

**DISTRICT COURT, ARCHULETA COUNTY,
COLORADO**

Court Address: 449 San Juan Boulevard
Pagosa Springs, CO 81147

**PLAINTIFF: COLORADO'S TIMBER RIDGE
HOMEOWNERS ASSOCIATION, a Colorado non-
profit corporation**

**DEFENDANTS: COLORADO TIMBER RIDGE
RANCH, L.P., a California limited partnership, et al**

Submitting Attorneys:

A. Michael Chapman, Atty. Reg. No.19513
R. Thomas Geyer, Atty. Reg. No. 36277
SHAND, NEWBOLD & CHAPMAN, P.C.
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▲ COURT USE ONLY ▲

Case Number: 09 CV 95

Div.: Ctrm.:

**PLAINTIFF'S MOTION FOR LEAVE TO
AMEND ITS AMENDED COMPLAINT FOR DECLARATORY JUDGMENT**

CERTIFICATION – DUTY TO CONFER

The undersigned moving counsel certifies, pursuant to C.R.C.P. Rule 121, Section 1-15(8), that he has conferred with opposing counsel, Jeffrey A. Lane, Esq., (counsel for defendants Colorado Timber Ridge Ranch, L.P., Walter Joseph Machock, and George and Jean Taulman) before filing this motion. This motion is opposed.

Opposing counsel was contacted about this motion the afternoon of August 20, 2009. Because of opposing counsel's schedule and need to consult with his clients and conduct research, opposing counsel was unable to determine whether the motion will be opposed by the time this motion was filed. For this reason, opposing counsel stated that the motion is opposed, but reserved the right to revise his position after he has had the opportunity to fully review the motion and prepare a response.

Due to the fact that a responsive pleading to the Amended Complaint would be due from defendants Colorado Timber Ridge Ranch, L.P., Walter Joseph Machock, and

George and Jean Taulman on August 27, 2009, plaintiff did not want to delay filing this motion.

MOTION

COMES NOW plaintiff Colorado's Timber Ridge Homeowners Association ("HOA"), by and through counsel, Shand, Newbold & Chapman, P.C., and in accordance with C.R.C.P. Rule 15, hereby requests leave to file a Second Amended Complaint for Declaratory Judgment in order to delete certain named parties from this action. As grounds for and in support of this Motion, the HOA states:

1. The Amended Complaint in this case was filed on June 25, 2009.
2. Defendants Colorado Timber Ridge Ranch, L.P., Walter Joseph Machock, and George and Jean Taulman are the only parties that have been served with the Amended Complaint. These four named defendants are represented by Jeffrey A. Lane, Esq. and none have filed a responsive pleading to the Amended Complaint.
3. The remaining named defendants are owners of individual lots located in Colorado's Timber Ridge Ranch (collectively referred to hereinafter as "Lot Owner Defendants"). None of the Lot Owner Defendants have been served with process in this action.
4. On or about August 4, 2009, defendant Walter Joseph Machock, writing on behalf of himself and defendant Colorado Timber Ridge Ranch, L.P., sent a letter to all Lot Owner Defendants stating, "[f]rom our perspective, it was completely unnecessary for the HOA to name [each lot owner] as an individual defendant in the lawsuit. The HOA could have pursued claims against the Development Partnership and me, without [each lot owner] being named as a defendant." [A copy of Mr. Machock's August 4, 2009 letter is attached hereto as Exhibit 1, with unrelated text redacted, See page 2 highlighted text.]
5. Based upon Mr. Machock's August 4, 2009 letter, it is clear that neither Mr. Machock nor Colorado Timber Ridge Ranch, L.P. take the position that the Lot Owner Defendants are "indispensable" or "necessary" parties under C.R.C.P. Rule 19, or that their joinder is required under C.R.C.P. Rule 57(j).
6. Removal of the Lot Owner Defendants as named defendants will simplify and expedite this action.
7. All Lot Owner Defendants have been made aware of this action, and may choose to intervene as a party if they desire.
8. C.R.C.P. Rule 15(a) "prescribes a liberal policy of amendment and

encourages the courts to look favorably on requests to amend." *Eagle River Mobile Home Park, Ltd. v. Dist. Court*, 647 P.2d 660, 662 (Colo. 1982); accord *Polk v. Denver Dist. Court*, 849 P.2d 23, 25 (Colo.1993).

9. Based upon the positions taken by defendants Colorado Timber Ridge Ranch, L.P. and Walter Joseph Machock, no party should be prejudiced by deletion of the Lot Owner Defendants as named defendants to this action.

10. For these reasons, the HOA moves this Court for leave to amend its Amended Complaint to remove all Lot Owner Defendants as named defendants. The proposed Second Amended Complaint for Declaratory Judgment is submitted (but not filed) with this Motion.

WHEREFORE the HOA requests that the Court grant its Motion to Amend the Amended Complaint for Declaratory Judgment, that the Second Amended Complaint submitted to the Court with this Motion be filed upon entry of the Court's order and that Defendants Colorado Timber Ridge Ranch, L.P., Walter Joseph Machock and George and Jean Taulman be ordered to file a responsive pleading to the Second Amended Complaint within 10 days of entry of the Court's Order pursuant to C.R.C.P. Rule 15. A proposed form of order is submitted to the Court with this motion.

RESPECTFULLY SUBMITTED this 21st day of August, 2009.

SHAND, NEWBOLD & CHAPMAN, P.C.
*Original signature on file at the offices of
Shand, Newbold & Chapman, P.C.*


/s/ A. Michael Chapman

A. Michael Chapman

R. Thomas Geyer

*Attorneys for Plaintiff Colorado's Timber Ridge
Homeowners Association*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of August, 2009 a true and correct copy of the foregoing document was electronically served via LexisNexis File and Serve, addressed as follows:

Jeffrey A. Lane, Esq.
The Law Firm of Springer & Steinberg,
A Professional Corporation
1600 Broadway, Suite 1200
Denver, CO 80202

jlane@springer-and-steinberg.com

*Attorneys for defendants, Walter Joseph Machock, Colorado Timber Ridge Ranch, L.P.,
George Taulman and Jean Taulman*


/s/ Sarah Taylor
Sarah Taylor

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COLORADO TIMBER RIDGE RANCH, L.P.

(831) 626-0754

JOEmachock@aol.com

August 4, 2009

TO: Timber Ridge Homeowners

Re: *Colorado's Timber Ridge Homeowners Association v.
Colorado Timber Ridge Ranch, L.P., et al.*
(District Court, Archuleta County, Colorado, Case #09 CV 95)

Dear Timber Ridge Homeowner:

As you are undoubtedly aware, a lawsuit has been filed by your homeowners association, Colorado's Timber Ridge Homeowners Association (the "HOA"), against me and the Colorado Timber Ridge Ranch, L.P. (the "Development Partnership").

*Redacted by counsel for Colorado's Timber Ridge Homeowners Association on 8/21/09.

1. The Lawsuit. The HOA has filed a lawsuit against the Development Partnership, against me personally, and against over 200 other individual defendants. The lawsuit was filed in district court in Archuleta County, Colorado in Pagosa Springs. The exact case name and case number are listed above. I have just recently received a copy of the lawsuit and understand the lawsuit was filed within the last two weeks.

It is important to note that *you have been named as a defendant in the lawsuit.* As such, you will most likely need to retain a lawyer to represent you and protect your interests. Your lawyer cannot be the same lawyer that represents the HOA, because that is a conflict of interest. I am told that the filing fee alone for each defendant to pay to the court is approximately \$100 to \$150 per person (or \$200 to \$300 per couple). This does not include the cost of attorneys to defend each of the landowners.

The fact that you have been named as a defendant in the lawsuit filed by the HOA has other potential impacts on your personal finances and legal responsibilities as well. For example, you cannot sell the property you own in Colorado Timber Ridge without making a full and complete disclosure of the fact that there is pending litigation and that your property is the subject of the pending litigation. Additionally, should you wish to borrow money from a bank, whether it be for refinancing your Colorado Timber Ridge property, obtaining a loan or refinancing other property, or perhaps even obtaining a personal line of credit or business financing, in all likelihood it will be necessary to disclose to your lender that you are a defendant in a pending lawsuit. This may impact your ability to obtain financing in these difficult times.

From our perspective, it was completely unnecessary for the HOA to name you as an individual defendant in the lawsuit. The HOA could have pursued claims against the Development Partnership and me, without you being named as a defendant.

*Redacted by counsel for Colorado's Timber Ridge Homeowners Association on 8/21/09.

*Redacted by counsel for Colorado's Timber Ridge Homeowners
Association on 8/21/09.

*Redacted by counsel for Colorado's Timber Ridge Homeowners
Association on 8/21/09.

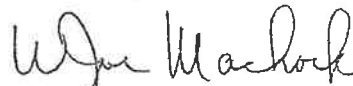
Timber Ridge Homeowners

August 4, 2009

Page 5

*Redacted by counsel for Colorado's Timber Ridge Homeowners
Association 8/21/09/

Sincerely,



W. Joseph Machock
Managing Partner
Colorado Timber Ridge Ranch, L.P.

WJM/jm

00071340.000

**DISTRICT COURT, ARCHULETA COUNTY,
COLORADO**

Court Address: 449 San Juan Boulevard
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**PLAINTIFF: COLORADO'S TIMBER RIDGE
HOMEOWNERS ASSOCIATION, a Colorado non-
profit corporation**

**DEFENDANTS: COLORADO TIMBER RIDGE
RANCH, L.P., a California limited partnership;
GEORGE TAULMAN and JEAN TAULMAN, a
married couple; WALTER JOSEPH MACHOCK**

Submitting Attorney:

A. Michael Chapman, Atty. Reg. No.19513
R. Thomas Geyer, Atty. Reg. No. 36277
SHAND, NEWBOLD & CHAPMAN, P.C.
P.O. Box 2790
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Fax Number: (970) 247-3100
E-Mail: mchapman@snc-law.com
tgeyer@snc-law.com

▲ COURT USE ONLY ▲

Case Number: 09 CV 95

Div.: Ctrm.:

SECOND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Colorado's Timber Ridge Homeowners Association ("HOA"), by and through counsel, Shand, Newbold & Chapman, P.C., and in accordance with C.R.C.P. Rule 57 and C.R.S. §13-51-101, *et seq.* alleges as follows:

PARTIES

1. Plaintiff HOA is a Colorado non-profit corporation with its principal place of business being in Pagosa Springs, Colorado.
2. Defendant Colorado Timber Ridge Ranch, L.P (the "Declarant") is a

California limited partnership with its principal place of business being in Bountiful, Utah.

3. Upon information and belief, Defendant Walter Joseph Machock ("Machock") is the general partner of the Declarant.

4. Defendants George Taulman and Jean Taulman (collectively referred to as the "Taulmans") are residents of Taos, New Mexico.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to Section 9, Article VI of the Constitution of the State of Colorado.

6. All named defendants are subject to personal jurisdiction of this Court, pursuant to C.R.S. §13-1-124, because the defendants either own real property or are general partners of a defendant that owns real property situated in Archuleta County, Colorado that is the subject of this action.

7. Venue is proper in this forum pursuant to C.R.C.P. Rule 98 (a).

GENERAL ALLEGATIONS

8. Prior to July 29, 1999, the Declarant purchased real property located in Archuleta County, Colorado commonly known as the Gomez Ranch and more particularly described as follows:

A tract of land located in the Southeast Quarter (SE4) of Section 21; the West Half of the Southwest Quarter (W2SW4) of Section 22; the Southwest Quarter of the Northeast Quarter (SW4NE4) and the Northwest Quarter (NW4) and the North Half of the Southwest Quarter (N2SW4) and the Southwest Quarter of the Southwest Quarter (SW4SW4) and the Northwest Quarter of the Southeast Quarter (NW4SE4) of Section 27; the East Half (E2) and the Northwest Quarter (NW4), less tracts sold, and the North Half of the Southwest Quarter (N2SW4) and the Southeast Quarter of the Southwest Quarter (SE4SW4) of Section 28, Township 35 North, Range 2 West, New Mexico Principal Meridian, Archuleta County,

Colorado totaling 1178 acres, more or less.

The above-described real property is hereinafter referred to as the "Property".

9. On July 29, 1999, the Declarant executed a document entitled "Declaration of Protective Covenants, Conditions and Restrictions for Colorado's Timber Ridge Subdivision" (hereinafter referred to as the "Covenants").

10. The Covenants were recorded in the office of the Clerk and Recorder for Archuleta County, Colorado on August 26, 1999 at reception number 99008651.

11. The Property is encumbered by the Covenants.

12. The Declarant created the Covenants as part of its development of a single-family residential community with parks, recreational facilities and other amenities for the benefit of the community that the Declarant named "Colorado's Timber Ridge Ranch."

13. The Covenants were created, in part, to insure the attractiveness of individual property and the community facilities within the Property, to prevent future impairment to the Property, and to preserve, protect and enhance the value and amenities of the Property.

14. One of the recreational amenities identified in the Covenants for the use and enjoyment of members of the HOA is an Equestrian Center.

15. The Property and the Covenants are subject to the Colorado Common Interest Ownership Act, found at C.R.S. § 38-33.3-101, *et seq.*

16. The Declarant created and formed HOA to administer the Covenants.

17. On or about May 21, 2008, and without the knowledge or approval of

HOA, Declarant unilaterally developed a previously undeveloped portion of the Property, approximately 319.44 acres in size, hereinafter referred to as the "Undeveloped Property", by recording Plat number 882 entitled "Timber Meadows" in the office of the Clerk and Recorder for Archuleta County, Colorado at reception number 20803811, hereinafter referred to as the "Timber Meadows Plat".

18. The Timber Meadows Plat describes eight differing parcels, each of which are 35+ acres in size, and a tract of land 35.43 acres in size that is bisected by Bristlecone Drive and identified as "Equestrian Center", referred to hereinafter as "Equestrian Center Tract."

19. Each of the eight parcels and the Equestrian Center Tract are "units" as defined by the Colorado Common Interest Ownership Act and were created by the division, or creation of multiple parcels, out of the Undeveloped Property.

20. On June 24, 2008, without the knowledge or approval of HOA, Declarant executed a Deed-in-Lieu of Foreclosure purporting to validly transfer title to the Equestrian Center Tract to the Taulmans, hereinafter referred to as the "Equestrian Center Deed-in-Lieu". The Equestrian Center Deed-in-Lieu was recorded in the office of the Clerk and Recorder for Archuleta County, Colorado on June 30, 2008 at reception number 20804983.

21. On June 27 2008, without the knowledge or approval of HOA, Declarant executed a Deed-in-Lieu of Foreclosure purporting to validly transfer title to real property described as Parcel 8 on the Timber Meadows Plat to the Taulmans ("Parcel 8 Deed-in-Lieu"). The Parcel 8 Deed-in-Lieu was recorded in the office of the Clerk and

Recorder for Archuleta County, Colorado on June 30, 2008 at reception number 20804984.

22. On June 30, 2008, without the knowledge or approval of HOA, Declarant recorded Plat number 885 entitled "Timber Meadows Amended Plat" in the office of the Clerk and Recorder for Archuleta County, Colorado at reception number 20804982.

23. The Timber Meadows Amended Plat purports to remove from Timber Meadows the real property and improvements purportedly transferred to the Taulmans by the Equestrian Center Deed-in-Lieu and Parcel 8 Deed-in-Lieu.

24. The Declarant had no legal right to develop the Undeveloped Property and create the different parcels and tracts of land on the Timber Meadows Plat for separate ownership or occupancy because the Defendant failed to properly reserve such development rights in the Covenants as required by C.R.S. § 38-33.3-205(1)(h).

25. The Declarant's unilateral development of the Undeveloped Property as described herein was invalid under Colorado law and void at the time it was done.

26. To legally develop the Undeveloped Property, the Declarant must obtain approval from HOA in accordance with C.R.S. § 38-33.3-210(5).

27. HOA has never approved Declarant's development of Timber Meadows or the transfer of title of any portion or unit of the Undeveloped Property to the Taulmans.

28. Because the Declarant had no unilateral right to develop the Undeveloped Property, the Declarant could not legally convey to the Taulmans separate and distinct portions or units of the Undeveloped Property by way of the Equestrian Center Deed-in-

Lieu and Parcel 8 Deed-in-Lieu.

29. A present dispute exists between the HOA, the Declarant, and the Taulmans as to whether the Declarant's development and creation of Timber Meadows and subsequent transfers of property to the Taulmans by way of the Equestrian Center Deed-in-Lieu and Parcel 8 Deed-in-Lieu are valid, and whether the Declarant has any unilateral right to develop the Undeveloped Property.

WHEREFORE, the HOA asks this Court to enter judgment declaring:

a) That the Declarant's development of the Undeveloped Property by the creation of units designated for separate ownership or occupancy as shown on the Timber Meadows Plat is void;

b) That the Timber Meadows Plat and Timber Meadows Amended Plat be declared void and stricken from the real property records of Archuleta County;

c) That the transfers of property by the Declarant to the Taulmans by way of the Equestrian Center Deed-in-Lieu and the Parcel 8 Deed-in-Lieu be declared invalid and void, or in the alternative that the Taulmans be named as tenants in common in title to the Undeveloped Property with the Declarant;

d) That, pursuant to C.R.S. § 38-33.3-123 and the Covenants, the Declarant and Machock be ordered to pay all costs, fees, and expenses incurred in this action by the HOA, including reasonable attorney's fees, expert witness fees and costs and deposition expenses as provided by law;

e) That the HOA be awarded such other relief as is equitable and just.

RESPECTFULLY SUBMITTED this 21st day of August, 2009 to the Court simultaneously with Plaintiff's Motion for Leave to Amend its Amended Complaint for Declaratory Judgment.

SHAND, NEWBOLD & CHAPMAN, P.C.
*Original signature on file at the offices of
Shand, Newbold & Chapman, P.C.*


/s/ A. Michael Chapman

A. Michael Chapman

R. Thomas Geyer

*Attorneys for Plaintiff Colorado's Timber Ridge
Homeowners Association*

Plaintiff's Address:
P.O. Box 5436
Pagosa Springs, CO 81147

**DISTRICT COURT, ARCHULETA COUNTY,
COLORADO**

Court Address: 449 San Juan Boulevard
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**PLAINTIFF: COLORADO'S TIMBER RIDGE
HOMEOWNERS ASSOCIATION, a Colorado non-
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RANCH, L.P., a California limited partnership, et al**

▲ COURT USE ONLY ▲

Case Number: 09 CV 95

Div.: Ctrm.:

**ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO AMEND ITS AMENDED
COMPLAINT FOR DECLARATORY JUDGMENT**

THIS MATTER came before the Court on Plaintiff's Motion for Leave to Amend its Amended Complaint for Declaratory Judgment, and

THE COURT, having reviewed Plaintiff's Motion and being otherwise fully informed, hereby orders that Plaintiff's Motion be and hereby is GRANTED, and

IT IS FURTHER ORDERED that Plaintiff's Second Amended Complaint for Declaratory Judgment submitted to the Court by Plaintiff with the Motion shall be filed by the Clerk of Court upon entry of this Order, and that Defendants Colorado Timber Ridge Ranch, L.P., Walter Joseph Machock and George and Jean Taulman are hereby ordered to file a responsive pleading to Plaintiff's Second Amended Complaint for Declaratory Judgment within 10 days of entry of this Order.

DONE AND SIGNED this _____ day of _____, 2009.

BY THE COURT

District Court Judge

LexisNexis File & Serve Transaction Receipt

Transaction ID: 26725661
Submitted by: Sarah Taylor, Shand Newbold & Chapman PC
Authorized by: Michael Chapman, Shand Newbold & Chapman PC
Authorize and file on: Aug 21 2009 4:06PM MDT

Court: CO Archuleta County District Court 6th JD
Division/Courtroom: 1 - Division 1
Case Class: Civil
Case Type: Declaratory Judgment
Case Number: 2009CV95
Case Name: COLORADOS TIMBER RIDGE HOMEOWNERS ASSOCI vs. COLORADO TIMBER RIDGE RANCH LP et al

Transaction Option: File and Serve
Billing Reference: 8006.1
Read Status for e-service: Not Purchased

Documents List

4 Document(s)

- Attached Document, 4 Pages Document ID: 33331544** [PDF Format](#) | [Original Format](#)

Document Type: Motion	Access: Public	Statutory Fee: \$0.00	Linked:
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Document title:
PLAINTIFF'S MOTION FOR LEAVE TO AMEND ITS AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
- Attached Document, 5 Pages Document ID: 33331546** [PDF Format](#) | [Original Format](#)

Document Type: Filing Other	Access: Public	Statutory Fee: \$0.00	Linked:
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Document title:
EXHIBIT 1 TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND ITS AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
- Attached Document, 7 Pages Document ID: 33331547** [PDF Format](#) | [Original Format](#)

Document Type: Filing Other	Access: Public	Statutory Fee: \$0.00	Linked:
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Document title:
SECOND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
- Attached Document, 1 Pages Document ID: 33331549** [PDF Format](#) | [Original Format](#)

Document Type: Proposed Order	Access: Public	Statutory Fee: \$0.00	Linked:
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Document title:
ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO AMEND ITS AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

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Sending Parties (1)

Party	Party Type	Attorney	Firm	Attorney Type
COLORADOS TIMBER RIDGE HOMEOWNERS ASSOCI,	Plaintiff	Chapman, Michael	Shand Newbold & Chapman PC	Privately Retained Attorney

Recipients (1)

Service List (1)

Delivery Option	Party	Party Type	Attorney	Firm	Method
Service	COLORADO TIMBER RIDGE RANCH LP	Defendant	Jeffrey A Lane Springer & Steinberg PC	E-Service	
Service	MACHOCK, WALTER JOSEPH	Defendant	Jeffrey A Lane Springer & Steinberg PC	E-Service	
Service	TAULMAN, GEORGE	Defendant	Jeffrey A Lane Springer & Steinberg PC	E-Service	
Service	TAULMAN, JEAN	Defendant	Jeffrey A Lane Springer & Steinberg PC	E-Service	

Additional Recipients (0)

Case Parties