

AROUND THE RANCH

Covenants, Conditions and Restrictions

and Why They Apply to Me



A question that we are often asked is, "Who gives the community association the right to tell me what I can do with my

property?" The simple answer to the question is, "You do."

You did so when you took title to your property and elected to live in Highlands Ranch.

In 1981, the original developer of Highlands Ranch recorded in the public records of Douglas County, Colorado a document called the *Community Declaration* for Highlands Ranch Community Association, Inc. ("Declaration").

The *Community Declaration* imposes a number of restrictions and conditions on all property and property owners in Highlands Ranch. One of those conditions is that every owner of a lot in Highlands Ranch is required to be a member of Highlands Ranch Community Association, Inc. ("HRCA").

HRCA is a non-profit corporation in which all property owners in Highlands Ranch automatically are members. Membership is required of all property owners and no owner has a right to "opt out" because of non-use of the services, such as the recreation facilities, offered by the HRCA or disagreement with HRCA's restrictions or rules.

The *Community Declaration* also gives HRCA the right to enforce the restrictions in the *Community Declaration* and to adopt Bylaws and rules and regulations for the governance of HRCA and the use of property in Highlands Ranch.

Under fundamental principles of real estate law, by accepting title to real property, an owner agrees to be bound by the terms of documents that were recorded before the owner took title. In essence, a form of "contract" exists. By accepting title, you as an owner agreed to the terms of that "contract."

In Highlands Ranch, your "contract" contains all of the

terms, conditions and restrictions in the *Community Declaration*, including the condition that HRCA will have the right to govern how you use, maintain and improve your property. By taking title to your lot, you have contractually agreed to all of those terms, conditions and restrictions. As the owner of a home in Highlands Ranch you should take the time to become familiar with the terms of this contract contained in the *Community Declaration*, *Residential Improvement Guidelines* and other rules and regulations of HRCA.

Before you make changes on or improvements to your property contact HRCA to make certain that what you are doing complies with the *Community Declaration* and rules and regulations of HRCA. We are always glad to answer any questions that you might have with regard to the governing documents.



Please remember that homeowners are required to submit plans for any and all exterior improvements for approval to the Architectural Control Committee prior to installation. A requirement of the *Community Declaration* and the *Residential Improvement Guidelines*, the intent is not to hinder you from choice, but to ensure choices are in harmony with the overall appearance of the community.

As always, please feel free to contact HRCA at (303) 471-8821 or covenant@hrcaonline.org regarding any covenant enforcement and compliance issues or questions you may have.

We value your comments and input as we work to enhance property values in the community.



Covenant Enforcement



Covenants & What Every Homeowner Needs To Know

In June the article, *Covenants, Conditions and Restrictions and Why They Apply To Me*, covered the right of HRCA to enforce the covenants and restrictions in Highlands Ranch. Additional questions we are often asked are, "How are the covenants in Highlands Ranch enforced?" and "Why does it take so long to gain compliance in some cases?"

The covenants in Highlands Ranch are enforced pursuant to enforcement procedures established by the Board of Directors as authorized by the *Community Declaration* for Highlands Ranch Community Association. These procedures are designed to ensure each owner receives due process before any fine or other penalty is imposed, and to encourage voluntary compliance. Ensuring due process involves many steps and is one of the reasons it takes time to gain compliance.

An enforcement action is initiated either by a complaint filed by another owner within Highlands Ranch or by HRCA Covenants, Compliance and Assistance staff ("Staff"), as a part of its function of surveying neighborhoods in Highlands Ranch for covenant compliance. (Violations discovered by Staff during routine surveys comprise the majority of the covenant compliance matters handled by the HRCA). Following receipt of a complaint by an owner, a Staff member visually inspects the property to determine whether the situation giving rise to the complaint is, in fact, a violation of the covenants.

Upon verification of an alleged violation, HRCA sends a letter to the owner of the property requesting that the violation be cured and setting a

date by when the cure should be completed. HRCA sends out hundreds of such letters each year for various types of covenant and restriction violations and, thankfully, the vast majority of owners cure their violations promptly after receipt of this first letter.

Following the requested cure date, Staff inspects the property to determine if it has been brought into compliance. If it has not, a second violation letter with a new cure date is sent to the owner, and the property is re-inspected after the second cure date to verify compliance.

If the property remains in noncompliance after the second cure date, Staff files a complaint setting forth the violation with the Board of Directors. A copy of that complaint is mailed to the owner, together with a notice that the owner has the right to a hearing before a Tribunal appointed by the Board to be held no sooner than 30 days after the complaint is mailed. At the hearing, the owner is given the opportunity to present a defense prior to the Tribunal issuing a recommendation to the Board on the complaint. The recommendation includes a finding as to whether the covenants have been violated and what, if any, sanctions should be imposed against the violating owner. The Board may adopt the recommendation of the Tribunal or has the discretion to decline an enforcement action or grant a waiver, even where a violation exists, if the Board determines declining enforcement or granting a waiver is in the best interest of the community.

If the Board determines the property is in noncompliance, the Board will typically impose a continuing fine (currently \$25 per day)

against the owner until the property is brought into compliance. The purpose of the continuing fine is to give the owner incentive to correct the offense as quickly as possible. The Board also has the right to suspend the violating owner's privileges to use HRCA recreation facilities, to vote, and to take legal action in the courts to enforce compliance.

If the property continues in noncompliance, the Board typically turns the matter over to HRCA's legal counsel, with instructions to commence a civil legal action against the violating owner. In such an action, HRCA typically seeks a restraining order to stop the noncompliance and an injunction against future violations. HRCA also asks the court to order the owner to bring the property into compliance with the covenants or to permit HRCA to bring the property into compliance at the owner's expense. HRCA also will request that the court require the owner to reimburse it for all attorneys' fees and costs it incurs in enforcing the covenant or restriction.

Each one of these steps takes time. In addition, sometimes an owner files for bankruptcy protection, is subject to foreclosure proceedings or elects to defend the lawsuit, any of which delays the process of bringing the property into compliance.

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