

GENERAL INFORMATION HORSESHOE RIDGE HOMEOWNERS ASSOCIATION (AND HOMEOWNERS ASSOCIATIONS IN GENERAL)

In recent years, more and more developers nationwide have established a homeowners association in conjunction with a new residential development project. There are both significant advantages and potential problems with such associations, but the general consensus is that they are here to stay. The advantages include:

1. protection and enhancement of property values by supplementing county zoning restrictions and requirements;
2. provisions for association-owned and controlled assets such as open-space, parks, recreation facilities and irrigation systems;
3. fostering a sense of community among neighbors and members of the association.

Disadvantages include:

1. acceptance of some limitations as to how individual properties may be constructed, landscaped, used and maintained;
2. additional costs for operating the association and maintaining its assets;
3. heightened animosity when association covenants and rules are violated forcing actions to enforce such covenants and rules.

The developer, Ward (“Jeep”) Studd, established the Horseshoe Ridge Homeowners Association by filing three documents with Mesa County in November of 2000: the “*Articles of Incorporation*,” the “*Bylaws*,” and the “*Declaration of Covenants, Conditions and Restrictions of Horseshoe Ridge Subdivision*” (*CC&Rs*). Purchase of a lot and acceptance of the deed for that lot legally obligates the purchaser to abide by the provisions of all three documents. The title company handling the transfer of ownership should have provided each buyer with copies of all three documents. The buyer should have read all three documents prior to purchasing the property. However, whether or not the buyer received and read the documents, he or she is obligated by law to comply with the provisions of those documents.

A number of property owners in Horseshoe Ridge Subdivision have voiced some concern about enforcement of the provisions of the *CC&Rs*. They bought their property at least in part BECAUSE of the existence of the *CC&Rs* and the ability of the Homeowners Association to enforce them. They believe that their property values are enhanced and protected by enforcing the *CC&Rs* and are concerned that their property values will be diminished by a failure to enforce the rules.

Enforcement authority is provided by Colorado State Statute 38-33.3, the “Colorado Common Interest Ownership Act.” This is a rather lengthy document (48 single-spaced pages) which forms the legal basis for the *Articles of Incorporation*, *Bylaws* and *CC&Rs*. The Act delineates the legal powers of the Association and provides methods allowed for enforcement along with the legal authority for such enforcement.

The topic of “enforcement” in the *CC&Rs* generally summarizes the Colorado Common Interest Ownership Act. “Enforcement” falls within two categories: (1) collection of dues and assessments, and (2) enforcement of all other provisions of the *Articles of Incorporation*, the *Bylaws* and the *CC&Rs*. Ideally, a courteous reminder from the Board of Directors would resolve either issue. However, if owners of a lot do not respond, there are provisions for an escalating level of enforcement. For failure to pay dues or assessments:

- (1) formal notification by certified or registered mail of being in arrears. A penalty of 18% per annum is authorized for every day the dues remain unpaid;
- (2) filing of a lien against the property for the amount of unpaid dues, any penalties and any other expenses incurred to collect the dues;
- (3) foreclosure of the lien in a court of law, collecting all legal expenses and court costs associated with the foreclosure.

For other violations:

- (1) formal notification by certified or registered mail of the precise nature of the violation, including the pertinent provisions of the *CC&Rs*, the *Bylaws* or the *Articles of Incorporation*;
- (2) if desired by the property owners, a hearing of the issue by the Board of Directors;
- (3) if the issue is not resolved with the Board, arbitration may be required in accordance with the Colorado Common Interest Ownership Act;
- (4) imposition of fines by the Association (multiple fines may be levied over a period of time if the violation is not corrected);
- (5) filing of a lien against the property for the amount of the fines;
- (6) foreclosure of the lien as described above.

We all hope that every neighbor will choose to comply, without coercion from neighbors, with the documents regulating the Horseshoe Ridge Homeowners Association. However, if such is not the case, the law does provide for remedies.