

Information on potential modifications to your governing documents.

Note that a number of statutory changes have been made in recent years which are applicable to your association. I have listed some of them below:

Open Board meetings are required with advance notice to members.

Certain specified items can be decided by the Board only in an open board meeting after notice.

All HOA documents must be recorded in County records, or they are not enforceable.

If you have more than 60 lots, documents must be available on an HOA website.

Must allow payment plans for delinquent assessments.

Required procedures for enforcement of restrictions, including written notice, opportunity to cure and the right to a hearing before the Board of Directors. Hearing must be conducted in accordance with specified procedures.

Recommend that you add the authority to adopt a schedule of fines for violations.

Legal procedures for member rights to access and copy Association records.

Limited rights of association to prohibit/regulate xeriscaping, rainwater collection systems, solar panels, flag pole installations and the display of US, Texas and military flags.

When owner owns two adjacent lots, limited ability of association to prohibit joint use of the lots for residential purposes, e.g. playscapes, pools, septic systems, driveways etc.

HOAs should have conflict of interest policies for board members.

Violation notices must include required language addressing rights of servicemen and women on active duty.

Voting procedures for meetings of members may include proxies, absentee ballots, electronic balloting, as well as in person voting

Certain votes may be held by absentee or electronic ballots without a meeting after specified notice of the issues to be addressed.

Certain political signs cannot be prohibited by the Association.

Religious displays on an owners' property displays may be regulated by an HOA only if the display: (i) threatens public health or safety, (ii) violates a law other than the prohibition of religious speech, (iii) contains language or graphics that is "patently offensive" for reasons other than religious content, (iv) is installed on property owned or maintained by the Association or is commonly owned by association members, (v) the display violates building setbacks or easements, or (vi) is attached to a traffic control device, streetlamp, fire hydrant, utility pole or similar item.

Swimming pool enclosures – POAs may not prohibit or restrict the construction of swimming pool enclosures which incorporate state or local requirements.

Security devices – HOAs may not prohibit an owner's installation of security devices including cameras, motion detectors or perimeter fencing. HOA may regulate the type of fencing.

Resale certificates and Association info – POA may charge “reasonable and necessary fee” not to exceed \$375 for collecting and delivering required documents, may charge a “reasonable and necessary fee” of \$75.00 for resale certificate.

After 2nd request for documents, HOA has 5 business days to meet requirements (used to be 7 days). Failure may lead to judgment of \$5000 (used to be \$500).

Online posting and availability of all governing documents and amendments, applies to associations with more than 60 lots.

Management Certificates – requirements for timely amendments and filing in deed records and with Texas Real Estate Commission.

If no management certificates filed, then limits or prohibition on collection of attorney’s fees related to collection activities.

ACC provisions:

ACC member may not be a Board member, a spouse of Board member or residing in Bd. Member household.

ACC decisions may be appealed to the Board. Written notice of denial must be sent and must note changes, if any, which would be required for approval.

Hearing before the Board may be requested within 30 days of notice of denial is sent.

Bd. May affirm, modify or reverse ACC decision.

Bd. Meeting Notice – minimum notice extended to 144 hours for regular Bd. Meeting and 72 hours for Special Bd. Meeting

Budget – The Board must review and approve all budgets in an open Board meeting after required notice to the members.

Association Bid Requirements – If HOA proposes to contract in excess of \$50,000 must solicit bids in a procedure to be established by the Board.

Priority of Payments Modifications – the word “reasonable” is applied to attorney’s fees, 3rd party collection costs, fines and other charges owed to the Association.

Collection Notice Letter – final notice and opportunity to cure or enter into payment plan must be sent at least 45 days (used to be 30) before matter is referred to a collection agent.

Violation Hearing Requirements – This proceeding is made more formal. At least 10 days before hearing, Association must provide owner with a copy of all documents, pictures etc. to be used by the Association at the hearing.

Failure to provide gives owner 15-day delay. Hearing involves formal presentation of evidence by both sides.

Leasing Restrictions – HOAs may adopt restrictive covenants concerning leasing and/or occupancy. HOA entitled to receive contact information on tenants and commencement date and term of lease.

New Justice Court jurisdiction – Owner may file suit against Association if owner contends that Association has violated some provision of law applicable to associations.

You may want to consider a mechanism for increasing the assessment amount by vote of the Board or members.

Proposed Action Items

1. Find and record in the County Records the Articles of Incorporation of Bear Creek Oaks Property Owners Association, Inc. originally filed with the Texas Secretary of State on December 18, 1980, and the restated Articles of Incorporation filed with the Secretary of State on April 24, 1995.
2. Find and record a signed copy of the Bylaws of Bear Creek Oaks Property Owners Association, Inc.
3. Set up an online website for the Association and provide access to all of the Association's governing documents (restrictions, Articles, Bylaws)
4. Update and record policies to address statutory requirements (xeriscaping, religious displays, flags, enforcement etc.) imposed on POAs by the legislature
5. Update 3.08 of Bylaws to address alternate methods of voting (electronic ballots)
6. Consider updating 3.03 of Bylaws to authorize Zoom meetings of members as additional method of holding annual meeting
7. Propose amendments to restrictions to:
 - Confirm existence and the responsibilities of the Bear Creek Oaks Property Owners Association, Inc. Incorporate relevant provisions of the Bylaws into the restrictions.
 - Replace all current references to the "Protective Committee" or "Committee" with the "Board of Directors of the Bear Creek Oaks POA" or the "Board" as applicable.
 - Confirm the separate existence and responsibilities of the Architectural Review Committee ("ARC"). Provide that membership of the Board and ARC shall be different as required by Texas Property Code.
 - Authorize Board enforcement of the restrictions by the Board on behalf of the Association. (Restrictions currently authorize enforcement by Declarant and individual owners) Consider updating enforcement authority to include authorizing Board to adopt a schedule of fines and impose fines as part of the enforcement process. Incorporate enforcement requirements/procedures of Texas Property Code Chapter 209 into the restrictions.
 - Clarify amendment requirements.
 - Eventually redo the entirety of the restrictions with an updated version to entirely replace the original restrictions.

Initial Proposed Amendments to Address Immediate Needs of Client:

To be presented to members of the Association for approval. Must be approved by a majority of the property owners voting in person or by proxy or absentee ballot. I recommend that voting be on all proposed amendments jointly rather than separately.

1. The Bear Creek Oaks “Restrictions” shall be known as the “Declaration of Covenants and Restrictions”
2. The existence and authority of the Bear Creek Oaks Property Owners Association, Inc. (the “Association”) as provided in the Articles of Incorporation originally filed with the Texas Secretary of State on December 18, 1980, and in the Restated Articles of Incorporation filed April 24, 1995 is confirmed. The Association shall have all the powers of a Texas non-profit corporation, as such powers may exist from time to time, subject only to such limitations upon the exercise of such powers as may be expressly set forth in this Declaration, and the Articles of Incorporation and Bylaws. It shall further have the power to do and perform any and all acts that may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration, Articles of Incorporation or Bylaws. Without in any way limiting the generality of the two (2) preceding sentences, the Association and the Board acting on behalf of the Association, shall have the power and authority to perform the following functions:
 - A. The Association shall have the power to take any and all actions necessary to enforce all covenants, conditions and restrictions affecting the Properties and to perform any of the functions or services delegated to the Association in any covenants, conditions or restrictions applicable to the Properties, Articles of Incorporation, Bylaws or Rules and Regulations, including, without limitation, those contained within this Declaration and as set forth in any amendment.
 - B. The Association shall conduct the business of the Association, including, but not limited to, administrative services such as legal, accounting, financial and communication services. The Association shall have the right to enter into management agreements with companies affiliated with Declarant in order to provide its services and perform its functions and to retain professionals necessary or proper in the operation of the Association.
 - C. The Association shall operate the ACC in accordance with the terms of this Declaration and the applicable provisions of the Texas Property Code.
 - D. The provisions of the Bylaws of Bear Creek Oaks Property Owners Association Inc. as previously adopted by the Association with respect to the operations, powers and authority of the Association are hereby incorporated herein.
 - E. All references in the currently recorded Bear Creek Oaks Restrictions not otherwise amended herein, to the “Bear Creek Oaks Protective Committee” or the “Committee” shall be changed to the “Board of Directors of the Bear Creek Oaks Property Owners Association, Inc.” or the “Board” as appropriate.
3. Establishment of Architectural Control Committee. An Architectural Control Committee for the subdivision is hereby established, which shall be operated and maintained in accordance

with this Declaration and applicable law. ACC shall consist of three (3) members appointed by the Board of Directors

- A. Term of Office. Each member of the ACC, shall hold office from the date of his appointment until January 31 of the succeeding calendar year, and thereafter until such time as a successor has been appointed, unless such member sooner resigns or is removed.
- B. Approvals Required. No Improvements shall be constructed, erected, removed, planted or maintained on any Lot or Tract nor shall any addition to or any change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme and the location of same shall have been submitted to and approved in writing by the ACC as provided herein. Any change in the outward appearance of any Improvement, including, but not limited to, repainting the same in a different color, adding decorative sculptures or art work, wrought iron grills, changing in any manner the exterior appearance or the like, shall also require approval in writing by the ACC before any work is commenced. No Owner shall do any act or any work that will impair the structural soundness or integrity of another residence or impair any easement or hereditament, or do any act or allow any condition to exist which will adversely affect other Lots, Improvements or Owners.
- C. "Improvements" as used herein shall mean and refer to any buildings, structures, underground installations, slope alterations, lights, driveways, flatwork of any kind, utility facilities and lines, parking areas, fences, barriers, curbs, retaining walls, stairs, decks, windbreaks, plantings, planted trees and shrubs, statues or sculptures, poles, signs, loading areas and all other structures, landscaping or improvements of every type and kind.
- D. Plan Approval. The ACC shall have the right of specific approval or veto of all architectural, engineering, platting, planning and landscaping aspects of any Improvement, as well as the general plan for development of any individual Lot within the Properties. All construction and development within the Properties is subject to local government control; provided, further, that the ACC may, in its sole discretion, impose standards of architectural and landscaping design, Setback Lines or a plan for development, which standards are greater or more stringent than standards prescribed in applicable building, zoning, planning or other governmental codes. Such approval may be subject to special conditions or requirements, including, without limitation, the date upon which all Improvements are to be completed. The Architectural Control Committee shall be the sole authority for determining whether proposed structures and modifications of proposed structures comply with applicable covenants, conditions, and restrictions and are in harmony of external design with existing structures and the overall plan of development of the Properties.
- E. Disapproval. The ACC shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole opinion and absolute discretion, for aesthetic or any other reasons. In approving or disapproving such plans and applications, the ACC shall consider the suitability of the proposed Improvements and materials of which the same are to be built, the site upon which it is proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring Lots.
- F. Operations. A person may not be appointed or elected to serve on an architectural review authority if the person is:(1) a current board member;(2) a current board member's spouse; or(3) a person residing in a current board member's household.(d) A decision by the

architectural review authority denying an application or request by an owner for the construction of improvements in the subdivision may be appealed to the board. A written notice of the denial must be provided to the owner by certified mail, hand delivery, or electronic delivery. The notice must:(1) describe the basis for the denial in reasonable detail and changes, if any, to the application or improvements required as a condition to approval; and(2) inform the owner that the owner may request a hearing under Subsection (e) on or before the 30th day after the date the notice was mailed to the owner.(e) The board shall hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for a hearing and shall notify the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. Only one hearing is required under this subsection.(f) During a hearing, the board or the designated representative of the property owners' association and the owner or the owner's designated representative will each be provided the opportunity to discuss, verify facts, and resolve the denial of the owner's application or request for the construction of improvements, and the changes, if any, requested by the architectural review authority in the notice provided to the owner under Subsection (d).(g) The board or the owner may request a postponement. If requested, a postponement shall be granted for a period of not more than 10 days. Additional postponements may be granted by agreement of the parties. (h) The property owners' association or the owner may make an audio recording of the meeting.(i) The board may affirm, modify, or reverse, in whole or in part, any decision of the architectural review authority as consistent with the subdivision's declaration.