liability or financial stake. Shared legal counsel in this scenario opens the door to accusations of self-dealing, concealment of conflicts, and breach of fiduciary duty, especially if contracts, assessments, or other obligations are involved.

Even with a conflict waiver, the attorney's ability to offer undivided loyalty is impaired.

Loss of Independent Legal Advice

Each association is entitled to receive legal advice that is solely in its best interest. When counsel is shared, the legal advice offered may be generalized, limited, or biased to avoid favoring one party over the other. This deprives each board of candid, strategic legal guidance and limits its ability to make fully informed decisions.

Compromised Attorney-Client Privilege

When the same individuals are involved in both boards, confidential communications may be improperly shared or manipulated for strategic advantage. This not only threatens legal privilege, but can become evidence in a lawsuit challenging control, favoritism, or failure to transition power appropriately to property owners.

Risk of Dual Disqualification

In the event of a legal dispute between the Master and Sub-HOA, the shared attorney would be disqualified from representing either party due to the conflict. Both associations would then be required to seek new counsel, incurring additional cost, delay, and disruption to governance.

Imbalance of Influence and Resources

The Master Association typically has greater financial and administrative resources than a Sub-Association. This disparity may lead to real or perceived preferential treatment by shared counsel, creating mistrust among board members and property owners.

Separate Corporate and Fiduciary Obligations

Both the Master HOA and the Sub-HOA are governed by their own sets of covenants, bylaws, and boards of directors. Their legal obligations, budgetary priorities, and enforcement strategies are not necessarily aligned. Legal representation must reflect and support these unique organizational frameworks.

Appearance of Impropriety

Even if no actual conflict has occurred, the appearance of potential bias is enough to undermine community trust in board leadership and decision-making processes. Independent legal representation upholds transparency, neutrality, and confidence in governance.

Waiver of Conflict Doesn't Eliminate Risk

Even if both the Master and Sub-HOA agree to a conflict waiver, it does not eliminate the inherent ethical and practical risks of shared legal representation. A waiver may acknowledge the potential conflict, but it cannot erase it. The attorney is still bound by professional rules of conduct, which prohibit acting against a client's interest or representing clients with materially adverse positions.

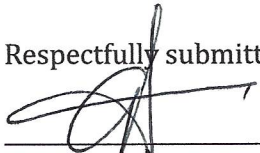
If a dispute arises, the attorney may be forced to withdraw from representing both associations, leaving both parties without counsel at a critical moment. Additionally, such a withdrawal can delay conflict resolution, increase legal costs, and undermine the stability of governance during the transition.

Furthermore, relying on a waiver can give the false impression that all future legal conflicts can be safely managed, when in reality, the structure itself remains fundamentally flawed and vulnerable to legal challenge.

In Conclusion

For the reasons stated above, I, Albert R Rapant, Treasurer of Barefoot Resort Nonresidential Properties, believe that separate legal counsel is essential to maintain independent advocacy, preserve fiduciary integrity, and mitigate legal risk. I respectfully recommend that the Sub-HOA and Master HOA retain different attorneys to represent their respective interests now and in the future.

Respectfully submitted,



Albert R Rapant
Treasurer, Barefoot Resort Nonresidential Properties

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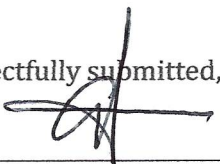
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Respectfully submitted,

 7/13/25

Albert R Rapant
Treasurer, Barefoot Resort Nonresidential Properties

Formal Objection to Vote on Waiver of Conflict of Interest Due to Failure of Dual-Serving Members to Recuse

From: Joy D. Cottle, Vice President – NROA Albert R. Rapant, Treasurer – NROA
To: Board of Directors, Barefoot Resort Nonresidential Owners Association (NROA)

Date: July 14, 2025

RE: Formal Objection to the Voting Procedure on the Conflict Waiver Concerning Shared Legal Counsel

Dear Members of the Board,

This correspondence serves as our formal objection to the vote taken on the proposed Waiver of Conflict of Interest, which would authorize the same legal counsel to represent both the Joint Committee (JC) and the Nonresidential Owners Association (NROA).

Specifically, we object to the participation and voting of the following board members: Rick Coutour, Tom Staats, and Holly Casper, each of whom holds concurrent positions on both the NROA and Joint Committee Boards. These individuals have a clear conflict of interest in the matter, as the vote directly concerns legal representation affecting both entities in which they serve.

Despite this conflict, these directors did not recuse themselves, nor did they disclose any intent to abstain. Their participation in the vote undermines the integrity of the process and raises significant concerns regarding:

- Breach of fiduciary duty,
- Procedural invalidity of the action taken, and
- Potential exposure to legal or ethical challenges should the waiver later be contested.

We respectfully request that this objection be formally entered into the minutes of the meeting, and we reserve all rights to further address this matter through appropriate governance channels or legal remedies if necessary.

Sincerely,



Joy D. Cottle
Vice President
Board of Directors, Barefoot Resort Nonresidential Owners Association (NROA)



Albert R. Rapant
Treasurer
Board of Directors, Barefoot Resort Nonresidential Owners Association (NROA)

Subject: Formal Objection to Proceeding with Vote – Procedural Grounds

From: Joy D Cottle, VP NROA and Albert R Rapant, Treasurer NROA

To: Board of Directors, Barefoot Resort Nonresidential Owners Association (NROA)

Date: July 14, 2025

Re: Procedural Objection and Request to Postpone Vote on the Waiver of Conflict of Interest for Dual Legal Representation

Dear Members of the Board,

We hereby submit a formal objection to the proposed vote on the Waiver of Conflict of Interest for dual legal representation of law firm Mullen Wylie SC, LLC scheduled for today July 14, 2025, on the basis of multiple procedural deficiencies, outlined below:

1. Cross-Association Conflict:

Each **Association must independently deliberate and vote**, per governance structure. Separate votes must be recorded in each Board's Meeting Minutes.

2. Conflict of Interest and Dual Representation:

There are board members that simultaneously serve on Joint Committee and the Nonresidential Associations. To prevent double representation and preserve impartiality:

- Anyone serving on both boards must disclose the conflict.
- They should recuse themselves from voting in one of the entities and leave the room during deliberations on these cross-affecting matters.
- If they vote in both boards without recusal, it may be grounds for a challenge or procedural objection.
- Failure to do so compromises the integrity of this process.
- If Either Board Votes "No," the Shared Counsel Arrangement Cannot Proceed.

3. Directors & Officers (D&O) Insurance Coverage Could Be Lost or Denied

Breach of fiduciary duty: If a director acts in their own interest or favors one Association over another, insurers may argue the conduct was intentional or negligent and therefore not covered under the policy.

Violation of conflict-of-interest policies: Most D&O policies require adherence to ethical standards and governance procedures. Ignoring recusal obligations can trigger exclusions for misconduct.

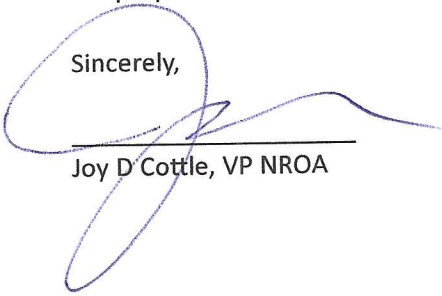
Loss of Business Judgment Rule protection: Directors who fail to recuse may lose the legal shield that protects decision-making done in good faith. This opens the door to personal liability and weakens the board's defense in litigation.

Policy exclusions for dishonest or self-dealing acts: If the conflict results in financial gain or harm to the Association, insurers may invoke exclusions for fraud, dishonesty, or improper personal benefit.

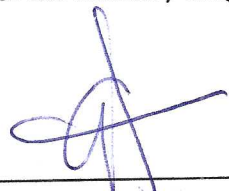
Based on the above, we respectfully demand that the vote be postponed until all cross-entity and dual representation coordination is completed as listed above. We request that this Objection to Vote be entered into the Minutes.

We retain the right to act in accordance with our fiduciary obligations, including reporting this issue to the proper authorities if warranted.

Sincerely,



Joy D Cottle, VP NROA



Albert R Rapant, Treasurer NROA