

**RE-IMPOSITION OF ASSESSMENT NOT
PERMITTED IN UTAH
Q: WHAT WOULD HAPPEN IN COLORADO?**

April 17, 2008

TABLE OF CONTENTS

1. Why would an assessment be imposed a second time by an Association? 1

2. The Challenge of One Owner – The Ruling of the Appellate Court 1

3. What should Colorado owner associations do if faced with a similar issue? 2

**RE-IMPOSITION OF ASSESSMENT NOT PERMITTED IN UTAH
Q: WHAT WOULD HAPPEN IN COLORADO?**

The Utah Supreme Court recently addressed a Utah owner association's attempt to re-impose an assessment. While Utah case law is not binding in Colorado, Courts in Colorado may look to case law from other states for guidance.

1. Why would an assessment be imposed a second time by an Association?

The Utah case involved a residential development with over 500 lots, with typical recorded covenants. The covenants authorized a designated owners association to impose assessments.

In 1989, the association levied an assessment of \$5,900 per lot for special improvements, which a few owners failed to pay. Then, in 1994, the County sold 4 lots at a tax foreclosure sale, which had the legal effect of extinguishing the unpaid assessments. In 1996, the association imposed a new assessment for the same amount (\$5,900) giving a credit to all owners who had already paid for the improvements!

The association sought to recover the \$5,900 assessed in 1989 against the owner of just 4 lots (the ones sold at a tax sale), who's prior owners had not paid this assessment, by re-assessing everyone (500 lots) in 1996. The association was shrewd, and credited 496 lots, so that just the 4 lots would pay the total of the new re-assessment, almost \$24,000. These re-assessments appeared to be a way to collect the assessment from the new owner of the lots that went to a tax foreclosure sale. Yet, the owner of the lots objected.

In an interesting part of this case, the Utah Supreme Court noted that the original association lost its corporate status because of a failure to file annual reports and pay annual fees to the Utah Secretary of State. One homeowner formed a new owners association using the identical name and articles of incorporation from the original association. A meeting of property owners elected a board of directors, and the new association began to operate.

2. The Challenge of One Owner – The Ruling of the Appellate Court

The owner of the 4 lots, the purchaser at the tax sale, challenged the new assessment on two grounds, both raising issues of first impression in Utah.

The Utah Supreme Court rejected the purchaser's claim that the new association, which was not formally recognized by an amendment to the recorded covenants, lacked the authority to assess. Under the equitable doctrine of ratification, the new association had the authority delegated to

the original association, because a majority of the lot owners had participated in and accepted the new association for at least twenty years.

The purchaser prevailed, however, on the second claim. The 1996 assessment was found invalid because the recorded declaration did not specifically allow the association to impose non-uniform assessments or levy assessments on only selected lot owners.

3. What should Colorado owner associations do if faced with a similar issue?

In a case like this, a Colorado owner association should impose the assessment for the \$24,000 sought (assuming the funds were needed to operate the association and/or for funding of reserves) against all 500 lots, not just the owner of the 4 lots whose prior owners had not paid. In the Community in Utah, this would have been an assessment of approximately \$48 per lot.

The case discussed above is *Swan Creek Village Homeowners Ass'n v. Warne*, 134 P.3d 1122 (Utah 2006). For a copy, visit the Library page at www.ocrhlaw.com.