

**GOVERNING DOCUMENTS ENFORCEMENT AND FINE POLICY**  
*for*  
**PELICAN COVE CANAL OWNERS ASSOCIATION**

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THE STATE OF TEXAS                   §  
  §  
COUNTY OF SAN PATRICIO         §

I, DON RAGER, President of Pelican Cove Canal Owners Association (the "**Association**"), certify that at a meeting of the Board of Directors of the Association (the "**Board**") duly called and held on the 11 day of MAY, 2023, with at least a quorum of the Board members being present and remaining throughout, and being duly authorized to transact business, the following Governing Documents Enforcement and Fine Policy ("**Policy**") was approved by not less than a majority of the Board members in attendance.

**RECITALS:**

1. Article III, Section 21(k) of the Amended and Restated Bylaws of Pelican Cove Canal Owners Association, recorded at Clerk's File No. 727862 of the Official Public Records of San Patricio County, Texas, as same may be amended and/or supplemented from time to time (the "**Bylaws**"), and any other property which has been or may be subsequently annexed thereto and made subject to the authority of the Association grants to the Association the power and authority to enforce all covenants, conditions and restrictions set forth in the Dedicatory Instruments (as defined by the Texas Property Code).

2. Article III, Section 21(g) of the Bylaws also authorizes the Association to levy fines against an Owner for violations of the Governing Documents, subject to compliance with notice requirements imposed by law.

3. Section 209.006 of the Texas Property Code sets forth notice requirements prior to the commencement of enforcement action, including the imposition of fines.

4. The Board of Directors desires to adopt a policy relating to the enforcement of the Declaration and the other Governing Documents of the Association consistent with Section 209.006 of the Texas Property Code.

5. NOW, THEREFORE, this Policy supersedes and replaces any previously recorded fine and enforcement policy.

**WITNESSETH:**

It is the policy of the Association to enforce its Governing Documents (as defined herein) as provided below.

## Section 1. Definitions.

Capitalized terms used in this Policy have the following meanings:

- 1.1. **Declaration** - First Amended and Restated Declaration of Covenants and Restrictions Affecting Lots 1 through 12, Block 1, Lots 1 through 16, Block 2, Lots 1 through 16, Block 3 and Lots 1 through 9, Block 4 of Pelican Cove Addition Phase I, recorded at Clerk's File No. 360030 of the Official Public Records of San Patricio County, Texas, as amended by the Amendment to First Amended and Restated Declaration of Covenants and Restrictions of Pelican Cove Addition Phase I and II, recorded at Clerk's File No. 417978 of the Official Public Records of San Patricio County, Texas; as supplemented by that certain Supplementary Declaration of Covenants and Restrictions of Pelican Cove Addition, recorded at Clerk's File No. 420646 of the Official Public Records of San Patricio County, Texas; as amended by that certain Amendment to First Amended and Restated Declaration of Covenants and Restrictions of Pelican Cove Addition Phase I and II, recorded at Clerk's File No. 433630 of the Official Public Records of San Patricio County, Texas and as supplemented by that certain Supplementary Declaration of Covenants and Restrictions affecting Pelican Cove Addition, recorded at Clerk's File No. 453523 of the Official Public Records of San Patricio County, Texas (the "**Phase I Declaration**"); Pelican Cove Addition Phase II, a subdivision in San Patricio County, Texas, as shown on the map or plat recorded at Envelope A-88, Tube 24-1, Deed and Plat Records of San Patricio County, Texas ("Phase II") is subject to and governed by that certain First Amended and Restated Declaration of Covenants and Restrictions Affecting Lots 1 through 12, Block 1, Lots 1 through 16, Block 2, Lots 1 through 16, Block 3 and Lots 1 through 9, Block 4 of Pelican Cove Addition Phase I, recorded at Clerk's File No. 360030 of the Official Public Records of San Patricio County, Texas; as supplemented by that certain Supplementary Declaration of Covenants and Restrictions Affecting Pelican Cove Addition Phase II, recorded at Clerk's File No. 417977 of the Official Public Records of San Patricio County, Texas; as amended by the Amendment to First Amended and Restated Declaration of Covenants and Restrictions of Pelican Cove Addition Phase I and II, recorded at Clerk's File No. 417978 of the Official Public Records of San Patricio County, Texas, as amended by that certain Amendment to First Amended and Restated Declaration of Covenants and Restrictions of Pelican Cove Addition Phase I and II, recorded at Clerk's File No. 433630 of the Official Public Records of San Patricio County, Texas and as supplemented by that certain Supplementary Declaration of Covenants and Restrictions affecting Pelican Cove Addition, recorded at Clerk's File No. 453523 of the Official Public Records of San Patricio County, Texas (the "**Phase II Declaration**").
- 1.2. **Governing Documents** - Each document governing the establishment, maintenance or operation of the properties within the Community, as more particularly defined in Section 202.001(1) of the Texas Property Code.



Other capitalized terms used in this Policy, but not defined herein, have the same meanings as that ascribed to them in the Declaration.

**Section 2. Types of Violations.** Section 209.006 of the Texas Property Code refers to curable violations, uncurable violations, and violations which are considered a threat to public health or safety. The types of violations are addressed below.

2.1. **Curable Violations** – By way of example and not in limitation, the Texas Property Code lists the following as examples of curable violations:

- a. a parking violation based on the Governing Documents;
- b. a maintenance violation;
- c. the failure to construct improvements or modifications in accordance with approved plans and specifications; and
- d. an ongoing noise violation such as a barking dog.

2.2. **Uncurable Violation** – A violation that has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. By way of example and not in limitation, the Texas Property Code lists the following as examples of uncurable violations:

- a. an act constituting a threat to health or safety;
- b. discharging fireworks;
- c. a noise violation that is not ongoing; and
- d. holding a garage sale or other event prohibited by the Governing Documents.

2.3. **Violation that is a Threat to Public Health or Safety** – Per the Texas Property Code, a violation that could materially affect the physical health or safety of an ordinary resident.

As provided in this Policy, there are two (2) enforcement procedures to be followed depending upon whether the violation is curable *and* does not pose a threat to public health or safety or whether the violation is uncurable *and/or* poses a threat to public health or safety. If there is reasonable uncertainty as to whether a violation is curable or uncurable or a threat to public health or safety, the Board has the authority to make the determination and, therefore, to decide which enforcement procedure will be followed. Provided that, this Policy will not be construed to impose an obligation on the Board to pursue enforcement action with respect to a violation or alleged violation if the Board, in its reasonable good faith judgment, decides that enforcement action is not warranted or necessary.

**Section 3. Enforcement – Curable Violations That Do Not Pose a Threat to Public Health or Safety.** If a violation is curable and does not pose a threat to public health or safety, the Owner will be given a reasonable period to cure the violation, as provided below. The time period

given to an Owner may vary depending upon the violation and the difficulty involved or the effort required to cure the violation. The Board of Directors may, but is not obligated to, consider any special circumstance relating to the violation and the cost to cure the violation. The enforcement procedure for this type of violation is as follows:

3.1. **Courtesy Letter (Optional)** - Upon verification of a violation, a courtesy letter may be sent to the Owner describing 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.

3.2. **Violation Letter (Optional)** - After the expiration of the time set forth in the courtesy letter, if a courtesy letter is sent, or as the initial notice, a violation letter may be sent to the Owner. Depending on the severity of the violation and/or the history of prior violations on the Owner's Residential Lot, the violation letter may be the first letter sent to the Owner. The Association is not required to send a violation letter. If sent, the violation letter will include:

- a. a description of the violation;
- b. the action required to correct the violation;
- c. the time by which the violation must be corrected; and
- d. notice that if the violation is not corrected within the time provided or if there is a subsequent violation of the same restriction, a fine may be imposed or other enforcement action may be initiated.

3.3. **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. The demand letter must be sent by certified mail or by any method of mailing for which evidence of mailing is provided by the United States Postal Service or a common carrier, and will be emailed to the Owner at the email address registered with the Association, if any. The demand letter must be sent to the Owner's last known address as shown in the records of the Association, as well as by any other method that the Board determines will cause the demand letter to be received by the Owner. Depending on the severity of the violation and/or the history of prior violations on the Owner's Residential Lot, the demand letter may be the first letter sent (rather than a courtesy letter and/or a violation letter), as determined by the Board in its sole discretion.

3.4. **Content of the Demand Letter** - The demand letter will include the following:

- a. a description of the violation that is the basis for the enforcement action, suspension action, charge, or fine and any amount due the Association;
- b. notice that the Owner is entitled to a reasonable period to cure the violation



- and avoid the enforcement action, suspension, charge or fine;
- c. a specific date, which must be a reasonable period given the nature of the violation, 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;
  - d. a notice that the Owner may request a hearing before the Board of Directors, 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
  - e. notice that 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.

3.5. **Hearing Requested** - If a hearing is properly requested by the Owner, the hearing will be held not later than the 30<sup>th</sup> day after the date the Association 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 Association or the Owner, a postponement must be granted for a period of not more than ten (10) days. Any additional postponement may be granted by agreement of the parties.

3.6. **Hearing Not Requested** - If a hearing is not properly requested by the Owner, the violation must be cured within the time frame set forth in the demand letter. Fines, suspension of the right to use the Common Area, and other remedies available to the Association may be implemented after the expiration of the thirty (30) day time frame provided to the Owner to request a hearing.

3.7. **Remedies** - The Owner is 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, if a hearing is not requested, after the date by which the Owner must request a hearing. Additionally, the Association may, but is not obligated to, exercise any self help remedies set forth in the Declaration. Further, the right to use the Common Area may be suspended.

In addition to charging fines, as provided in Section 6, the Association reserves the right under the Governing Documents and under Texas law to file a suit for the recovery of damages and/or injunctive relief.

A notice of violation may also be recorded in the real property records if the violation is not cured within the specified time frame.

**Section 4. Enforcement - Uncurable Violations and/or Violations that Pose a Threat to Public Health or Safety.** Upon initial verification of an uncurable violation and/or threat to public health or safety, a demand letter may be sent to the Owner. The demand letter must be

sent by certified mail or by any method of mailing for which evidence of mailing is provided by the United States Postal Service or a common carrier. The demand letter must be sent to the Owner's last known address as shown in the Association's records, as well as by any other method that the Board determines will cause the demand letter to be received by the Owner.

4.1. **Content of the Demand Letter** - The demand letter will include the following:

- a. a description of the violation that is the basis for the enforcement action, suspension action, charge, or fine and any amount due the Association;
- b. notice that the Owner may request a hearing before the Board of Directors, 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
- c. notice that 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.

4.2. **Hearing Requested** - If a hearing is properly requested by the Owner, the hearing must be held not later than the 30<sup>th</sup> day after the date the Association 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 Association or the Owner, a postponement must be granted for a period of not more than ten (10) days. Any additional postponement may be granted by agreement of the parties.

4.3. **Remedies** - Regardless of whether the Owner requests a hearing, fines, suspension of the right to use the Common Area, and other remedies available to the Association may be implemented after mailing the demand letter. The Owner is liable for, and the Association may collect reimbursement of, reasonable attorneys' fees and other reasonable costs incurred by the Association. Additionally, the Association may, but is not obligated to, exercise any self help remedies set forth in the Declaration. Further, the right to use the Common Area may be suspended.

In addition to charging fines, the Association reserves the right under the Governing Documents and under Texas law, to file a suit for the recovery of damages and/or injunctive relief.

A notice of violation may also be recorded in the real property records should the violation not be cured within the specified time frame.

**Section 5. Subsequent Violation.** If an Owner has been given notice in accordance with Section 3 or Section 4 of this Policy in the preceding six (6) month period, notice is not required for



the recurrence of the same or a similar violation. The Association may impose fines or suspend the Owner's right to use the Common Area without first sending another demand for compliance.

**Section 6. Fines.** Subject to the notice provisions set forth in Section 3 or Section 4 of this Policy, as applicable, the Association may impose reasonable monetary fines against an Owner in accordance with the below schedule until the violation is cured if of a curable nature. The Board reserves the right to adjust fines based upon the egregiousness of the violation.

<b>Notice</b>	<b>Time to Cure (estimate)</b>	<b>Fine Amount if not Cured</b>
Courtesy Notice (if sent)	10 days	No Charge
Violation Notice (if sent)	10 days	No Charge
Demand Letter - 1 <sup>st</sup> Notice (Chapter 209 - Demand Letter)	10 days	\$50.00
2 <sup>nd</sup> Notice of Fine Letter	10 days	\$100.00
3 <sup>rd</sup> Notice of Fine Letter	10 days	\$150.00
Subsequent Notice of Fine Letters for the same or substantially similar violation	10 days	\$250.00 every 10 days
Fine Letter for Uncurable Violations or Violations that are a Threat to Public Health or Safety	N/A	\$500.00 every 10 days

Any fine levied by the Association is the personal obligation of the Owner. The Board of Directors of the Association may adopt and modify the schedule of fines for various types of violations from time to time.

I hereby certify that we are the duly elected and acting President of the Association and that this Policy was approved by not less than a majority vote of the Board of Directors as set forth above and now appears in the books and records of the Association, to be effective upon recording in the Official Public Records of Real Property of San Patricio County, Texas.

*[Certification Page Follows]*

TO CERTIFY which witness my hand this 11 day of MAY, 2023.

PELICAN COVE CANAL OWNERS ASSOCIATION

By: Don Rager

Printed: DON RAGER

Its: President

THE STATE OF TEXAS     §

COUNTY OF San Patricio §

BEFORE ME, the undersigned notary public, on this 11 day of may, 2023 personally appeared Don Rager, President of Pelican Cove Canal Owners Association, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purpose and in the capacity therein expressed.

Kathleen D. Smith  
Notary Public in and for the State of Texas

