Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

July 22, 2019

SEC-OGC Opinion No. 19-26
Re: Right to Lease of a Non-Stock, Non-Profit Condominium Corporation

ATTY. IRENEO J. MARASIGAN
8TH Floor, PDCP Bank Center Building
V.A. Rufino corner Leviste Street
Salcedo Village, Makati City

Atty. Marasigan:

This refers to your letter dated 22 October 2018 requesting an opinion on: (1) the legal right of Kensington Place Condominium Corporation (Kensington) to lease its newly-owned unit pursuant to its objectives; and (2) whether the act of leasing the unit and other similarly foreclosed units in the future is deemed as doing business, in violation of its registration as a non-stock and non-profit corporation.

You stated that Kensington is a non-stock, non-profit condominium corporation incorporated on 20 June 2006 with SEC Registration No. CN200609494. On 03 July 2014, Kensington filed with the Regional Trial Court (RTC) an action for Judicial Foreclosure of Mortgage against the unit owners of Unit 8-K due to delinquency in payment of association dues and other defaulted assessments. On 23 June 2016, a decision was rendered in favor of Kensington, which became final and executory on 17 May 2017. On 18 September 2017, Kensington filed a motion to sell Unit 8-K at public auction to the highest bidder, which was granted by the RTC on 09 November 2017. On 28 March 2018, during the public auction sale, Kensington, being the highest bidder, purchased and/or acquired Unit 8-K. For this reason, all the rights and interests over the said unit were vested to Kensington as its owner.

Thus, your query, simply stated, is whether Kensington, as owner, may lawfully lease its condominium unit without violating its purpose clause.

Section 86 of the Revised Corporation Code (RCC)[1] provides:

> "SEC. 86. Definition, - For purposes of this Code and subject to its provisions on dissolution, a nonstock corporation is one where no part of its income is distributable as dividends to its members, trustees, or officers; Provided, That **any profit which a nonstock corporation may obtain incidental to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized, subject to the provisions of this Title.** (Emphasis supplied)

[1] Republic Act No. 11232

7/23/19

The law clearly allows nonstock corporations to raise funds so long as it is incidental to the corporation's operations, and that said funds shall be used for the furtherance of the purpose for which it was established. The fact that a non-profit corporation earns a profit as a legal entity, as distinguished from profit, gain or income to the incorporators or members, does not make it a profit-making corporation where such profit or income is used for the purposes set forth in the articles on incorporation and is not distributed to its incorporators, members or officers, since mere intangible or pecuniary benefits to the members do not change the nature of the corporation[2].

Relatedly, a corporation has both express and implied or incidental powers. Express powers are those which are enumerated in Section 36 of the Corporation Code, which is reproduced as Section 35 of the RCC, and those which are sanctioned by the State in the corporation's articles of incorporation. Implied or incidental powers, on the other hand, are the corporation's "powers, attributes and properties . . . incident to its existence"[3], which may be "essential or necessary to carry out its purpose or purposes as stated in its articles of incorporation"[4].

In this connection, there are general powers that may be exercised by every corporation whether or not such powers are stated in the articles of incorporation or by-laws[5]. Section 35(g) of the RCC enumerates the powers expressly given to every corporation created under the general incorporation law, to wit:

> "Sec. 35. Corporate Powers and Capacity. – Every corporation incorporated under this Code has the power and capacity:
>
> xxx xxx xxx
>
> (g) To purchase, receive, take, or grant, hold, convey, sell, lease, pledge, mortgage, and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution;
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> xxx xxx xxx

The Commission has previously opined that: "Fletcher has regarded the power to acquire and convey property as an incident to every corporation although such power is expressly conferred to corporations incorporated in accordance with Section 36 (7) of the Corporation Code[6]. ***Therefore whether or not such power is included in what the corporation could do and perform under its articles of incorporation, it is nevertheless, deemed to be within the scope of its corporate powers by express declaration of Section 36[7] of the Code."[8]***

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[2] 1A Fletcher Cyc. Corp., 1983 rev. vol., sec. 112, at 151 (cited in SEC Opinion dated 09 September 1988 addressed to Technology and Livelihood Resource Center)

[3] SEC-OGC Opinion No. 20-09, citing Section 2 of the Corporation Code

[4] Paragraph (g) and (k) of section 35 of Republic Act No. 11232

[5] De Leon, H. The Corporation Code of the Philippines, Annotated, 267 (1993)

[6] Now Section 35(g) of the Republic Act No. 11232

[7] *Ibid.*

[8] Lopez, R. The Corporation Code of the Philippines, Vol. 2, 512 (1994), citing SEC Opinions dated 6 September 1982, Marble Corporation of the Philippines 25 January 1991, and Philippine Library Materials Project Foundation, Inc.

Based on our records[9], Article II of Kensington's Articles of Incorporation provides in part, to wit:

> "SECOND: A. That the purpose or purposes for which such association is incorporated are:
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> To own and hold title to common areas in the condominium project known an identified as 'Kensington Place Condominium Corporation' xxx xxx. To levy and collect such assessments and penalties against the owners of the units in the project as are provided for in the Master Deed with Declaration of Restrictions and/or approved and authorized by the Board of Trustees; xxx xxx. **To purchase, acquire, own, hold, enjoy, lease, operate and maintain and to sell and convey, transfer or mortgage, or otherwise dispose of, real and personal properties such as may be necessary to achieve the purposes and activities of the association**; xxx xxx" (Emphasis supplied)

It should be noted that the above-highlighted purpose clause is substantially similar to Section 35(g) of the RCC. Hence, it simply affirms the general power of every corporation allowed under the law.

As per Kensington, the income that may be derived from leasing the newly-acquired condominium unit will be used for the same purpose for which condominium dues and fees are collected, that is, to cover for the expenses in managing and administering the condominium project and the corporation. Thus, considering Kensington's representation, it can lease its owned condominium unit as long as it remains necessary in the pursuit of corporate purposes.

It shall be understood that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.[10] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

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[9] Articles of Incorporation of Kensington Place Condominium Corporation dated 31 May 2006
[10] SEC Memorandum Circular 2003-15, No.7