

AVALON AT CYPRESS COMMUNITY ASSOCIATION, INC.
RESIDENTIAL DEDICATORY INSTRUMENT
ENFORCEMENT, BOARD HEARING AND FINE POLICY

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

WHEREAS, the property encumbered by this Residential Dedicatory Instrument Enforcement, Board Hearing and Fine Policy (the "Policy") is that property restricted by the Declaration of Covenants, Conditions and Restrictions for Avalon at Cypress recorded under Clerk's File No. RP-2021-399356 in the Official Public Records of Harris County, Texas, as same has been or may be amended from time to time (the "Declaration"), and any other property which has been or may be annexed thereto and made subject to the authority of the Avalon at Cypress Community Association, Inc. (the "Association"); and

WHEREAS, pursuant to the Dedicatory Instruments governing the Property, the Association is vested with the authority to adopt this Policy in an effort to provide Owners with a better understanding of the process of Dedicatory Instrument enforcement, Board hearings and fines; and

WHEREAS, pursuant to the Dedicatory Instruments governing the Property, the Association is vested with the authority to suspend Owners' use of the Common Areas and to impose reasonable fines against Owners for violations of restrictive covenants contained in the Dedicatory Instruments; and

WHEREAS, reference is hereby made to the Declaration for all purposes, and any and all capitalized terms used herein shall have the meanings set forth in the Declaration, unless otherwise specified in this Policy; and

NOW, THEREFORE, IT IS RESOLVED, that the following Policy is hereby adopted by the Board of Directors (the "Board") of the Association and shall run with the land and be binding on all Owners and Lots within the Property. This Policy replaces any previously recorded or implemented policy that addresses the subjects contained herein.

ARTICLE I: APPLICABILITY

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 temporary suspension of a person's right to use the Common Areas that is the result of a violation that occurred in a Common Area and involved a significant and immediate risk of harm to others in the subdivision. The temporary suspension is effective until the Board makes a final determination on the suspension action after following the procedures prescribed by this Policy.

ARTICLE II. DEDICATORY INSTRUMENT VIOLATION LETTERS

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 Article in order to provide Owners with a better understanding of the process of Dedicatory Instrument enforcement. 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.

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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. VIOLATIONS THAT ARE CURABLE AND DO NOT POSE A THREAT TO PUBLIC HEALTH OR SAFETY

By way of illustration and not limitation, the following are examples of *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 instances where a violation 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 time period stated in 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 of any other Dedicatory Instrument, 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 ("Curable Demand Letter"):

(a) **The Curable Demand Letter will State:**

- (1) **Violation:** A description of the violation(s) that is the basis for the suspension action, charge, or fine;
 - (2) **Fines/Amounts Due:** The amount of the proposed fine and any amount due to the Association;
 - (3) **Right to Cure:** The Owner is entitled to a reasonable period to cure the violation and avoid the fine or suspension;
 - (4) **Time to Cure:** A specific date, which must be a reasonable period to cure, by which the Owner must cure the violation;
 - (5) **Active Military Duty:** 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;
 - (6) **Right to Request Hearing:** The Owner may request a hearing before the Board, such request to be made in writing on or before the thirtieth (30th) day after the date the notice was mailed to the Owner; and
 - (7) **Referral to Attorney:** If the Owner fails to cure the violation within the reasonable period to cure set forth in the Demand Letter, the matter may be turned over to the Association's attorney for legal action.
- (b) **Owner Timely Cures Violation:** If the Owner cures the violation before the date specified in the Demand Letter, a fine may not be assessed for the violation.
- (c) **Hearing not Requested – Timeframe to Cure Violation:** If the Owner chooses not to request a hearing, the violation must be cured within the timeframe set forth in the Demand Letter. Fines, suspension of the right to use the Common Areas, and other remedies available to the Association may be implemented after the expiration of the thirty (30) day timeframe provided to the Owner to request a hearing.

B. 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 non-repetition 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 health

or 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:** 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 also be 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 ("Uncurable Demand Letter"):

- (a) **The Uncurable Demand Letter will state:**
 - (1) **Violation:** A description of the violation(s) or property damage that is the basis for the suspension action, charge, or fine;
 - (2) **Fines/Amounts Due:** State the amount of the fine and any amount due to the Association;
 - (3) **Active Military Duty:** 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;
 - (4) **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 (30th) day after the date the notice was mailed to the Owner; and
 - (5) **Referral to Attorney:** If the Owner fails to pay the fine within the timeframe set forth in the Demand Letter, the matter may be turned over to the Association's attorney for legal action.
- (b) **Hearing not Requested:** Regardless of whether the Owner chooses to request a hearing, fines, suspension of the right to use the Common Areas, and other remedies available to the Association may be implemented after the mailing of the Demand Letter.

C. SUBSEQUENT SIMILAR VIOLATIONS:

If an Owner has a violation within six (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 (1st) date of the subsequent violation, and/or (ii) use of the Common Areas may be suspended for the subsequent violation without sending another Demand Letter to the Owner.

ARTICLE III. BOARD HEARINGS

In the event an Owner requests a Board hearing pursuant to Article II of this Policy, the following rules will apply:

- A. **Timing of Board Hearing:** 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)

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days. Notwithstanding the foregoing, the Board hearing may be scheduled outside of these parameters by agreement of the parties.

- B. Notice of Board Hearing:** The Board shall provide 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 “Notice”). 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.
1. The Board shall include with the Notice a packet containing all documents, photographs, and communications relating to the matter which the Board intends to introduce at the Board hearing (the “Hearing Packet”).
 2. 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.
- C. Owner’s Evidence:** Owners are expected to provide a list of anticipated participants (including, but not limited to, witnesses and Owner representatives) and 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.
- D. Hearing Procedure:**
1. 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, the Owner’s designated representative and/or witnesses.
 2. Either party may make an audio recording of the hearing.
 3. 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.
- E. Ruling:** The Board is not required to deliberate or to 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 its managing agent within this timeframe, the violation will remain standing.
- F. Time Limit:** The Board may set a time limitation for the Board hearing, to be determined at the Board’s sole discretion, taking into account factors including, but not limited to, the complexity of the issues, the number of exhibits, and whether witnesses will be presented. 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) and the Board’s finite amount of time available to consider such violations.

- G. **Number of Hearings:** Upon receipt of a Demand Letter as set forth in Article II, Owners are entitled to request only one (1) Board hearing as it relates to the violations set forth in the Demand Letter, unless the Board, in its sole and absolute discretion, agrees to allow additional hearings.
- H. **Alternative Dispute Resolution:** In accordance with Section 209.007(e) of the Texas Property Code, an Owner or the Board may use alternative dispute resolution services.

ARTICLE IV. FINES AND OTHER REMEDIES

A. 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.

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

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

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

In the instance where an Owner’s violation of the Dedicatory Instruments is uncurable and/or poses a threat to public health or 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.

B. OTHER ASSOCIATION REMEDIES

The 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 the Common Areas may be suspended and/or a Notice of Dedicatory Instrument Violation may be recorded in the real property records.

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.

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CERTIFICATION

I hereby certify that, as President of the Avalon at Cypress Community Association, Inc., the foregoing Residential Dedicatory Instrument Enforcement, Board Hearing and Fine Policy was approved on the 25 day of August, 2021, at a meeting of the Board of Directors at which a quorum was present.

DATED, this the 25 day of August, 2021.

By: [Signature]
Print Name: Robert Skinner
Title: President

STATE OF TEXAS §
COUNTY OF NARRIS §

BEFORE ME, on this day personally appeared Robert Skinner, the President of Avalon at Cypress Community 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 25 day of August, 2021.



[Signature]
Notary Public – State of Texas

After Recording, Return To:
Lisa L. Gambrell
Isabella L. Vickers
Roberts Markel Weinberg Butler Hailey PC
2800 Post Oak Blvd., 57th Floor
Houston, Texas 77056

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e-Filed & e-Recorded in the
Official Public Records of
HARRIS COUNTY
TENESHIA HUDSPETH
COUNTY CLERK
Fees \$42.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

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.

THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



Teneshia Hudspeth
COUNTY CLERK
HARRIS COUNTY, TEXAS

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