

## EXCERPTS FROM ATTORNEY LETTER

### On Whether Assessments are Mandatory:

"4. Assessments are Mandatory upon Members. As stated above, the Association is a Colorado nonprofit corporation and as such is subject to the Nonprofit Act. Section 7-123-102(I)(h) allows a Colorado nonprofit corporation to impose assessments upon its members."

"As to assessments under the Bylaws, those are mandatory. Section 1 of Article VIII specifically provides: "Each member agrees to pay the Association an annual assessment, to be determined annually by the majority vote of the attending designated voters and proxies at the annual meeting". The use of the term "agrees to pay" would most likely be interpreted by a Colorado court to state an agreement to pay, which would make the payment mandatory, but again the agreement is by the Member and so the issue becomes whether membership is mandatory. In addition, the use of the word "shall" is a mandatory term and it refers to the ..."

### On Implied Covenants and Shared Easements:

"There is authority under the Evergreen Highlands case that the duty to pay assessments may be implied and may constitute an implied covenant in certain situations."

"There is Colorado law that all users of a road easement must pay for maintenance based upon use but that may be difficult for your Association to prove. However, you should be able to show the general benefit of access, the protection of property values, the necessity for lenders of mandatory assessments, and the common benefit of liability insurance. Under Colorado law, those common benefits may be sufficient to support mandatory assessments which should be mandatory even on non-members who are using the roads."

### On Whether Membership is Mandatory:

"Membership in the Association does not appear to be mandatory under the Articles or Bylaws, and the imposition of such mandatory membership may be questionable under the Nonprofit Act in the absence of recorded covenants."

### On the Significance of Member Status vs. Tract Ownership:

"...but again **the agreement is by the Member and so the issue becomes whether membership is mandatory**. In addition, the use of the word "shall" is a mandatory term and it refers to the tracts, so there may be an implication that even if an owner is not a Member, **the owner's tract is obligated to pay**. That issue is discussed below in "Implied Covenants" and "Easement Maintenance". It is to be noted that Section 3 reinforces that conclusion by stating that the annual assessment "shall be the same for each tract as presently constituted". Again, the use of the word "shall" imposes a mandatory obligation."

### On Lack of Remedies:

"As to members, assessments are mandatory because the Bylaws used the words "agrees to pay" and "each tract shall". However, the enforcement power appears to be to change the Member's status to "Delinquent Member", which in practical effect renders the assessments voluntary, unless the enforcement remedies are amended."