

Subsequent to the letter sent to every member in May 2023 wherein the question was posed whether the Board or any member can bring action against a member for engaging in contempt of the Court Order granted by Justice Kraus, it became apparent that this question did not thoroughly address dealing with members who would contemplate contravening or actually contravene our Restrictive Covenants. Consequently, we asked our lawyers, Duncan Craig, to address this issue further. Here is their addendum to Q8 in the original document.

Q8A: Can the Board or a member of the HOA bring action against another member of the HOA for installing alternate roofing materials on a home governed by the restrictive covenant in question?

A8A: If a member of the HOA breaches the restrictive covenant in the fashion that was dealt with in the Court Order granted by justice Kraus, then the Order would serve as instructive precedent to quickly obtain a mandatory injunction against a new breaching HOA member. If an HOA member then breaches that injunction, a contempt application may be appropriate. It should be noted that any member (i.e. not just the Board) of the HOA can sue for a mandatory injunction. Put another way, even if the Board opts to not enforce the restrictive covenant in question, any member of the HOA can seek to do so and use the decision of Justice Kraus to support this effort.

The Board wishes the members to realize that upholding the Restrictive Covenants is not just a duty of the HOA Board, it is also enforceable by any member. In its duty to enforce those Covenants, the HOA will not abandon those members who bought into our community because of the Restrictive Covenants (and there are many members who did so and continue to do so). It is hoped that members who did not do so are respectful of those members who did, as it is these members who are legally protected by the Restrictive Covenants.