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October 24, 2011

Mr. Fred Coleman  
President, Odd Fellows Sierra Homeowners' Association  
P. O. Box 236  
Long Barn, CA 95335-3733

Re: **OFSHA CC&Rs**

Dear Directors:

Thank you for your question about what to tell lot owners who want to know the advantages and disadvantages of recording the existing CC&Rs in the chain of title to their properties.

### 1. Existing CC&Rs

The existing CC&Rs were prepared in 1985. They are only a little over seven pages in length. They have the following characteristics:

- They give the Lot Owner the right to use the Recreational Area, subject to the right of the OFSHA to charge reasonable fees for the use of any recreational facility;
- They give the Association the right to suspend voting rights for failure to pay assessments and for rules violations;
- They give the Association the right to relinquish or transfer its right to use the Recreation Area;
- It allows an Owner to delegate his/her right to use the Recreation Area to members of his family, tenants, or contract purchasers who reside on the Lot;
- It explains who is a Member of the association and how the Lot Owners are to cast votes (one vote per Lot);
- It discusses how to hold "membership meetings";
- It describes the Association's powers;

- It gives the Association the right to levy assessments against the Owners;
- It allows the Association to enact Operating Rules;
- It gives the Association the right to take enforcement action in the event of breach of the provisions of the Articles, By-Laws, CC&Rs or Rules;
- It provides for discipline of members who have violated the Governing Documents and the Association Rules; disciplinary action may be taken only after notice and an opportunity for a hearing;
- It allows the Association to enter into any Lot in order to perform maintenance, landscaping or construction for which the Association is responsible;
- It requires the OFSHA to operate and maintain the Recreation Area to the extent required by any license agreement or lease;
- It allows the Association to pay for, from its revenues, water, sewer, garbage, electrical, telephone, gas, road maintenance, and other utility service not separately metered; insurance for any property owned or controlled by OFSHA; liability insurance; directors' and officers' insurance; workers compensation insurance; and legal and accounting and other services;
- It imposes limitation on the powers of the Board;
- It allows the Association to enforce the assessment obligations by a lawsuit or by a lien and foreclosure;
- It provides that the CC&Rs may be amended by a vote of 75% of the Members.

These CC&Rs contain no use restrictions and no architectural covenants.

## **2. Advantages of CC&Rs.**

- The CC&Rs codify the Lot Owners' right to use the Recreational Area, and they allow the OFSHA to charge fees for its use if OFSHA has to pay fees by virtue of a license or easement;
- It provides for one entity that can collect assessments, and it gives that entity, OFSHA, the power to either go to court or to lien and foreclose if the assessments are not paid. Without a predictable stream of income, OFSHA cannot perform maintenance obligations. I would think OFSRA would rather get one check per month than have to deal with each Lot Owner individually. Also, if OFSRA were dealing individually with each Lot Owner, OFSRA would have to cut off water to any Lot Owner who did not pay for water; this right would be subject to California water laws,

which will, hopefully, be the subject of a separate opinion letter by Barry Epstein or other authority on water law. If the CC&Rs were recorded in the chain of title to all the Lots, OFSHA could lien and foreclose on or sue any owner that did not pay his/her fair share of water costs and/or road costs. This helps prevent insolvent owners or those who just don't want to pay their fair share from taking advantage of those who do pay.

- It gives the Association power to make and enforce rules. This is beneficial when you have owners or tenants who are making other people's lives miserable—the enforcement powers allow OFSHA to do something about such people, so long as the people have agreed to be bound by the CC&Rs.
- It allows the OFSHA to use bargaining power derived from economies of scale in order to organize activities such as road maintenance, purchase of insurance, etc. to get a better price for goods and services than would be available to individual lot owners;
- It gives OFSHA strength in numbers, and more bargaining power in dealing with OFSRA, city government, etc.

### 3. Disadvantages of CC&Rs

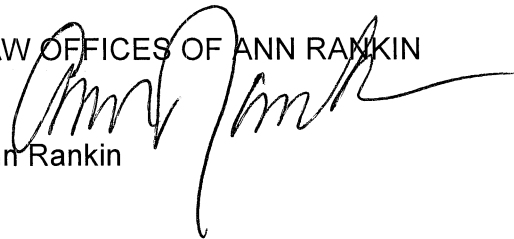
- The CC&Rs make it harder for lot owners to avoid paying assessments;
- The CC&Rs allow OFSHA to make and enforce rules that some people may not like;
- The CC&Rs are very hard to amend, because it's hard to get 75% of lot owners to agree on what day of the week it is, let alone on what should be in the CC&Rs.

I hope this helps.

Very truly yours,

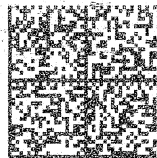
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