

---

MICHAEL A. GOLDMAN  
JEFFERY P. ROBBINS  
LINDSEY K. S. NICHOLSON  
JOSH W. MACK

**GOLDMAN  
ROBBINS  
NICHOLSON**<sub>P.C.</sub>  
ATTORNEYS AT LAW

---

679 E. 2ND AVENUE, SUITE C  
PO BOX 2270  
DURANGO, CO 81302  
970/259.8747  
FAX 970/259.8790

December 19, 2011

*Via email to [bill@wjdarling.com](mailto:bill@wjdarling.com) and U.S. mail to:*

William J. Darling, Esq.  
Law Office of William J. Darling, PC  
PO Box 959  
Pagosa Springs, CO 81147

**Re: Colorado Timber Ridge HOA - Jody McAlister  
Our File No. 2478.001**

Dear Mr. Darling:

Thank you for your letter dated September 25, 2011. I apologize for the delay in responding; however, Ms. McAlister has been facing family medical issues and was unable to communicate with me until November. My workload subsequently prevented me from replying to you before now.

Ms. McAlister retains her position that the Board is precluded from taking action to enforce any of the alleged violations asserted in the Notice of Violation due to the expiration of the relevant statutes of limitations. Notably, your last letter did not respond to the statutes of limitations issues that I raised in my letter to the Board (and that you previously acknowledged in a letter to the Board). I assume therefore that the Board acknowledges that a lawsuit to compel removal of any items will be dismissed on such grounds; accordingly, the only question that remains is whether penalties can be assessed for alleged violations that have existed for longer than the statutory period. A declaratory judgment action would be the proper proceeding for determining the respective rights of the parties with respect to the legality of any such penalties that might be levied by the Board. C.R.C.P. 57; *e.g.*, Good v Bear Creek Ranch Ass'n, Inc., 160 P.3d 351 (Colo. App. 2007).

Your letter also mentions that you thought Ms. McAlister was not questioning the process by which the Board reached its decision. In fact, Ms. McAlister does challenge many aspects of the Board's procedures and would raise such challenges in any lawsuit that she may bring or defend. Such challenges would include, but may not be limited to, the lack of impartiality of certain members of the Board and the Board's consideration of evidence that was not put forth at the hearing and to which Ms. McAlister could not respond. As you know, Colorado law requires homeowners' associations to use their authority to enforce protective covenants in good faith and in a reasonable manner. In fact, associations have a fiduciary duty to deal impartially with owners and not in a manner that is arbitrary or capricious. From the information that I have received from Ms. McAlister, it seems that the HOA has breached this duty and that it quite arbitrarily singled out Ms. McAlister for enforcement action, which leads to the assumption that

William J. Darling, Esq.

December 19, 2011

Page 2

this action is driven more by personal conflicts between past and present board members than by any real concern regarding the uses and condition of Lot 121.

Notwithstanding all of the foregoing, and in light of the more important family issues that she is facing, Ms. McAlister does not wish to rehash prior mistakes and conflicts, but rather wishes to focus on resolving this matter. To that end, she makes the following offer of settlement:

1. She will remove her horses from Lot 121 permanently (or until such time as she has built a residence on the property).
2. She will remove one of the two barns (the one with the green-roof). The fencing and the other barn will not be removed; again, the statute of limitations clearly bars any action to compel their removal.
3. She has removed all building materials other than several large beams that could not be removed due to weather conditions. She will have these beams removed by May 31, 2012.
4. The Association will compensate Ms. McAlister \$3,500 for her attorneys' fees and other expenses incurred in defending against the HOA's arbitrary action.
5. The Association will rescind the Notice of Violation, and the parties will execute a full release of all claims pertaining to the Notice of Violation.

Please advise whether this offer is acceptable to the Board at your earliest convenience and not later than December 30, 2011. If we are unable to resolve the matter on these terms, we will move forward with a request for the pre-litigation hearing required by the HOA's dispute resolution policy.

Thank you.

Sincerely yours,

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



Lindsey Nicholson

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

LN

cc: Jody McAlister