

GRAND HARBOR PROPERTY OWNER'S ASSOCIATION
DEED-RESTRICTION-VIOLATION: FORCED CORRECTION
POLICY

NOVEMBER 29, 2011

I. INTRODUCTION

The Grand Harbor Property Owner's Association (GH POA) has responsibility for Deed Restriction Enforcement (i.e., Deed Restriction Disclosure and Correction). This responsibility needs to be implemented through a defined, publicly-disseminated procedure executed on behalf of subdivision property owners without prejudice, and conducted in a timely and efficient manner. The outcome, for the GH POA and its Association members, should be such that community standards and property values are maintained while not interfering with the use of and enjoyment in individual property ownership.

II. BACKGROUND

The authority for the Deed Restriction Enforcement Procedure is derived from the subdivision's "Declaration of Covenants, Conditions, and Restrictions" (CCR's; a.k.a. "Deed Restrictions") of record, and the current GH POA By-Laws of record, which state, in part, as follows:

Declaration of Covenants, Conditions, and Restrictions of Grand Harbor: Article IX, "General Provisions," Section 1, "Term"

"It shall be lawful for the Association,...to prosecute the proceedings at law or in equity against the person or persons violating or attempting to violate any such Covenants and either prevent him or them from doing so or to recover damages or other dues for such violations."

First Amended and Restated By-Laws of the GH POA: Article III, "Board of Directors: Number, Powers, Meetings," Paragraph C, "Powers and Duties," Section 1, "Powers"

"... the Board of Directors shall have the power to establish policies relating to, and for performing or causing to be performed, the following,...:

(g) making and amending rules and regulations and promulgating, implementing and collecting fines for violation of the rules and regulations;

(i) enforcing by legal means the provisions of the Declaration, including the provisions concerning architectural control, these By-Laws, and the rules and regulations adopted by the Association and bringing any proceedings that may be instituted on behalf of or against the Owners concerning the Association:"

Given the GH POA's overall fundamental responsibility and authority to enforce deed restrictions, there may arise instances when the offending property owners (Association members), for unknown reasons, fail to remedy a CCR violation(s) once disclosed. This reoccurring and fairly prevalent problem was somewhat addressed by the Grand Harbor Subdivision Developer, at the time of each subdivision section's inception, wherein certain CCR Articles contained provisions for forced correction, if needed. Specifically, Article III, Sections 16, 20 and 27 all similarly noted:

*In the event of any default by the Owner or other occupant of a Lot in observing the ... requirements, which default is continuing after ten (10) days' written notice thereof to the Owner or occupant as applicable, the Association or their designated agents may, **at their option without liability to the Owner or occupant in trespass or otherwise,***

enter upon said Lot and make such repairs as deemed necessary by ... the Association to secure compliance with this restriction, so as to place said Lot in a good state of repair and in neat, attractive, healthful and sanitary condition.

This position is reinforced by state statute wherein Chapter 209, "Texas Residential Property Owners Protection Act," Section 209.012, "Restrictive Covenants Granting Easements to Certain Property Owners' Associations" states:

"(a) A property owners' association may not amend a dedicatory instrument to grant the property owners' association an easement through or over an owner's lot without the consent of the owner.

(b) This section does not prohibit a property owners' association from adopting or enforcing a restriction in a dedicatory instrument that allows the property owners' association to access an owner's lot to remedy a violation of the dedicatory instrument."

(Added by Acts 2007, 80th Leg., R.S., Ch. 887, Sec. 1, eff. September 1, 2007.)

In addition, the three relevant CCR sections previously noted (Art. III, Sec. 16, 20, 27) each similarly provide for the POA to recover the cost incurred to remedy a CCR violation:

(The Association) may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of the Lot to pay such statement immediately upon receipt thereof, and all such payments to the Association, shall, likewise, be secured by a Vendor's Lien for the benefit of the Association in the same manner as the maintenance charges payable in accordance with Article VI, Section 4 herein.

III. DEED-RESTRICTION-VIOLATION: FORCED CORRECTION POLICY

It is important to emphasize that the CCR's contain a large number of deed restrictions - all essential to carrying out the GH POA's mandate noted in the INTRODUCTION. Yet the bulk of these restrictions do not have the benefit of specific language, like that stated in the three sections in the BACKGROUND, encompassing the applicability/possibility for Forced Correction Enforcement. This circumstance should be reconciled.

In addition, in consideration of the serious nature of any forced correction action contemplated by the GH POA, once the State law-mandated notification has been given, the grace period has expired, and the Property Owner/Occupant has not requested an appeal hearing by the Board of Directors, the Board should review all pending forced correction actions at a regular, scheduled Board meeting (Board Review Exemption: "Forced Mowing" instances otherwise covered by GH POA Policy LT1-1-2010091541-1, dated July 20, 2010). Within the meeting agenda, affirmation or rejection of pending forced corrections should be made and the results entered into the official meeting minutes for the record.

In summary, all aspects of deed restrictions enforcement considered, it is now the declared policy of the Grand Harbor Property Owner's Association to utilize Deed-Restriction-Violation Forced Correction, when such enforcement is necessary, without qualification or limitations, as follows:

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In the event of any non-compliance and/or default by the Property Owner, or other occupant of a Lot, in observing the applicable CCR's to the Property, which default is continuing after ten (10) calendar days' written notice thereof to the Owner or occupant as applicable, the Association or their designated agents may, at their option without liability to the Owner or occupant in trespass or otherwise, enter upon said Lot and make such repairs as deemed necessary by the Association to secure compliance with the CCR restriction, and place said Lot in a good state of repair and in neat, attractive, healthful and sanitary condition.