


## The Basics of Covenant Enforcement

City of Greeley  
Debra J. Oppenheimer  
June 8, 2023



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## Additional Resources

- Website: [www.altitude.law](http://www.altitude.law)
- Sign up on our Website for our Blog and Newsletter
- [www.facebook.com/AltitudeCommunityLaw](https://www.facebook.com/AltitudeCommunityLaw)
- [www.twitter.com/AltitudeLaw](https://www.twitter.com/AltitudeLaw)
- [www.linkedin.com/company/altitudecommunitylaw](https://www.linkedin.com/company/altitudecommunitylaw)

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## What is a Covenant?

- Promise
- "Runs with the land" because recorded against land C.R.S. 38-30-121
- Restricts changes in the architecture, construction or appearance of lots or homes
- Conditions or Restrictions on behavior of residents, guests or visitors



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## What is a Rule

- Clarifies, expands upon a covenant
- Statement of prohibited actions or uses
- Changes in the architecture, construction or appearance of lots or homes
- Can't contradict covenant
- Can't try to amend covenants but call it a rule



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## Hierarchy of Docs and Law

- Federal law
- State law
- Ordinances – sometimes
- Declaration of Covenants and Plat map
- Bylaws
- Articles of Incorporation
- Rules/Guidelines/Policies



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## Purpose of Association

- Maintain, preserve, enhance and protect
- Promote harmonious community living
- Preserve the common scheme
- Preserve the harmonious design of the community



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## Be careful what you ask for.



06/06/2023



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## It is important to spell out that which you will and will not accept...



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## Identifying Violations

- Owner complaint
- Manager complaint
- Board/committee complaint
- External



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## Enforcement Options

- No action
- External resources
- Internal resources
- Alternative dispute resolution (ADR)
- Fine
- Legal action



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### Can you prohibit this?



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## No Action

- Duty to enforce covenants
- Political decision
- No requirement to enforce each violation
- Law change trumped covenants
- Case-by-case analysis
- Apply business judgment rule
- Consult attorney
- Document reasons



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**So, do you have to enforce?**

- *Business Judgment Rule*
- *Colorado Homes v. Loerch-Wilson, 43 P.3d 718 (Colo. App. 2001)*



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**Business Judgment Rule**

• Director is NOT liable to association or members for any action taken or omitted if the director acted:

- In good faith
- With best interests of association
- Prudently (informed)



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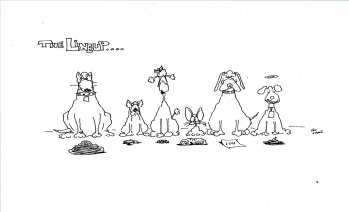

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**FINES/VIOLATIONS:**

No per day fines. No foreclosure on balances that are just fines; or Collection costs or attorney fees that the association has incurred and that are only associated with assessed fines.

If violation threatens public safety, health or welfare:

- Written notice of violation with 72-hour cure period, or may fine.
- If no cure in 72 hrs, may fine every other day and take legal action

If violation does NOT threaten public safety, health, welfare:

- Written notice by certified mail, with confirmation of receipt, of violation with two 30-days cure period, or may turn over to counsel.
- If no cure in 30 days then may fine
- Total amount of fines may not exceed \$500




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**FINES/VIOLATIONS:**

Once cured Assn must notify Owner of outstanding fine balance, and that no further fines for violation will be issued

Fine policy must specify the intervals upon which fines may be levied for continuing violations

Hearings: Disciplinary hearings are considered unwarranted invasions of privacy, and may now be conducted in executive session




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**HB1137**

If an association reasonably determines that a unit owner committed a violation ... the association shall ... provide the unit owner written notice ... of the violation informing the unit owner that the unit owner has thirty days to cure the violation....




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## External Resources

- Health Department
- Building/Zoning Department
- Law Enforcement
- Fire Department
- Building/Code Enforcement
- Animal Control




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## Internal Resources

- Suspend voting
- Suspend use of pool or rec center
- Shut off garbage collection
- Stop cable
- Towing
- Utility shutoff
- Self-help




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## Self-Help

- Authority
- When to use – Don't unless vacant
- Law enforcement
- Attorney
- Quickly
- No damage




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## Alternative Dispute Resolution (ADR)

- Arbitration
- Mediation
- Cost
- Time
- When to use



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## Fine

- Authority
- When to use
- Due process required
- Reasonableness
- Collection



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## Due Process Steps

- Notify of violation and right to hearing
- Be prepared to disclose name of complainant and copy of complaint
- C.R.S. § 7-136-102 & C.R.S. § 38-33.3-317(2)
- Hold hearing
- Issue a decision



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## Ensuring Procedures are Consistent with Policy

- Create a checklist
- Post process/procedures on websites or newsletters
- Notice and hearing language
- Comply with CCIOA
- C.R.S. § 38-33.3-302(k)




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## Easiest Way to Get in Trouble

- Not following the rules
- Examples:
  - Problem homeowner
  - Sympathy
  - Threat of suit
  - Not enforcing something




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## Legal Action

- When to use
- Who may enforce
  - Association through Board
  - Architectural Review Committee (ARC)
  - Homeowner




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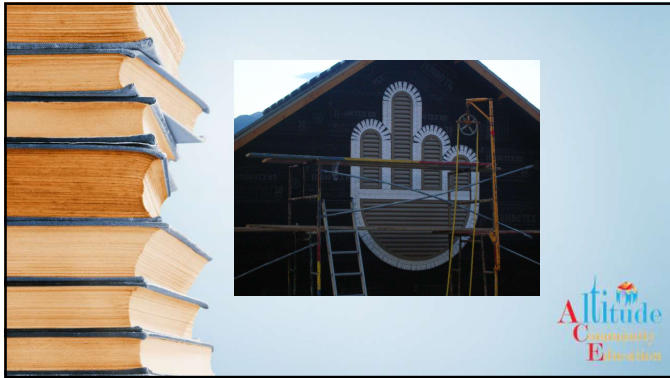
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### Statute of Limitations

- 1 year for structures/improvements
- From date of discovery
  - "Knew or should have known"
  - Continuing violations



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### Judicial Standard of Review

- Rule/Covenant is enforceable
- Followed procedure/docs/statute
- Acted within scope of authority
- Acted reasonably and in good faith



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**Questions?**

Thank you!

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[www.altitude.law](http://www.altitude.law)



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