

To: Saddlebag Creek Residents

Re: Letter enclosed

In March of the year our association met and elected a new board. The membership, also, by a majority vote, indicated their desire to have the board enforce our by- laws in a "strict" manner.

Our current board has inherited a few problems, one of which is somewhat described in the enclosed letter. However many residents, represented by their lawyer, I do not know. I do know, as of today, (the 13th of July) I, as Chairman, have received no complaints, verbal or written, just the threat of an immediate lawsuit. I would suggest this "problem" has been festering for quite a while. And so I must ask, why didn't all or some of these residents run for the board, come to the board in April, May, or June, or send a letter of complaint during that same period of time? Of course, I cannot answer for them, but threatening a lawsuit is not the answer either.

If any of you have been involved in or know of someone who has been involved in a divorce will know, the opposing attorney loves to get the two positions hot at each other. They write letters that call for a response and they hope the battle will go on forever. The problem with this scenario is the legal fees escalate. Each party believes they are 100% right, and it goes on and on until someone either surrenders or realizes the cost is getting out of hand. Most/ all of the board's monies is not ours, it's yours! i.e. The monies spent by this board will not be ours.

A decision to resolve this problem, which we inherited, was made in June by the current board. I'll not go into particulars here, but this might have been resolved by the past board. That was not the scenario we faced. Surely residents have the right to object to anything our board does, but if a threatened lawsuit is going to be the answer, we may as well have two boards!

As soon as our board makes a decision or a non- decision, I'll let you, the membership, know. Conflicts within our association can be avoided by following a few steps!

1. Whenever you are contemplating a change to your property, contact any of the board members.
2. Submit plans/ diagrams of changes contemplated.
3. Wait for a complete approval by the entire board signing off on your plans. (not verbal) (not one board member)
4. Read the association's by-laws.

We are now speaking with our attorney on how to resolve various issues.

Thank you for your understanding,

Dave Cohen, Chairman



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Via Email: [chairman@saddlebagcreek.org](mailto:chairman@saddlebagcreek.org)

RE: Nonconforming Structures

Dear Mr. Cohen:

I represent a number of Saddlebag Creek Ranches lot owners concerned over the Board's recent course of action in regards to a structure erected in violation of the Saddlebag Creek Ranches Declaration of Covenants, Conditions, Restrictions and Easements. The building at issue is the modular and/or manufactured outbuilding recently placed at 29405 Saddlebag Trail, Myakka City FL 34251. By the minutes of the Saddlebag Creek Ranches Homeowners' Association Board meeting held Thursday, April 21, 2016, it appears the Board implicitly and belatedly approved the placement of this nonconforming outbuilding by granting the owner 60 days to implement unspecified "mandates."

This course of action is in violation of Florida Statutes and your own Covenants, Conditions, and Restrictions. More importantly, it jeopardizes the ability of this and future Association Boards to enforce the architectural requirements for outbuildings throughout Saddlebag Creek Ranches. Board members are under a duty, as fiduciary to *every homeowner* in Saddlebag Creek, to enforce Florida Statutes and the Declaration of Covenants, Conditions, Restrictions and Easements pursuant to § 720.303 of the Florida statutes. Relevant here is Florida Statute § 720.3035 which provides this Board the authority to enforce architectural controls specifically stated or reasonably inferred from your Declaration of Covenants, Conditions, Restrictions and Easements. While § 720.3035 provides the authority, the duty to enforce architectural requirements for outbuildings flows from Article VI, section 6.1(a) of your Declaration which states the Association *shall* "enforce the provisions of this Declaration. . . ."



The provisions of the Declaration, ignored by the homeowner who placed the nonconforming building and this Board which allowed it to remain, which preclude the placement of the nonconforming building are as follows:

- Article IX, section 9.3(a) - Architectural review *is required* whenever *any* outbuilding is constructed.
- Article X, section 10.1 - No building or structure may be erected without architectural review and approval.
- Article X, section 10.3 - *All* outbuildings must conform architecturally and structurally *and* use identical or substantially similar exterior materials and roof design.
- Declaration of Restrictions and Easements, paragraph 5 - Prohibits modular and/or manufactured construction from being brought upon any parcel of land within Saddlebag Creek Ranches.

By the owner erecting the building at issue, and by this Board allowing it to remain, each and every one of the preceding restrictions have been violated. The Board did not give the required approval before the building was erected. The building does *not* conform architecturally and structurally nor does it use identical or substantially similar exterior materials *and* roof design. Finally, modular and/or manufactured buildings are prohibited upon any parcel of land within Saddlebag Creek Ranches.

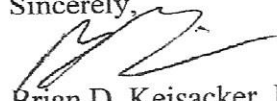
As the 60 days granted by the Board has expired and the building still does not comply with the Covenants, Conditions, and Restrictions, this Board has the opportunity to take the only appropriate action and demand the outbuilding be removed. The Board has this authority under the Declaration, Florida Statutes, and case law interpreting the same.

Enforcing the Declaration and demanding removal of the nonconforming building is not only appropriate, it is imperative to ensure the Association maintains the future ability to enforce architectural controls. Florida courts have stated that by failing to consistently enforce declaration regulations through selective enforcement, associations will be estopped from applying that given regulation. Shields v. Andros Isle Prop. Owners Ass'n, Inc., 872 So. 2d 1003, 1007 (Fla. 4th DCA 2004). Failing to act now could seriously impact the ability of the Association to protect the aesthetics and property values within Saddlebag Creek Ranches.

While Board action on this matter is the optimal method for having the nonconforming building removed, it is not the sole remedy available to my clients. Pursuant to the Declaration, Article XII, section 12.1, any owner has the right to enforce the restrictions, conditions, easements, and reservations of the Declaration by action at law or in equity. Should this become necessary, my clients will seek to recover his attorney fees from the offending homeowner and this Association pursuant to the Declaration, Article XII, section 12.6.

GOVERN YOUR ACTIONS ACCORDINGLY

Sincerely,



Brian D. Keisacker, Esq.

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