



September 24, 2024

Via Email

Board of Directors
Chateau Chaparral Owners Association
c/o Treasurer
PO Box 5177
Buena Vista, CO 81211

Denver Office
David A. Firmin
Direct 303.991.2028
dfirmin@altitude.law

CONFIDENTIAL COMMUNICATION
ATTORNEY CLIENT PRIVILEGED

Re: *Chateau Chaparral Owners Association/Strategy for Addressing Encroachments*
Our File No. 1059.0028

Dear Members of the Board:

Altitude Community Law P.C. has been retained to provide an opinion regarding the Association's options to address and remedy the existing encroachments within the community over the Common Elements. This letter is in response to that inquiry.

We understand over the years, numerous Owners have installed improvements on their Lots which are encroaching upon the Common Elements. After review of the situation and the Association's governing documents, we believe the best strategy moving forward to address the encroachments is to work with those encroaching Owners, rather than against them. Thus, our recommendations are as follows:

1. Stop Approving Architectural Requests. First, the Architectural Committee ("Committee") must stop approving any pending Owner-submitted requests which include an encroachment onto the Common Elements or setbacks. Ceasing approvals for improvements and encroachments will stop the source and subsequently will prevent more encroachments from coming into existence. Essentially, you must stop the source.

Additionally, we recommend adopting formal Architectural Committee Guidelines, which contain a clear process for requesting and approving modifications to the Lots. While the Declaration provides for this process in general, a formal policy would allow the Board to take control of the procedure. To the extent one exists, it should explicitly provide no improvements or modifications will be approved containing an encroachment.

2. Take Inventory of All Encroachments. In order to adequately address the existing encroachments in the community, you must be able to identify every Lot that contains an encroachment. Whether it is a single Board Member or a Committee, the Association should investigate the situation and take an inventory of all encroachments. This should include taking photos. Not only will an inventory assist in understanding the scope of the issue, but will also act as evidence-gathering for proof that these encroachments exist.

3. Contact Encroaching Owners. After the first two steps have been completed, the Association should send a formal letter to those Owners whose Lots contain encroachments. This letter

Board of Directors
Chateau Chaparral Owners Association
September 24, 2024

will inform the Owners they are encroaching on either the Common Elements or the roadway. This notice expressly states the Association does not grant permission for the encroachment but will allow it to continue. This letter will also need to discuss the Association's strategy for future compliance (discussed in more detail below):

a. In the event the Owner needs to repair/improve or otherwise modify the encroaching improvement (i.e., a fence), the Owner will be required to remove it and restore the improvement within their Lot boundaries.

b. In the event the Owner sells their Lot, the Owner will be required to inform the buyer that the encroachment exists and that the buyer will be responsible for its removal to ensure all improvements are within the Lot boundaries under the conditions identified in Paragraph 3(a) above.

4. Address Encroachments Individually. It will be difficult to simultaneously enforce against every existing encroachment. Therefore, we recommend enforcement occur on a case-by-case basis as an encroachment requires maintenance. As these encroaching improvements require repair or replacement, the Committee can require that the work include relocating the improvement within the Owner's property lines. Thus, as each individual opportunity arises, the Committee can condition its approval on the encroachment being removed and the improvement staying within the Lot boundaries.

Given the scale and longstanding history of these encroachments, we believe this is the best practice for the Association to address the situation and enforce compliance with the Lot boundaries over a period of time as opportunities arise. Strict enforcement will not work and will create issues moving forward. However, a phased plan which gradually removes the encroachments will over time restore the Owners' improvements back onto their Lots.

Our recommendations and opinions are based on the facts stated or assumed and known to us as of the date of this letter, but are not a guarantee of results or a specific outcome.

We hope this letter satisfactorily addresses the question presented to us. Should you have any further questions or comments or desire further clarification, please do not hesitate to contact us.

Sincerely,



David A. Firmin
Altitude Community Law P.C.

DAF/bjs