

Denton County  
Juli Luke  
County Clerk

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Instrument Number: 113617

ERecordings-RP

NOTICE

Recorded On: October 20, 2023 04:20 PM

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" Examined and Charged as Follows: "

Total Recording: \$58.00

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Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

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STATE OF TEXAS  
COUNTY OF DENTON

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

Juli Luke  
County Clerk  
Denton County, TX

**FINE AND ENFORCEMENT POLICY**  
*for*  
**PECAN SQUARE RESIDENTIAL COMMUNITY ASSOCIATION, INC.**

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THE STATE OF TEXAS       §  
  §  
COUNTY OF DENTON       §

I, Kim Comiskey, President of Pecan Square Residential Community Association, Inc. (the "Association"), certify that the following "Fine and Enforcement Policy" was approved by not less than a majority of the Board of Directors of the Association.

**RECITALS:**

1. Article XII, Section 12.11(c) of the Declaration of Covenants, Conditions and Restrictions for Pecan Square Residential Community, recorded at Clerk's File Volume No. 20190423000236 of the Official Public Records of Denton County, Texas and the Supplemental Declaration of Covenants, Conditions and Restrictions for Pecan Square Residential Community (Phase 2B), recorded at Clerk's File No. 2011032940 (collectively, the "**Declaration**") as they may be amended and/or supplemented from time to time, and any other property which has been or may be subsequently annexed thereto and made subject to the authority of the Association and Article VII, Section 7.15(b)(xi) of the Bylaws of Pecan Square Residential Community Association, Inc., attached as Attachment 2 to the Pecan Square Residential Community Association, Inc. Dedicatory Instrument Manual, recorded at Clerk's File No. 20190424000521 of the Official Public Records of Denton County, Texas (the "**Bylaws**") grant to the Association the power and authority to enforce all covenants, conditions and restrictions set forth in the Dedicatory Instruments (as defined by the Texas Property Code).

2. Article III, Section 3.7 of the Declaration and Article VII, Section 7.15(a)(xi) of the Bylaws authorize the Association to levy fines against an Owner for violations of the Governing Documents, subject to compliance with notice requirements imposed by law.

3. The Board of Directors desires to amend and restate its previously adopted policy relating to the enforcement of the Declaration and the other Governing Documents of the Association consistent with Section 209.006 and 209.0061 of the Texas Property Code. All capitalized terms in this Policy shall have the same meanings as that ascribed to them in the Declaration.

4. This Policy replaces and supersedes any previously recorded or implemented policy that addresses the subjects contained herein, if any, adopted by the Association.

**WITNESSETH:**

It is the policy of the Association to enforce its Governing Documents (as defined herein) as provided below.

**Section 1. Definitions.**

Capitalized terms used in this Policy have the following meanings:

- 1.1. **Declaration** - Declaration of Covenants, Conditions and Restrictions for Pecan Square Residential Community, recorded at Clerk's File Volume No. 20190423000236 of the Official Public Records of Denton County, Texas and the Supplemental Declaration of Covenants, Conditions and Restrictions for Pecan Square Residential Community (Phase 2B), recorded at Clerk's File No. 2011032940 (collectively, the "**Declaration**") as they may be amended and/or supplemented from time to time, and any other property which has been or may be subsequently annexed thereto and made subject to the authority of the Association.
- 1.2. **Bylaws** - Bylaws of Pecan Square Residential Community Association, Inc., attached as Attachment 2 to the Pecan Square Residential Community Association, Inc. Dedicatory Instrument Manual, recorded at Clerk's File No. 20190424000521 of the Official Public Records of Denton County, Texas.
- 1.3. **Governing Documents** - Each document governing the establishment, maintenance or operation of the properties within the Community, as more particularly defined in Section 202.001(1) of the Texas Property Code.

Other capitalized terms used in this Policy, but not defined herein, have the same meanings as that ascribed to them in the Declaration.

**Section 2. Types of Violations.** Section 209.006 of the Texas Property Code refers to curable violations, uncurable violations, and violations which are considered a threat to public health or safety. The types of violations are addressed below more than one may exist at one time depending on the circumstances surrounding the violation(s).

- 2.1. **Curable Violations** - Without limitation, the Texas Property Code lists the following as examples of curable violations:
  - a. a parking-violation based on the Governing Documents;
  - b. a maintenance violation;
  - c. the failure to construct improvements or modifications in accordance with approved plans and specifications; and
  - d. an ongoing noise violation such as a barking dog.

2.2. **Uncurable Violation** – A violation that has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. Without limitation, the Texas Property Code lists the following as examples of uncurable violations:

- a. an act constituting a threat to health or safety;
- b. discharging fireworks;
- c. a noise violation that is not ongoing; and
- d. holding a garage sale or other event prohibited by the Governing Documents.

2.3. **Violation that is a Threat to Public Health or Safety** – Per the Texas Property Code, a violation that could materially affect the physical health or safety of an ordinary resident.

**Section 3. Enforcement – Curable Violations That Do Not Pose a Threat to Public Health or Safety.** If a violation is curable and does not pose a threat to public health or safety, the Owner will be given a reasonable period to cure the violation, as provided below. The enforcement procedure for this type of violation is as follows:

3.1. **Courtesy Letter (Optional)** – A courtesy letter may be sent to the Owner describing the violation and requesting that the Owner cure the violation within a stated time period.

3.2. **Violation Letter (Optional)** – Depending on the severity of the violation and/or the history of prior violations on the Owner’s Residential Lot, the violation letter may be the first letter sent to the Owner. If sent, the violation letter may include:

- a. a description of the violation;
- b. the required curative action;
- c. the deadline to cure the violation; and
- d. notice that if the violation is not corrected within the time provided or if there is a subsequent violation of the same restriction, a fine may be imposed or other enforcement action may be initiated.

3.3. **Demand Letter** – The demand letter must be sent by certified mail or by any method of mailing for which evidence of mailing is provided by the United States Postal Service or a common carrier and may be emailed to the Owner at the email address registered with the Association. The demand letter must be sent to the Owner’s last known address as shown in the records of the Association. Depending on the severity of the violation and/or the history of prior violations on the Owner’s Lot, the demand letter may be the first letter sent (rather than a courtesy letter and/or a violation letter), as determined by the Board in its sole and absolute discretion.

3.4. **Content of the Demand Letter** – The demand letter will include the following:

- a. a description of the violation that is the basis for the enforcement action, suspension action, charge, or fine and any amount due the Association;
- b. notice that the Owner is entitled to a reasonable period to cure the violation and avoid the enforcement action, suspension, charge or fine;
- c. a specific date, which must be a reasonable period given the nature of the violation, by which the Owner must cure the violation. If the Owner cures the violation before the date specified, a fine may not be assessed for the violation;
- d. a notice that the Owner may request a hearing before the Board, such request to be made in writing on or before the 30<sup>th</sup> day after the date the notice was mailed to the Owner; and
- e. notice that the Owner 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 is serving on active military duty.

3.5. **Hearing Requested** – If a hearing is properly requested by the Owner, the hearing will be held not later than the 30<sup>th</sup> day after the date the Association 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 10<sup>th</sup> day before the hearing. If a postponement of the hearing is requested by either the Association or the Owner, a postponement must be granted for a period of not more than ten (10) days. Any additional postponement may be granted by agreement of the parties.

3.6. **Hearing Not Requested** – If a hearing is not properly requested by the Owner, the violation must be cured within the time frame set forth in the demand letter. Fines, suspension of the right to use the Common Area, and other remedies available to the Association may be implemented after the expiration of the thirty (30) day time frame provided to the Owner to request a hearing.

**Section 4. Enforcement – Uncurable Violations and/or Violations that Pose a Threat to Public Health or Safety.** The demand letter must be sent by certified mail or by any method of mailing for which evidence of mailing is provided by the United States Postal Service or a common carrier and may be emailed to the Owner at the email address registered with the Association. The demand letter must be sent to the Owner’s last known address as shown in the Association’s records.

4.1. **Content of the Demand Letter** – The demand letter will include the following:

- a. a description of the violation that is the basis for the enforcement action, suspension action, charge, or fine and any amount due the Association;

- b. notice that the Owner may request a hearing before the Board, such request to be made in writing on or before the 30<sup>th</sup> day after the date the notice was mailed to the Owner; and
- c. notice that Owner 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 is serving on active military duty.

4.2. **Hearing Requested** - If a hearing is properly requested by the Owner, the hearing must be held not later than the 30<sup>th</sup> day after the date the Association 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 10<sup>th</sup> day before the hearing. If a postponement of the hearing is requested by either the Association or the Owner, a postponement must be granted for a period of not more than ten (10) days. Any additional postponement may be granted by agreement of the parties.

**Section 5. Remedies and Subsequent Violations.** Regardless of whether the Owner requests a hearing, fines, suspension of the right to use the Common Area, and other remedies available to the Association may be implemented after mailing the demand letter. The Owner is liable for, and the Association may collect reimbursement of, reasonable attorneys' fees and other reasonable costs incurred by the Association. Additionally, the Association may, but is not obligated to, exercise any self-help remedies set forth in the Declaration. Further, the right to use the Common Area may be suspended. A notice of violation may also be recorded in the real property records should the violation not be cured within the specified time frame. The Association may file a suit for the recovery of damages and/or injunctive relief.

If an Owner has been given notice in accordance with Section 3 or Section 4 of this Policy in the preceding six (6) month period, notice is not required for the recurrence of the same or a similar violation. The Association may impose fines or suspend the Owner's right to use the Common Area without first sending another demand for compliance.

**Section 6. Fines.** Subject to the notice provisions set forth in Section 3 or Section 4 of this Policy, as applicable, the Association may impose reasonable monetary fines against an Owner in accordance with the below schedule until the violation is cured if of a curable nature. The Board reserves the right to adjust fines based upon the egregiousness of the violation. The general categories of restrictive covenant violations for which the Association may assess fines includes, but is not limited to the following: aesthetics, use of lot and/or Common Area, lawn maintenance, Lot improvement maintenance, parking/vehicles, installation of an unapproved improvement, leasing/tenant violations, animals, nuisance, incurable violations or violations that are a threat to the public health and safety and holiday lights.

<b>Notice</b>	<b>Time to Cure (estimate)</b>	<b>Fine Amount if not Cured</b>
Courtesy Notice (if sent)	10 days	No Charge
Violation Notice (if sent)	10 days	No Charge

Demand Letter - 1 <sup>st</sup> Notice (Chapter 209 - Demand Letter)	10 days	See General Category of Violations
2 <sup>nd</sup> Notice of Fine Letter	10 days	See General Category of Violations
3 <sup>rd</sup> Notice of Fine Letter	10 days	See General Category of Violations
Subsequent Notice of Fine Letters for the same or substantially similar violation	10 days	See General Category of Violations

General Category of Violations	Fine Amount
Aesthetics	\$150.00-\$250.00/month
Use (Lot or Common Area)	\$150.00-\$250.00/month
Yard Maintenance	\$250.00/month
Improvement Maintenance	\$250.00/month
Parking/Vehicles	\$500.00 every 10 days
Installation of Unapproved Improvement	\$500.00 daily
Leasing/Tenant Violations	\$500.00 daily
Animals	\$250.00/month
Nuisance	\$250.00/month
Uncurable Violations or Violations that are a Threat to Public Health and Safety	\$500.00
Holiday Lights	\$500.00 every 10 days

Any fine levied by the Association is the personal obligation of the Owner and shall constitute a continuing lien against the property per Article VI, Section 6.2 of the Declaration. The Board of Directors of the Association may adopt and modify the schedule of fines for various types of violations from time to time.

**Section 7. Board Hearings.** If an Owner is entitled to an opportunity to cure a violation pursuant to Section 209.007 of the Texas Property Code, the Owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before the Board.

- 7.1. The Board Hearing shall be held no later than the thirtieth (30th) day after the date the Board receives the Owner's request for a Board Hearing. The Board or the Owner may request a postponement and, if requested, a postponement shall be granted for a period of not more than ten (10) days. Notwithstanding the foregoing, the Board Hearing may be scheduled outside of these parameters by agreement of the parties.
- 7.2. The Board shall provide a Hearing Notice setting forth the date, time, and place of the Board Hearing, to the Owner not later than ten (10) days before the date of the Board Hearing. The Board Hearing may be held by virtual or telephonic means, in which case the access information for the virtual or telephonic Board Hearing shall be the "place" of the Board Hearing for purposes of the Notice.

- 7.3. The Board shall include with the Notice, a Hearing Packet containing all documents, photographs, and communications relating to the matter which the Board intends to introduce at the Board Hearing.
- 7.4. If the Board fails to provide the Hearing Packet to the Owner at least ten (10) days before the Board Hearing, the Owner is entitled to an automatic fifteen (15) day postponement of the Board Hearing.
- 7.5. Owners are expected to provide copies of any documentary evidence the Owner intends to introduce at the Board Hearing to the Board no later than five (5) days before the Board Hearing.
- 7.6. During the Board Hearing, a member of the Board or the Association's designated representative shall first present the Association's case against the Owner. An Owner, or an Owner's designated representative is then entitled to present the Owner's information and issues relevant to the dispute. The Board may ask questions of the Owner or designated representative.
- 7.7. The Board is not required to deliberate or reach a determination during the Board Hearing. Rather, all information gleaned from the Board Hearing may be taken under advisement by the Board. The Association or its managing agent may inform the Owner of the Board's decision in writing within thirty (30) days of the date of the hearing. If there is no written communication from the Association or the managing agent within this timeframe, the violation will remain standing.
- 7.8. The Board may set a time limit for the Board Hearing, to be determined at the Board's sole and absolute discretion, taking into account factors including but not limited to the complexity of the issues and the number of exhibits. The Board may communicate the time limitation in any manner to the Owner and will make every effort to communicate the time limitation to the Owner in advance of the date of the hearing. The time limitation will be strictly adhered to and is intended to strike a balance between: (i) allowing the Association ample time to present its case; (ii) allowing the Owner ample time to present the Owner's response; (iii) the Board's finite amount of time available to consider such issues.
- 7.9. All parties participating in the Board Hearing are expected to treat each other professionally and respectfully. The Board reserves the right to terminate a Board Hearing if the Board, in its sole and absolute discretion, determines the Board Hearing has become unproductive and/or contentious. The Board, in its sole and absolute discretion, reserves the right to reconvene any Board Hearing that is terminated pursuant to this Section 7.9.
- 7.10. Either party may make an audio recording of the Board Hearing.
- 7.11. This Policy does not apply to instances where the Association files a suit seeking a temporary restraining order, or temporary injunctive relief, or files a suit that includes foreclosure as a cause of action. Further, this Policy does not apply to a



