

4M Restrictions



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2017112638

**RESIDENTIAL DEDICATORY INSTRUMENT  
ENFORCEMENT AND FINE POLICY  
RIVERSTONE HOMEOWNERS ASSOCIATION, INC.**

THE STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND       §

WHEREAS, the property encumbered by this Residential Dedicatory Instrument Enforcement and Fine Policy (this “**Policy**”) is that property restricted by the Declaration of Covenants, Conditions and Restrictions for Riverstone Single Family Residential Areas recorded in the Official Public Records of Real Property of Fort Bend County, Texas under Clerk’s File No. 2001047889 (the “**Declaration**”), and any other property which has been or may be annexed thereto and made subject to the authority of the Riverstone Homeowners Association, Inc. (the “**Association**”); and

WHEREAS, Article X, Section 8, of the Declaration, entitled “Enforcement”, provides that the Association has the authority to enforce the provisions of the Declaration, the Bylaws, and/or rules and regulations of the Association (the “**Dedicatory Instruments**”) and impose reasonable fines against Owners and Occupants for violations of the Dedicatory Instruments; and

WHEREAS, the Board hereby adopts this Policy in an effort to provide Owners and Occupants with a better understanding of the process of enforcement and fines related to the Dedicatory Instrument; and

WHEREAS, unless otherwise provided herein, capitalized terms used herein have the same meanings as that ascribed to them in the Declaration; and

WHEREAS, in the event of a conflict between the terms of this Policy and any previously adopted rules, regulations and/or policies addressing the enforcement of Dedicatory Instruments and fines as set forth herein, this Policy controls.

NOW, THEREFORE, IT IS RESOLVED, that the following Policy is hereby adopted by the Board:

## ARTICLE I: DEDICATORY INSTRUMENT ENFORCEMENT

In addition to other remedies that may be available to the Association pursuant to Texas law, there are two different types of enforcement procedures that may be followed regarding violations of the dedicatory instruments. These two procedures are outlined in this Policy in order to provide Owners and Occupants with a better understanding of the process of enforcement and fines related to the Dedicatory Instruments. As set forth below, the type of enforcement procedure followed depends on whether a violation of the dedicatory instruments is considered (1) curable *and* does not pose a threat to public health or safety, or (2) uncurable *and/or* poses a threat to public health or safety. Section 209.006(f) of the Texas Property Code provides that a violation is considered a threat to public health or safety if the violation could materially affect the physical health or safety of an ordinary resident

The Board has the authority to make the ultimate determination as to which enforcement procedure is followed, if at all. Additionally, the Board has the authority to make the ultimate determination of whether a violation of the dedicatory instruments is curable, uncurable and/or poses a threat to public health or safety. Nothing contained herein, not otherwise required by the Declaration, will require the Board to take any of the specific actions contained herein. The Board has the right, but not the obligation, to evaluate each violation on a case-by-case basis as it, in its best judgment, deems reasonable.

### A. ENFORCEMENT REGARDING CURABLE VIOLATIONS THAT DO NOT POSE A THREAT TO PUBLIC HEALTH OR SAFETY

By way of illustration and not limitation, Section 209.006(i) of the Texas Property Code provides the following as examples of acts that are considered curable violations: (i) a parking violation, (ii) a maintenance violation, (iii) the failure to construct improvements or modifications in accordance with approved plans and specifications, and (iv) an ongoing noise violation such as a barking dog.

In the event that a violation is both curable and does not pose a threat to public health or safety (herein referred to as a “**curable violation**”), Owners and Occupants will be given a reasonable time to cure them, as set forth in more particular detail below. The time period given to cure a curable violation may vary in relation to the difficulty, planning and expense associated with curing the curable violation, which will be determined by the Board, in its sole discretion. Additionally, the Board may take into consideration the specific circumstances and the overall effect that such curable violation has on the subdivision and other Owners and Occupants when determining the time period to cure such curable violation, but in no event will the Board be responsible or required to consider such factors. If an Owner or Occupant is unable to cure such curable violation within the time specified, a written request for an extension must be submitted to the Board, and such request may be approved by the Board.

1. COURTESY LETTER:

Upon verification of a curable violation, a courtesy letter may be sent to the Owner or Occupant providing a description of the curable violation and requesting that the Owner or Occupant cure the curable violation within a stated time period. The Association is not required to send a courtesy letter.

2. VIOLATION LETTER:

If the curable violation has not been corrected after the expiration of the time allotted to the Owner or Occupant to cure the curable violation as provided in the courtesy letter, if one is sent, or upon inspection of the Lot after the expiration of the time allotted, a violation letter may be sent to the Owner or Occupant. Depending on the severity of the curable violation and/or the violation history of the Owner or Occupant, the violation letter may be the first letter sent as determined by the Board, in its sole discretion. The Association is not required to send a violation letter. The violation letter, if sent, will provide the following:

- (a) A description of the curable violation(s);
- (b) The action required to correct the curable violation(s);
- (c) The time by which the curable violation must be corrected; and
- (d) That if the curable violation is not corrected within the time provided or if there is a subsequent curable violation of the same restriction, or a violation of any other Dedicatory Instrument, a fine may be imposed.

3. DEMAND LETTER:

Either upon initial verification of a curable violation, or after the expiration of the time period provided in the courtesy letter and/or violation letter, if sent, a demand letter may be sent to the Owner or Occupant by certified mail. The demand letter may be also sent by any method of mailing for which evidence of mailing is provided by the United States Postal Service or a common carrier to the Owner's or Occupant's last known address as shown on the Association's records, as well as by any other method that the Board determines that the demand letter may be received by the Owner or Occupant. Depending on the severity of the curable violation and/or the history of previous violations on the Owner's property, this demand letter may be the first letter sent as determined by the Board, in its sole discretion.

**The demand letter for curable violations of the Dedicatory Instruments will provide the following information:**

- (a) Violation: A description of the curable violation(s) that is the basis for the suspension action, charge, and/or fine, and all sums due to the Association;

- (b) Right to Cure: The Owner is entitled to a reasonable period to cure the curable violation and avoid the fine or suspension;
- (c) Time to Cure: A specific date by which the Owner or Occupant must cure the curable violation. If the Owner or Occupant cures the curable violation before the date specified, a fine will not be assessed for the curable violation;
- (d) Right to Request Hearing: The Owner may request a hearing before the Board or a designated committee. Such request must be made in writing on or before the thirtieth (30<sup>th</sup>) day after the date the notice of the curable violation was mailed to the Owner. If the hearing is held before a designated committee, the Owner has the right to appeal the decision of that committee to the Board upon written notice to the Board;
- (e) Timing and Notice of Hearing: If requested, a hearing will be held not later than the thirtieth (30<sup>th</sup>) day after the date the Board receives the Owner's written request for a hearing. Notification of the date, time and place of the hearing will be sent not later than the tenth (10<sup>th</sup>) day before the hearing. If a postponement of the hearing is requested by either the Board or the Owner, it must be granted for a period of not more than ten (10) days. Any additional postponements may be granted by agreement between the Association and the Owner;
- (f) Hearing not Requested--Timeframe to Cure Violation: If the Owner chooses not to request a hearing, the curable violation must be cured within the timeframe set forth in the demand letter. Fines, suspension of right to use the Common Area, and other remedies available to the Association may be imposed after the expiration of the thirty (30) day timeframe provided to the Owner to request a hearing;
- (g) Active Military Duty: The Owner or Occupant may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 et seq.), if the Owner or Occupant is serving on active military duty;
- (h) Association Remedies: Pursuant to Article X, Section 8 of the Declaration, entitled "Enforcement", the Owner or Occupant will be liable for, and the Association may collect reimbursement of, reasonable attorney's fees and other reasonable costs incurred by the Association after the conclusion of a hearing, or, should a hearing not be requested, after the date by which the Owner must request a hearing. Said attorney's fees and costs will be charged to the Owner's Assessment account. Additionally, the Association may, but is not obligated to, exercise its self help remedy pursuant to the terms set forth in Article X, Section 8 of the Declaration, entitled "Enforcement", and any costs, including reasonable attorney's fees, associated with such self help will be the personal obligation of the Owner and are secured by the lien created in the Declaration. Further, the Owner's or Occupant's right to access the Common Area may be suspended.

In addition to charging fines, the Association reserves its right under the Dedicatory Instruments and under Texas law, to file a lawsuit for damages and injunctive relief. Pursuant to Section 202.004(c) of the Texas Property Code, a court in such a lawsuit may assess civil penalties of up to \$200.00 per day for each violation of a restrictive covenant. After the conclusion of a hearing, or, should a hearing not be requested, after the date by which the Owner must request a hearing, per the Board's direction, a matter may be sent to legal counsel for the Association; and

- (i) Notice of Dedicatory Instrument Violation: A Notice of Dedicatory Instrument Violation may be recorded in the Official Public Records of Fort Bend County, Texas should the curable violation not be cured within the specified time frame provided in the demand letter.

**B. ENFORCEMENT REGARDING VIOLATIONS THAT ARE UNCURABLE AND/OR THAT POSE A THREAT TO PUBLIC HEALTH OR SAFETY**

In the sole discretion of the Board, Owners or Occupants will not be given time to cure violations of the dedicatory instruments that are considered uncurable and/or pose a threat to public health or safety (hereinafter referred to as “**uncurable violations**”). By way of illustration and not limitation, Section 209.006(g) of the Texas Property Code provides that an uncurable violation is considered uncurable if the violation has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. A single uncurable violation or other violation that is not ongoing is not considered an adequate remedy. By way of illustration and not limitation, Section 209.006(h) of the Texas Property Code provides the following as examples of acts that are considered uncurable violations: (i) shooting fireworks, (ii) an act constituting a threat to public safety, (iii) a noise violation that is not ongoing, (iv) property damage, including the removal or alteration of landscape, and (v) holding a garage sale or other event prohibited by a dedicatory instrument.

1. DEMAND LETTER:

Either upon initial verification of an uncurable violation, a demand letter may be sent, by certified mail, to the Owner or Occupant. The demand letter may be also sent by any method of mailing for which evidence of mailing is provided by the United States Postal Service or a common carrier to the Owner's or Occupant's last known address as shown on the Association's records, as well as by any other method that the Board determines that the demand letter may be received by the Owner or Occupant.

**The demand letter for uncurable violations of the Dedicatory Instruments will provide the following:**

- (a) Violation: A description of the uncurable violation(s) or property damage that is the basis for the suspension action, charge, or fine and all sums due the Association;

- (e) Right to Request Hearing: The Owner may request a hearing before the Board or a designated committee. Such request to be made in writing on or before the thirtieth (30<sup>th</sup>) day after the date the notice was mailed to the Owner. If the hearing is held before a designated committee, there will be a right to appeal the decision of that committee to the Board upon written notice to the Board;
- (b) Timing and Notice of Hearing: If requested, a hearing will be held not later than the thirtieth (30<sup>th</sup>) day after the date the Board receives the Owner's written request for a hearing. Notification of the date, time and place of the hearing will be sent not later than the tenth (10<sup>th</sup>) day before the hearing. If a postponement of the hearing is requested by either the Board or the Owner, it must be granted for a period of not more than ten (10) days. Any additional postponements may be granted by agreement of the parties;
- (c) Hearing not Requested: Regardless of whether the Owner chooses to request a hearing, fines, suspension of right to use the Common Area, and other remedies available to the Association may be imposed after the mailing of the demand letter;
- (d) Active Military Duty: The Owner or Occupant may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 et seq.), if the Owner or Occupant is serving on active military duty;
- (e) Association Remedies: Pursuant to Article X, Section 8 of the Declaration, entitled "Enforcement", the Owner or Occupant will be liable for, and the Association may collect reimbursement of, reasonable attorney's fees and other reasonable costs incurred by the Association after the conclusion of a hearing, or, should a hearing not be requested, after the date by which the Owner must request a hearing. Said attorney's fees and costs will be charged to the Owner's Assessment account. Additionally, the Association may, but is not obligated to, exercise its self help remedy pursuant to the terms set forth in Article X, Section 8 of the Declaration, entitled "Enforcement", and any costs associated with such self help, including reasonable attorney's fees, will be the personal obligation of the Owner and are secured by the lien created in the Declaration. Further, the Owner's or Occupant's right to access the Common Area may be suspended.

In addition to charging fines, the Association reserves its right under the Dedicatory Instruments and under Texas law, to file a lawsuit for damages and injunctive relief, and pursuant to Section 202.004(c) of the Texas Property Code, a court in such a lawsuit may assess civil penalties of up to \$200.00 per day for each violation of a restrictive covenant. After the conclusion of a hearing, or, should a hearing not be requested, after the date by which the Owner must request a hearing, per the Board's direction, a matter may be sent to legal counsel for the Association; and

- (f) Notice of Dedicatory Instrument Violation: A Notice of Dedicatory Instrument Violation may be recorded in the Official Public Records of Fort Bend County, Texas should the incurable violation not be cured within the specified time frame.

C. SUBSEQUENT SIMILAR VIOLATIONS:

If an Owner or Occupant violates the Dedicatory Instruments within six (6) months after receiving a demand letter pursuant to Sections A or B, above, related to a previous similar violation, fines may be imposed pursuant to Article II of this Policy, or the right to access the Common Area may be suspended without sending another demand letter to the Owner or Occupant.

**ARTICLE II. FINES**

After a demand letter, if any, has been sent to the Owner or Occupant pursuant to the terms of this Policy as set forth above, the Association, acting through the Board, is authorized to impose fines according to the schedule for violations of any provisions of the Dedicatory Instruments governing the Subdivision, as set forth below. If the violation is a similar, subsequent violation to one that has occurred within the previous six (6) months, the fine will accrue as of the first (1<sup>st</sup>) date of the subsequent violation. The Board will determine, in its sole discretion, whether or not an Owner's or Occupant's violation(s) of the Dedicatory Instruments affects other Owners or Occupants in the subdivision.

The following schedule of fines will apply should the Board determine, in its sole discretion, to impose fines for a particular violation of the Dedicatory Instruments for each day the violation exists:

First Violation	\$ 50.00
Second Violation	\$ 100.00
Subsequent Violations	\$ 150.00

Notwithstanding the fine schedule above, the Board has the authority to set the amount of the fine as it reasonably relates to the violation of the Dedicatory Instruments, taking into consideration the number of Owners and Occupants affected by the violation. The Board, in its sole discretion, is hereby authorized to impose lesser or greater fines, or no fine at all, for a violation of the Dedicatory Instruments. Each day that such violation continues will be considered to be a new violation. Fines against an Owner or Occupant will be assessed against the Owner's Lot.

**CERTIFICATION**

I hereby certify that, as President of the Riverstone Homeowners Association, Inc., the foregoing Residential Dedicatory Instrument Enforcement and Fine Policy was approved on the 9<sup>th</sup> day of October, 2017, at a meeting of the Board of Directors at which a quorum was present.

DATED, this the 13<sup>th</sup> day of October, 2017.

**Riverstone Homeowners Association, Inc.**

*Trey Reichert*

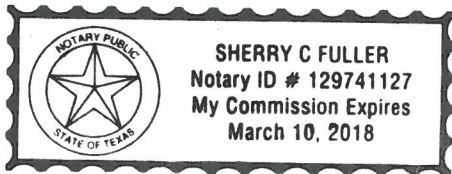
Print Name: Trey Reichert  
President

STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND §

BEFORE ME, on this day personally appeared Trey Reichert, the President of Riverstone Homeowners Association, Inc., known by me to be the person whose name is subscribed to this instrument, and acknowledged to me that s/he executed the same for the purposes herein expressed, in the capacity herein stated, and as the act and deed of said corporation.

Given under my hand and seal this the 13<sup>th</sup> day of October, 2017.

*Sherry C Fuller*  
Notary Public - State of Texas



After Recording, Return To:  
Brady E. Ortego  
Roberts Markel Weinberg Butler Hailey PC  
2800 Post Oak Blvd., 57<sup>th</sup> Floor  
Houston, TX 77056



RETURNED AT COUNTER TO:

Kayla Barton / Riverston HOA

18353 University Blvd.

Sugar Land, TX 77479

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS

*Laura Richard*

Laura Richard, County Clerk

Fort Bend County Texas

October 13, 2017 12:29:56 PM

FEE: \$39.00 SB

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