

THE KRAUS
LAW FIRM
ATTORNEYS & COUNSELORS

MAIN: 281.781.8677
FAX: 281.840.5611
WWW.KRAUSATTORNEYS.COM
JDK@KRAUSATTORNEYS.COM

19500 STATE HIGHWAY 249, SUITE 350
HOUSTON, TX 77070



April 15, 2025

To: Board of Directors, Lake Hollyhill Acres Owners Association,
Inc (the “Association”)

Re: Validity and Enforceability of the Association and the Lake
Hollyhill Acres (the “Neighborhood”) restrictive covenants

This firm was asked by the Association to respond to the March 3, 2025 letter from Milpa Law Firm. As explained and detailed below, it is my legal opinion that the Association and the Neighborhood’s restrictive covenants are still valid and enforceable.

1. Validity of the Lake Hollyhill Restrictive Covenants

The March Milpa Law argues that the restrictions themselves are no longer enforceable because (1) the original restrictions expired (2) the amended restrictions were not validly adopted; and (3) only the bylaws (not the restrictions themselves) authorize assessment liens and foreclosure of such liens. None of this is true.

Restrictions Automatically Renew every 10 Years

By the express terms of the original 1966 restrictions, the restrictions, as amended, are valid “for a period of twenty (20) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years [unless terminated by a majority of the then owners of the lots]...” As such, unless there is a court order or recorded document signed by a majority of the lot owners terminating the restrictions, the Association believes the restrictions are enforceable.

Bylaws Recorded

On September 9, 1992 and then again on January 30, 2009, the Association recorded its bylaws and amended bylaws with the Grimes County property records. Ordinarily, bylaws cannot add power that restrictive covenants do not grant; however, in this instance, the bylaws were recorded, which under Texas law, makes them a valid part of the Neighborhood's restrictive covenants. See *Goddard v. Northhampton Homeowners Ass'n, Inc.*, 229 S.W.3d 353, 358 (Tex. App. – Amarillo 2007, pet. denied).

Texas Property Code Chapter 202, "Construction and Enforcement Of Restrictive Covenants", contains the following defined terms:

"Dedictory instrument" means each governing instrument covering the establishment, maintenance, and operation of a residential subdivision,... The term includes a declaration or similar instrument subjecting the real property to restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association....

and

"Restrictive covenant" means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

TEX. PROP.CODE ANN. § 202.001(1) (Vernon 2007).

It's beyond dispute that the restrictions were filed in the property records of Grimes County in 1966. It's also beyond dispute that the Bylaws of the Association were also filed in the property records of Grimes County in 1992 and January 2009, thus, under the terms of the statute, they became part of the dedicatory instruments that placed restrictions on the Neighborhood.

Further, an express provision of the recorded bylaws grants the Association the right, duty and obligation to enforce the Neighborhood's restrictions. For these reasons we reject your position that the recorded

bylaws are trivial. When all of the dedicatory instruments are viewed collectively, the restrictive regime allows for assessments.

2. Validity of Assessments and Liens

An audit of the all the last 57 years of recorded restrictive documents applicable to Lake Hollyhill makes it absolutely clear that the (1) all lots owners are mandatory members of the Association and that the Association was empowered with the ability to “levy and collect maintenance assessments”. This concept is first seen in the August 1968 Articles of Incorporation (Article 4), April 1976 Resolution (“Lien for Assessments”) then again in the recorded January 1977 Resolution (“Lien for Assessments”) and February 1977 recorded Bylaws (Article 4), April 1982 Resolution. These concepts are confirmed in more modern times in both the 1992 and 2009 recorded bylaws. As such, there’s little doubt that these documents would be upheld by a court of law.

3. Validity of the Association

The Association – separate and distinct from the neighborhood’s restrictive covenants – is a non-profit corporation formed to enforce the Neighborhood’s restrictions. The Association does not dispute it lost its corporate privileges in February 2013. It also does not dispute that it sought assessments while the Association was not in good standing. However, the Association’s corporate privileges were reinstated by the Texas Secretary of State on August 24, 2022 and Texas law is clear that a Texas entity that loses its corporate privileges may still conduct business, including levying and collecting assessment and entering into valid and enforceable contracts.

Under Texas law, once an entity is reinstated, the revived rights relate back to the date of forfeiture.

Under the Texas Tax Code, when a company fails to pay its franchise tax, the comptroller may forfeit the company’s corporate privileges and ability to transact business in the State of Texas.¹ The effect of a company’s forfeiture are only that “(1) the corporation shall be denied the right to sue or defend in a court of this state; and (2) each director or officer of the

¹ See TEX. TAX CODE ANN. §§ 171.251, 171.2515.

corporation is liable for a debt of the corporation as provided by Section 171.255 of this code.”²

A company can revive both of those rights upon payment of “any tax, penalty, or interest due.”³ After reinstatement, the revived rights relate back to the point of the delinquency.⁴ “[O]nce the right to sue or defend is revived, the corporation may sue or defend all causes of action, regardless of whether such causes arose before or during the period of forfeiture.”⁵ Revival reinstates all rights ‘as if the disability had never existed.’”⁶

Accordingly, once the Association paid all required taxes, penalties, and interest on or about August 24, 2022, it was “as if the disability had never existed” and the Association could “sue, defend or pursue all causes of action, regardless of whether such causes arose before or during the period of forfeiture.”⁷ Therefore, because the Association has been reinstated, it has (and had) the full authority to pursue assessments against your client.

Further, a company can continue to conduct business while its rights are forfeited.

Texas courts have held that the purpose of the forfeiture statute is purely to generate revenues.⁸ The forfeiture statute was not intended to be a draconian measure that invalidates legitimate business transactions due to a failure to pay taxes or fees to the State of Texas. Courts have consistently interpreted the statute as a means to secure compliance and revenue, not a free pass for debtors avoiding contractual obligations. “The validity of

² Id. at § 171.252; see also *Marshall Feature Recognition, LLC v. Pepsi-Cola Co.*, 2015 WL 5912672, at *1–2 (E.D. Tex. Sept. 28, 2015) (“When a corporation loses its right to operate, the corporation shall be denied the right to sue or defend in a court of this state.”) (internal quotations omitted).

³ See TEX. TAX CODE ANN. § 171.258.

⁴ *Manning v. Enbridge Pipelines (E. Tex.) L.P.*, 345 S.W.3d 718, 723 (Tex. App.—Beaumont 2011, pet. denied) (citing *Flameout Design & Fabrication, Inc. v. Pennzoil Caspian Corp.*, 994 S.W.2d 830, 839 (Tex. App.—Houston [1st Dist.] 1999, no pet.)) (emphasis added); see also *Marshall Feature Recognition*, 2015 WL 5912672, at *2; *Dalio Holdings I, LLC v. WCW Houston Properties, LLC*, 2019 WL 13191545, at *2 (S.D. Tex. Sept. 30, 2019); *Bluebonnet Farms, Inc. v. Gibraltar Sav. Ass’n*, 618 S.W.2d 81, 85 (Tex. App.—Houston [1st Dist.] 1980, writ ref’d n.r.e.).

⁵ *Manning*, 345 S.W.3d at 723 (quoting *G. Richard Goins Constr. Co., Inc. v. S.B. McLaughlin Assocs., Inc.*, 930 S.W.2d 124, 128 (Tex. App.—Tyler 1996, writ denied)); *Marshall Feature Recognition*, 2015 WL 5912672, at *2.

⁶ Id.

⁷ *Manning*, 345 S.W.3d at 723.

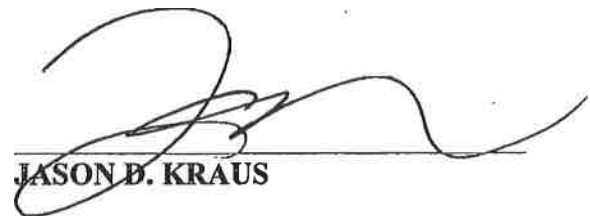
⁸ See *In re ABZ Ins. Services, Inc.*, 245 B.R. 255, 258 (Bankr. N.D. Tex. 2000) (quoting *Isbell v. Gulf Union Oil Co.*, 147 Tex. 6, 209 S.W.2d 762 (1948) (“[T]he Texas Supreme Court discussed the purpose and effect of Texas franchise forfeiture statutes [under § 171.251 et seq.] ‘This court has held that the foregoing articles were enacted purely for revenue purposes. This statute is purely a revenue measure.’”

contracts of such corporations executed while doing business after such forfeiture is not effected thereby.”⁹

A property owners association may enter into a contract during the time of forfeiture “because the law does not expressly declare that contracts made by a corporation whose right to do business has been forfeited are void.”¹⁰ As such, it is the Association’s position that all assessments sought against your client and corporate action taken to pursue collection of such debt is (and was) valid, enforceable and would be confirmed by a court.

Very Truly Yours,

THE KRAUS LAW FIRM



JASON B. KRAUS

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⁹ *R.J. Carter Enterprises, Inc. v. Greenway Bank & Tr. of Houston*, 615 S.W.2d 826, 831 (Tex. App.—Houston [1st Dist.] 1981, writ ref’d n.r.e.) (citing *Real Estate-Land Title & Tr. Co. v. Dildy*, 92 S.W.2d 318, 320 (Tex. App.—Austin 1936, writ ref’d) (“The validity of contracts of such corporations, executed in pursuance of doing business in Texas after such forfeiture, is not affected thereby. The statute is a revenue measure only, and the only penalty it imposes is to deny to the offending corporation the right to prosecute or defend in its courts.”) (emphasis added).

¹⁰ *Transamerica Corp v. Braes Woods Condo Ass’n, Inc.*, 580 S.W.3d 733, 737 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (quoting *Ross Amigos Oil Co. v. State*, 134 Tex. 626, 630–31, 138 S.W.2d 798, 800 (1940) (“The Oil Company could have made valid contracts, because the law does not expressly declare that contracts made by a corporation whose right to do business has been forfeited are void. Nor does the law declare that the business transacted during the time of such forfeiture is void . . . The only right or privilege taken away from such corporation by the forfeiture of its right to do business by the Secretary of State was its right to sue and defend in the courts of this State.”) (emphasis added).