

# **Somerset Estates Homeowners Association 2018 Declaration Amendment Information May 11, 2018**

Dear Somerset Estates Homeowner,

This is (really) important. We need your affirmative vote to adopt an updated Declaration to move our community forward. We cannot overstate the significance of this crucial first step. An amended Declaration is required regardless of whether SEHOA and SHOA ultimately vote to merge or not.

This document is organized in three sections to address different levels of interest in the details. Choose the level of information you need to make an informed decision:

**SECTION ONE: TOP LEVEL** (“I remember the 2016 Version and only need a simplified overview”)

**SECTION TWO: SUMMARY OF DECLARATION AMENDMENT** (“Just give me the highlights”)

**SECTION THREE: DETAILED DISCUSSION** (“I want the details”)

You are invited to review as much of the information in this document and the attached Draft 2018 Amended Declaration (“2018 Version”) as you wish<sup>1</sup>. Then bring your questions and comments to the upcoming Board meeting on May 22<sup>nd</sup> and/or the Homeowners “Shooting for 60” Meeting on May 30<sup>th</sup>. You’ll find a list of changes in the 2018 Version compared to the failed 2016 Version, a summary of the differences between the 2018 Version and the current 1992 Version (which can be found in full on [www.SomersetEstates-HOA.com](http://www.SomersetEstates-HOA.com)), and the full proposed Draft 2018 Amended Declaration. A proxy is also enclosed if you arrive at a decision and wish to designate the SEHOA Board (or another party) to cast your vote when the formal voting period begins.

Once we have the benefit of homeowner input, we anticipate a final 2018 Version will be approved by the SEHOA Board at the June 12<sup>th</sup> Board meeting, followed shortly thereafter by mailing a formal voting package that will include a Final Amended Declaration, cover letter, ballot, and return envelope. Voting will continue until August 13<sup>th</sup>. If 60 or more homeowners return their ballots with affirmative votes, we will have a new, functional declaration in place for Somerset Estates!

Is there any more you can do to help? YES! We need help spreading the word. Please email the board at [info@SomersetEstates-HOA.com](mailto:info@SomersetEstates-HOA.com) to volunteer. You may also send comments to this address.

We thank you in advance for your support in completing this important task.

Your Somerset Estates Homeowners Association Executive Board

Marc Arnold, President

Anthony Chirikos, Vice President

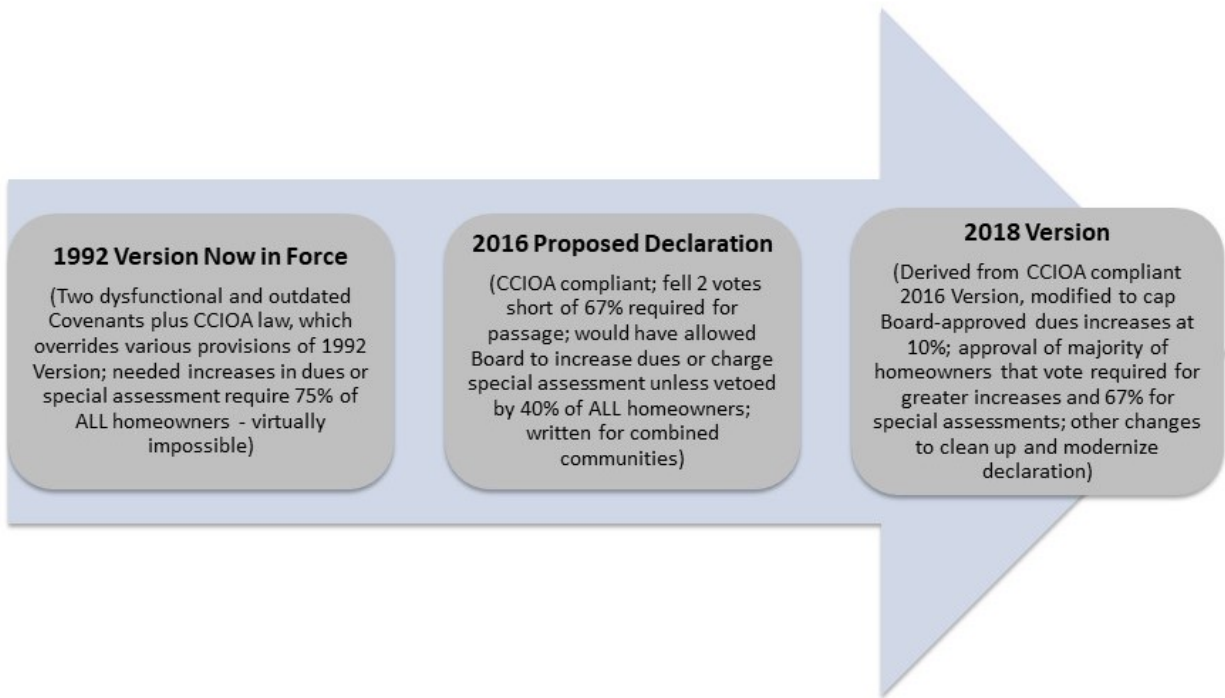
Paula Hemenway, Treasurer

Susan Reilly, Secretary

Kip Sharp, Director

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<sup>1</sup> This package is for informational purposes only and not for the purpose of providing legal advice. Feel free to contact your attorney to obtain independent advice. Comparison summaries enclosed are good faith attempts to summarize material changes and may not be comprehensive.

**SECTION ONE: TOP LEVEL (“I remember the 2016 Version and only need a simplified overview”)**

The graphic above is an over-simplified depiction of the situation. Nevertheless, it captures the essence of where we stand and what we need to accomplish. With the 2018 Version in place, our community will be on the road to a well-run, no drama, functional community with mechanisms in place to address our short- and long-term needs.

If you are comfortable with this Top Level view, you needn't read further. Respond to the formal voting package in June, or simply mail the enclosed proxy to the SEHOA board at the address below (or give to another trusted party). If you want more information, continue working your way through this package.

## SECTION TWO: SUMMARY OF DECLARATION AMENDMENT (“Just give me the highlights”)

One of the key steps needed to set our community on the right footing going forward is resolution of the structural problems that have plagued us for years, namely, our out-of-date and dysfunctional governing documents. Somerset Estates still operates under two covenant documents created by the original real estate developer in 1992, the so-called “1992 Version”, which you’ll find posted on the SEHOA website. Since Somerset Estates is subject to all of the provisions of the Colorado Common Interest Ownership Act (CCIOA), in many cases, these covenants are overridden by CCIOA. This means a homeowner seeking to understand a particular rule may have to refer to three documents (two covenants and the 79 page CCIOA law). This makes no sense. **Adoption of an amended declaration requires the affirmative vote of 67% of all 89 homeowners (60 votes). This means NOT voting is effectively a NO vote!**

The Somerset Homeowners Association (SHOA) board put an amended declaration to a vote by the homeowners in the combined communities of Somerset Estates and Somerset Place/Heights in 2016, what we call the “2016 Version”. An attorney with expertise in CCIOA helped write the declaration so it would be consistent with CCIOA. Although this amendment fell short of the 67% required for passage, 58 Estates homeowners voted FOR the proposed declaration, only 2 short of the needed 60 votes.

The aftermath of the failure of this vote and subsequent court petition is that Somerset Estates is now a separate association from Somerset Place/Heights. Regardless of how that situation is ultimately resolved, both communities still need to amend their respective declarations. Rather than starting from scratch, your SEHOA Executive Board has taken advantage of the work done in 2016 and modified the 2016 Version for SEHOA to incorporate changes to address concerns expressed by homeowners in 2016. At the April 24<sup>th</sup> board meeting, we asked for input from homeowners on these modifications. Based on that input and review by the SEHOA attorney, we are proposing the attached “2018 Version”. We also gave this version to the SHOA Board so that it may offer any suggestions that will make it fairly easy to propose a unified declaration for a merged association as part of a future Plan of Merger, which requires approvals by both boards and a separate vote of homeowners. Depending in part on joint planning with SHOA, we anticipate a vote on a plan of merger in either Q3 or Q4 of 2018.

Our Declaration is an extremely important document for Somerset Estates, in particular because it specifies how assessments will be determined in order to maintain our common areas, which are currently in a state of disrepair. **Since we cannot afford for this declaration amendment to fail, the Board encourages all residents to evaluate this amended declaration carefully and provide feedback.** We invite you to send questions or comments to [info@SomersetEstates-HOA.com](mailto:info@SomersetEstates-HOA.com). **We particularly want homeowners who voted either AGAINST or who chose NOT TO VOTE for the 2016 version to let us know if the 2018 version adequately addresses your concerns. We would also like to understand if any homeowners who voted FOR the 2016 version would change their vote based on the edits made in the 2018 version.** Everyone is also welcome to attend the May 22<sup>nd</sup> board meeting at 6:30 pm at the Niwot Fire Station, where a discussion of the declaration will be on the agenda, followed by a “Shooting for 60” homeowner meeting **May 30<sup>th</sup> at the Somerset Swim & Tennis Club**. The meeting will start with a social hour including refreshments from 6 to 7 pm, followed by a discussion starting at 7 pm. This meeting is for adults only. We hope to see you there.

**What are the most important purposes of the proposed amendment to the declaration?**

CCIOA Compliance. SEHOA is subject to all of the provisions of CCIOA. For some issues, CCIOA allows the declaration to take precedence. For example, with respect to how associations set budgets, the language in CCIOA is “Unless the declaration requires otherwise, the budget proposed by the executive board does not require approval from the unit owners and it will be deemed approved by the unit owners in the absence of a veto at the noticed meeting by a majority of all unit owners.” As the underlined clause indicates, CCIOA provides flexibility for Somerset Estates homeowners to take a different approach to establishing budgets and determining assessments, instead of its “negative voting” default language. For other issues, CCIOA takes precedence. For example, the percentage vote to amend the declaration cannot exceed 67% even if the declaration specifies a higher percentage (the 1992 declaration says 75%): “Any provision in the declaration that purports to specify a percentage larger than sixty-seven percent (*to amend the declaration*) is hereby declared void as contrary to public policy, and until amended, such provision shall be deemed to specify a percentage of sixty-seven percent.” There are many other provisions in CCIOA that are inconsistent with our current declaration. Since it is unreasonable to expect a homeowner to have to refer to both the declaration and CCIOA to figure out which prevails in case of conflict, we need to amend our declaration to make it consistent with current law. Much of the new language is taken directly from the CCIOA law, such as requirements for insurance, rules about meetings, rules for liens for assessments, rights of first mortgage holders, etc.

Assessments Approval. Our current declaration makes it essentially impossible to properly operate the association and maintain the common properties to the level that homeowners (and potential buyers) in a premier community should expect. CCIOA does not overrule the requirement that 75% of all homeowners approve any increase in annual assessment or any special assessment; therefore, we have been operating on the same budget for 13 years. This is rectified in the 2018 version by the following provisions, which replace the 75% of all homeowners approval in the current 1992 version and the 40% of all homeowners in the 2016 version to oppose a special assessment or dues increase. In addition, the notice period for a homeowner meeting about assessments is 21 days instead of the usual 10 days.

1. Section 5.4 requires that any Special Assessment proposed by the board must be approved by 67% of the votes cast by Members present in person or by proxy at a meeting called for this purpose.
2. Section 5.7 requires that any annual budget that includes an assessment that is greater than 110% of the prior year’s assessment (a 10% increase) must be approved by a majority of the votes cast by Members present in person or by proxy at the annual or other meeting.

**Will voting for this declaration automatically result in a dues increase or a special assessment?**

No. The Board expects to propose an annual assessment that is >110% of the current assessment of \$1,300 (reasonable since this level of assessment allows minimal operations and no contribution to needed reserves, but the amount has not been determined), and the homeowners will need to vote to approve the proposed assessment by a majority vote in person or by proxy at a meeting. Further, if the Board proposes a special assessment (such as to more quickly fund reserves or make capital improvements), 67% of homeowners that vote in person or by proxy at a meeting must approve this special assessment. So while homeowners should expect that the new declaration will result in increased dues (and possibly a special assessment if that seems the best way to get to a solid financial position), you will have the opportunity to vote to approve the actual amount proposed by the Board.

### SECTION THREE: DETAILED DISCUSSION (“I want the details”)

#### HOW DOES THE PROPOSED 2018 AMENDED DECLARATION DIFFER FROM THE 2016 VERSION?

Below is a summary of the changes between the 2016 Version (for the combined community) and the attached 2018 Version for Somerset Estates. As homeowners spent considerable time understanding and commenting on the 2016 proposal, we kept the changes to those that are most important.

#### General Changes:

- Consistent with the May 2017 Court Order that says that Somerset Estates is a separate common interest community, this declaration is for the 89 lots in Somerset Estates only. All references to Cottonwood Hills were removed. Some background information in the Recitals was considered extraneous and removed.
- For consistency with other documents, “Executive Board” replaced “Board of Directors” throughout. Likewise, “Owner” is replaced by “Member” when referring to voting to be consistent with Definitions. A few other minor changes were made while reviewing the 2016 version for accuracy, clarity, and completeness.

#### Specific Changes (actual language in quotes; notes in italics):

Article	Proposed 2018 Language	Language in 2016 Version (not passed)
3.4.3	“The Association <b>shall have the exclusive power</b> to maintain, or cause to be maintained, the Common Areas, and it shall exclusively be responsible for management, operation, and control of the Common Areas <b>to the extent of the funds available to it through Assessments and any other sources, and in the judgment and discretion of the Executive Board to prioritize spending for the short- and long-term benefit of the Community.</b> ”	<i>This bold phrases are not in the 2016 version and are simply an acknowledgement that the responsibility placed on the Executive Board to maintain the common properties must be supported by the budget approved by the homeowners.</i>
5.4	“The meeting ( <i>to consider a Special Assessment</i> ) shall be not less than twenty-one (21) or more than (50) days after mailing or other delivery of the summary. A Special Assessment is ratified if a quorum is present and the Special Assessment is approved by 67% of the votes cast by Members in person or by proxy at the meeting.”	“The meeting ( <i>to consider a Special Assessment</i> ) shall be not less than fourteen (14) or more than fifty (50) days after mailing or other delivery of the summary. Unless at that meeting at least forty percent (40%) of all Owners vote to reject the Special Assessment, the Special Assessment is ratified, whether or not a quorum is present.”
5.7.1	“Within ninety (90) days after adoption of a proposed budget, the Executive Board shall mail, by first-class mail, or otherwise deliver, including posting the proposed budget on the association’s website, a summary of the budget to all Members and shall set a date for a meeting of the Members to consider the budget. The meeting shall occur not less than twenty-one (21) or more than fifty (50) days after mailing or other delivery (hand delivery or email) of the summary. The Executive Board shall give notice to the Members of the meeting as allowed for in the Bylaws.”	“Within ninety (90) days after adoption of a proposed budget, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the budget. Such meeting shall occur within a reasonable time after mailing or other delivery (hand delivery or via e-mail) of the summary.”

5.7.2	<p>“If the annual assessment in the proposed budget is not greater than 110% of the previous year’s annual assessment, the budget shall be deemed ratified, unless at that meeting a majority of all Members reject the budget. If the annual assessment in the proposed budget is greater than 110% of the previous year’s annual assessment, the budget shall be deemed ratified if a quorum is present and the budget is approved by a majority of the votes cast by Members in person or by proxy at the meeting.”</p>	<p>“Unless at that meeting at least forty percent (40%) of all Owners vote to reject the budget, the budget is ratified, whether or not a quorum is present.”</p>
6.2.8	<p>“No horses, cattle, sheep, goats, pigs, llamas, ostriches, rabbits, poultry or other animals of any description shall be kept or maintained on any part of said Lots, but residents may keep not more than four (4) customary household pets (such as dogs and cats) and litters thereof under the age of four months, or other animals which are bona fide and customary household pets, as long as such pets are not kept for commercial purposes and do not make objectionable noises or otherwise constitute a nuisance or inconvenience to the residents of other properties.”</p>	<p><i>This language, taken from the 1992 version, is not in the 2016 version. The language about animals that was in the 2016 version is retained in the 2018 version, with the <u>addition</u> of the language to the left.</i></p>
7.6	<p>“Vote and Review. A majority vote of the ACC may approve a request for approval pursuant to this Article. In the event any Owner is dissatisfied with any decision of the ACC with regard to such Owner’s proposed Improvements, all members of the ACC are required to meet with and review the request with the Owner. Any further review will be according to the Rules and procedures approved by the Board.”</p>	<p>“Vote and Appeal. A majority vote of the ACC may approve a request for approval pursuant to this Article. In the event any Owner is dissatisfied with any decision of the ACC with regard to such Owner’s proposed Improvements, all members of the ACC are required to meet with and review the request with the Owner. The decision of the ACC shall be conclusive.”</p>
Exhibit B	<p>“Description of Common Areas. Noting that a portion of Outlot D described as follows is operated by the Somerset Swim &amp; Tennis Club (SSTC), a Colorado Nonprofit Corporation, and the Association has no liability or responsibility for the Real Property, the Facilities or the activities and affairs of SSTC.”</p>	<p><i>This acknowledges the provision in the 1992 version that a portion of Outlot D could be conveyed to a separate entity established for the benefit of the homeowners in the Subdivision. It was not in the 2016 version.</i></p>

## **HOW DOES THE PROPOSED 2018 AMENDED DECLARATION DIFFER FROM THE CURRENTLY GOVERNING 1992 VERSION?**

Because the current 1992 version uses an outdated structure, a side-by-side comparison between it and the proposed 2018 version is not straightforward. For one thing, the current declaration is actually two documents – one titled “Homeowners Covenants” and one titled “Lot Covenants”. In a modern declaration, it is a single consolidated document, which is why the title on the 2018 version is “Consolidated, Amended and Restated Declaration for Somerset Estates”. What is now in the “Lot Covenants” is covered in Articles 6 and 7 of the 2018 version.

Below is a summary of the changes between the 1992 version and the proposed amended declaration. The Article reference is for the 2018 version. Although the Article numbers don’t always line up between the two versions, a very interested reader can look at both documents to see the specific changes. The 1992 version is available at [www.SomersetEstates-HOA.com](http://www.SomersetEstates-HOA.com). As a general comment, the amended declaration refers to “reasonable Rules issued by the Board” and “Architectural and Landscaping Standards” in several places, rather than putting every specific rule into the declaration. This allows for more flexibility if changes are needed or desired, without having to pass a new declaration.

### ARTICLE BY ARTICLE COMPARISON BETWEEN 2018 PROPOSED AMENDED DECLARATION AND 1992 DECLARATION

**RECITALS** – This is the legal history of the subdivision. The amended declaration can start by referring to the 1992 declaration, so the prior history of Hillside Estates, etc. is removed from the 2018 version.

**Article 1. DEFINITIONS** – This section is more extensive and detailed than 1992 version, consistent with CCIOA definitions.

**Article 2. THE COMMUNITY** – Essentially similar to 1992, but without the mergers clause as this is covered by CCIOA.

**Article 3. THE ASSOCIATION AND ITS MEMBERS** – Specifies one class of membership. Provides more detailed information on Association Powers and Duties. Allows Board to impose sanctions for violations and establish a range of penalties for different violations. Allows Association to take enforcement action to ensure compliance and levy Specific Assessments to cover costs incurred by the Association to bring a Lot into compliance. Also allows Association to suspend Owner rights and use other compliance tools such as mediation, arbitration, litigation, or administrative proceedings. Current documents require a lawsuit against a homeowner to ensure compliance. In current documents, the use of a lien is only for non-payment of assessments, not failure to maintain property, etc. Easements for Common Areas are set by Board rules, instead of in Property Rights section as in 1992 version. Vote required to dedicate, transfer, or encumber any right to Common Areas is set at 67% of all votes, not 75%.

**Article 4. MAINTENANCE** – This article has some overlap with Article VI in the 1992 version about Association’s obligation to maintain drainage/storm sewer facilities. Complaints process in 1992 version is moved to Article 14 in 2018 version. In addition, it includes paragraphs about an Owner’s obligation to maintain their Lot and what happens if they fail to do so. Also obligates Owner to pay for any damages they cause to Common Areas.

**Article 5. ASSESSMENT AND COLLECTION OF COMMON EXPENSES** – This is the section that sets the process for setting the budget (including the annual assessment) and special assessments. The 75% vote of all homeowners to increase assessments and approve special assessments is replaced with a provision requiring vote of a majority of members at a meeting called for that purpose to approve any annual assessment increase >10% and a provision requiring a vote of 67% of members at a meeting called for that purpose to approve any special assessment. In

addition, this section allows for “specific assessments” against particular Lots in particular situations, such as if a common expense is caused by the misconduct of an Owner or Guest and against particular Lots relating to Eagle Point pond. The process for establishing a lien for unpaid assessments, including specific assessments, is covered in detail.

Article 6. RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY – This section is covered in the Lot Covenants of the 1992 version and isn’t all that different from the current rules. The rules about home occupations are more specific. Adds paragraph about satellite dishes. Adds paragraph about structures destroyed by fire or other casualty, which now must be rebuilt within 12 months. Section 6.3 on Architectural and Site Restrictions refers to “reasonable Architectural and Landscaping Standards”, as well as Guidelines for roofing materials. Gives Board authority to issue “reasonable Rules” governing care and maintenance of unpaved portions of Lots, parking, placement of garbage, lighting, rental of homes, etc.

Article 7. ARCHITECTURAL CONTROL COMMITTEE – This section is also covered in the current Lot Covenants, but dispersed throughout the Lot Covenants rather than in its own section. Differences include addition of a paragraph on approval of governmental entities, dropping of the requirement that at least one member of the ACC shall be a licensed architect, licensed contractor, registered engineer, professional landscape architect, or professional landscape planner, and allowing three or more ACC members, not just three. Added paragraph on Guidelines, Standards, Rules, and Procedures allowing the ACC, with the approval from the Board, to adopt and amend additional guidelines, standards, rules, and procedures. Adds a paragraphs about Records and Certificate of Compliance, Liability, Variance, and Waivers. Removes the provision in existing Lot Covenants that obligates the Association to “pay any reasonable compensation to members for actual services rendered”. Further, rather than the Association reimbursing the ACC for actual and reasonable expenses incurred, the applicant may be required to reimburse the ACC for actual expenses.

Article 8. INSURANCE – This section details the insurance requirements for the Association compared to the 1992 version, which simply say that “The Association shall obtain and maintain in full force and effect such casualty, liability and other insurance as the Board of Directors from time to time deems proper and appropriate”. For example, the proposed Declaration lists exactly what must be covered by property and liability insurance, as well as mandatory provisions, all in keeping with CCIOA requirements.

Article 9. EASEMENTS AND LICENSES – The proposed Declaration specifies more Easements than the current, which is specific to irrigation ditches only.

Article 10. DURATION, ANNEXATION, AMENDMENTS AND MERGER – Duration is perpetual, compared to the 1992 covenants that go to 12/31/2015 and then are extended for 10 year period after that unless revoked by 75% of Members. Proposed amendment requires vote of 67% of Owners to amend Declaration, compared to 75% in the 1992 version.

Article 11. TERMINATION – Requires vote of 67% of all homeowner to terminate the community. This is important because the vote to merge with another community is set by CCIOA as the vote required to terminate.

Article 12. MORTGAGE PROTECTION – This is a section on rights of first mortgage holders that is not in current declaration, but is required by CCIOA.

Article 13. CONDEMNATION – This is about the rights of owners if all or any part of the Common Areas shall be taken by power of condemnation or eminent domain. No similar section in current declaration.

Article 14. ALTERNATIVE DISPUTE RESOLUTION – Section on alternative methods for resolving disputes between the Association and Owners as recommended by the legislature in CCIOA as preferred over litigation. No similar section in current declaration.



Article 15. MISCELLANEOUS – Much of this legal language is also in the 1992 versions. Additional paragraph about conflicts between Act (meaning Colorado Common Interest Ownership Act) and the documents, as well as added paragraph indemnifying Directors, officers, and committee members.

Exhibits A and B. These Exhibits lay out the legal description of the Community, as referred to in the Recitals and Article 1. In the 1992 version, the legal description is in the body of the Declaration. The 1992 version reserved a portion of Outlot D for “another association to be established for the benefit of the homeowners in the Subdivision”, which became the Somerset Swim & Tennis Club (SSTC). The operation of SSTC as a separate corporation is simply acknowledged in Exhibit B.

Exhibit C. This section on Arbitration Procedures contains the details of the alternative dispute resolution process outlined in Article 14. No similar section in current declaration.