

OFFICER'S OPINION ON ENFORCEABILITY OF PINON HILLS COVENANTS

The opinion of these officers is that the Pinon Hills covenants, dated November 30, 1966, Chaffee County document number 122969, are no longer enforceable, due to failure of the homeowners in the subdivision to enforce them in the past, and due to the original developer's failure to sign the covenants at the time of filing. Without valid covenants, building and lot use regulations within the Pinon Hills Subdivision plat default to current Chaffee County Land Use Code.

Voting for the opinion so stated:

Susan Jesuroga, Mary Cuyler, Andrew Koransky, Doug Rausch

Voting against the opinion so stated:

None

Attested true copy of vote: December 30, 2013 by the officers.

Andrew Koransky, Secretary

Andrew Koransky

Susan Jesuroga, President

Susan Jesuroga

STATE OF COLORADO

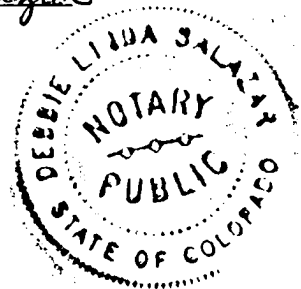
Chaffee COUNTY OF Salida)
) ss.

The foregoing instrument was acknowledged before me this 7th day of
February 2014, by Andrew Koransky, Susan Jesuroga principal.

Witness my hand and official seal.

My commission expires: 9-17-2015.

Debbie Linda Salazar
Notary Public



Date Recorded: 2/7/2014 2:04:00 PM

BACKGROUND

The Pinon Hills HOA officers received a request from a homeowner in late 2012, asking the officers to force a neighbor to clean up their junk. On first request, the officers suggested the homeowner talk directly to the neighbor. The same homeowner again brought the request in 2013, without indicating if any conversation had occurred with the neighbor.

Being newly elected, the officers read the covenants and found there is no process for dealing with complaints other than any homeowner may file a lawsuit against another homeowner violating the covenants. So, the basic question is, can the HOA or its officers enforce any part of the covenants?

History of the covenants and HOA:

- Covenants were filed by the developers in 1966. They define:
 - the minimum requirements of a house on a lot.
 - responsibilities of the Architectural Committee to review building plans, additional buildings beyond houses and garages, fences
 - conditions of the legal uses of any lot
 - lot easements
 - and use of lawsuits as a means to enforce compliance
- HOA articles of incorporation in 1989 in order to:
 - To manage, operate and maintain the common areas of Pinon Hills, Inc property.
 - to purchase, take, receive, lease or otherwise acquire, sell, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.
 - to carry on any lawful business whatsoever that this corporation may deem proper or convenient.
 - to obtain licenses and permits and to exercise all powers necessary to or convenient to effect any of the purposes for which the corporation is organized.
 - to assume the duties and responsibilities of the architectural control committee as set forth in the restrictive covenants of Pinon Hills, Inc.

It appears the HOA was formed as a way for the developer to divest of the "common property" of Tracts B & C and not have to deal with issues of the architectural committee.

More research uncovered other issues in enforcing the covenants:

- One long-time homeowner suggested we look for a letter from the county attorney to the county about the legality of the covenants. We uncovered a 1997 letter from then county attorney Ken Baker to county administrator Tom Hale, suggesting that the covenants were unsigned at filing and invalid at the time of recording. He also notes that the covenants do not provide for a homeowners association as a method of enforcement, just the architectural committee.

Date Recorded: 2/7/2014 2:04:00 PM

- Indeed, the Pinon Hills covenants were not signed by the developer. Further research by the officers found a 2009 court case in Colorado that voided a lien against homeowners by finding that the unsigned covenant was not legally binding. *"The court stated that the association could not prevail since the declaration of covenants was required to be signed and executed in the same manner as a deed."* <http://www.coholaw.com/what-the-courts-say-the-importance-of-signed-and-recorded-covenants.html>
- The HOA articles of incorporation do not explicitly say that the HOA was formed to enforce the covenants, other than take responsibility for the Architectural Committee.

In the spring of 2013, the officers decided to retain legal counsel, Deric Pamp, to help us sort this out. Mr. Pamp has expertise in real estate, and HOA law, and was formerly a resident of Pinon Hills.

With some research, Mr. Pamp has advised us:

-> *With regards to the covenants: are they valid for purposes of enforcement?*

"I spent some time reading case law but I didn't find a case directly on point. The answer I offer is the same one I wrote you before you hired me: no, I don't think that the District Court would enforce any of the current covenants against any landowner who had a lawyer to defend him/her. The restrictions are of record in everyone's title, it appears and I assume, but ***I believe the key fact is that they have been enforced fitfully, at best, and not at all for quite a while.*** Since Colorado law is generally against restrictions on land use, my expectation is that a court would rule that since it is X years since any covenant was enforced, it is too late now for Pinon Hills HOA to be trying to enforce any covenant. The then-County Attorney's letter of 1997 is also interesting, attacking the basic validity of the covenants because they were not signed.

Note, please, that mine is only an argument and the only way for the Board to KNOW if the covenants can be enforced is to try it. The District Court door is open to all, the costs are not outlandish, taking a case to court would certainly satisfy the HOA and/or Board members who want the covenants enforced, and it would fully settle the issue, barring appeal."

-> *With regards to, what would make the covenants enforceable?*

The short answer is, if Pinon Hills HOA provided the organization and impetus and a basic document (including covenants and an enforcement mechanism, probably connected to the HOA) to be signed and then recorded, many people in the subdivision might agree voluntarily to encumber their homes. Once the homeowner signs the document and it is recorded, the covenants would then be enforceable against the current and future owners of those lots. But who would sign up if they knew that they couldn't keep chickens anymore, or the rafts of junk cars they now have, or whatever? Most covenants are created when all the land is in single ownership, and that owner thinks it's a sales point for his subdivision.

Date Recorded: 2/7/2014 2:04:00 PM

-> *Can we 'fix' these covenants?* "I don't think so. I think you have to start from scratch."

SUMMARY OF FINDINGS

The covenants have not been routinely enforced prior to our taking office. The residents of the subdivision have been operating as though the current covenants are valid, which it appears they are not, because they were not signed and more importantly, rarely enforced. And although the Pinon Hills HOA is a valid organization with legal standing with the state, the only defined roles it seems to have are the architectural committee work and oversight of Tract C. Residents and previous officers have been operating as if the two are connected somehow.

With regards to the original request that the officers enforce the covenants, the officers have no legal power in confronting the neighbor. Wearing our fiduciary hats, officers were concerned about the fiscal obligations of joining a lawsuit to test the covenants that we would likely lose on the grounds that we believe the covenants are invalid. At the 2013 HOA Annual Meeting, voting members voted not to join a lawsuit to test the covenants.