

This HOA consists of five single-family homes, each situated on its own fee-simple lot. The governing Declarations appear to have been adapted from documents intended for a large condominium complex. For example, a quorum for voting requirement is set at 20% of the owners, which—within a five-home association—equates to a single household.

The developer's intent was to preserve a consistent exterior appearance and landscaping throughout the project build out, which was completed in 2002. To accomplish this, the developer recorded maintenance, repair, and replacement easements over all five fee-simple parcels. The Declaration also includes Section 9.1(c), which intentionally and specifically authorizes the developer to assign those responsibilities to individual owners through the Rules and Regulations. Section 9.1(C) states "The Association reserves the right to grant the maintenance responsibility of certain areas on each Residential Unit to the Residential Unit Owner, and the Residential Unit Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner. Furthermore, the Association shall have the right to promulgate reasonable rules and regulations regarding the maintenance by the Owner"

That assignment authority was later exercised after buildout was completed when the Rules and Regulations were recorded on October 23, 2002, as reflected in section 2.2, which states *"Each Owner or tenant of a Residential Unit shall keep the exterior surfaces and landscaped areas of the Residential Unit in a good state of repair and appearance."*

Once this assignment occurred, §9.1(b) and other Declaration provisions no longer applied, because the governing documents placed those duties squarely on the individual owners.

This Planned Unit Development contains **no Common Elements**. Under Colorado law, a Common Element must be owned or leased by the homeowners' association. The Beaver Creek Point Association owns or leases nothing; therefore, no Common Elements exist within this PUD. A common-area easement is not a Common Element. This was confirmed by Judge Granger.

The 1999 Declaration granted the HOA a common-area easement over all land outside the exterior walls of each home. It does not grant owners unrestricted or "untethered" access to other owners' yards. If these exterior areas were legally Common Elements, each owner would be entitled to unrestricted use of all exterior space surrounding every home. Judge Shamis rejected that interpretation, holding that construing the easement to allow an owner to, for example, "hold a party in a neighbor's backyard" would be incorrect.

The recorded but unsigned 2007 Clarification Amendment further confirms this allocation of responsibility. It provides that:

- each homeowner is responsible for repairs to their own home;
- each owner may select their own contractor without HOA involvement; and
- the HOA may only arrange for painting and staining and pay for landscaping.

The Amendment does not authorize the HOA to perform, control, or manage landscaping activities. Judge Shamis ruled held that the 2007 Clarification Amendment narrowed and limited the HOA's authority and responsibilities.