

Court empowers homeowners associations

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Residents don't have to be members to be billed

Homeowners will no longer have to be members of an association to have to pay fees to maintain neighborhood common areas, according to a ruling handed down by the Colorado Supreme Court earlier this week.

According to two attorneys' interpretations, homeowners associations also will have more freedom under the court's ruling.

"It gives powers to associations well beyond what anybody thought they could have,"

said Gary Tobey, an attorney with Tobey and Toro, P.C., in Englewood.

Tobey represented Robert West of Evergreen, who argued that his homeowners association didn't have the right to add new covenants imposing mandatory dues and the power to impose liens if the dues weren't paid, after the fact.

After receiving contradictory opinions from lower-level courts, West appealed the issue to the Supreme Court, which ruled on the side of the home-

owners association.

In the court's opinion, the justices state that Evergreen Highlands Homeowners Association's original declaration was enough "to create a common-interest community by implication" with the "power to impose mandatory dues on lot owners to pay for the maintenance of common areas of the subdivision."

Jan Laitos, a professor with the University of Denver Law School, said the key word the court used is "implication."

"It basically tells any community in Colorado that is a 'common interest community' ... that you can be assessed retroactively any costs incurred to upkeep and maintain that property," he said.

About 2,000 communities without homeowners associations, representing about 450,000 people, will be affected by the ruling, Laitos said.

Some homeowners have refused to help pay for the upkeep of common property within their neighborhoods be-

cause it is not in writing that they have to do so, he said. So other residents of the neighborhood have had to pick up the slack.

"It's the people who didn't have to pay and have not been paying, they're the ones who are subject to this new liability," he said. "That is absolutely fair."

However, the ruling could spill over into homeowners associations, Laitos and Tobey agreed.

The ruling provides associations with "very close to limitless" power to bill members for

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any repairs of common property beyond what is covered by dues, Tobey said.

The court failed to specify what improvements or maintenance is allowed, so an association's board could put up an expensive sign at the neighborhood entrance and charge members for it without the members' input, he said.

"It allows a ... big shift in the association to do all manner of things whether or not it's written in the covenants," Tobey said. "They have the implied right to do it."

Dave Whittle, a resident of the Cottonwood Meadows subdivision in southwest Loveland, wasn't thrilled to hear about that possibility.

"It sounds bad," he said.

While it is worth paying homeowners association dues for the upkeep of the open space and other common property within the neighborhood, the association shouldn't be able to charge fees carte blanche, Whittle said.

"The less you hear from them (the association), the better," he said.

Dale and Carol Simmons, also residents of Cottonwood Meadows, said that is not likely to happen in their homeowners association, of which Carol Simmons is former president.

Dale Simmons said when people buy a home in a neighborhood with a homeowners association, they should realize a majority vote could change things.

If they can't live by the changes, homeowners need to take steps to reverse the decision or move, Dale Simmons said.

But the couple agreed that the association board should not impose charges above the dues without a democratic pro-

cess. "Without a meeting, I'd have a problem with that," Dale Simmons said.

His wife added, "I don't think they could get away with it."

Merlin Perkins, president of the Mariana Shores Homeowners Association, said her board would not take advantage of any additional freedoms the court's ruling may grant.

"Ours is pretty nip and tuck as far as that goes," she said. "Our covenant is pretty specific as to what we can and can't do as a board."

If the neighborhood needs any major repairs or improvements, residents would get at least get 30 days notice of additional fees, Perkins said. If the costs were substantial, the board would put the issue before a vote of homeowners, 64 percent of which would need to approve it.

While not everything requires a vote, the board would not likely be successful if it did not have the agreement of the majority of the homeowners, she said.

"We have a lot of vocal people out here," Perkins said. "The people would rise up against the board."

"The board serves the people; we try to listen to what they want."

Laitos said that's one benefit to homeowners associations: Members can at least vote in new board members if the board tries to impose additional fees.

"That's the biggest power of all, actually," he said.

But Tobey said not all homeowners associations follow such a democratic process, and it's the property owners in those organizations now at risk.