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Page: 1 of 3

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City & County of Denver

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District Court, City and County of Denver, Colorado
1437 Bannock Street, Room 256
Denver, Colorado 80202

Petitioner: PROVENCE TOWNHOUSE
ASSOCIATION, INC.

Howard Buchalter
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▲ COURT USE ONLY ▲

Case Number: 04 CV 4556

Div. Ctrm. 18

ORDER

THIS COURT, having reviewed Petitioner's Petition to Amend Protective Covenants, the Court having read the Motion, and being otherwise fully advised in the premises, it hereby makes the following findings;

1. Jurisdiction is proper pursuant to C.R.S. 38-33.3-217 (7) which enables a Colorado Common Interest Community to amend its protective covenants by filing a petition with the district court pursuant to the said statute.
2. Venue is proper since all of the property affected by the covenants Petitioner desires to amend is located in the captioned county.
3. Petitioner is a Colorado Non-Profit Corporation authorized for creation by the Declaration for Provence Setting Forth Covenants, Conditions, Restrictions, Easements and Charges, recorded on or about July 10, 1984 with the Office of the Clerk and Recorder of Denver County at Book 3143, Page 598 of that office ("Covenants"), and established pursuant to articles of incorporation filed with the Colorado Secretary of State on the same said date, which purpose is to enforce the Covenants, maintain common areas and otherwise conduct the affairs of the common interest community known as Provence, a townhouse community consisting of fifty-eight (58) lots along with common areas located in southeast Denver.
4. In pertinent part, Section 710 of the Covenants provides that any single covenant may be amended or a new provision added by an instrument signed and acknowledged by the owners

of at least two-thirds (2/3) of the lots in Provence (40 votes) and by all of the first mortgagees of the lots owned by the owners joining in said instrument whose mortgages have been filed for record with the Clerk and Recorder of the City and County of Denver and Section 711 of the Covenants provides that Covenants may be terminated at any time and two or more sections of the Covenants may be mended in similar fashion as under Section 710 by three fourths (3/4) of the owners (44 votes) ("Existing Change Procedure").

5. Petitioner has deemed the Existing Change Procedure cumbersome since it requires approval by first mortgagees in addition to owners. First mortgages are frequently bought and sold on the open secondary market and serviced by third-parties, making it all but impossible to enact any changes to the Covenants.
6. For the above reasons, Petitioner now desires to enact changes to it to enable Petitioner and residents of Provence to enact future substantive changes to the Covenants.
7. Petitioner now desires to delete Sections 710 and 711 of the Covenants in their entirety so as to repeal the Existing Change Procedure and replace it with the following language:

"Amendment, Termination and Extension.

Section 710. From time to time, any section or sections of this Declaration may be amended, repealed, extended, supplemented, or new sections may be added to this Declaration by an instrument signed and acknowledged by at least two-thirds (2/3) of the Lots in Provence"

8. On January 20, 2004 and February 1, 2004, Petitioner posted in conspicuous locations within Provence and hand-delivered a Notice of Special Meeting to discuss and vote on various proposed covenant changes, including those sought herein along with attachments thereto, in various conspicuous locations within Provence.
9. On February 24, 2004 at 7:30 p.m., pursuant to the Notice of Special Meeting, the Provence membership held a special meeting at 10200 East Harvard Avenue, Denver, Colorado ("Special Meeting").
10. At the Special Meeting, Petitioner's management agent reported a legal quorum of Provence members was present by proxy or in person.
11. At the Special Meeting, after discussion, a vote was held on enacting changes to the various covenants and the vote to change the Existing Change Procedure passed by a vote of 54-3, with one abstention.
12. At the Special Meeting, the said vote tally to amend the Existing Change Procedure exceeded the twenty-two (22) votes required by C.R.S. 38-33.3-217(7)(a)(III), which requires half of the number of votes specified by the Existing Change Procedure of the Covenants.

13. At the Special Meeting, after the vote, the Board of Directors of Petitioner voted to have its counsel prepare a petition for filing with this court with respect to only the Existing Change Procedure.
14. Petitioner has fully complied with the provisions of C.R.S. 38-33.3-217(7) in filing the Petition and after providing proper notice to owners of record, first mortgagees and appropriate governmental entities, as required by law.
15. No rights or privileges or interests of first mortgages and the previously noted governmental entities have been infringed upon or eliminated.
16. No objections have been filed by any owners, first mortgages or noticed governmental entity.
17. Based upon the above the Court hereby:

ORDERS that Sections 710 and 711 of the Covenants, Conditions, Restrictions, Easements and Charges, recorded on or about July 10, 1984 with the Office of the Clerk and Recorder of Denver County at Book 3143, page 598, shall be amended by the filing of an appropriate document with that same office, as follows:

"Amendment, Termination and Extension"

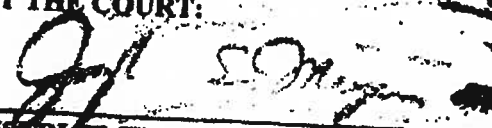
Section 710. From time to time, any section or sections of this Declaration may be amended, repealed, extended, supplemented, or new sections may be added to this Declaration by an instrument signed and acknowledged by at least two thirds (2/3) of the Lots in Provence"

DATED: _____

CT. REC. 93 AUG 17 2004

more pro tunc 8/12/04

BY THE COURT:


DISTRICT JUDGE

cc: ATP Buchalter who
SHALL IMMEDIATELY serve a
copy to all counsel / parties
pursuant to CRCP 5.