

HOA sends homeowners repair bills for \$21,000

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After a late-summer hailstorm caused millions of dollars damage to a Colorado Springs neighborhood, residents expected to face some repair costs — but not the nearly \$21,000 bill sent to each family by their homeowner's association.

The brewing legal battle between the Soaring Eagles Townhomes Association and its residents centers on the eyebrow-raising \$20,752 invoices to repair community damage from an August 2024 storm — as well as disagreements over the HOA's insurance policy, which residents say doesn't match the association's governing documents.

Homeowners pushing back against the HOA's assessment think it was unreasonable and didn't take into consideration the community's best interests, attorney Robert Schifferdecker told The Denver Post.

Schifferdecker's law firm, Robinson & Henry, is representing 21 of the 150 Soaring Eagles homeowners in the fight against the townhome association.

"I think that my clients are just reeling from the fact that ... without their authorization, without their knowledge and without any power to change it, (they) have been subjected to this astronomical deductible that really just made the HOA itself self-insured," Schifferdecker said.

The crux of the issue dates to 2006, when the community's declaration was signed. The document specified the HOA board members were allowed to adopt insurance policies only with a deductible of \$10,000 or less, according to court documents. But in recent years, the association's deductible has shifted to 10% of the community's value, which comes to approximately \$3.1 million.

After filing the insurance claim for the August 2024 hailstorm, the HOA split that deductible among the 150 townhomes. Some residents had enough insurance to cover it, but others — who had only prepared for the maximum outlined in the HOA's governing documents — did not.

"We understand it's extremely frustrating, but the reality is you can't just go buy that policy in the Colorado market," said Tony Smith, one of the attorneys representing Soaring Eagles. "Nobody sells a policy with a \$10,000 wind and hail deductible."

Smith is an attorney with the law firm acting as the HOA's general counsel, SJJ Law.

"That's where you have the homeowners in this community who are very, very upset," Smith said. "They're frustrated because the policy that the association has has a deductible that doesn't conform to what the declaration requires."

Smith said the dispute falls under the "doctrine of impossibility." Essentially, if it's impossible for parties to comply with components of a contract, they're relieved from that responsibility, Smith said.

The number of insurance companies willing to offer policies to homeowners associations is declining, and those that do often utilize a percentage-based deductible, such as the one that Soaring Eagles has, Smith said.

"The biggest reason is that Colorado has an incredible number of wind and hail claims, and insurance companies have paid a lot of money on those claims," Smith said. "They're trying to cover their losses by increasing the deductible so they reduce their exposure to those future claims."

The homeowners — and at least one expert they consulted — disagree.

"Just because the HOA didn't get an insurance price that they liked, to have the deductible that matched, doesn't mean that it's impossible." Schifferdecker said. "The HOA just didn't exercise all of its available resources and ... do all of its due diligence in

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looking for insurance that fits its covenants' requirements."

Before hiring an attorney, the homeowners reached out to a different insurance company, the Leavitt Group, for another perspective.

Colorado's insurance market has changed because of the number of wind and hail claims, but there are definitely still carriers offering lower deductibles, Leavitt Group co-owner JP West told the homeowners.

"Your HOA certainly did not appear to exhaust every option to find a policy in compliance with their own guidelines," West wrote.

"To say that finding the right combination of policies to be compliant is 'impossible' is simply not true."

More than a dozen homeowners signed a letter Sept. 18 demanding that the HOA board members and the townhome association's management company cease all construction on the hail damage, void the contracts, remove the damage claim and suspend the cost collection efforts.

"We have already spoken to several attorneys and are more than willing to proceed with a lawsuit if needed," their letter said. "This demand is only made in an attempt to try and handle the issue in good faith without incurring unnecessary legal fees for anyone."

Soaring Eagles filed a lawsuit seeking a declaratory judgment against the homeowners four days after that letter was sent, according to the document.

The lawsuit asks the court to interpret the HOA's governing documents and issue an order declaring each party's rights and obligations. Namely, did the board members have the right to purchase the insurance policy that didn't match the document's requirements? And can it assess the cost of the repairs back to the homeowners?

"(The lawsuit) doesn't seek money from anybody," Smith said. "It's better just to get this question resolved as quickly as possible, to minimize everybody's expenses."

The homeowners fighting the HOA are hoping an El Paso County district court will rule that the association did not have the authority to get such a large-deductible insurance plan and therefore can't bill residents for the cost, Schifferdecker said.

The HOA will still have to pay the deductible, but not in a way that forces homeowners to suddenly come up with more than \$20,000, he said.

"That's the issue with the entire ordeal, is that the HOA had other ways to handle this matter," he said. "You know, maybe they didn't do the right thing at the front end, but they certainly also didn't do the right thing on the back end by special-assessing and forcing this amount of money on everyone."