

Greater Houston Neighborhood Associations
2014 Annual Seminar and Trade Show

Practical Deed Restriction Management



C.I.A. Services, Inc.

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Ralph Troiano is President of C.I.A. Services, Inc., a professional management company for community associations throughout Houston and San Antonio areas. With 30 years of experience in the trenches, Mr. Troiano has presented numerous seminars on a variety of topics such as “Essential of Architectural Control”, “Practical Deed Restriction Management”, “Super Budgeting”, “Meetings & Records – The Legal Requirements”, “Understanding Collections & Financial Reports”, “Risk Management”, “Coping with Disaster” and “Myths in Management”.

Prior to establishing C.I.A. Services in 1984, Mr. Troiano worked as an engineer and systems analyst for two major petrochemical companies. He has a bachelors and masters degrees in chemical engineering from MIT and has earned the PCAM designation from Community Associations Institute. His interest in community association management began by serving on a Board of Directors and being an active volunteer in each neighborhood he has lived.

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Agenda

- Objectives of deed restriction management
- Our challenges
- Basis of authority for enforcement
- Texas Property Code
- The management process
- The importance of guidelines
- Statistics
- Handling the tough problems
- Questions & answers



Objectives of DR management

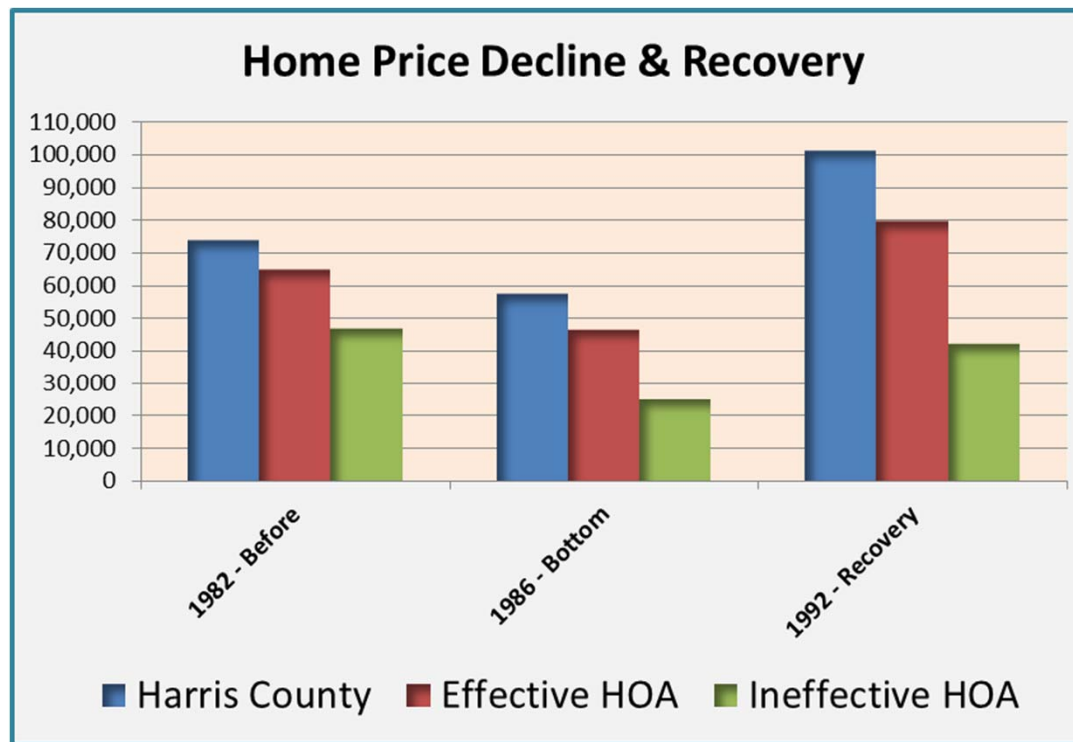


- Preserve property values
 - “... Declarant desires to adopt a uniform plan of development ... for protecting the value and desirability of the land ... for the benefit of each owner ...”
- Effective management will
 - Affect the reputation of the area
 - River Oaks, West University, The Heights, Montrose and Sharpstown and each evoke a different perception even though there are homes of similar age in all
 - Create positive attitude and pride among residents
 - Sense of community versus just the place you live
 - Reduce crime
 - The broken window syndrome

Preservation of property values



In the mid-1980's the Houston area was hit hard by the recession and many homeowners faced foreclosure. The University of Houston Center for Public Policy conducted a study which showed the effect of active, effective community associations. For the purpose of this study, they included only communities with high foreclosure rates.



The broken window syndrome



In a 1982 Atlantic Monthly article titled "Broken Windows," James Wilson and George Kelling argued that disorder in a community, if left uncorrected, undercuts residents' own efforts to maintain their homes and neighborhoods and control unruly behavior. "If a window in a building is broken and left unrepaired," they wrote, "all the rest of the windows will soon be broken. One unrepaired window is a signal that no one cares, so breaking more windows costs nothing. Untended property becomes fair game for people out for fun or plunder. If disorder goes unchecked, a vicious cycle begins."

In a community, an unmowed lawn, trash cans on the street or a trailers on a driveway all signal to residents and visitors that the condition is acceptable. Another lawn goes unmowed because it's too hot, another trash can is left out because you'll get dirty carrying it back, another trailer appears because the garage is too full to back it in. Little excuses and visible examples provide rationalization for compounding the community problems.

Our challenges



Wrecked boat in back yard, front fence removed



Vacant foreclosed home with overgrown yard



Popup travel trailer stored on driveway



Boat parked on street blocking traffic at corner

Our challenges (continued)



Fence, junk car in back yard, overgrown back yard



Deteriorated siding, painting peeling off



Excessive mildew on siding



18 wheeler cab routinely parked in driveway

Our challenges (continued)



Swimming pool with stagnant water in backyard



Fence replacement needed & trash in backyard



Unapproved addition with encroachment



Garage converted to living space

Our challenges (continued)



Interesting paint color choice



Easy to find this home from the boulevard



Driveway addition on right side



Solar panels on roof

Basis of association authority



- Governing documents
 - Articles of incorporation & bylaws
 - Govern the operation of the community association
 - Covenants, conditions & restrictions (“deed restrictions”)
 - Govern the use of the land by its owners
 - Plats
 - Provide additional restrictions on use of the land
 - Architectural & deed restriction guidelines
 - Internal interpretation of deed restrictions for owner guidance and uniform enforcement
 - Policies, procedures, rules & regulations
 - Internal rules of operation for the community association
- These comprise the “dedicatory instruments” which must be filed in the county public records to be enforceable

Related authorities



- Local government ordinances
 - Buildings (zoning, building codes, fire safety)
 - Health & safety (animal control, swimming pools, grass, rodents)
 - Annoyances (noise, lighting, signage, barking dogs)
 - Appearance (junk vehicles, grass heights)
- State laws
 - Texas Property Code
 - Uniform Condominium Act
- Federal laws
 - Telecommunications Act
 - Americans with Disabilities Act and other anti-discrimination laws

Texas Property Code



- This is the most important set of state laws dealing with property owners associations
- Chapters 201 thru 215 were passed and amended in almost every legislative session from 1985 through 2013
- Expands, limits, alters the authority of Associations
- TPC is highly “bracketed” - all chapters do not apply in all parts of the state
- View at www.statutes.legis.state.tx.us or on Library page of our web site www.ciaservices.com

Texas Property Code (continued)



Applicability of Texas Property Code Houston Metro Area Counties								
Chapter	Brazoria	Chambers	Fort Bend	Galveston	Harris	Liberty	Montgomery	Waller
201	X	X	X	X	X	X	X	X
202	X	X	X	X	X	X	X	X
203	X	-	X	X	X	-	X	-
204	-	-	-	X	X	-	X	-
205	X	-	X	X	X	X	X	-
206	-	-	-	-	X	-	-	-
207	X	X	X	X	X	X	X	X
208	-	-	-	-	X	-	-	-
209	X	X	X	X	X	X	X	X
210	-	-	-	-	-	-	-	-
211	-	X	-	-	-	-	-	X
212	-	-	-	-	X *	-	-	-
215	-	-	-	-	-	-	-	-

Note: no chapter 213 or 214

* City of Houston only

Impact of recent legislation

2011

- Five laws were passed relating to architectural control
 - Display of Certain Religious Items
 - Display of Flags
 - Roofing Materials
 - Solar Energy Devices
 - Rainwater Recovery Systems
- The laws state that an Association may not prohibit these items but may regulate them with guidelines
 - The law provides the parameters allowed for regulation
 - Guidelines must be in writing and filed in public records
 - Note that no underlying CC&R reference is needed

Impact of recent legislation

2013

- Two laws were passed relating to:
 - Flagpoles
 - Landscaping (xeriscaping)
- The flagpole law was a clarification to the 2011 legislation regarding display of flags – in most cases, an Association cannot prohibit a front yard flagpole
- The landscaping law prevents an Association from prohibiting the use of drought-resistant landscaping or water conserving natural turf
 - Unlike the 2011 legislation, this law does not require written guidelines for implementation

TPC chapter 209



- Before any enforcement actions below, the owner must be given written notice by certified mail:
 - Withhold rights to use common areas
 - File a lawsuit that is not related to collections
 - Charge for property damage
 - Levy a fine
- The notice must include:
 - Description of violation or damage and any amounts due
 - Reasonable period to cure (unless same notice in last 6 months)
 - Opportunity to request a hearing within 30 days of receipt
 - Notice of special rights for active duty service members
- Certain situations are excluded from this notice:
 - Filing suit seeking temporary injunction or restraining order
 - Ban from common areas if significant & immediate risk to others

TPC chapter 209 (continued)



- An owner is not liable for any legal fees notice is given and the hearing has been held or the hearing opportunity period has passed
- The owner must request a hearing within 30 days of receipt of the notice – the owner request must be in writing
- The association must hold the hearing within 30 days of receipt of the request
 - The association extend to 40 days without the owner's consent
 - By mutual agreement, the hearing can be held later than 40 days
 - If held within 40 days, owner consent to not required on the date
- The owner must be given notice of the date, time and place at least 10 days in advance
- The owner's presence is not required to hold the hearing

TPC chapter 209 (continued)



- Purpose of hearing is “to discuss and verify facts and resolve the matter in issue”
- Hearings are held with the board or a committee appointed by the board – if committee, owner may appeal decision to board
- Can be held in a regular or special board meeting properly announced to the members
- The hearing may be held in executive session to the exclusion of other members
- Procedurally and not required by law:
 - Rules and format should be announced at beginning of hearing
 - Board decisions may be made after owner is excused
 - Always provide response to owner in writing after hearing

TPC chapter 209 (continued)



- It is important to approach the hearing as an opportunity to resolve the issue – it is not a debate or trial – listen, understand, communicate & try to reach common ground
- Here is a nice hearing introduction by the presiding officer:

As provided for in chapter 209.007 of the Texas Property Code, this hearing has been requested by Mr. Smith who owns the property at 123 Happy Hollow to discuss and verify facts regarding certain deed restriction issues that have been raised by the Association. The format for the hearing is as follows. First, our community manager, Ms. Marigold will give a summary of the issues at hand. Each Board member has received and reviewed background information including materials from Mr. Smith. Next, Mr. Smith will be given the floor to present his information and get clarification on the issues. Finally, Board members will be given an opportunity to ask Ms. Marigold and Mr. Smith questions. After the hearing in Executive Session, the Board will discuss the hearing and make any necessary decisions. In a few days, a written response will be sent to Mr. Smith with any Board decisions. I would ask for everyone's courtesy in not interrupting while someone is speaking. We have set aside 15 minutes for this hearing.

TPC chapter 209 (continued)



- Here is some key wording from a certified “2009 letter”

Important Notice of Your Rights

Per Section 209.007 of the Texas Property Code, you have a right to a hearing in front of the Board of Directors. If you desire a hearing, written notice of your request must be received at our office within 30 days of your receipt of this letter. Upon receipt of your written request, you will be furnished with notice of the date, time and place of the hearing.

If you are serving on active military duty, you may have special rights or relief related to this enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. app. Section 501 et seq.).

The management process



- Establish clear boundaries & standards
 - Everything is not the association's responsibility
 - Everything is not the top priority
 - Everything is "shades of gray"
 - Create written guidelines
- Communicate the standards & expectations
 - Community signs
 - Welcome packages
 - Newsletter & website articles
 - Set an example
 - Establish a community reputation

The management process (continued)



- Act on deviations from standards
 - Notify the owner and/or tenant of the violation
 - Follow-up until the violation is resolved
 - Never bluff – if you start something, you must finish it
 - If all else fails, call attorney and be willing to go all the way
- Repeat
 - Make sure enforcement is uniform & consistent
 - The little things do matter in the long run

The importance of guidelines



- CC&Rs and TPC provide authority to create guidelines
- Guidelines are extremely important
 - Provides owners with a clear understanding of community standards & requirements for improvements
 - Provides a consistent based for decision making by Board and ACC that doesn't vary over time and as members change
 - Provides evidence of uniform standards if litigation is needed
- Guidelines cannot conflict with deed restrictions
- Proper guidelines carry the same authority as the underlying deed restrictions
- Guidelines must be filed in the county public records

The importance of guidelines (continued)

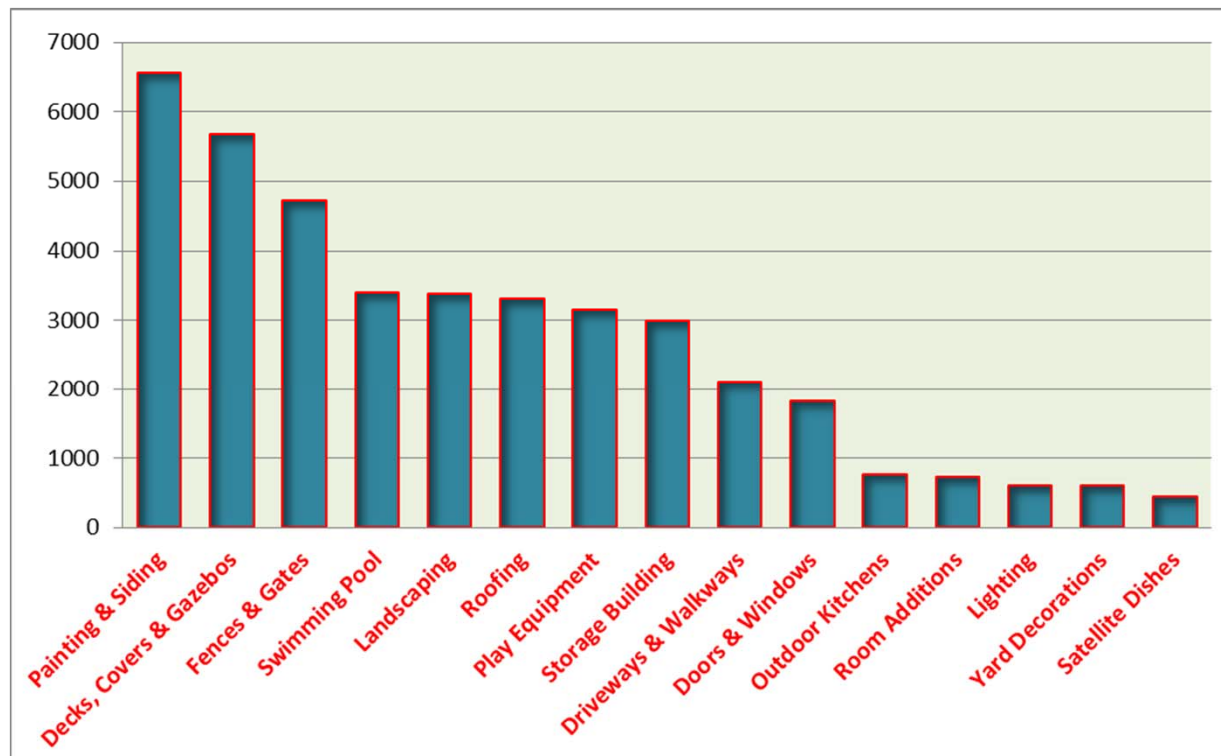


- CC&Rs say “... owners must maintain home ... painted in an earth tone color harmonious with the subdivision ...”
- Guidelines can answer in understandable & specific terms
 - What is considered unmaintained (faded paint, mildewed surfaces, rotted wood, sagging gutters, ...)
 - What is earth tone & harmonious (allowed/disallowed color palettes for different parts of home, paint finish, number of colors, can bricks be painted, must garage doors match, ...)
- CC&Rs say “... vehicles may not be stored ...”
- Guidelines can clarify
 - How long is “stored”? Is an unused, operable vehicle stored?
 - What is inoperable – functionally or legally?
 - What parameters will Association use to determine inoperable
 - Are such vehicles allowed in garage, back yard or never

ACC statistics



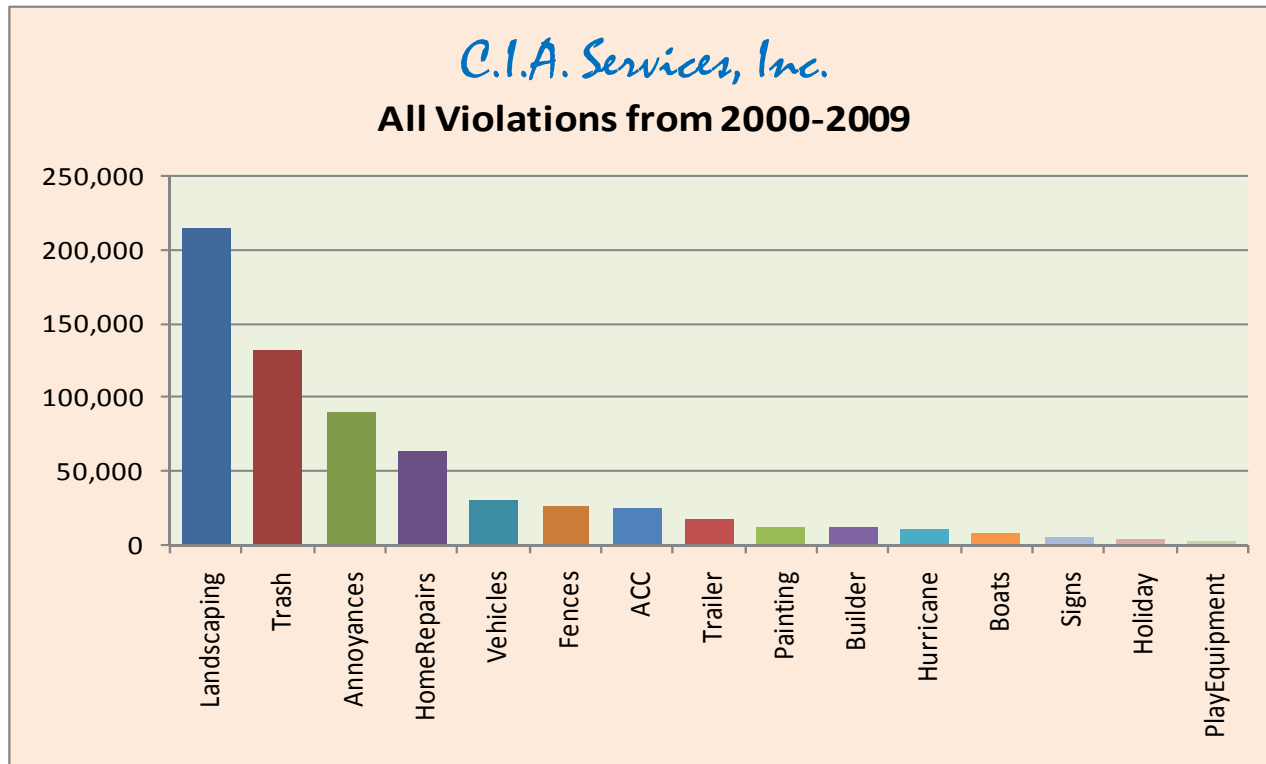
The table below summarizes the types of improvements that owners are making to their homes. This includes 40,240 applications for improvements to existing homes over a 10 year period.



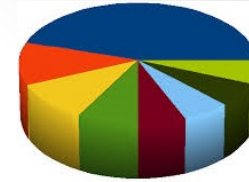
Violation statistics



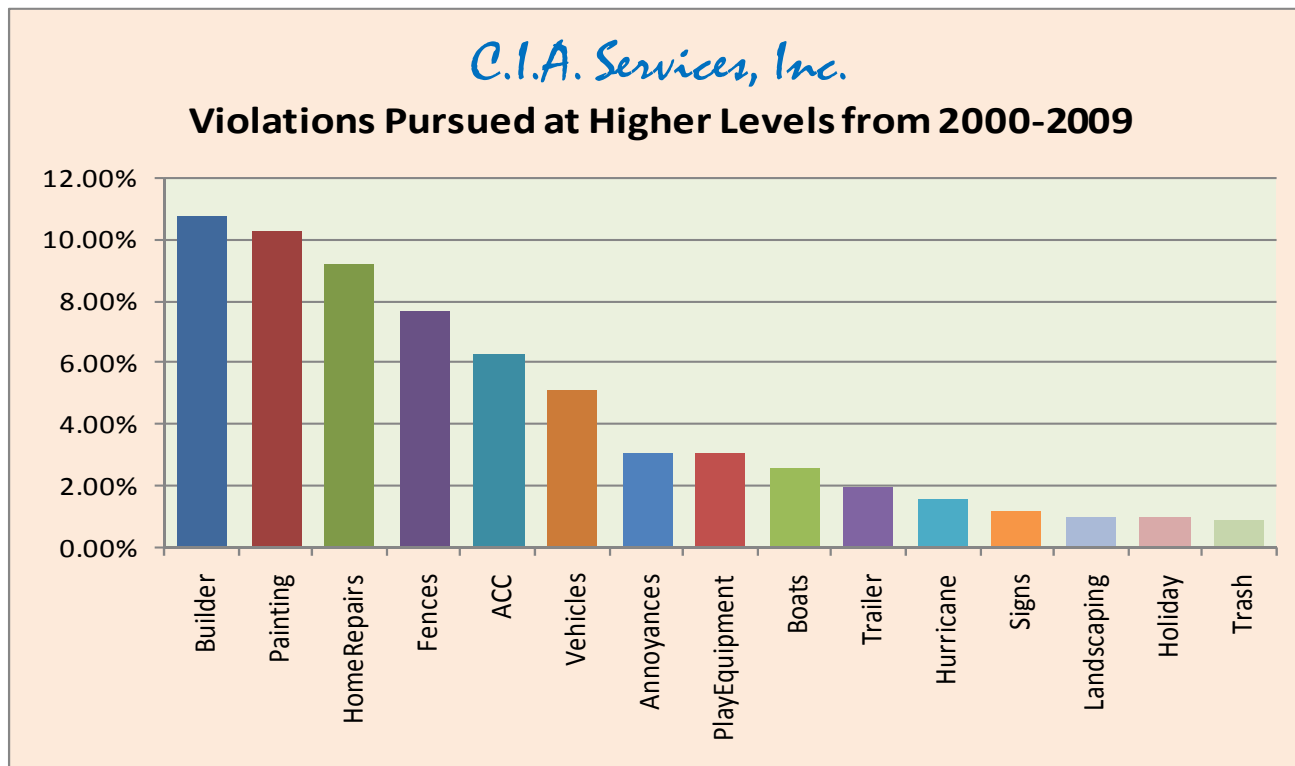
The chart below summarizes violations from all C.I.A. Services communities over a 10 year period grouped into 15 categories. Landscaping, trash, annoyances and home repairs are the dominant categories in terms of volume of violations.



Violation statistics (continued)



97% of all violations are corrected with no more than the “209 letter” (2nd letter). This chart shows the 3% of “tough” violations which need higher level enforcement (a “last chance” letter or attorney involvement). The order makes common sense.



Handling the tough problems

- Amending deed restrictions
- Chronic lawn care
- Pet problems
- Offsite owners & tenants
- Multiple families in a home
- Sex offender in community
- Group homes
- Commercial vehicles
- Lack of enforcement in the past



Amending deed restrictions



- May not be perfect but can they get the job done?
- Take advantage of powers to improve documents
 - Amending Bylaws is generally easy if that is what needs work
 - DRs already provide authority to adopt guidelines
- Don't under-estimate the effort, apathy or opposition
- Success will depend on marketing and shoe leather
- Figure out what you want and hold community meetings to gain consensus and support before trying to get signatures
- Have an attorney prepare the legal documents
- The Board or management company should prepare the marketing documents

Chronic lawn care



- Give owner fair warning – be very specific (mow, edge, trim shrubbery, weed beds, prune trees, etc.)
- Assign a contractor to do the work – get before & after photos
- Promptly bill the owner for the work
- What if contractor is turned away?
 - Generally owner will get the message and maintain their yard
 - Refer to City or County if it is a code or health violation
 - Try using JP Court if problem is bad – quick and inexpensive

Pet problems

- Generally originate from complaints that are often unverifiable – offer options to affected neighbor
- Send a courtesy letter to offenders – provide solutions
- Refer to proper outside agency
 - Animal control (vicious, running loose)
 - Health department (sanitation)
 - Law enforcement (noise)
 - SPCA (cruelty)



Offsite owners & tenants



- Make tenants feel part of the community
 - Include in community activities
 - Send them copies of newsletters
- Send DR letters to the owner, manager, tenant or all
 - Initial lawn care letter would typically go to tenant only
 - Letters for house painting would typically go to owner only
 - Initial letters for minor maintenance would typically go to both
- Tenant problems are sometimes easier than owner problems
 - We may have an ally with the landlord
 - A bad tenant may move out voluntarily or be evicted by owner
 - Some rental managers already understand the expectations of a community and management company

Multiple families in home



- This is not an enforceable violation
- “Single family homes” describes a type of structure & does not indicate who can live in home
- Even if someone is renting out a room (which may be specifically prohibited), that may be difficult to prove and may have no impact on the neighborhood
- Do not use “multiple families” to enforce morals or prejudices
 - Co-habitation
 - Certain cultures value having multiple generations in a house
- Define the real problems affecting the neighborhood and try to address them directly
 - Vehicle parking
 - Wild parties
- There may be municipal ordinances which can help

Group homes



- Includes elder care, halfway houses, disabled care – these are for profit businesses operating in a residential setting
- CC&Rs may prohibit businesses but group homes are protected by state and federal laws
- The protections have limitations – if the group home creates problems for the community, consult with an attorney on whether the home is operating under the limits of the law
- If there are intolerable problems, complain to the business owner/manager and regulatory agency

Sex offender in community



- Three categories
 - On parole or probation – strict monitoring
 - Completed parole or probation – may have monitoring
 - Undetected
- Past, present and future sex offenders are among us – the ones we know about are the best monitored
- Keep community informed of the general issue
 - <https://records.txdps.state.tx.us/SexOffender/>
- Parents should educate their children on safety and keep children away from identified sex offender home
- Be aware of activity that is suspicious or enticing to children
- Contact local law enforcement to report suspicious behavior or activities

Commercial vehicles



- Proceed under “vehicles” clause of deed restrictions, if possible.
- DPS can enforce weight limits (low priority).
- TxDOT is responsible for hazardous loads (low priority).
- If within a City and an ordinance is violated, police departments will ticket and tow.
- Complain to company named on truck – won’t work if the trucker is an owner/operator.
- Take advantage of section 545.307 of the Texas Transportation Code regarding overnight parking of commercial motor vehicles in residential subdivisions – allows signs to be placed and law enforcement to ticket or tow – requires a petition from residents.

Commercial vehicles (continued)



- Required Procedure: Present a petition to the applicable county or municipality signed by at least 25% of the owners or tenants of residences with the subdivision.
- Prohibited Commercial Vehicles: Includes both tractors and trailers, as well as vehicles intended to transport 16 passengers or more, including the driver; plus other types of vehicles based on factors such as weight, etc.
- Prohibited Parking Areas: Anywhere within the residential subdivision and on any street adjacent to a residential subdivision and within 1,000 feet of the property line of a residence, school, place of worship or a park.
- Applicable Time Period: Commercial vehicles are prohibited from parking in prohibited areas from 10 pm to 6 am.
- Signs: If the petition passes and the signs are posted, it is a misdemeanor offense to violate the overnight parking prohibition.

Lack of enforcement



- Don't delay, you have to start sometime
- The largest challenge will be with learned attitudes of residents with daily visual reminders of what has been acceptable
- Constantly communicate goals, expectations, process
- Some types of violations may not be resolvable
 - Likely unresolvable: unacceptable structures
 - Can resolve long term: house colors, fences, roof
 - Easier to resolve: lawn care, trash, maintenance
- Deal with problems on a case-by-case basis
- Don't allow new problems to occur
 - The myths of waiver, abandonment and grandfathering
- Prioritize violations and make steady progress

Has right been waived?

Percent of Homes with Violations

Judicial Finding of Non Waiver

Stephenson v. Perlitz

537 S.W.2d 287 (Tex Court of Civil Appeals, Beaumont 1976, writ ref'd n.r.e.)
Construction of a duplex unit on a vacant lot in a single family community

9 %

Zent v. Murrow

476 S.W.2d 875 (Texas Civil Court of Appeals, Austin, 1972, no writ)
Construction of a duplex unit on a vacant lot in a single family community

16.6 %

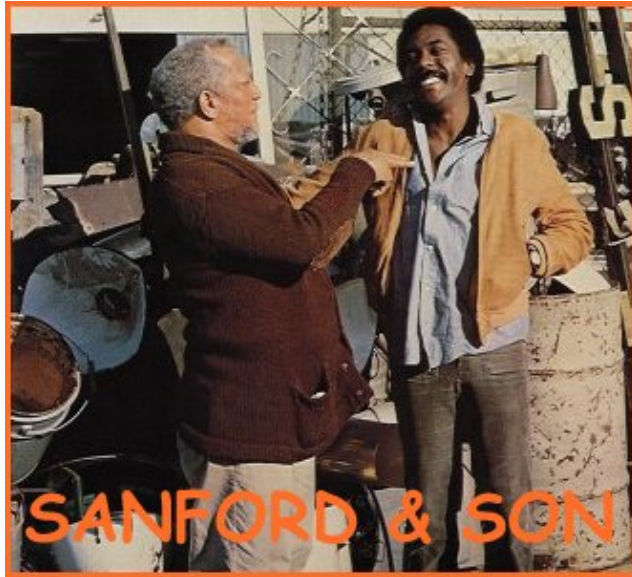
Judicial Finding of Waiver

Tanglewood Homes Ass'n. v. Henke

728 S.W.2d 39 (Tex Court of Appeals, Houston (1st District), 1987, writ ref'd n.r.e.)
Violation of side setback lines

27 %





Ken Hoffman
The Houston Chronicle's "Zest" Magazine
January 20, 2008

I like homeowners' associations. I'm constantly amazed when someone moves into a neighborhood, signs an agreement to abide by the rules of the neighborhood ... but when he breaks the rules, he blames the homeowners' association for being unfair, unpatriotic or heathen. Homeowners' associations protect the rights and wishes of 99 percent of the residents. If you want to turn your front lawn into Fred Sanford's junkyard or your living room into Van Halen's recording studio, you need to move somewhere else.

Questions & answers

