

Why did the Board recently spend HOA funds to answer certain legal questions?

Board of Directors (BOD) and Association members who are not attorneys are often in the position of making impactful decisions about complex legal rights and responsibilities, often affecting large budget items and significant individual rights.

In November 2018 the BOD resolved unanimously (all 9 Board members) to spend up to \$3000 on having an HOA attorney answer a critical core list of legal questions centered around the governance of this association. Most of these questions have been identified as needing legal clarification for the entire history of the HOA, and the answers to them are now a solid guideline for this board and all others in the future to carry forward effective, legally-durable governance. They will also be useful in allowing the association membership to better understand BOD decisions – as members choose to read the answers. They are also critical for helping the membership to be able to hold the BOD accountable henceforth to follow known legal guidelines.

The attorney answers are an important investment in the success and protection of the HOA and all Lot Owners. This will serve to uphold property values, and to provide solutions for long-time problems and 'stop gates' that all boards in our history have been challenged with.

What questions were asked?

All Association members can write the BOD at the mailing address or email and ask for access to the Q&A. Otherwise, here is a synopsis of the issues that were addressed:

- **Exactly which state laws this HOA is required to follow.** There has been much confusion and some resulting non-action in our history because of this issue, which is now settled. Many actions and rights for both the Board and the membership are clear now, and several very large fiscal expenditure issues have also been clarified. Members can know what to expect from the BOD and what the HOA is to provide to the membership.
- **Expectation for road maintenance.** Clarifications have been made that the BOD/HOA is required to achieve a minimum level of maintenance on the roads, and that, among other things, gravel must be replenished as it is being worn away. This is a somewhat 'landmark' change for the HOA because historically gravel has been allowed to wear away with only a small portion of replenishment, eventually leading to ruined or unsafe roads if that continues. It is the BOD's duty to maintain the gravel unless the membership refuses to provide the funding for this.
- **Control, use, and maintenance of roadside easements.** According to our CCRs, all 36 miles of Ranch roads have a roadside width on each side that acts essentially as 'community property', able to be used by all Lot Owners for various recreational purposes. This easement is also for road maintenance purposes, like space for placing snow when plowing the roads in the winter. But what if a Lot Owner chooses to put something in the roadside easement of their property that blocks use of the easement, and those blockages are allowed to remain for some number

of years? Does the HOA and membership lose the right over time to use the easements per the CCRs? These conditions exist in several places on the Ranch and have affected some liability issues (snow plowing and road maintenance so far), so the recent legal answers have given the Board some guidelines on how to deal with them.

Also, the answers have established that it's the HOA's responsibility – and in turn the BOD's responsibility – to remove hazardous roadside trees that exist within the easement width, whether in the road or not (this is also subject to certain private property rights of the Lot Owner). This has been an unresolved important issue whenever occasional wildfires in the area cause trees in the easements to burn and die, often becoming a falling threat to road traffic and private buildings near the hazardous trees.

- **Clarifications about CCR limitations and controls regarding renting of private residences.**
- **Clarification about the Bylaw requirement that the Board appoint at least (3) specific Board members with certain qualifications.** Previously the BOD was appointed by the developer, Lynn Barnett. As of May 21, 2018, the developer turned the process over to the membership to vote for their HOA board. One important aspect of that process needed to be settled. Bylaws Article IV, Section 4 states that the *BOD* – not Association members – shall appoint Directors who have the qualifications of “...a licensed forester... a protector of wildlife interests... a representative of the community of Oroville...”. Legal counsel has advised that this Bylaw clause is in contravention with applicable state laws and is therefore regarded void; the BOD can only appoint vacated terms of a director, and the BOD cannot set specific qualifications of Directors.
- **HOA right/responsibility to enforce CCRs even though only a limited history of enforcement exists.** Legal counsel advises that various specific facts, standard legal precedents, and HOA governing document clauses determine that enforcement of our CCRs is valid and that the BOD has a fiduciary duty to the Association to enforce the requirements of the CCRs unless, “...the Board reasonably determines, after reasonable inquiry, that an attempt to enforce a covenant would be unsuccessful, or would unreasonably consume the resources of the Association...”.
- **As per CCRs, parameter clarity about potentially establishing additional rules and/or penalties for violations of CCRs.**

Again, if you like, please write the Board at P.O. Box 332, Oroville, WA or email us at bod@9mileranchhoa.org and ask for access to actual attorney documents.