

DEDICATORY INSTRUMENTS ENFORCEMENT AND FINE POLICY
for
THE COLONY TOWNHOMES ASSOCIATION, INC.

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

I, Amy Wood, Secretary of The Colony Townhomes Association, Inc. (the "Association"), certify that at a meeting of the Board of Directors of the Association duly called and held on the 26th day of March, 2021, with at least a quorum of the Board members being present and remaining throughout, and being duly authorized to transact business, the following Dedicatory Instruments Enforcement and Fine Policy was approved by not less than a majority of the Board members in attendance.

RECITALS:

1. Article II of the Declaration of Covenants, Conditions and Restrictions (the "Declaration") grants to the Association the power and authority to enforce all covenants, conditions and restrictions set forth in the Declaration.
2. Article II, Section 1 (a) of the Declaration grants to the Board of Directors (the "Board") of the Association the authority to enact rules and regulations governing the Association.
3. The By-Laws and Amendment to Bylaws of The Colony Townhomes Association, Inc. are recorded under Clerk's File Number 2020-621588 in the Official Public Records of Harris County, Texas, as same may be or have been amended (the "By-Laws").
4. Article IV, Section 9 (e) of the By-Laws of the Association grant the authority to impose reasonable fines for violations of the Dedicatory Instruments (as defined below).
5. Section 209.006 of the Texas Property Code sets forth notice requirements prior to the commencement of enforcement action, including the imposition of fines.
6. The Board desires to adopt a policy relating to the enforcement of the Dedicatory Instruments of the Association consistent with Section 209.006 of the Texas Property Code and applicable provisions in the Dedicatory Instruments.
7. This Policy supersedes and replaces any previously recorded fine and enforcement policy.

ENFORCEMENT AND FINE POLICY:

Section 1. Definitions. Capitalized terms used in this policy have the following meanings. Other capitalized terms used in this policy but not defined herein have the same meanings as that ascribed to them in the Declaration.

- (i) **Board or Board of Directors** - The Board of Directors of the Association.
- (ii) **Declaration** - Declaration of Covenants, Conditions and Restrictions recorded in Harris County Clerk's File No. E943505 of the Official Public Records of Real Property of Harris County, Texas, and any other applicable amendments, annexations or supplements not included and any future amendments, annexations or supplements.
- (iii) **Dedictory Instruments** - Each document governing the establishment, maintenance, or operation of a residential subdivision, including but not limited to the Declaration, the Articles of Incorporation, the By-Laws, guidelines, policies, and the rules and regulations of the Association.

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;
- 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 Violations** - 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 Dedictory Instruments.

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 shall 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 shall not be 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** – 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** – After the expiration of the time set forth in the courtesy letter, if a courtesy letter is sent, 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 Building Plot, 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.

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 will be sent by certified mail. The demand letter may also be sent 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 shall be sent to the Owner’s last known address as provided by the Owner to the Association and 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 Building Plot, 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 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 suspension, charge or fine;
- c. a specific date, which must be a reasonable period, 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 30th 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 shall be held not later than the 30th 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 10th 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. Hearings may be conducted by electronic, telephonic or other virtual means by agreement of the parties. In lieu of an in-person or virtual hearing, an Owner may elect to submit his or her position to the Board in writing ("written hearing"). Any Owner electing a written hearing agrees and stipulates that a written hearing constitutes a hearing for purposes of fulfilling the hearing requirements of Section 209.006 of the Texas Property Code.

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 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 shall be 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.

In addition to charging fines, the Association reserves the right under the Dedicatory Instruments 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 will be sent by certified mail. The demand letter may also be sent 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 shall be sent to the Owner's last known address as provided by the Owner to the Association and 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 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 30th 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 shall be held not later than the 30th 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 10th 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. Hearings may be conducted by electronic, telephonic or other virtual means by agreement of the parties. In lieu of an in-person or virtual hearing, an Owner may elect to submit his or her position to the Board in writing ("written hearing"). Any Owner electing a written hearing agrees and stipulates that a written hearing constitutes a hearing for purposes of fulfilling the hearing requirements of Section 209.006 of the Texas Property Code.

4.3. **Remedies** - Regardless of whether the Owner chooses to request a hearing, fines and other remedies available to the Association may be implemented after mailing the demand letter. The Owner shall be liable for, and the Association may collect reimbursement of, reasonable attorney's fees and other reasonable costs incurred by the Association.

In addition to charging fines, the Association reserves the right under the Dedicatory Instruments 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 similar violation. The Association may impose fines or suspend the Owner's right to use Common Area without first sending another demand for compliance.

Section 6. Fines. Subject to the notice provisions set forth above in this Policy, as applicable, the Association may impose fines against an Owner as a result of a violation.

6.1 Curable Violations:

- a. First Violation: \$25.00
- b. Second Violation: \$50.00
- c. Subsequent Violations: \$100.00

6.2 Uncurable Violations:

- a. First Violation: \$100.00 per occurrence.
- b. Each Additional Similar or Substantially Similar Violation: \$200.00 per occurrence.

6.3 The Board is hereby authorized at its sole and absolute discretion to impose a lesser fine or no fine at all for a violation of the Dedicatory Instruments. Any adjustment to the Fine Schedule by the Board shall not be construed as a waiver of the Fine Schedule or the Dedicatory Instruments.

6.4 Owners are responsible for their tenants, guests, invitees, and licensees, and Owners are liable for any fines levied by the Association for actions of their tenants, guests, invitees, and licensees.

This Policy is in addition to any other remedy the Association may have to pursue a violation of the Association's Dedicatory Instruments and in no way limits or estops the Association from pursuing any other remedy to enforce the Association's Dedicatory Instruments.

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I hereby certify that I am the duly elected and acting Secretary of the Association and that the foregoing Dedicatory Instruments Enforcement and Fine Policy was approved by 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 Harris County, Texas.

TO CERTIFY which witness my hand this 26th day of March, 2021.

THE COLONY TOWNHOMES ASSOCIATION, INC.

By: Amy Wood

Print Name: Amy Wood
Secretary

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned notary public, on this 26th day of March, 2021 personally appeared Amy Wood, Secretary of The Colony Townhomes Association, Inc., known to me to be the person whose name is subscribed to this instrument, and acknowledged to me that s/he executed the same for the purpose and in the capacity herein expressed.



Amy Jacob
Notary Public in and for the State of Texas

Return to:
Sipra S. Boyd
ROBERTS MARKEL WEINBERG BUTLER HAILEY, PC
2800 Post Oak Blvd., Suite 5777
Houston, Texas 77056
13778-00001

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e-Filed & e-Recorded in the
Official Public Records of
HARRIS COUNTY
TENESHIA HUDSPETH
COUNTY CLERK
Fees \$62.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.
THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



Teneshia Hudspeth
COUNTY CLERK
HARRIS COUNTY, TEXAS

SUPPLEMENTAL NOTICE OF DEDICATORY INSTRUMENTS
for
THE COLONY TOWNHOMES ASSOCIATION, INC.

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

The undersigned, being the authorized representative of The Colony Townhomes Association, Inc. (the "Association"), a property owners' association as defined in Section 202.001 of the Texas Property Code, hereby supplements instruments entitled "Notice of Dedicatory Instruments for The Colony Townhomes Association, Inc." recorded in the Official Public Records of Real Property of Harris County, Texas under Clerk's File No. RP-2020-621588 (the "Notice") was filed of record for the purpose of complying with Section 202.006 of the Texas Property Code.

Additional Dedicatory Instrument. In addition to the Dedicatory Instruments identified in the Notice, the following documents are Dedicatory Instruments governing the Association.

- **Second Amendment to the By-Laws of The Colony Townhomes Association, Inc.**
- **Dedicatory Instruments Enforcement and Fine Policy for The Colony Townhomes Association, Inc.**

True and correct copies of such Dedicatory Instruments are attached to this Supplemental Notice.

This Supplemental Notice is being recorded in the Official Public Records of Real Property of Harris County, Texas for the purpose of complying with Section 202.006 of the Texas Property Code. I hereby certify that the information set forth in this Supplemental Notice is true and correct and that the copies of the Dedicatory Instruments attached to this Supplemental Notice are true and correct copies of the originals.

Executed on this 26th day of March, 2021.

THE COLONY TOWNHOMES
ASSOCIATION, INC.



By:

Sipra S. Boyd, authorized representative

RP-2021-160736

THE STATE OF TEXAS §
 §
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BEFORE ME, the undersigned notary public, on this 26th day of March, 2021 personally appeared Sipra S. Boyd, authorized representative of The Colony Townhomes Association, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and in the capacity therein expressed.


Notary Public in and for the State of Texas

