

November 2022 ACC NEWSLETTER

The ACC does not recognize, and is not required to recognize, the Fifth Amendment to Declaration of Covenants, Conditions, and Restrictions of Dixie Springs Subdivision, recorded on November 1, 2022, as a valid or enforceable amendment to the CC&Rs for Dixie Springs. One of the biggest reasons is that the Fifth Amendment wasn't signed by at least 60% of the Lot Owners in Dixie Springs, as required by the CC&Rs. Another reason is that written notice of the Fifth Amendment wasn't sent to all holders of first mortgage liens, which is also required by the CC&Rs.

To be valid, any amendment to the CC&Rs by the Lot Owners must comply with the amendment requirements in Article VI, Section 2 of the original CC&Rs recorded on May 1, 1998. To amend the CC&Rs, Section 2 first says that "this Declaration may be amended . . . by an instrument signed by not less than sixty percent (60%) of the Lot Owners." This means that the instrument (an instrument is a formal legal document) that amends the CC&Rs must be signed by at least 60% of the Lot Owners. In other words, Section 2 required the Fifth Amendment to be signed by at least 60% of the Lot Owners. However, the Fifth Amendment is signed by only one Lot Owner, which means the Fifth Amendment is invalid and unenforceable.

Another requirement in Section 2 that must be met to amend the CC&Rs is that "[p]rior to any material amendment to this Declaration, written notice shall be sent to all holders of first mortgage liens, setting forth said amendment and advising them of the date that the Owners will vote on said amendment." This means that before the CC&Rs are amended, every organization that holds a first-position mortgage (i.e., deed of trust) on any Lot in Dixie Springs must be sent the proposed amendment and written notice of when the Owners will approve the amendment. However, written notice of the Fifth Amendment was apparently never sent to mortgage holders because

there is nothing in the Fifth Amendment that says that written notice was ever sent, before or after the Fifth Amendment was approved.

For these and other reasons, the Fifth Amendment is invalid and unenforceable, and the ACC is not required to recognize the Fifth Amendment as a binding amendment to the CC&Rs.

If you have any questions, please email us at acc@dixiespringsacc.org