



5-10-11

GRAND HARBOR

Property Owner's Association

DEED RESTRICTIONS ENFORCEMENT POLICY AND PROCEDURE

May 4, 2011

**GRAND HARBOR PROPERTY OWNER'S ASSOCIATION
11301 Grand Harbor Blvd.
Montgomery, TX 77356**

GRAND HARBOR PROPERTY OWNER'S ASSOCIATION

DEED RESTRICTIONS ENFORCEMENT POLICY AND PROCEDURE

POLICY

WHEREAS, it is the policy of the Grand Harbor Property Owner's Association (GH POA) to institute and execute a subdivision Deed Restrictions Enforcement Procedure as described herein, and, **FURTHERMORE**, the authority for this procedure is derived from the subdivision's "Declaration of Covenants, Conditions, and Restrictions" (CCR's) of record, and current GH POA By-Laws of record, which state in part:

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

"It shall be lawful for the Association, the Architectural Control Committee, or any lot owner 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:...."*

THEREFORE, it is resolved, the procedure, as follows, is to be implemented without prejudice in a timely and efficient manner such that community standards and property values are maintained while not interfering with the use of and enjoyment in individual property ownership.

**GH POA APPROVAL
DEED RESTRICTIONS ENFORCEMENT**

I certify that the foregoing is a correct representation of the Policy Statement prepared with ordinary care and agreed to in good faith by a majority of the GH POA Board of Directors on this date. This document is represented as being in the best interest of the Corporation; any previous Policy and Procedure document on this subject is obsolete and has been rescinded.

Terese Brayman
GH POA Secretary

5/10/11
DATE

APPROVED:

[Signature]
President

Charles A. Pasala
Treasurer

Charles Smith
Vice President

Terese Brayman
Secretary

[Signature]
Member

**GH POA
DEED RESTRICTIONS ENFORCEMENT
PROCEDURE**

The Grand Harbor Property Owner's Association (GH POA) Procedure for Deed Restriction Enforcement, as follows, is to be implemented on behalf of subdivision property owners without prejudice, in a timely and efficient manner, such that community standards and property values are maintained while not interfering with the use of and enjoyment in individual property ownership. This multi-step, time-sequenced restriction violation process follows the form:

DISCOVERY → DISCLOSURE → CORRECTION → CLOSURE

I. VIOLATION TYPES

Grand Harbor Subdivision CCR's deed restrictions violations take on various forms, with enforcement procedure and notification requirements tailored in response:

Type A: Those violations that are relatively easily resolved by property owner attention/action. Violation corrective action is negotiable to some degree; in infrequent instances, it is possible for corrective action to be implemented without a fine for the first offense. A fine can otherwise be imposed if not resolved in a timely manner or if it is a repeat violation.

Type B: Those violations of an egregious nature such that, with official notification: 1) an immediate fine is to be levied, or 2) any procrastination on the part of the violator in implementing a remedy will cause an added per-day surcharge to be applied onto the basic penalty until that violation is eliminated. (See also "Grace Period" consideration in Procedure Notes.)

Type C: Those violations that may involve a critical time element (such as fast growth of weeds) that, if not expeditiously cured by the property owner, can/will be remedied by the GH POA, with the property owner then billed for all fines, remedy costs, along with a administrative fee.

Type D: Those items in violation of the Architectural Control Committee's (ACC) New-Home Improvement Agreements, as accepted by both the property owner and new-home builders. These stipulations are CCR derivatives within the ACC's formal enforcement duties and responsibilities. The non-payment of these violation fines can result in the withholding of the refundable portion of the improvement application deposit.

II. SPECIAL PROCEDURE STIPULATIONS

Certain procedural caveats and understandings are necessary to cover violation permutations and their correction/enforcement. Thus, the following Special Procedure Stipulations are in effect:

1. **Valid Violations:** The only violations applicable under this policy and procedure, derived from CCR's and ACC Construction Improvement Applications, are identified and listed in **Appendix A**.

2. **Repeated Violations:** Any procedure executed against a specific instance of CCR violation is a discrete action in and of itself. If the violation is repeated, **within Six (6) months from the date of the first violation**, by the same offender, this procedure is to be repeated in its entirety. However, any fine imposed in the first instance shall escalate in the second instance (and all subsequent instances) according to the penalty schedule in Section VII.

3. **Photograph Evidence:** Photo documentation is essential for the timely resolution of all violations. Photo copies of violations will be retained in the property owner's file along with all per-instance correspondence.

4. **Violation Recording:** A "Violations Log," updated with violation events, status and closures, shall be electronically maintained (with written report printout) in a format containing the chronologically executed attributes. See **Appendix B**.

5. **Grace Period:** While Type B violations can carry the added per-day surcharge to deter violation correction delay, certain violations' enforcement are delayed in recognition of property-owners' usual and customary, personal activities at residence. Activities such as RV, boat and travel trailer parking for pre and post trip preparations, boat or motor vehicle repairs by the owner, etc. receive a grace period:

Weekends: Friday am to Monday pm deferral,

Weekdays: Any three-day, two-night interval deferral with approval from POA Management.

Deferrals can be extended for a defined period with prior notification of the POA Management. All grace period Type B violations are noted by (B*) designation in **Appendix A**.

6. **Reporting Confidentiality:** Apparent deed restriction violations, when reported by a property owner, will be promptly investigated by POA Staff personnel. Until substantiated by a POA Staff person, a reported violation is only "alleged" and not official. Once a violation is authenticated and the correction procedure initiated, the reporting owner will not be named – "Confidentiality is essential to Correction."

7. **Telephone or Email Disclosure:** When a violation disclosure (to the property owner) is first attempted via telephone and there is no answer, any informative message left on the contact's answering device will suffice as the required informal notification. A note to that effect shall be posted in the Violation Log. The use of the "Doorknob Hanger Tag" also constitutes informal notification.

8. **Administrative Fee:** Regardless of the disposition of a valid violation, i.e., whether a fine or corrective action cost is applied or not, an administrative fee will be imposed on the violator/owner in each violation instance for admin processing, photos and certified letter. This is necessary to cover the POA administrative burden for correction of needless/avoidable deed violations.

III. VIOLATION DISCOVERY

CCR Violation Discovery will primarily occur through periodic GH POA Staff in-field surveillance of all GH properties. When a violation is found, the POA Staff person takes an evidentiary photo and inputs the pertinent information into the master violations log according to **Appendix B**. All violation allegations by owner/residents must be substantiated by POA Staff. When proven to be valid, the violation will receive the appropriate categorization and entry into the system.

Note: Violation Discovery can cause a violation to be eliminated if the initial Staff investigative work (e.g., informal contacts during Discovery) results in the basis for violation being satisfactorily removed.

IV. VIOLATION DISCLOSURE

The nature, extent, and consequences of each CCR violation must be expeditiously conveyed to the property owner of record, i.e., within the first Four (4) business days after Violation Discovery. In other words, the GH POA Staff must attempt informal (telephone or email) contact of the property owner so as to inform on all aspects of the violation as it will be documented in the formally-tendered "First Notice" letter:

A. When a violation is observed and documentary photos obtained, the property owner is given notice of the violation via Certified Mail (and an administrative fee incurred by the property owner). This "First Notice" letter, containing essential information as per **Attachment 1**, shall request action to bring about compliance with the CCR within a Ten (10) calendar day period that begins on the date of the First Notice letter postmark. The First Notice letter will also indicate the possible penalty/fees and, where it applies, an added per-day surcharge to the basic penalty, until the violation is removed (Type B).

B. In the First Notice, the obligatory notice-of-appeal-rights will be given. The subsequent appeal, by the property owner or his representative, must first be requested in writing and then must be presented in person before a mutually-agreed/scheduled meeting with the full GH POA Board of Directors.

C. The GH POA Staff shall always maintain informal (telephone, email, or tag) contact with the property owner to convey all aspects of the violation notification as noted in the First Notice letter. Use of the "Doorknob Hanger Tag" (**Attachment 4**) to provide informal notice is acceptable for occupied-premises violations. The tag carbon should be placed in the Property Owner's file.

D. Disclosure actions shall be entered into the Log as soon as they are executed.

V. VIOLATION CORRECTION

The owner/violator is to remedy the violation, either through corrective action or the submittal of a formal appeal request, within the Disclosure's Ten (10) calendar-day period that begins on the date of the First Notice letter mailing postmark:

A. The Violation type determines the corrective action necessary for closure. Note that certain Type B violations warrant immediate fines/action and are not subject to the 10-day correction interval. If, at the end of the requisite notification period, no action or response has come from the owner, a suitable GH POA action will be implemented and entry made in the Violation Log.

B. If a request to appear at a Board of Directors' meeting is received from the owner within the ten-days-of-First-Notice date, a hearing shall be entered on the Board Agenda with such hearing to take place at the earliest opportunity, but no later than Fourteen (14) days from the date the request is made.

C. If no request to appear at a Board of Directors' meeting is received, or if after the hearing a violation is yet found to exist, the GH POA, where applicable, can independently correct the violation and invoice the owner for all action taken, i.e., all penalties, per-day surcharges (when required), and fees imposed from the violation.

D. **Penalties, per-day surcharges and fees assessed by the GH POA will be invoiced.** If these fines, charges and fees are not then paid within Thirty (30) days of date on the individual invoice, that invoice will be processed for collection through the GH POA's "Delinquent Property Assessments and Dues" system, and/or directed to the Association's attorney with instructions to seek legal action. A letter notification of the invoicing action shall follow the form and content shown in **Attachment 2**,

E. Type D violations occur when restrictions in the "ACC New-Home Construction Improvement Application" (a valid contract between a property owner/home builder and the GH POA Architectural Control Committee) are not met or implemented. Similar to all other violations, when a Type "D" violation is observed and photographed, both the builder and owner shall be telephoned and/or emailed by the GH POA Staff to convey the violation. If written, the "ACC Notice" of the violation (**Attachment 3**) is sent via Certified Mail and an administrative cost will be incurred. This "ACC Notice" letter shall demand the owner/builder remedy the violation within Ten (10) days from the date on the ACC Notice letter, along with the offer of opportunity to appear at an Architecture Control Committee' meeting. GH POA

1. If a request to appear at an Architectural Control Committee meeting is received from the owner/builder within Seven (7) days of the ACC Notice Letter mailing date, a hearing shall be entered on the ACC Agenda with such hearing to take place at the earliest opportunity.

2. If no request to appear at an Architectural Control Committee meeting is received, or if after the hearing a violation is yet found to exist, or if the violation is still not removed: **a) Any monetary fine assessed by the ACC shall be levied against the property through subtraction from the Builder's Refundable Deposit at the time of post-construction deposit return, or b) the Association's attorney shall be notified to anticipate action against the owner/builder within the legal remedies available.** For violation fines over and above the Refundable Deposits amount, the owner shall then be charged for the balance cost thereof, as well as nominal cost of owner notices and invoicing, and processed for collection through the GH POA's Delinquent Property Assessments and Dues system.

VI. **VIOLATION CLOSURE**

Violation closure occurs when the violation remedy is implemented by the property owner, or any "forced correction" on the part of the GH POA is implemented, or the violation appeal process is completed (with the violation disposed of) **AND** any penalties, surcharges, and fees are either paid in full, or invoiced for payment through the Delinquent Property Assessments and Dues system. The violation does not remain in active status solely for the financial collection activity.

