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Board of Directors  
Sun City Anthem Community Association, Inc.  
2450 Hampton Road  
Henderson, NV 89052

Subject: Distribution of Surplus Funds

The purpose of this letter is to urge the matter of how surplus funds accumulated as of the end of our fiscal year 2008 should be distributed be presented in a good faith effort to the units' owners of SCA for a vote as to whether the surplus funds should be returned to the units' owners or carried forward as a reduction of assessments in 2009 as required by IRS Ruling 70-604. This might be done at a special Meeting of Units' Owners with a solicitation of proxies to strive for large participation by unit's owners, by a special ballot election or by "Some other Fashion" as allowed under TAM 9539001. After the vote of the units' owners is recorded it may be prudent for the board to take action to ratify the results at a properly noticed meeting.

I am concerned significant federal income taxes may result if the IRS rules are not followed explicitly. The requirement for a vote by units' owners, rather than the board, is well established. There seems no basis in IRS regulations, rulings, opinions or court rulings for the board to act solely and unilaterally to determine the distribution of surplus funds.

It seems most HOAs use the ballot process for this election by units' owners as part of their annual election of directors. This normally results in a significant number of units' owners' votes and exceeds quorum requirements. It would seem reasonable for SCA to do the same but I think the opportunity for that election method for 2008 surplus funds may have passed.

Based on the information provided at the tax workshop last week there seems to be history of abuse of IRS Ruling 70-604 by SCA directors over several years in an effort to avoid payment of taxes. (Italicized remarks from memorandums by Gary Porter of Porter & Company except as noted)

1. Carry over of surplus funds year after year. Money was neither returned to units' owners nor was it used to reduce the next year's assessments. Rather it was just accumulated and now totals over \$4.7 million. (*"The Internal Revenue Service has continually held that the carryover allowed by the revenue ruling was to be interpreted as a one-year carryover only. That is, you could not indefinitely carry over a series of excess income from year to year to year."*)
2. Units' owners have never been allowed, or even asked, to vote on distribution of surplus funds. (*"I recommend that the wording of Revenue Ruling 70-604 be*

*literally interpreted and that the election be in the form of a resolution adopted by the membership.”)*

3. The executive boards attempted to unilaterally pass a resolution each year to carry over the surplus funds to the next year and then falsely claim the units’ owners had expressed the “desire” to do so as support of the Association federal tax forms for each year. (Per Adams Kessler Law Firm – “The Ruling [70-604] requires the membership rather than the board vote on the issue.”)
4. Suggestion that certain surplus funds be transferred as an unscheduled deposit to the Association reserve fund. (*“The Ruling [70-604] allows two options, either refunding the excess member income to the members or rolling it forward to the subsequent tax year. However, many tax practitioners and associations have elected a third option, which is to transfer the excess to reserves. The third option is not valid.”*)
5. The resolution adopted by the executive board on August 28, 2008 concerning distribution of surplus funds accumulated as of the end of the 2007 fiscal year purports the desire of SCA Members for a carry over distribution. This is not true. It is a false statement. SCA members never indicated their desires to do so. (*if the election [by members] is not documented in writing, you have no evidence of having made the election.*)

The behaviors noted above would seem to make the Association vulnerable and present considerable exposure to major tax liability as well as possibly penalties for filing a fraudulent tax return by claiming or implying member election of distribution when there was none. In such an event a special assessment might be required to meet tax and penalty obligations. I do not think anyone would like that.

I suggest it is important any resolution passed by the executive board prior to a vote by SCA units’ owners concerning distribution of surplus income at the end of fiscal 2008 make no reference or indication that units’ owners or members have agreed to the distribution indicated in the resolution. That would be a false statement.

Thus I urge prompt good faith action to obtain a vote by units’ owners concerning the distribution of surplus funds accumulated at the end of fiscal 2008 in accordance with IRS Ruling 70-604. Under Nevada Law NRS116.011, NRS116.095 and NRS116.3101 units’ owners have the authority to decide fiscal matters of the Association.

Thank you,

(SIGNED)  
Tim Stebbins