

**EFILED Document**  
**CO El Paso County District Court 4th JD**  
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**Review Clerk: Donna Maes**

<p>DISTRICT COURT, EL PASO COUNTY, COLORADO Court Address: 270 South Tejon Street Colorado Springs, CO 80903</p> <hr/> <p>Plaintiff(s): CHARLES WARNE, an individual; BRIDGET WARNE, an individual; BRANDON CUFFE, an individual; NORMAN VILLANUEVA, an individual; NANCY VILLANUEVA, an individual; HOWARD SURBER, an individual; and LUANA SURBER, an individual,</p> <p>v.</p> <p>Defendant(s) / Third Party Plaintiff(s): WOODMEN HILLS COVENANT MANAGEMENT BOARD, a Colorado non-profit corporation; and WOODMEN HILLS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision; and</p> <p>Defendant(s): Melody Homes, Inc. d/b/a D.R. Horton – Melody Series.</p> <p>v.</p> <p>Third Party Defendants(s) / Counterclaim Plaintiff(s): TRAVIS R. HELTON and KAREN E. HELTON.</p> <hr/> <p>Attorney for Plaintiffs and Third Party Defendants: M. Jacqueline Gaithe, PC M. Jacqueline Gaithe (#34348) 111 South Tejon Street, Suite 202 Colorado Springs, CO 80903 Phone: (719) 635-2595 Facsimile: (719) 578-8836 E-mail: <a href="mailto:jackie@mjglaw.net">jackie@mjglaw.net</a></p>	<p><b>▲ COURT USE ONLY ▲</b></p> <hr/> <p>Case Number: 08CV2923</p> <p>Div. No.: 5      Ctrm:</p>
<b>AFFIDAVIT OF CHARLES WARNE</b>	

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF EL PASO    )

Affiant, Charles Warne, being first duly sworn, states upon personal knowledge as follows:




1. I am a lot owner in Woodmen Hills Filing No. 8 and am one of the plaintiffs to this action.
2. Prior to purchasing in Woodmen Hills Filing No. 8, I did quite a bit of househunting and looking at homes built by D.R. Horton in this filing. During my home search, I inquired about covenants in Woodmen Hills Filing 8. Before signing a purchase contract with D.R. Horton, its sales representatives informed me that while there were recorded covenants for Woodmen Hills Filing No. 8 they were not actively being enforced by D.R. Horton, and there was no intention of covenant enforcement for that filing. They further stated to me that if there was to be any covenant enforcement, if at all, it would have to be done by agreement of the lot owners in the filing. I purchased my home in Woodmen Hills Filing No. 8 based on this representation from D.R. Horton.
3. Prior to signing my purchase agreement, I requested and received copies of the Declaration of Covenants, Conditions and Restrictions for Woodmen Hills Filing No.8 and a Portion of No. 9 were executed October 24, 2000 which were recorded in the real property records of El Paso County, Colorado on or about November 9, 2000 (the "Covenants") and the Amendment to Declaration of Covenants, Conditions and Restrictions for Woodmen Hills filing No. 8 and a Portion of No. 9 on or about February 12, 2003 (the "Amendment to Covenants"). After review of these documents, I felt that the representation made by the D.R. Horton sales representative about covenants and covenant enforcement were accurate. Neither the Covenants nor the Amendment to Covenants contain: any means of covenant enforcement, no provision for fining lot owners if they do not "comply" with the provisions of the Covenants, a provision for home owners dues for covenant enforcement, or a provision for the formation of a "governing body"/homeowners association.
4. After D.R. Horton sold its last lot in Woodmen Hills Filing No. 8 and the portion of Woodmen Hills Filing No. 9 that is subject to this lawsuit, a small number of homeowners who wanted covenant enforcement held a meeting for all of the lot owners in those filings to discuss covenant enforcement and the formation of a homeowners association. At the meeting the homeowners in support of covenant enforcement stated that the homeowners would have to wait until the last lot was sold by D.R. Horton before the lot owners could pursue enforcement of covenants. There were representatives there from other filings demanding that the lot owners in filing no 8 and filing 9 agree to assign covenant enforcement over to one of the other developers in Woodmen Hills. After much discussion, the homeowners agreed not to form a homeowners association or hold election to assign rights and further decided to let the lot owners and non-existent covenant enforcement continue "status quo."
5. Other than two letters received by me on or about December 28, 2007 advising that covenant enforcement and a covenant enforcement fee would become effective January 2008, the homeowners in these filings were not given notice or a chance to be included in the process of Woodmen Hills Metro District and/or Woodmen Hills Covenant Management Board to take over covenant enforcement. See both letters attached hereto as Exhibit 7a, and incorporated as if fully set forth herein.

6. I researched the El Paso County real property records and learned that D.R. Horton sold its last lot in Woodmen Hills Filing No. 8 on or about April 2006 and sold its last lot in Woodmen Hills Filing No. 9 on or about September 2003. The Covenants state that Declarant lost its rights of Declarant control 120 days after the last lot in these filings was sold. It did not sign the Contract and Assignment of Right to Enforce Covenants dated (the "Assignment") until August 14, 2007. This was more than a year after the last lot was sold and after the time the Declarant could make any assignment.

7. The views and expressed in this Affidavit are not mine solely. It is a widely held view of the lot owners in Woodmen Hills Filings 8 and 9 as I hold proxy rights to vote to eliminate covenant enforcement for more than 50% of the lot owners in these filings.

FURTHER, AFFIANT SAYETH NOT.

  
Charles Warne

The Affidavit of Charles Warne was subscribed and sworn to before me this 3rd day of April 2009, by Charles Warne.

Witness my hand and official seal.

My commission expires: April 9, 2009.

  
Norma Faulkner

Notary Public



# WOODMEN HILLS

A RECREATIONAL LIFESTYLE COMMUNITY 

**From: WOODMEN HILLS METRO DISTRICT BOARD**

Dear Woodmen Hills' Residents,

Seasons Greetings! The Metro District Board of Directors and all of its employees wish you and yours a successful and prosperous New Year!

Thank you for giving us a moment of your time so that we can update you on some important Metro District activity that directly impacts our community. We'd like to address two issues: #1: covenant enforcement and #2: an explanation for a covenant's fee and a 2008 fee increase for services.

### Covenant Enforcement:

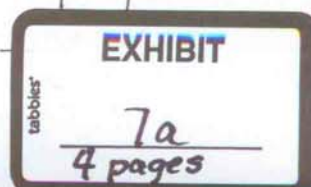
When you purchased your home, you chose to live in a covenant-controlled community. The various covenants were recorded in the property records of El Paso County for the purpose of enhancing the value and aesthetics of our community.

Several developers recorded those covenants for Woodmen Hills and Colorado Revised Statutes, Section §32-1-1004(8)(a)(1) allows a declarant of the covenants (the developer) to contract and assign the right to enforce the covenants to a Metropolitan District. Ten years after our community's inception and as the developers vacate as they move closer to completing their work, steps are being taken to ensure that the covenants will continue to be enforced. Keeping our property values high and our community beautiful are top priorities, so the Woodmen Hills Metropolitan District Board of Directors formed a nonprofit corporation controlled by residents to continue the covenant enforcement. The Woodmen Hills Covenant Management Board ("WHCMB") was formed and is controlled by residents to continue covenant enforcement. Now you, as the owners of lots in Filings 1-6 and 8-10, have the power to control covenant enforcement in our neighborhoods.

### 2008 Covenant Fee and District Fee Increase

Until recently, all covenant matters were financed and managed by the developers, so the last piece of the puzzle is the funding of the covenant enforcement. Unlike the covenants that control Filing 11, the covenants controlling your properties do not provide for the collection of assessments that fund covenant enforcement. As stated above, in the past, the developers funded covenant enforcement. In order to fund covenant enforcement activities, the district will assess an additional \$6.50 to your monthly water bill. This charge will be reflected as a separate item on all monthly bills beginning in 2008. Please note that your covenants are not being amended, so please take the time to review your covenants to make sure that your lot is in compliance.

Rec 12/25/07



Mentioned earlier was the fact that our community is a little over ten years old. So, just like your home's roof, carpet, driveway and furnace gets older and may require some repair, replacement and maintenance, the same is true for our community's infrastructure. This includes all of our systems that support water, sewer, street lights and Park and Rec. too. So that we can continue to provide the quality of services that you chose when you became a homeowner in Woodmen Hills, you will see a 7.5% fee increase across the board in costs for services provided beginning in 2008. You will see this increase reflected in your water bill. We trust that you'll understand that just as your cost of living continues to climb, so do our costs to continue doing business.

The WHCMB and the Metro District Board plan to jointly host an informational session early in 2008 to answer your questions regarding these issues so we ask you to keep an eye out for upcoming details. Thank you in advance for your support as we make this much needed transition to ensure that the quality of our community remains top notch.

### Woodmen Hills Metro District Pricing Breakdown:

#### Water

Water Usage Fee:	\$25.48
Water Acquisition Fee:	\$31.85
*Usage allowance:	7,500 gallons per month
Over 7,500 gallons will be billed at a rate of	\$ .30 per hundred gallons
Over 10,000 gallons will be billed at a rate of	\$ .90 per hundred gallons
Over 20,000 gallons will be billed at a rate of	\$1.20 per hundred gallons
Over 30,000 gallons will be billed at a rate of	\$1.50 per hundred gallons

#### Sewer

Sewer Charges:	\$25.48 per month
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#### Other

Parks & Rec. Charges	\$44.59 per month
Street lighting	\$ 6.36 per month
Late Fee (If payment is not received by the 25 <sup>th</sup> )	\$10.50

Woodmen Hill's residents can expect a monthly bill of \$133.76 per month, if water usage is within 7,500 gallons per month.

Effective January, 2008

WOODMEN HILLS  
Covenant Management Board

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December 5, 2007

Dear Homeowner:

The Woodmen Hills Covenant Management Board would like to take this opportunity to introduce Colorado Management and Associates and their management team. Your Covenant Management Board has hired Colorado Management to conduct weekly inspections of the Woodmen Hills community. In addition, they will be working with the community to address covenant violations and process design review requests.

When you purchased your home in Woodmen Hills you were provided a copy of the Covenants, Conditions & Restrictions. However, until recently not all homeowners in the community were managed by the previous management company, The Warren Management Group. Effective immediately, all residents (Filings 1-6, 8, 9, 10) in the Woodmen Hills community will be under Covenant Management with Colorado Management & Associates.

Initially, Colorado Management would like to give all residents a chance to rectify current infractions. They drove the community on November 30, 2007 and compiled a list of current violations. Each owner will have until December 31, 2007 to bring their lot into compliance before the violation process will begin. Effective January 1, 2008 violation letters will be sent to ALL owners in violation. Please note that if you have a renter in your home, YOU are ultimately responsible for making sure that your lot is in compliance. Some of the areas of non compliance are as follows:

- No boats, trailers, campers, tractors, trucks, commercial vehicles, motorcycles, junk or abandoned vehicles, motor homes, or RV shall be parked or stored in, on, or about any lot or street within the community area except within the attached enclosed garage or unless such vehicles are concealed from view within an approved building.
- The dwelling unit on each lot shall include at least a two (2) car or larger fully enclosed garage. All driveways must be constructed of concrete or similar material.

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C/O Colorado Management & Associates, 14241 E. 4<sup>th</sup> Avenue, #300, Aurora, CO 80011  
Phone: 866-463-3599 Fax: 303-366-0440 Email: [iborisov@coloradomanagement.com](mailto:iborisov@coloradomanagement.com)  
Web-site: [www.coloradomanagement.com](http://www.coloradomanagement.com)

Rec 12/28/07

# WOODMEN HILLS

Covenant Management Board

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- Prior to the commencement of work on any lot the property management company shall approve the plan for new construction or any proposed improvement to the property.
- All unsightly conditions, structures, facilities, equipment and objects shall be enclosed within a structure except when in actual use.
- No animal, live stock or poultry of any kind shall be raised, bred or kept on any lot. No animals, except an aggregate of not more than three (3) domesticated animals (e.g., two cats and one dog), will be permitted within the community area. All household pets shall be controlled by their owner and shall not be allowed off the owner's lot except when properly leashed.
- All yards, open space and the entire area of every lot on which no improvement has been constructed shall be kept mowed to a maximum height of 6 inches.

The above are a list of some of the violations that Colorado Management has noted and will write up after the end of December. Please make sure your lot is brought into compliance.

They are also providing a website that will have all legal documents, contact information, Design requests forms and Covenant enforcement forms for your use. This will be a great tool for all owners.

Colorado Management is excited about helping Woodmen Hills maintain a safe and beautiful place to live and they look forward to working with you and the Covenant Management Board to help enhance our community.

For questions or comments please feel free to contact Irene Borisov at the toll free number 1-866-463-3599 option 8.

Sincerely,

For the Covenant Management Board  
Irene Borisov, CMCA, AMS  
Manager

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Web-site: [www.coloradomanagement.com](http://www.coloradomanagement.com)