

## **Sunset West Homeowner's Association Meeting Minutes**

Date: July 10, 2012

Meeting Time: 7:00 pm – 8:45 pm

Attendance: Executive Board members Curt Behm, Hillery Venturini, Nick Young, Anita Gauthier  
ARC Committee members Vicki Tooley, Lyn Young, Eloy Gonzales

### **1. Welcomed and introduced Anita G. to neighborhood and HOA board**

### **2. Board members were given the following handouts (Attached for reference)**

- a. 2012 HOA To Do List Reminder: Review and Comply with Responsible Governance Policies (<http://www.cohoalaw.com/governance-2012-hoa-to-do-list-reminder-review-and-comply-with-responsible-governance-polices.html>) – *Refer to Attachment 1*
- b. Before Imposing fines – Make Sure Your Ducks Are in a Row 6/10/2011 – *Refer to Attachment 2*
- c. SB 100/SB 89 ANALYSIS, Winzenburg, Leff, Purvis & Payne, LLP – *Refer to Attachment 3*
- d. Outline of Resident Addresses and Current Owners – *Refer to Attachment 4*
- e. Residential Parking: Parking regulations for vehicles in residential areas, Jefferson County Sheriff – *Refer to Attachment 5*

### **3. Reviewed Responsibilities/Duties of HOA Board**

- a. Board Members discussed HOA can pay for the yard work to be complete and charge homeowner or the homeowner can do the requested work
- b. HOA board concern that there may never be a refund of money if the home goes into foreclosure or is already owned by the bank
- c. HOA board does not deal with personal issues of the homeowner but rather strictly the appearance of the property as it pertains to the neighborhood as outlined in the covenants and bylaws
  - i. Vicki Tooley noted that this was the policy while she was President

### **4. Current ARC Committee Issues**

- a. 9253 W. Capri Ave
  - i. Nick Young talked to one of the homeowners
    - a. Home was sent into foreclosure, however home has been released by US Bank to said homeowner
      - i. She appears to be organizing most the work on the property as the other homeowner may no longer be involved with the property
      - ii. New numbers and address for both homeowners were provided to Secretary and will be updated on the residence mailing spreadsheet.
    - b. According to homeowner, an eviction letter has been sent to the current renters, however the renters, who have not paid rent in 7 months, refuse to vacate the residence
  - ii. According to Homeowner, contractors have been hired to paint and do additional work on the property

- a. Son (maybe) asked painter to vacate the property
- iii. Additional potential issues with the property
  - a. Foundation issues on South side of the residence possibly due to drainage off hill
- iv. Past issues with homeowners regarding inability to pay HOA dues and difficulty with communication raised concern for the HOA board members regarding the validity of information provided by either party.
- v. ARC committee should make a request to have documentation of work done on the exterior of the home sent to the HOA for review/record.
- b. 9121 W. Lake Dr.
  - a. Issued a certified letter regarding the trailer parked on driveway and large delivery truck
    - i. The allowed 14 day/year grace period by Jefferson County parking rules has passed
    - ii. Sheriff Deputy Coleburn indicated to Nick & Lyn that a the letter be send to the owner
    - iii. In the past, Deputy Coleburn has indicated that if the vehicles are licensed and there is no signage on vehicle indicating that a business is being run out of the residence, little can be done.
- c. 9174 W. Capri Ave.
  - a. Visible boat parked on driveway has been removed or stored
    - i. Boat has been unlicensed for approximately 5 years
- d. 9142 W. Lake Dr.
  - a. Visible boat parked on property has been removed.
- e. Multiple residents on East end of W. Capri Ave.
  - a. Loud gatherings noted late into the evening during the week and on weekends
  - b. Concern regarding surrounding neighbors and potential disturbance (i.e. new baby)
  - c. HOA Board will leave it up to residents to call Sheriff should the noise reach intolerable limits.
- d. 5970 S. Estes
  - i. Homeowner has the official copy of an approved ARC committee form approved by Zoe Grant (former Sunset West resident and ARC committee member).
  - ii. Nick Young would like to get a copy of the letter for the HOA Board ARC committee records.
- e. 8962 W. Lake Dr.
  - i. Nick requested concurrence for either approval or disapproval of roof color submitted by the owner for a new roof. The colors provided did not match the home. Nick would be making a recommendation to Jaime to stay within a color range similar to the existing roof.
  - ii. Nick will follow up with the owner regarding recommendation for roof color per HOA board discussion

f. Other issues

- a. Regarding section 5.5 'Submission of plans for architectural work....in accordance with standards with section 4.8', section 4.8 does not exist
- b. Nick inquired whether this section 4.8 would specific paint and/or roof colors
- c. Do the original convents provide to original owners (i.e. Vicki and Eloy) included this section 4.8 or could this be a typo?
  - i. Eloy will check his copy of the convents for the section in question

**5. Establish P.O. Box for Incoming HOA mail**

- a. All documents sent to the board either by residents or outside contracted parties would be sent to mailbox rather than a board member's personal residence
- b. If desired, mail could be forwarded from P.O. Box to board members personal residence for convenience.
- c. Multiple board members were in favor of establishing the P.O. Box for safety reasons especially when fines are sent to residences.
- d. Curt Behm (President) motioned to have P.O. Box established
  - i. Nick Young (Vice President) seconded motion
  - ii. Either Nick or Carol will open P.O. Box account

**6. Current Issues Regarding Property Liens**

8941 W. Lake Dr.

- i. Carol Baxter has made attempts to contact Stacy regarding current property lien.
- ii. There is currently no documentation of the initial letters sent out prior to the lien according to the treasurer records passed on to Carol from previous treasurer.
- iii. Carol will continue to follow up
- b. Carol indicated a second home which has a current lien does not show up in treasurer records. It is unclear however if property lien is related to the HOA or another party.
- c. Carol will be following up with a search of a thumb drive provided by the previous HOA treasurer in an effort to locate any additional lien documentation.
  - i. If records for property liens cannot be located, residence will be provided the option of paying the previous year's HOA dues with no additional fines.

**7. Board members discussed/reviewed requirements stated in Senate Bill 100**

- a. According to bill, homeowner's associations in Colorado must adopt 9 responsible Governance Policies (see Attachment 1)
- b. In reference to '4. Enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines', wording needs to be in place in order to assess/distribute fees/fines to residents.
  - i. Anita Gautier offered to look up examples online used by other residential developments and alter to fit the needs/requirements of Sunset West
  - ii. Board members discussed how a fine schedule might be structured.
    - 1. Example: 1) Visit 2) \$50 fine 3) \$100 fine, 4) etc.
  - iii. Potential scheduling for issuing fees for requested yard/property improvement by the ARC committee

1. 1<sup>st</sup> Visit with letter (Should resident sign letter acknowledging request for work with 2 ARC committee or board members present? One could sign if resident refuses to completed work)
  2. After 30 days – Fine is issued (fine schedule stated in original letter)
  3. Final schedule was not decided as this meeting.
- c. Discussion of policies
- i. Residents who have been issued a fee/fine have the right to be heard and/or plead their case
    1. Opportunity could be offered at a schedule board meeting if needed.
    2. Some HOAs have bi monthly meeting which are open for residents to attend. Announcement of meeting could be made in one of the following mechanisms:
      - a. Sign, distributed letter, posting on the HOA website, etc.
      - b. Meeting agenda could be developed indicating a time frame for open discussions.
  - ii. Once policies are in place should there be a a) copy sent to residents for review or b) meeting scheduled for open discussion
  - iii. Of note, a lien can be put on the property for any fine of \$100 or greater

## **8. Other issues discussed at HOA meeting**

- a. A homeowner has made a lawsuit threat against Vicki Tooley (former HOA President) and Nick Young (Current HOA Vice President) for defamation of character indicating based on refusal to vote him in on HOA board for President Position despite the petition signatures he collected.
  - i. Executive board members followed the bylaws regarding the voting process
  - ii. Signed petition is not valid for filling a vacant HOA board position according to the current Sunset West bylaws.
- b. Residential address and contact information is currently being maintained by Hillery Venturini (Secretary) as updated become available.
  - i. Hillery will send a copy of the current spreadsheet to board members
- c. The homeowner at 9162 W. Lake would like to have cottonwood near his residence removed
  - i. Cottonwood appears to be making him ill.
    1. Eloy Gonzales (ARC committee member) indicated that owner should first talk with neighbor whose has the tree in question in his yard.
      - a. Eloy will follow up with owner regarding discussion

## **Action Items:**

1. Curt will email example policy documents for board review for Sunset West use
2. Nick will follow up with owner regarding recommendation for roof color per HOA board discussion
3. Eloy will check his copy of the convents for the section in question (4.8)
4. Either Nick or Carol will open P.O. Box account

5. Carol will continue to follow up with search of thumb drive for additional lien submission documentation
6. Hillery will send a copy of the current spreadsheet to board members
7. Eloy will follow up with owner regarding discussion with neighbor about Cottonwood tree

Next meeting will be held approximately 2 weeks from this meeting, July 26<sup>th</sup> at 7:00 pm

**Meeting was adjourned at 8:45**

**From: <http://www.cohoalaw.com/governance-2012-hoa-to-do-list-reminder-review-and-comply-with-responsible-governance-policies.html>**

## **2012 HOA To Do List Reminder: Review and Comply with Responsible Governance Policies**

Back in 2005, the Colorado General Assembly passed Senate Bill 100 which requires that every homeowner's association ("HOA") in Colorado must adopt 8 Responsible Governance Policies. Since that time, an additional policy has been added to the mix and the requirement for the "conflicts of interest" policy has been further refined.

As a reminder, here are the 9 Responsible Governance Policies each HOA must adopt and comply with:

1. Collection of unpaid assessments.
2. Handling of conflicts of interest involving board members. This policy must: (a) define or describe the circumstances under which a conflict of interest exists; (b) set forth the procedures to follow when a conflict of interest exists, including how, and to whom, the conflict of interest must be disclosed and whether a board member must recuse himself or herself from discussing or voting on the issue; and (c) provide for the periodic review of the association's conflict of interest policy, procedures, and rules and regulations.
3. Conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles.
4. Enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines.
5. Inspection and copying of association records by unit owners.
6. Investment of reserve funds.
7. Procedures for the adoption and amendment of policies, procedures and rules.
8. Procedures for addressing disputes arising between the association and unit owners.
9. When the association has a reserve study prepared for the portions of the community maintained, repaired, replaced and improved by the association; whether there is a funding plan for any work recommended by the reserve study and, if so, the projected sources of funding for the work; and whether the reserve study is based on a physical analysis and financial analysis.

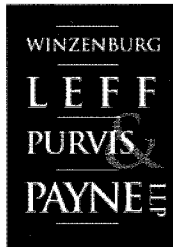
Aaron Acker, the HOA Information Officer for the Colorado Division of Real Estate, has noted that many complaints his office receives have to do with associations not complying with the requirements of SB 100. As a result, every director should ensure they have a copy of and are complying with their HOA's Responsible Governance Policies.

## Before Imposing Fines - Make Sure Your Ducks Are in a Row 6/10/2011

Summertime and the living is easy . . . unless you are a community association manager or board member in a homeowners' association ("HOA") dealing with violations of covenants, rules and regulations or architectural guidelines. It can be extremely frustrating to receive constant complaints on alleged violations, to send out letters to owners informing them of a violation and requesting their compliance – only to be repeatedly ignored. Sometimes the only option left is to "motivate" these individuals to come into compliance by the imposition of a fine. But before a fine is imposed, make sure that your HOA is compliant with Colorado law.

The Colorado Common Interest Ownership Act ("CCIOA"), at [C.R.S. 38-33.3-209.5\(2\)](#), addresses the parameters that HOAs must comply with *prior* to imposing a fine. Here's what you need to know:

- HOAs in Colorado *may not impose a fine unless*:
  - (1) The association has adopted, **and follows**, a written policy governing the imposition of fines (this is one of the 9 required "SB 100 Policies"); and
  - (2) The policy includes a fair and impartial factfinding process to determine: (1) whether the violation actually occurred, and (2) whether the owner of the unit is the individual who should be held responsible for the violation.
- The impartial factfinding process can be informal. However, at a minimum, *the owner must be given notice and an opportunity to be heard before an impartial decision maker prior to the fine being imposed*. Many HOAs make the mistake of imposing a fine without first providing the alleged violator with notice and an opportunity to be heard.
- CCIOA defines an "impartial decision maker" as ". . . a person or group of persons who have the authority to make a decision regarding the enforcement of the association's covenants, conditions and restrictions, including its architectural requirements, and the other rules and regulations of the association and do not have any direct personal or financial interest in the outcome. A decision maker shall not be deemed to have a direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the association."
- A board of directors of an association may act as the impartial decision maker or designate an individual or group of individuals to assume this role. The key is to ensure that the individuals acting as impartial decision makers have no personal stake in the outcome of the hearing that is different than the stake the general membership has in the outcome.
- If the hearing is held and the owner is determined to be responsible for the violation, the association may proceed with imposing a fine. If the owner does not show up at the hearing and no other arrangements with the owner have been made, the impartial decision maker should consider the facts before them and make a decision on whether the owner should be held responsible for the violation and fined. It is wise to include in your written policy regulating the imposition of fines, the actions the association may take in the event an owner does not attend a hearing on the alleged violation.



### SB 100/SB 89 ANALYSIS<sup>1</sup>

#### SB05-100 Provisions

#### SB06-89 Provisions

#### Action Required by Association

1	Mandates right to display American or military service flag on a unit owner's property 38-33.3-106.5(1)(a) 38-33.3-106.5(1)(b)	Extends right to display flag to occupants of unit	Revise policy if current policy limits display of flags to owners only
2	Mandates right of owners to display political signs (one per ballot issue or candidate) on unit owner's property or from window of unit up to 45 days before election and 7 days after 38-33.3-106.5(1)(c)	Clarifies that right to post signs is within boundaries of unit; permits limit on maximum size to lesser of local jurisdiction or 36 x 48 inches	May modify policy to implement clarifications
3	Allows owner of unit to park emergency vehicles, subject to certain limitations 38-33.3-106.5(1)(d)	Extends right to occupants	Revise policy if current policy limits right to owners
4	Association may not require replacement of roofing with cedar shake shingles or other nonflammable roofing, subject to certain criteria 38-33.3-106.5(1)(f)	Association may not require use of cedar shake shingles or other flammable roofing materials	Revise architectural or design guidelines as necessary
5	Encourages alternative dispute resolution 38-33.3-124	Requires association to adopt a policy effective January 1, 2007 for addressing disputes between association and owners	Adopt policy by January 1, 2007

<sup>1</sup>This analysis is only a brief outline of the respective acts, and paraphrases for ease of reference. As with any legal analysis, it is critical to review the actual provisions of the statutes and apply the specific facts to determine legal outcome. Every part of a statute is important in its interpretation. Governing documents may further impact an interpretation of a statute. **Do not rely on this analysis to make decisions or take action without further consultation with the association's attorneys.**



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6	Annual disclosures required; wide latitude in how to provide disclosures - posting on internet web page with accompanying notice via 1st class mail or e-mail, literature table at association's principal place of business, mail or personal delivery 38-33.3-209.4	Association must make specified information available upon request, and in any event, within 90 days after a change of management company, or change of association address or agent, or upon assuming control from declarant	No change
7	Association must maintain accounting records using generally accepted accounting principles, and adopt responsible governance policies addressing (1) collection of unpaid assessments; (2) handling board member conflicts of interest; (3) conduct of meetings; (4) enforcement of covenants and rules including notice and hearing and imposition of fines; (5) inspection and copying of association records by owners; (6) investment of reserve funds; and (7) adoption and amendment of policies, procedures and rules 38-33.3-209.5	Eliminates requirement to keep accounting records using generally accepted accounting principles and allows association to use cash or tax basis of accounting (per 38-33.3-303(4)(b))  Must adopt mandatory dispute resolution policy	No action required  See item 5 above
8	Allows association to pay for board member education relating to responsible governance of association 38-33.3-209.6		No action required
9	Requires association to provide, on an annual basis, education to owners concerning owners and association's rights and responsibilities		No action required
10	Allows amendment of declaration upon approval of 67% of owners, regardless of any larger amount specified in the declaration 38-33.3-217(1)(a)	Clarifies that association may still seek court authorized amendment	No action required
11	Allows for process to obtain mortgagee approval of amendments by certified mail 38-33.3-217(1)(b)	Clarifies that this section is not mandatory; excludes certain high percentage owners/associations from effect of lower percentage requirements	No action required

12	Mandates certain disclosures by a seller to a buyer 38-33.3-223	repealed	No action required
13	Mandates that decisions concerning approval or denial of architectural or design approval shall be in accordance with standards in declaration, rules and regulations or bylaws and shall not be arbitrary or capricious 38-33.3-302(3)(b)	No change	Adopt guidelines if not already done
14		Board bound by standard of conduct in Colorado Revised Nonprofit Corporation Act regarding investment of reserves 38-33.3-303(2.5)	Amend reserve fund investment policy if necessary
15	Provides owners (or their agents) a right to attend and speak at meetings of the Association and to speak at meetings of the Board before formal action is taken by the Board 38-33.3-308(2.5)	Clarifies right to speak	May need to revise Conduct of Meetings policy to be consistent with statutory revisions
16	Provides for voting for board members by secret ballot, and other issues by secret ballot if requested by any owner; requires counting of ballots by neutral third party; results of vote reported without reference to names, addresses or other identifying information 38-33.3-310(b)(I)	Clarifies that this section does not apply to associations whose board members are chosen by delegates; and only applies to contested positions on board, and other issues if requested by 20% of unit owners present in person or by proxy	May conflict with association Bylaws; if so, then an amendment to bring into compliance with statute may be appropriate
17	Board member with conflict of interest must disclose conflict at open meeting prior to discussion or action on that issue and may not vote on issue; contract entered into in violation of section is void and unenforceable 38-33.3-310.5	Section repealed and provisions of Colorado Revised Nonprofit Corporation Act adopted	Board Member Conflicts of Interest policy may be revised to relax its provisions and adopt the provisions of the Nonprofit Act (conflicts of interest are better defined; authority of board is better defined; and contracts entered into are not automatically void)

18	Association must keep specified records and make them reasonably available to owners (provide owners with access to them and allow them to be copied upon 5 days advance notice) and payment of copying expenses not to exceed actual cost per page 38-33.3-317	Specifies that “reasonably available” permits the association to make records available at next Board meeting if occurring within 30 days after request; records may not be used for any purpose unrelated to an owner’s interest as an owner	May need to revise Records Inspection policy
19	Sellers required to disclose to Buyer in sale contract the existence of governing documents and property may be subject to architectural review and approval; Seller responsible for obtaining Buyer’s acknowledgment and deliver to association 38-35.7-102	Entire section repealed, and replacement disclosure requirements added that require every sale contract to disclose the existence of a common interest community and property is subject to governing documents that create financial obligations; failure to pay could lead to placement of a lien; changes may be prohibited without obtaining approval by an architectural review committee; at Buyer’s request, Seller must provide documents or authorize association to provide documents upon payment of copying costs	No action required
20	Permits owners to file claim against association’s insurance policy to same extent as if owner were an additional named insured 10-4-110.8	Establishes conditions before owner may file claim against association’s insurance policy: (1) owner has first contacted the board in accordance with any applicable association policies for owner-initiated claims; (2) association has 15 days to respond in writing and inspect damage; (3) the subject matter of claim falls within the association’s insurance responsibilities When determining amount of premium, association’s insurer cannot consider requests by owners for clarification of coverage	Adopt policy addressing how to handle insurance claims affecting owners’ units