

THE Durango HERALD

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Forest Lakes homeowners group folds

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The Forest Lakes Property Owners Association has dissolved after several years of legal strife, leaving no one in charge to enforce the subdivision's covenants.

In a July 3 letter to property owners, the remaining three board members announced their resignations, adding that no one else was interested in taking on the responsibilities.

Unlike most subdivisions, membership in the owners association was voluntary, and the organization didn't own common grounds or have the power to levy fees against property owners. It formed in the 1970s to enforce a set of covenants that residents approved by a two-thirds majority.

The association has been involved in a legal battle for six years with Myron and Louise Tolf about an alleged covenant violation.

The Tolfs built a carport almost 10 feet too close to a property line, a violation of subdivision covenants but not La Plata County setback standards. The Tolfs refused to tear down the \$11,000 cedar-sided carport, and the homeowners association filed a lawsuit in June 2003.

The Tolfs fought back, and they now are expected to receive a judgment in excess of \$100,000 for attorney's fees, said Bill Zimsky, who represented the association during later proceedings.

The association's letter to homeowners reads: "The lawsuit with the Tolfs will be completed soon with a judgment in favor of the Tolfs far exceeding any assets the FLPOA has."

It was unknown what legal recourse the Tolfs have to collect a judgment from the now-defunct, cash-strapped organization.

On Tuesday, Myron Tolf said he plans to explore every legal avenue he has to collect his judgment, even if it means suing members of the association.

"I'm going to pursue every avenue," he said. "They wrongfully sued me and caused damage. They caused me a lot of grief and damage for nothing. It's all because of a few people who felt they were above and beyond."

Forest Lakes is La Plata County's largest subdivision with more than 750 homes. It is located about six miles north of Bayfield.

Zimsky took issue with several legal rulings in the Tolf cases, including one that has allowed parties to collect attorney's fees even though the homeowners association was not organized under the Colorado Common Interest Ownership Act, which regulates non-voluntary property owners associations in the state.

The Tolf's carport was clearly in violation of the association's rules, Zimsky said, but because of a legal technicality - the covenants were not properly submitted as evidence to the court - a judge could not use them in deciding whether the Tolf's had violated the associations rules , Zimsky said.

"It's unfortunate how it all played out," he said. "Really, nobody won."

Doug Savage, one of the three remaining board members, referred questions to the written statement issued by the board.

"The combination of the problems with the covenants and the fact that the HOA is a voluntary organization without any real or fixed assets makes it impossible for this organization as a whole to continue as currently organized," the statement reads.

"For a property owners association to be viable in Forest Lakes, enforceable covenants will need to be created," it says. "Until this happens, the development of Forest Lakes will probably be governed by the La Plata County Master Plan."

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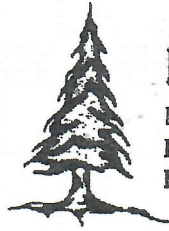
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COMMUNITY CALENDAR



FOREST LAKES

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MEMORANDUM

TO: To Whom It May Concern
From: Brian Sheffield, FLMD Manager
Re: Forest Lakes Residents' Concerns with Covenants
Date: April 19, 2017

Forest Lakes Metropolitan District's preference is to work in cooperation with residents and the public to maintain a peaceful enjoyable community to live in for all. In response to multiple public inquires, this memorandum explains the obligation that Forest Lakes Metropolitan District (FLMD) has with addressing problem residents and different actions that may be utilized to correct problems and issues. This memorandum is drafted for general informational purposes and should not be interpreted to be legal advice. Anyone seeking legal recommendation with a situation or incident is strongly encouraged to seek legal counsel of his/her own choosing.

Because of the dissolution of the prior Forest Lakes Property Owner's Association (POA), that entity is not active and does not enforce covenants at this time. Before moving on to explain what FLMD can or will do to address issues with problem residents, it is important to know that the covenants originally created and implemented for the subdivision still exist and should be followed. Although the FLMD is not an enforcement body for the covenants, the District recognizes and supports their existence and will operate within those parameters.

Dependent upon the type of issues encountered, different entities and organizations can become involved in efforts to correct different problems. In Forest Lakes, San Juan Basin Health may become involved in sanitation, health, and environmental code enforcement. With building, the La Plata County Building code may be applicable and a permit might be required. If fees are not paid and the FLMD rules and regulations are not followed, then FLMD must take action to correct those problems. La Plata County Animal Control can address uncontrolled, roaming, or dangerous pet problems. If state or federal law is violated, the La Plata County Sherriff's Office may be involved. With their own regulation/code, policies and procedures, and enforcement, outside entities and organizations may be able to find resolutions regarding problem residents. In some situations, there can, and should be, a coordinated effort among all entities involved in the issues.

In any issue in which FLMD is involved, FLMD makes every effort to ensure that problems are dealt with in a legal, fair and consistent manner. The FLMD can take different actions dependent upon the type of problem and the severity. In cases involving delinquent fees, written notification, shut off notices, and property liens are used to address unpaid balances. For extreme cases, certifying late payments through La Plata County and foreclosure are options that FLMD can consider. For various rule and regulation violations, FLMD will provide notice of the need to correct the problem, allow ample time to make the

needed changes, and then appropriate additional action could be required if there is continued refusal to comply. The FLMD works in coordination with attorneys and law enforcement when necessary.

The FLMD Board has considered the idea of assuming the role of the POA and has come to a consensus decision after thorough legal review and recommendations. The FLMD Board does not believe it is in the best interest of the District and its residents to assume the role of the POA. The additional work, time, staff, budget, and exposure to liability are all reasons that FLMD Board could not justify the addition of the POA duties to the existing services we provide for residents.

Through our own review of various information, we have learned that residents in the community are another group that can work to help with problem residents and they can actually enforce covenants in accordance with the language included in the covenants. For example, the covenants for Unit II, Section IX. General Provisions, 4. , states the following:

- a) If any owner of any lot in Forest Lakes or his heirs, agents or assigns violate or attempt to violate any of these Covenants and Restrictions it shall be lawful for the Declarant or any lot owner in Forest Lakes to prosecute any proceeding in any proper manner at law or in equity against such person or persons either to prevent him or them from doing so or to recover damages for each violation or both, and to recover court costs, attorney's fees, and related costs.

Currently, we are not aware of any plans to reassemble another POA. In the future, if another POA does come into existence, there are a few suggestions that we have been informed of that could be worth consideration:

1. The covenants that are currently in use seem to be outdated and could use a thorough review and updating. This revision process could help with the ease of administration, interpretation, and enforcement.
2. It may also be worthwhile to ensure that the bylaws for the POA are proper and include all necessary content and language.
3. The amount of liability and/or exposure that could exist from prior POA operations is unknown. A new POA would likely want to have protective measures and language against prior claims or decision that could have been made throughout past years.

I hope this information helps to answer some of the questions about roles and responsibilities in problem situations with residents. Please call the office at 970-884-2925 if there are additional questions.