

Fireside Estates Property Owner's Association

Fireside Estates POA Committee

Forney, TX 75126

REMEDY PROCESS

This document on the next page contains the 'Remedy and Enforcement Process' was mailed to the POA and adopted by the POA Committee in 2016. It was amended again in 2017 and the fine structure was added in 2020 through action at the June 4, 2020 Annual POA Meeting.

Some helpful information:

The Texas Property Code divides violations into two categories: uncurable and curable:

- (h) The following are examples of acts considered uncurable for purposes of this section:
 - (1) shooting fireworks;
 - (2) an act constituting a threat to health or safety;
 - (3) a noise violation that is not ongoing;
 - (4) property damage, including the removal or alteration of landscape; and
 - (5) holding a garage sale or other event prohibited by a dedicatory instrument.
- (i) The following are examples of acts considered curable for purposes of this section:
 - (1) a parking violation;
 - (2) a maintenance violation;
 - (3) the failure to construct improvements or modifications in accordance with approved plans and specifications; and
 - (4) an ongoing noise violation such as a barking dog.

The document on the next page suggests:

Incurable* Violation: \$25.00 fine for an 'uncurable' or incurable violation after the second offense. We would warn after the first offense. (*Texas Property Code uses the term uncurable)

Curable Violation: Fines will begin at \$2.50/day for the first 14 days, increasing to \$5.00/day for the next 14 days, increasing to \$10.00/day after the 28th day, increasing to \$25.00/day after the 60th day. All fines will be due on the 30th of each month with an added late fee of (\$10.00 or 5% - which ever is greater) if payment is not received by the 10th of the following month.

In general when someone is violating a restriction we will initiate the formal process of sending a Notice Letter. The Notice Letter will outline the violation and provide 30 days to remedy the violation. During that time they may ask for a hearing. After 30 days the POA Committee may institute the fines or begin civil action.

The next pages:

- Attachment #1: Remedy and Enforcement Process for Deed Restriction Violation
- Attachment #2: Texas Property Code 209.006 that governs what we must do before initiating fines or civil action.
- Attachment #3: Sample Notice Letter

Attachment #1 Fireside Estates POA: Remedy & Enforcement Process for Deed Restriction Violations¹

The following process will be use to enforce compliance with our Deed Restrictions.

COLLECTION OF DELINQUENT POA DUES: (Along with other money owed to the POA resulting from violations, attorney fees, etc. as noted below)

1. Notices of POA Dues (\$50.00/year) will be sent out though newsletters and other mailings.
2. The delinquent date for previous year(s) POA Assessment will be January 31st
3. Property Statements will be mailed out after January 1st indicating present dues status. *(Typically with the January Community Newsletter.)*
4. On February 1st of each year:
 - a. We will add penalties to the current year's POA Dues.
 - The penalty will equal the total of all money owed to the POA (assessments/fines)from previous years plus 20%.
 - b. We will add any cost to the POA related to the collection of the delinquent POA Dues and Fees owed (including \$10.00 for each letter sent certified or priority w/tracking).
 - c. Please note that our Deed Restrictions state that all unpaid annual "assessments shall attach and thereafter remain a charge against and be secured by a continuing lien upon the lot." (D.2.)
 - d. The POA Committee may use the other means of collection of past POA Dues. (Deed restrictions - D.2)

MOWING IN YARD: *(Let the POA know if you have a health reason preventing you from mowing. We can find help with short term needs.)*

Letter will be mailed communicating the following:

1. The lot (whole acre) must be mowed/trimmed within ten (10) days of receipt of the notification letter.
2. Failure to mow, within ten (10) days, the POA may contract the lawn to be mowed.
3. The fees for the mowing (and all other expenses incurred by the POA -) will be paid by the property owner.
 - A \$10.00 fee will be added for any follow-up letters needed within a twelve month period.
 - Fees not paid will become delinquent on January 31st – penalties and interest will be added to amount owed and also placed as a continuing lien on your property. (See Deed Restriction D.3.)

ALL OTHER OFFENSES: (mailboxes, debris, broken/damaged fences, improper buildings, inoperative cars, etc.)

Letter will be sent by either certified, verified, or priority mail with tracking communicating the following:

1. The offense must be remedied in thirty (30) days of receipt of violation letter.
 - The property owner may request a hearing within 30 days of the Notice Letter to challenge the violation.
 - The property owner may agree to remedy the violation and ask (in writing or email) for an extension to bring property into compliance with the Deed Restrictions.
 - Mailings related to the same violation, will incur a \$10.00 fee for postage.
2. Failure to comply with the restrictions will begin the following process.
 - After the thirty (30) day period, the POA Committee may

The goal is to remedy the deed restriction violations, not collecting fines.

- A. Institute fines: (Fines automatically attach to the continuing lien upon the lot.)

Curable Violations: Maximum fines will begin at \$2.50/day for the first 14 days, increasing to \$5.00/day for the next 14 days, increasing to \$10.00/day after the 28th day, increasing to \$25.00/day after the 60th day. All fines will be due on the 30th of each month with an added late fee of (\$10.00 or 5% - which ever is greater) if payment is not received by the 10th of the following month. **Uncurable Violations:** \$25.00 after 2nd offense²

- B. After 12 months of non compliance, we will contact our attorney (his charge is \$300.00/hour)³ who will begin the process of obtaining a Court Injunction or Declaratory Judgment from the Kaufman County Court to both remedy the violation and collect all fines and related costs to the POA.

¹During the Property Owners Association (POA) Meeting on May 12, 2016, the property owners present asked the POA Committee to enforce the standards of our Deed Restrictions. This document was presented and amended at the 02-2017 Annual Meeting to encourage compliance with our Deed Restrictions.

²The property owners asked the POA Committee to set up a fine structure to help enforce the deed restrictions at the Annual Meeting on June 4, 2020.

³All fines, court costs, interest, reasonable expenses of collection, and attorney fees will be the responsibility of the property owner in violation of the Deed Restrictions. (No exceptions: The property owner will be responsible for all costs to the POA once the attorney is contacted.)

Attachment #2 Texas State Law Regulating POA Committees Enforcement of Deed Restrictions

Texas Property Code § 209.006 Notice Required Before Enforcement Action

Sec. 209.006. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION.

- (a) Before a property owners' association may suspend an owner's right to use a common area, file a suit against an owner other than a suit to collect a regular or special assessment or foreclose under an association's lien, charge an owner for property damage, or levy a fine for a violation of the restrictions or bylaws or rules of the association, the association or its agent must give written notice to the owner by certified mail.
- (b) The notice must:
 - (1) describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the association from the owner;
 - (2) except as provided by Subsection (d), inform the owner that the owner:
 - (A) is entitled to a reasonable period to cure the violation and avoid the fine or suspension if the violation is of a curable nature and does not pose a threat to public health or safety;
 - (B) may request a hearing under Section 209.007 on or before the 30th day after the date the notice was mailed to the owner; and
 - (C) 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) specify the date by which the owner must cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety; and
 - (4) be sent by verified mail to the owner at the owner's last known address as shown on the association records.
- (c) The date specified in the notice under Subsection (b)(3) must provide a reasonable period to cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety.
- (d) Subsections (a) and (b) do not apply to a violation for which the owner has been previously given notice under this section and the opportunity to exercise any rights available under this section in the preceding six months.
- (e) If the owner cures the violation before the expiration of the period for cure described by Subsection (c), a fine may not be assessed for the violation.
- (f) For purposes of this section, 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.
- (g) For purposes of this section, a violation is considered incurable if the violation has occurred but is not a continuous action or a condition capable of being remedied by affirmative action. For purposes of this subsection, the nonrepetition of a one-time violation or other violation that is not ongoing is not considered an adequate remedy.
- (h) The following are examples of acts considered incurable for purposes of this section:
 - (1) shooting fireworks;
 - (2) an act constituting a threat to health or safety;
 - (3) a noise violation that is not ongoing;
 - (4) property damage, including the removal or alteration of landscape; and
 - (5) holding a garage sale or other event prohibited by a dedicatory instrument.
- (i) The following are examples of acts considered curable for purposes of this section:
 - (1) a parking violation;
 - (2) a maintenance violation;
 - (3) the failure to construct improvements or modifications in accordance with approved plans and specifications; and
 - (4) an ongoing noise violation such as a barking dog.

Added by Acts 2001, 77th Leg., ch. 926, Sec. 1, eff. Jan. 1, 2002.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 252 (H.B. 1127), Sec. 3, eff. January 1, 2012.

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 17, eff. September 1, 2015.

Section: Previous 209.0057 209.0058 209.0059 209.00591 209.00592 209.00593 209.00594 209.006 209.0062 209.0063 209.0064 209.007 209.008 209.009 209.0091
Next

Last modified: September 28, 2016

Fireside Estates Property Owner's Association

C/O Paul Brown, President Fireside Estates POA Committee
11342 Country Ridge Lane
Forney, TX 75126

NOTICE LETTER

Date

Lane
Forney, TX 75126

_____,

The POA Committee is using this letter to notify that your property has a deed restriction violation:

Stated Violation:

Cite Deed Restriction:

We are writing to ask you to remedy this violation within the next 30 days.

The Texas Property Code gives you certain rights in the remedy process.

You may request a hearing before the POA Committee if you believe we are in error or would like to speak to the POA Committee. (Texas Property Code 209.006) We will be happy to schedule a hearing if requested in within thirty days of this notice.

1. The hearing will review the noted violation, give you the opportunity to defend your view that you are not in violation of the Deed Restrictions, and it will be open for all property owners to attend.
2. The violation noted is in direct conflict with our Deed Restrictions section: (cite section)
[Texas Property Code 209.006 (b)(1)]
3. You have 30 days from the date this notice was mailed to bring your property into compliance to the Deed Restrictions. [Texas Property Code 209.006 (b)(2)(A)]
4. You do have the right to request a hearing under Section 209.007 on or before the 30th day after the date that this notice was mailed to you, the owner. [Texas Property Code 209.006 (b)(2)(B)]
5. You may have special rights or relief related to the enforcement action under federal law, including the Service members Civil Relief Act (50 U.S.C. App. Section 501 et seq.), if the owner is serving on active military duty. We want to make you aware of this. However, we do not believe you are presently serving on active military duty. [Texas Property Code 209.006 (b)(2)(C)]
6. The POA Committee is required to state a specific date when the violation need to be remedied. This specific date will be thirty (30) days after the date of this notice. We will both speak with you in person and send you this notice by certified mail. [Texas Property Code 209.006 (b)(3); (b)(4); (c)]

7. If you cure the violation within the above time limit (30 days from the mailing of this notice), there will be no further action from the POA Committee. We will consider our options which may include fines and possible civil court action if you do not cure the violation within the above time limit.. [Texas Property Code 209.006 (e)]
8. Your POA Committee ____ does ____ does not consider the an violation as being a threat to public health or safety. However, we do consider the noted concern to be a direct violation of the Fireside Estates POA Deed Restrictions. [Texas Property Code 209.006 (f)]
9. We will treat and consider this concern as a curable violation. The cure will be _____
_____ [Texas Property Code 209.006 (i)]

Your POA Committee hopes that you will remedy the violation noted above. We will be happy to speak with you further about this concern.

Respectfully,

_____,
Fireside Estates POA Committee