



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. Furthermore, 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, shall require the Board to take any of the specific actions contained herein. The Board shall have 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 VIOLATIONS THAT ARE CURABLE AND DO NOT POSE A THREAT TO PUBLIC HEALTH OR SAFETY**

By way of illustration and not limitation, the Texas Property Code examples of *curable* violations are: (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 instance of a violation that is both curable and does not pose a threat to public health or safety, Owners will be given a reasonable time to cure violations of the Dedicatory Instruments, as set forth in more particular detail below. The time period given may vary in relation to the difficulty, planning and expense associated with rectifying the violation which shall be determined in the sole discretion of the Board. Additionally, the Board may, in its own discretion, take into consideration the specific circumstances and the overall effect of the violation on the community when determining the time period to cure such violation, but in no event shall the Board be responsible or required to consider such factors. If an Owner is unable to correct the 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 violation, a Courtesy Letter may be sent to the Owner stating a description of the violation and requesting that the Owner cure the violation within a stated time period. The Association is not required to send a Courtesy Letter.

2. VIOLATION LETTER:

After the expiration of the Courtesy Letter, if one is sent, or upon the next inspection, if the violation has not been corrected, a Violation Letter may be sent to the Owner. Depending on the severity of the violation and/or the history of the

Owner, this may be the first letter sent as determined by the Board. The Association is not required to send a Violation Letter. The Violation Letter will state:

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

### 3. DEMAND LETTER:

Either upon initial verification of a violation, or after the expiration of the time period stated in the Courtesy Letter and/or Violation Letter, if sent, a Demand Letter may be sent to the Owner. This letter will be sent 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 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. Depending on the severity of the violation and/or the history of previous violations on the Owner's property, this may be the first letter sent (rather than a Courtesy Letter and/or a Violation Letter) as determined in the sole discretion of the Board.

#### **The following information is related to the Demand Letter for violations of the Dedicatory Instruments that are curable AND do not pose a threat to public health or safety:**

- (a) Violation: A description of the violation(s) that is the basis for the suspension action, charge, or fine;
- (b) Fines/Amounts Due: State the amount of the proposed fine and any amount due to the Association;
- (c) Right to Cure: The Owner is entitled to a reasonable period to cure the violation and avoid the fine or suspension;
- (d) Time to Cure: A specific date, which must be a reasonable period to cure, 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;
- (e) Right to Request Hearing: Owner may request a hearing before the Board or a designated committee, 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 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;
- (f) Timing and Notice of Hearing: If requested, a hearing shall be held not later than the 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 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 10 days. Any additional postponements may be granted by agreement of the parties;

- (g) Hearing not Requested--Timeframe to Cure Violation: If Owner chooses not to request a hearing, the violation must be cured within the timeframe set forth in the Demand Letter. Fines, suspension of right to use Common Areas, and other remedies available to the Association may be implemented after the expiration of the 30-day timeframe provided to the Owner to request a hearing;
- (h) Active Military Duty: 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;
- (i) Association Remedies: Owner shall 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 shall 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 the Declaration and any costs associated with same shall be the personal obligation of the Owner and are supported by the lien created in the Declaration. Further, rights to access Common Areas may be suspended.

In addition to charging fines, the Association reserves its right under any Dedicatory Instrument 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

- (j) Notice of Dedicatory Instrument Violation: A Notice of Dedicatory Instrument Violation may be recorded in the real property records should the violation not be cured within the specified time frame.

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

In the sole discretion of the Board, Owners may 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. By way of illustration and not limitation, a 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. The nonrepetition of a one-time violation or other violation that is not ongoing is not considered an adequate remedy. By way of illustration and not limitation, examples of acts considered uncurable are: (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 and/or threat to public health or safety, a Demand Letter may be sent to the Owner. This letter will be sent 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 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.

**The following information is related to the Demand Letter for violations of the Dedicatory Instruments that are uncurable AND/OR pose a threat to public health or safety:**

- (a) Violation: A description of the violation(s) or property damage that is the basis for the suspension action, charge, or fine;
- (b) Fines/Amounts Due: State the amount of fine and any amount due to the Association;
- (c) Right to Request Hearing: Owner may request a hearing before the Board or a designated committee, 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 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;
- (d) Timing and Notice of Hearing: If requested, a hearing shall be held not later than the 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 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 10 days. Any additional postponements may be granted by agreement of the parties.
- (e) Hearing not Requested: Regardless of whether the Owner chooses to request a hearing, fines, suspension of right to use Common Areas, and other remedies available to the Association may be implemented after the mailing of the Demand Letter;
- (f) Active Military Duty: 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;
- (g) Association Remedies: Owner shall be liable for, and the Association may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the Association. Said attorney's fees and costs shall 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 the Declaration and any costs associated with same shall be the personal obligation of the Owner and are supported by the lien created in the Declaration. Further, rights to access Common Areas may be suspended.

In addition to charging fines, the Association reserves its right under any Dedicatory Instrument 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. Per the Board's direction the matter may be sent to legal counsel for the Association; and

- (h) Notice of Dedicatory Instrument Violation: A Notice of Dedicatory Instrument Violation may be recorded in the real property records should the violation not be cured within the specified time frame.

C. SUBSEQUENT SIMILAR VIOLATIONS:

If an Owner has a violation within 6 months after receiving a Demand Letter pursuant to Section A or B herein, for a previous, similar violation, (i) fines may be implemented and accrue as of the first (1<sup>st</sup>) date of the subsequent violation, and/or (ii) use of Common Areas may be suspended for the subsequent violation without sending another Demand Letter to the Owner.

## **ARTICLE II. FINES**

After a Demand Letter (if required) has been sent to the Owner pursuant to the terms set forth above, the Association, acting through the Board, is authorized to impose fines for violations of any provisions of the Dedicatory Instruments governing the Property, as set forth below. Fines against an Owner will be assessed against the Owner's Lot. The Owner will be responsible for the actions of all residents, guests and invitees of the Owner and any fines against such residents, guests and invitees will also be assessed against the Owner's Lot.

A. **FINES FOR VIOLATIONS OF THE DEDICATORY INSTRUMENTS THAT ARE CURABLE AND DO NOT POSE A THREAT TO PUBLIC SAFETY**

In the instance where an Owner's violation of the Dedicatory Instruments is curable and does not pose a threat to public safety, as addressed hereinabove, the Owner may be fined \$100.00 for such violation. Each day that the violation continues may be subject to a \$100.00 fine, at the Board's sole discretion.

The Board is hereby authorized at its sole and absolute discretion to impose a

greater or lesser fine or no fine at all for a violation of the Dedicatory Instruments. Any adjustment to this fine schedule by the Board shall not be construed as a waiver of the fine schedule or the Dedicatory Instruments.

**B. FINES FOR VIOLATIONS OF THE DEDICATORY INSTRUMENTS THAT ARE UNCURABLE AND/OR POSE A THREAT TO PUBLIC SAFETY**

In the instance where an Owner's violation of the Dedicatory Instruments is uncurable and/or poses a threat to public safety, as addressed hereinabove, the Board has sole and absolute discretion to set the amount of the fine (if any) as it reasonably relates to the violation of the Dedicatory Instruments, taking into account factors including, but not limited to, the severity of the violation and the number of Owners affected by the violation.

*[SIGNATURE PAGE FOLLOWS]*



**E-FILED FOR RECORD**

03/05/2020 11:25AM

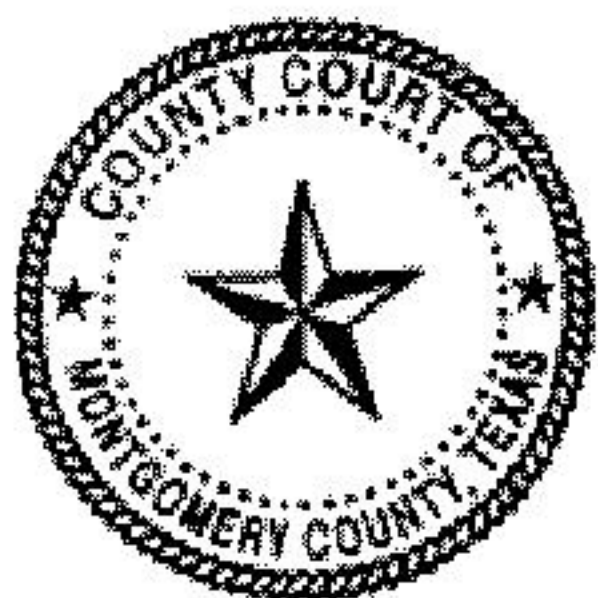


COUNTY CLERK  
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS,  
COUNTY OF MONTGOMERY

I hereby certify that this instrument was e-filed in the file number sequence on the date and time stamped herein by me and was duly e-RECORDED in the Official Public Records of Montgomery County, Texas.

**03/05/2020**



County Clerk  
Montgomery County, Texas