

---

# **OSGOOD & OSGOOD, LLC**

ATTORNEYS AT LAW

2586 TRAILRIDGE DRIVE EAST, SUITE 200  
LAFAYETTE, COLORADO 80026  
TELEPHONE 303-442-0165  
FACSIMILE 1-888-594-4079

RUSSELL K. OSGOOD  
SCOTT R. OSGOOD

September 24, 2019

Executive Board  
Somerset Estates Homeowners Association

By email

Dear Sirs and Madam:

On May 31, 2017 a Boulder District Court case voided the merger of what were originally the Cottonwood Hills Homeowners Association (now Somerset) and the Hillside Estates Homeowners Association (now Somerset Estates). The ruling did not in any way invalidate the declarations of covenants for the two neighborhoods, nor did it invalidate the actions of Somerset Homeowners Association to the extent that it acted as the sole governing body for both neighborhoods. The court's ruling was that there was no effective merger of the two associations, and that a proposed amendment to a common declaration of covenants was therefore invalid. The court found that the two neighborhoods were governed by their own separate declarations of covenants between 1992 and 2017, but had been operating under a "common management arrangement." After the case was decided, a transition period to separate governance of the two neighborhoods began on March 31, 2018, when Somerset Estates Homeowners Association was incorporated and began acting separately for Somerset Estates. The declaration of covenants for Somerset Estates (consisting of both Homeowners Covenants and Lot Covenants), recorded December 10, 1992, continued to bind homeowners in Somerset Estates until it was superseded by the Consolidated, Amended and Restated Declaration for Somerset Estates recorded August 14, 2018. Every homeowner living in any portion of the Somerset Estates neighborhood has been subject to a declaration of covenants continuously from the time any lot they now own was first created.

Apart from the confusion caused by the court ruling, it is not unusual for people to also confuse the existence of covenants with the existence of a homeowners association. They are actually two separate things. Covenants are private restrictions on what a homeowner can do on his/her property. They are created by recording such restrictions in the real property records, and once they are recorded, they continue to be effective in perpetuity, binding each successive owner of that property. Thus the declaration of covenants for Somerset Estates, as amended and restated, has always bound, and will continue to bind, the homeowners in Somerset Estates. There is no time when a declaration has not been in effect. It has become usual nowadays for a homeowners association to be created in conjunction with a declaration of covenants, but there are many existing neighborhoods with recorded covenants that do not have associations. Such covenants are still enforceable by the other homeowners in the neighborhood. In the case of Somerset Estates, of

course, there is both a declaration of covenants and a homeowners association formed to govern the neighborhood.

The board of a homeowners association has discretion as to how it enforces a declaration of covenants. Boards are supposed to exercise sound business judgment, and can consider the severity of a violation, the cost of pursuing enforcement of a violation, the cost to the homeowner to undo a violation as compared to the benefit to the association, what other remedies may be available, and other factors in deciding how to proceed in each instance. The action that is taken in one instance does not set a precedent that requires the same action in any other instance. Favoritism is not appropriate, and a certain amount of consistency is desirable generally, but judgment and discretion are allowed and should be exercised.

A declaration of covenants for Somerset Estates has been enforceable continuously since at least 1992, and as to the original Hillside Estates (that became Phase 1 of Somerset Estates), a declaration of covenants has been in effect since 1980. The common management arrangement between Somerset Estates and Somerset starting in 1992 arose as a result of a legal misunderstanding, but the arrangement was not invalidated by the court in 2017. The ruling merely corrected the misunderstanding. That led to the now separate governance of the two neighborhoods. The management decisions made during the common management period may guide, but do not dictate, how Somerset Estates must be managed today, and the declaration of covenants may be enforced in the manner the current board deems appropriate under each circumstance as it arises.

Sincerely,

OSGOOD & OSGOOD, LLC

*/s/Scott R. Osgood*

Scott R. Osgood