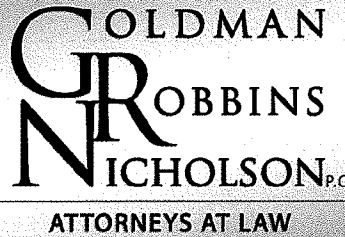


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MICHAEL A. GOLDMAN  
JEFFERY P. ROBBINS  
LINDSEY K. S. NICHOLSON  
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970/259.8747  
FAX 970/259.8790

August 26, 2011

Via email to [bmilford75@gmail.com](mailto:bmilford75@gmail.com) and U.S. mail to:

Bob Milford, President of the Board of Directors  
Colorado's Timber Ridge Homeowners Association  
PO Box 5436  
Pagosa Springs, CO 81147

**Re: Lot 121, Jody McAlister**  
**Our File No. 2478.001**

Dear Mr. Milford:

This firm has been retained by Jody McAlister, owner of Lot 121, Colorado's Timber Ridge Subdivision ("CTR"), to respond to the Board of Directors' Notice of Violation dated July 19, 2011 (the "Notice of Violation").

According to the Notice of Violation (copy enclosed), the Board has determined that Ms. McAlister's property is in violation of Section VII.A and Section VIII.J of the Declaration of Protective Covenants, Conditions and Restrictions (the "Declaration") for CTR, which provide as follows:

*VII.A. RESIDENTIAL USE. All lots shall be used exclusively for single family residential purposes including associated equestrian facilities. ... No buildings or improvements not associated with residential use shall be permitted.*

*VIII.J. REFUSE AND OUTSIDE STORAGE OF MATERIALS. No trash, ashes, garbage or other refuse shall be allowed to accumulate or be placed on any lot or the Property....*

The Notice of Violation demands that Ms. McAlister:

- (a) remove her horses and all fencing from Lot 121, *or* commence construction of a principal residence on Lot 121 on or before July 31, 2012; and
- (b) remove storage buildings and building materials from Lot 121 by December 31, 2011.

The Notice of Violation further provides that if such demands are not met by the stated deadlines, fines will be assessed against Lot 121.

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Colorado's Timber Ridge Homeowners Association  
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Ms. McAlister maintains her position as presented at the Board's July 11<sup>th</sup> hearing on the alleged violations that Lot 121 is not in violation of any provisions of the Declaration. At the hearing, Ms. McAlister raised numerous defenses to the allegations and issues with respect to the manner in which this enforcement action has been handled by the Board, which will not be reiterated at this time. Instead, for purposes of this letter, we wish to raise two primary issues: (1) the Declaration does not prohibit the keeping of horses on lots within CTR; and (2) even if the Declaration could somehow be read as prohibiting the keeping of horses except on those lots on which houses are also built, Ms. McAlister obtained a variance for such use from the IRC.

First, the plain language of Section VII.A limits the use of lots in CTR to "single family residential purposes" and expressly allows "associated equestrian facilities". "Residential purposes" is not defined in the Declaration; however, generally, Colorado law interprets residential use restrictions as simply prohibiting commercial use. For example, the Colorado Common Interest Ownership Act ("CCIOA"), which governs all subdivisions such as CTR, defines "residential use" as "use for dwelling or recreational purposes but does not include ... use[] for commercial income from, or service to, the public." C.R.S. § 38-33.3-103(26). Section X of the Declaration expressly allows horses on lots in CTR and sets forth guidelines for stalls, exercise areas, and feeding of horses. In light of the fact that Ms. McAlister does not keep her horses for the purpose of deriving commercial income, the presence of horses on Lot 121 does not constitute a violation of the Declaration.

Second, even if the Declaration could somehow be interpreted as allowing horses only on lots on which houses also exist, as the Board seems to believe, the fact is that Ms. McAlister obtained a variance from the IRC in 2006, allowing her to retain her horses on Lot 121 – see enclosed copy of report from Sari Schuchardt, committee chair of the IRC. Ms. McAlister and her ex-husband had originally owned Lot 121 together with the adjoining property, Lot 122. In 2000, after obtaining all necessary approvals, Ms. McAlister and her ex-husband constructed a home on Lot 122 and installed fences and storage buildings on Lot 121 to serve as their 'associated equestrian facilities'. When Ms. McAlister and her ex-husband divorced in 2006, Ms. McAlister received Lot 121 and her ex-husband received the home and Lot 122. At that time, Ms. McAlister requested and received a variance from the Environmental Control Committee (n/k/a the Improvement Review Committee)("IRC") to retain her horses on Lot 121 until such time as the CTR Equestrian Center was completed. Unfortunately, the enclosed report, which acknowledges that Ms. McAlister had received a variance from the IRC for the presence of horses on Lot 121, was not available to Ms. McAlister at the time of the hearing. In light of this granted variance, the presence of Ms. McAlister's horses on Lot 121 and the associated fencing and storage buildings are not violations of the Declaration.

Notwithstanding the foregoing, the purpose of this letter is not to belabor the factual issues, but rather to advise the Board that it is legally barred from enforcing the alleged violations. As has already been explained to the Board by its legal counsel William Darling, there is a one-year limitations period for actions to enforce building restrictions under CCIOA. The relevant statute reads as follows:

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Colorado's Timber Ridge Homeowners Association  
August 26, 2011  
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[N]o action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of the declaration ... or to compel removal of any building or improvements because of the violation ... unless the action is commenced within *one year* from the date from which the person commencing the action knew or in the exercise of reasonable diligence should have known of the violation....

C.R.S. § 38-33.3-123(2) (emphasis added). The foregoing statute of limitations applies directly to the alleged violation of the Declaration pertaining to the storage buildings and the fencing located on Lot 121. The fences and storage buildings in question have been in place for over five years. Accordingly, any lawsuit brought by the Association to enforce the alleged violation would be promptly dismissed by the court due to the expiration of the statute of limitations.

Although the foregoing section of CCIOA arguably does not apply to the presence of Ms. McAlister's horses on Lot 121 (which is a "use" restriction rather than a "building" restriction), any action to enforce this alleged violation would take the form of a breach of contract action. There is a limitations period of *three years* for breach of contract claims. See C.R.S. § 13-80-101(1)(a). Again, the horses have been on Lot 121 since at least 2006 and the three-year limitation period has expired.

If the Association proceeds with assessing fines against Lot 121, it will not be able to bring an action to collect such fines or to foreclose any lien against Lot 121 for such fines due to the limitations period expirations. In my opinion, a court will not allow the Association to collect penalties for alleged violations that it is otherwise barred from enforcing due to the statute of limitations expiration. Any lien filed against Ms. McAlister's property for such unpaid fines will be groundless and invalid, authorizing Ms. McAlister to seek damages and attorney's fees from the Association pursuant to C.R.S. § 38-35-109(3) and § 38-35-204.

If you have any questions or wish to discuss this matter further, please contact me or have Mr. Darling contact me. Ms. McAlister would like to avoid expensive and time-consuming litigation to resolve this matter; however, she has authorized our firm to file an action seeking a declaratory judgment regarding the Notice of Violation and all of the Board's actions associated therewith, unless the Board revokes its Notice of Violation or this matter is otherwise satisfactorily resolved in a timely manner.

Sincerely yours,

**GOLDMAN, ROBBINS & NICHOLSON, P.C.**



Lindsey Nicholson  
Direct e-mail: nicholson@gm-law.com

LN

Robert Milford, President  
Colorado's Timber Ridge Homeowners Association  
August 26, 2011  
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Encl.: Notice of Violation  
IRC Report

cc: via email only, with encl.:  
Jody McAlister

Board Members:     Lindy Rigney - [lindarigney@hotmail.com](mailto:lindarigney@hotmail.com)  
                          Mike Ward - [laughinggull@msn.com](mailto:laughinggull@msn.com)  
                          Barbara Parada - [barjed@yahoo.com](mailto:barjed@yahoo.com)

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Date: July 19, 2011

To: Jody McAlister Owner of Lot # 121 at 123 Heath Drive

From: Bob Milford - President of Colorado's Timber Ridge Homeowners Association

This letter is to inform you that Lot # 121 is in violation with the Declarations of Colorado's Timber Ridge HOA (CTRHOA). Subsequent to your hearing on July 11, 2011 the Board of Directors of CTRHOA by a majority vote decided that Lot # 121 is in violation with the Declarations of Colorado's Timber Ridge HOA.

The following states which section of the Declaration of CTRHOA Lot # 121 is in violation. It also states what is required to come into compliance with the Declaration of CTRHOA and the time frame allowed to come into compliance before a fine may be assessed.

**VII. Private Lot Use and Restrictions**

A. **Residential Use Only**. All lots should be used for residential purposes only including associated equestrian facilities. No improvements or buildings not associated with residential use shall be permitted.

**VIII. Design Requirements**

J. **Outside Storage of Materials**. No trash, ashes, garbage or other refuse shall be allowed to accumulate or be placed on any lot or property.

**Requirements for Owner of Lot # 121 to come into compliance with Declarations of Colorado's Timber Ridge HOA are as follows:**

VII. A. 1. Horses and all fencing must be removed from Lot #121 property.

Or

Begin Construction of personal residence on Lot # 121 property

2. Storage buildings must be removed from Lot # 121 property.

VIII. J. 1. Building materials stored on Lot #121 property must be removed.

**Time Frame allowed to come into compliance before a fine may be assessed against Jody McAlister owner of Lot # 121 are as follows:**

VII. A. 1. Horses and all fencing must be removed from Lot # 121 property by July 31, 2012

Or

Begin construction of personal residence on Lot #121 by July 31, 2012.

2. Storage buildings must be removed from Lot # 121 property by December 31, 2011

VIII. J. 1. Building materials stored on Lot #121 property must be removed by December 31, 2011.

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Bob Milford  
President  
Colorado's Timber Ridge HOA

## CTR IRC Report

As of 4/5/06 (when I assumed the chairmanship) the following has occurred:

Lot #	Name	Occasion for Permit
84	Shaw	House
162	Vautier/Woods	House
98	Kleiner	House
21	Peck	House
78	Jurak	House
155	Marks	Driveway
74	King	House
97	Olson	Barn
156	Molnar	Fence
100	Hewitt	Paved Driveway
128	Schmitz	House
105	Schuchardt	Tree Removal
148	Ward	House
79	Griggs	House
198	Rippy	House
107	Mochó	House (permit delayed by owner indefinitely)
164	Little	Site prep/grading
9	GPH Investments	House
98	Kleiner	Entryway & fencing
165	McCormick	House
161	Yalom	House
94	Kuening	House
117	Hewitt	Tree(s) removal
127	Sadler	Entryway
133	Rittenauer/Dillon	House
51	Gobatto	Deck addition
64	Bard	Entry & fence

Several permits were denied – usually for unnecessary and or premature action tree removal.

Several variances were granted – usually for slight set back encroachments which were given the go ahead by the neighboring lot owner.

One variance was not granted – permission was denied by the neighboring lot owner.

General variance was granted for horse grazing on property as long as it did not become an issue (ie. manure build up; area becoming a dust bowl; etc.) – variance utilized by Cromwell (McAlister), Hewitt, and Molnar.

Several issues were brought to the board for resolution, which can be found in the board minutes.

After a visit with Bruce Quintana with the road and bridge department at the county, he made it possible for the county to require our yellow permit prior to their issuance of any permit of any kind involving construction (including driveways) on a Timber Ridge lot. This action was a huge help to this committee.

Respectfully submitted,  
Siri Schuchardt - chairman