



Eagle Ridge



Subdivision

1-August-2004

www.eagleridgesub.com

News Letter

SPECIAL PROPERTY OWNERS MEETING

SATURDAY AUGUST 21st

10:00a.m. at East Marietta Library

2051 Lower Roswell Rd.

The Board of Directors of Eagle Ridge Property Owners Association, Inc. invites you to attend a special meeting to vote on the (attached) Amendment to our Covenants. The purpose of this Amendment is to make our covenants fall within the protection of the Georgia Property Owner's Association Act. Once this amendment has passed and has been recorded with Cobb County Superior Court, we can then proceed with an amendment restricting the number of rental homes. While the official amendment and the attorney's detailed explanation is published on our website www.eagleridgesub.com, we have included the old and the new sections providing you a clear and precise overview of all the changes.

Invitation to the Special Property owners Meeting

The board of Directors of the Eagle Ridge Property owners association, Inc. has the pleasure to invite all property owners to attend the Special meeting on Saturday 21st August 2004 in the Library on the Lower Roswell road.

The meeting will start at 10:00 AM to discuss and vote on a covenant amendment.

If you are not able to attend the meeting in person please provide your proxy to one of your neighbors attending the meeting to ensure that your voice is heard.

Please ensure that your proxy vote slip below is turned in prior the start of the meeting.

PROXY VOTE

I/We, the legal owner of the Eagle Ridge Property located at ____ Soaring ____ assign
(name) _____ at (address) _____, to represent
my vote during the special property owners meeting to be held on 21st August 2004.

Signed

(Property Owner) _____ (Proxy holder) _____

Annual; Property Owners Meeting 2004

See the homepage of our website for a detailed recap of the annual meeting.

During the annual meeting the following board members were elected for the 2004/2005 period

Les DeBusk (770) 919-1314 lesdebusk@yahoo.com

Mark Lefkow (770) 218-5985 mlefkow@nallmiller.com

Cor Tadema (770) 427-9736 cor.tadema@corcomm.com

David Warren (770) 428-6874 david.warren@nrtinc.com

Jan Wright (770) 514-9816 janice.wright@zurich.com

The majority of the fifty-plus homeowners at the June meeting agreed that some form of rental home restrictions is needed in our covenants. Jim Coleman consequently explained the reasoning to boost our legal fund and why the board proposed to increase the annual dues from \$25.00 to \$30.00

Following an almost unanimous vote at the June Property owners Meeting this increase was accepted and will be \$30.00 for the 2004/2005 period.

Invoices to follow. Payable by September 30th

At the meeting, the Association will vote on an Amendment to the Declaration of Covenants for Eagle Ridge. The full text of the proposed Amendment is available on our website.

From the Board's perspective, the purpose of the Amendment is to bring the Association within the Georgia Property Owners' Act (the "Act") located at Official Code of Georgia sections 44-3-220 through 44-3-235. This Act may be reviewed at http://www.legis.state.ga.us/cgi-bin/gl_codes_detail.pl?code=44-3-220.

The Board also believes that this Amendment is necessary in order to properly enact rental restrictions for the benefit of the community because of certain provisions of Georgia law outside of the Act which make it difficult to amend the existing Covenants of Eagle Ridge.

The Board believes that the following disclosures may be important to your decision as to whether to vote for this Amendment:

The Act provides for automatic lien rights so that a lien for unpaid assessments and fines automatically arises upon following certain procedures, without the Association having to pay a lawyer to draft and file a lien in the real estate records;

The Act allows for a 2/3 majority of votes in the Association to amend the Covenants, whereas under Georgia law outside the Act, amendments to covenants which create further restrictions on the use of land (such as rental restrictions) may not be able to be passed without the consent of each lot owner.

The Act codifies the law regulating homeowners' associations, whereas current law is created largely by caselaw. Thus, rights and responsibilities of the owners and the Association should be clearer.

Mark Lefkow, a new board member and a lawyer at the firm of Nall & Miller, was kind enough to draft this Amendment. Since Mark has received no compensation for drafting the Amendment, neither he nor his firm makes any representations or warranties regarding the Amendment nor should any comments he has on the Amendments be construed as legal advice.

Changes in the Declaration

Section 1.1

Old:

Eagle Ridge Property Owners Association "Eagle Ridge Property Owners Association means the party identified above as the Eagle Ridge Property Owners Association.

New:

Eagle Ridge Property Owners Association "Eagle Ridge Property Owners Association" means the party identified above as the Eagle Ridge Property Owners Association. The Association elects to avail itself of the benefits and provisions of the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, et seq., as amended from time to time.

Section 5.0

Old:

Right of Enforcement. This Declaration and the Restrictions herein shall inure to the benefit of and shall be enforceable by (i) the Eagle Ridge Property Owners Association, (ii) the ACC and (iii) each Owner, his legal representatives, heirs, successors and assigns

New:

Right of Enforcement. This Declaration and the Restrictions herein shall inure to the benefit of and shall be enforceable by (i) the Eagle Ridge Property Owners Association, (ii) the ACC and (iii) each Owner, his legal representatives, heirs, successors and assigns, who shall have all legal and equitable remedies, including, but not limited to all of those rights enumerated in the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, et seq.

Section 5.3

Old:

Right of Abatement The "Right of Abatement" means the right of the ACC, to enter at all reasonable times upon any Lot as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, the right to impose reasonable monetary fines as provided hereinbefore, and with the cost thereof including the costs of collection including reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by Law or 18% per annum to be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 5.4. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) all deeds to secure debt given to secure a loan the proceeds of which are used to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) or to finance the construction, repair or alteration of Structures.

New:

Liens for Assessments and Right of Abatement.

- 5.3.1 Liens for Assessments. All sums lawfully assessed by the Association assessed against any lot Owner or the Owner's lot, whether for the share of common expenses pertaining to such lot, fines, or otherwise, and all reasonable charges made to any lot Owner or lot for materials furnished or services rendered by the Association at the Owner's request to or on behalf of the lot owner or lot, shall, from the time the sums become due and payable, be the personal obligation of the lot Owner and constitute a lien in favor of the Association on the lot prior and superior to all other liens whatsoever except: (1) Liens for ad valorem taxes on the lot; (2) The lien of any first priority mortgage covering the lot and the lien of any mortgage recorded prior to the recording of the declaration; or (3) The lien of any secondary purchase money mortgage covering the lot, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the lot. The Association may, but is not required to, record such lien for assessments.
- 5.3.2 Right of Abatement and Fines. The ACC and the Association, through the Association's Board of Directors, have the "Right of Abatement," meaning that the ACC or the Board may enter at all reasonable times upon any lot as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section. The ACC or the Board may impose upon the owner of a lot in violation of the Declaration reasonable monetary fines, and may impose the costs of abatement, removal, extinguishment, repair, breach and collection, to include reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or 10% per annum from the date the same was first due and payable. The assessments and fines provided under the Declaration shall be a binding personal obligation of each Owner as to which they are assessed, as well as a lien on the Owner's lot.

Section 5.5

Old:

Collection of Fines. If any monetary, cost or other charge is not paid as required by this Declaration, the ACC may bring either an action at law or in equity against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

New:

Collection of Fines and Statements of Assessments.

- 5.5.1 Collection of Fines. If any monetary cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law or an action in equity against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees. The lien may be foreclosed by the Association by an action, judgment and foreclosure in the same manner as other liens for the improvement of real property not less than ten days after notice is sent by certified mail or statutory overnight delivery, return receipt requested, to the lot owner

both at the address of the lot and at any other address or addresses which the lot owner may have designated to the association in writing. The notice shall specify the amount of the assessments then due and payable together with authorized late charges and interest accrued thereon.

- 5.5.2 Statements of Assessments. Any lot owner, mortgagee of a lot, person having executed a contract for the purchase of a lot, or lender considering the loan of funds to be secured by a lot shall be entitled upon request to a statement from the Association or its management agent setting forth the amount of assessments past due and unpaid together with late charges and interest applicable thereto against the lot. Such request shall be in writing, shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. The Association shall, within five business days of receipt of such request, mail or otherwise furnish such a statement regarding amounts due and payable at the expiration of such five day period with respect to the lot involved..

Section 6.1

Old :

Duration. This Declaration and the Restrictions, contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of Cobb County, Georgia, after which time they may be renewed for, successive periods of ten (10) years, upon approval of a majority of the Owners.

New:

Duration. This Declaration and the Restrictions contained herein shall run with and bind the Property and may be renewed from time to time or amended as provided herein

Section 6.2:

Old :

Amendment. The Restrictions of this Declaration may be amended at any time by a two thirds (2/3) vote of those Owners voting (as defined in Section 1.9) provided, however, that any such amendment of these Restrictions must be in full compliance with this Declaration and the instrument evidencing such change has been duly filed for record in the office of the clerk of the Superior Court of Cobb County, Georgia... Every purchaser or grantee of any interest in any Lot subject to this Declaration, by acceptance of a deed or any other conveyance thereof, thereby agrees that the Restrictions of this Declaration may be amended as provided herein. All homeowners will be duly notified in advance of any vote.

New:

Amendment. The Restrictions of this Declaration may be amended at any time by the agreement of lot owners of lots to which two-thirds of the votes in the Association pertain. Evidence of the required majority of lot owners to any amendment of the Declaration shall be evidenced by their execution of the amendment or the sworn statement of the president, of any vice president, or of the secretary of the Association attached to or incorporated in an amendment executed by the Association, which sworn statement states that agreement of the required majority was lawfully obtained and that all notices required by this article were properly given. Any amendment of the Declaration shall only become effective when recorded or at such later date as specified in the amendment.

Section 8.8.1:

Old:

An annual fee of \$25.00 shall be required from each property owner, to cover the financial obligations incurred by Eagle Ridge Property Owners Association (i.e., maintenance and upkeep of front entrance, legal counsel, mediation fees, etc.).

New:

An annual fee of \$30.00 shall be required from each property owner, to cover the financial obligations incurred by Eagle Ridge Property Owners Association (i.e., maintenance and upkeep of front entrance, legal counsel, mediation fees, etc.).

Section 8.9 is hereby added to the Declaration as follows:

Meetings; Notice of Meetings. Meetings of the members of the Association shall be held in accordance with the provisions of the Association's bylaws, as amended from time to time, and in any event not less frequently than annually. Notice shall be given to each lot owner at least 21 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting and shall state the time, place, and purpose of such meeting. Such notice shall be delivered personally or sent by United States mail, postage prepaid, to all lot owners of record at such address or addresses as designated by such lot owners or, if no other address has been so designated, at the address of their respective lots. At the annual meeting, comprehensive reports of the affairs, finances and budget projections of the Association shall be made to the lot owners.

Section 8.10 is hereby added to the Declaration as follows:

Quorum. A quorum shall be deemed present throughout any meeting or referendum of the members of the Association if persons entitled to cast at least 10% of the votes are present at the beginning of the meeting or participate in the referendum, provided that notice to the owners of lots within the Association be given pursuant to the bylaws and this Declaration.

As indicated on Page 1, the full version of the amendment is available from our website.

If you don't have access to the internet please call one of the board members and they will be pleased to hand or mail you a copy of the official amendment

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