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June 30, 2016

Saddlebag Creek Ranches Homeowners' Association
Dave Cohen, President
PO Box 432
Myakka City, FL 34251
Via Email: 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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