



# Clayton & McCulloh

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Clayton & McCulloh, P. A.  
Servicing 25 Counties  
Respond to: Orlando Office

January 15, 2015

To Owners and Residents of  
Silver Creek of Clay County Homeowners Association, Inc.

Dear Owner and/or Resident:

Please be advised that the Association and the Board of Directors are concerned regarding future violations of the Association's Governing Documents, which include the Declaration Of Covenants, Conditions And Restrictions For Silver Creek, as amended, the Association's Articles of Incorporation, as amended and its Bylaws. Therefore, the Board of Directors has consulted with this firm to obtain Clayton & McCulloh's recommendation regarding how violations should be handled and regarding the course of conduct which should be implemented by the Board of Directors. We have apprised the Board of Directors that it ostensibly owes a fiduciary duty to the Membership which includes endeavoring to follow the Florida Statutes and to implement the requirements of the Governing Documents. Additionally, part of the purpose behind having Covenants and Restrictions (i.e., the Association's Declaration, etc.) ostensibly is to help preserve and protect your property values. However, to maintain and hopefully promote your property values, the Association needs to compel each owner's compliance with the Governing Documents. We also understand that for whatever reason, one or more prior Boards may not have uniformly, timely and consistently enforced the Governing Documents. Therefore, Clayton & McCulloh wishes to notify you that you cannot rely upon any prior infraction or violation as a basis to justify a future violation or infraction. Similarly, you cannot rely upon any past inaction of the Board as a justification to violate the Governing Documents in the future.

Please understand to protect all Owners and residents, the Board of Directors fully intends in the future to enforce and compel compliance with all of the Governing Documents. Therefore, we wish for each and every Owner to understand the procedure which has been adopted by the Board of Directors with respect to future Covenant violations.

Once a violation is confirmed, the Association intends to send an initial notice/letter to the violating Owner and/or occupant pointing out the violation and requesting compliance. If the time period for compliance delineated in the initial letter (e.g., 15 days) elapses without the violation being corrected, the Association will send out a second notice/letter to the violating Owner and/or occupant requesting/demanding compliance. If the violation is still not corrected

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within the time period specified in the second notice/letter (e.g., another 15 days), the Association will send out its third and final notice/letter requesting and demanding compliance. The third and final notice/letter will also apprise the violator(s) that the matter will be turned over to Clayton & McCulloh to compel compliance unless the violation is corrected within the time period specified therein. Each Owner and resident needs to appreciate that in the event a violation is turned over to Clayton & McCulloh, this law firm will seek not only to compel compliance with the Governing Documents and the Florida Statutes, but may also seek to recover the attorneys' fees and costs associated with compelling compliance. Needless to say, the amount of attorneys' fees which ultimately may be borne by the violating Owner and/or tenant can be expensive.

Please work with your Board of Directors for the benefit of the entire Community by complying with the Association's Governing Documents. Additionally, if you receive one of the above referenced letters, please do not become belligerent or irate, but rather, appreciate that such letters are being generated for your and the remainder of the Owners' and residents' benefit so that the Association may protect and preserve the Community. We realize that all of the Owners probably object to one or perhaps more of the requirements of the Association's Governing Documents. Nevertheless, it is hoped that each and every Member can appreciate the need for compliance by everyone and that each of you must give up certain rights to protect your Community. Additionally, please understand that not only do the Governing Documents mandate compliance, but the Florida Statutes mandate compliance as well. More specifically, please understand that the Declaration constitutes a covenant running with the land which is superior in authority to even the deed by which each and every owner took title to his lot or unit, and that by purchasing within your Community, each Owner had record title notice of the existence of and the binding nature of the Declaration. Therefore, each owner tacitly agreed to abide by each and every provision and covenant set forth in the Declaration and all the Governing Documents. Moreover, Section 720.305, Florida Statutes basically provides that a violation of the Governing Documents is a violation of Florida Statutes and subjects the violator to payment of the Association's reasonable attorneys' fees. Needless to say, the Association wishes to work with each of the Owners for the benefit of the Community and hopes that each of the Owners will cooperate in this endeavor.

While the Association intends to compel compliance with each and every provision of the Governing Documents, the violation which initially raises the most concern is listed below. Please understand that this particular area of concern is being pointed out so that you can avoid violating the Governing Documents and avoid having the Association undertake the enforcement action(s) listed above:

- Failure to obtain the requisite Architectural Review Committee approval prior to making exterior changes to your Residential Unit and/or Lot.

**Please understand that this letter is not an indication that you are in violation of any of the Governing Documents.** [Note - If you are in violation, such matter(s) will be dealt with in separate correspondence.] **As such, this letter is only for the purpose of helping you avoid**

**violating the documents and explaining why owners and residents must comply with each and every provision therein.**

In addition to the above, one particular issue which has been plaguing the Association deals with sheds. As you should be aware, the Association's Governing Documents prohibit sheds (see Article VI, Section 7 of the Declaration). As such, no owner should have erected a shed on their property nor should any owner (in the future) erect a shed on their property. Nevertheless, this firm has been advised that the Association and/or prior Board(s) of Directors permitted and/or authorized various owners to erect sheds. While such actions by the Association and/or the Board(s) should never have occurred, and while the owners thereof never should have erected such sheds, given the prohibition in the Association's Governing Documents, the fact remains that approximately 75 sheds exist. As such, the Association and its Board of Directors face a conundrum with respect to how to properly, fairly and reasonably address this issue and the resulting impact on the owners.

Given the above, the Association and the Board have decided that the best and fairest way to address and handle this issue would be to have this issue presented to and decided by the membership (i.e., the owners). More specifically, the owners should decide whether to permit sheds (especially future sheds) given the fact that approximately 75 sheds already exist. However, if the owners want to permit sheds, the shed prohibition in the documents should be removed and eliminated. As such, the Board, in the future, plans to present an amendment for consideration by the membership which amendment, if passed, would authorize and permit owners to erect sheds upon obtaining architectural approval from the Association.<sup>1</sup> To facilitate this process (provided the shed amendment passes), the Association likewise intends to create approved building criteria and specifications for sheds. Unfortunately, unless and until such amendment is passed, sheds are technically prohibited both by the Association's Governing Documents and §720.305, Florida Statutes, delineated above. Consequently, please ensure that you do not erect a shed unless and until such amendment is passed and implemented.

While the Association intends to present the shed amendment, as well as other amendments in the future for the membership's (i.e., owners') consideration, the approval required for any current amendment is significant. As such, before proceeding with a shed amendment, as well as various other amendment(s), the Association and your Board of Directors intend to proceed with a preliminary amendment making future amendment(s) easier and simpler. More specifically, the Association and the Board intend to first proceed with amending the current amendment procedure and requirements.<sup>2</sup> Please understand that your Board wants to ensure that before it expends all the time, effort and expense associated with not only the shed amendment, but the other ones as well, that the Association can at least initially get the requisite vote/approval for

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<sup>1</sup> - Note, as the erection of a shed would be an alteration, architectural approval from the Association would still be required by the documents.

<sup>2</sup> - Note, such an amendment should provide a simpler amendment process than that which exists either in the Association's Governing Documents or as provided by the Florida Statutes (see §720.306, Florida Statutes).

this preliminary amendment. Stated differently, the Association and the Board want to be confident that future amendments such as the shed amendment will have a real chance of being passed before it undertakes this larger and more expensive enterprise.

While the above approach is intended to ensure that the Association does not waste its resources, it is imperative that you realize that it will be some time before the shed amendment can even be considered and/or passed. Therefore, the Association seeks your cooperation not only with respect to passing such amendment(s) (which the Association believes will be highly beneficial for the community), but also with respect to forgoing any attempt to proceed with erecting a shed during the interim. Needless to say, the Association would prefer to avoid filing litigation against any owner, who during the interim, erects a shed, especially when the Association intends to let the owners amend the Declaration to permit them. As such, please cooperate with the Association in this endeavor.

Please work with the Association for the benefit of your Community by complying with the Association's Governing Documents.

Sincerely,

CLAYTON & MCCULLOH



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