

STATE OF TEXAS §

COUNTY OF HAYS §

**AMENDMENT OF RULES AND REGULATIONS
OF
WATERLEAF FALLS (KYLE) HOMEOWNERS' ASSOCIATION, INC.**

*· Deed Restriction Enforcement and Payment Plans
· Door Color*

Document reference. Reference is hereby made to that certain Declaration of Covenants, Conditions and Restrictions for Waterleaf Subdivision filed as Vol. 2291 Page 342, document no. 03026210 of the Official Public Records of Hays County, Texas (together with all amendments and supplements, the "Declaration").

Reference is further made to the rules filed of record as document no. 2010-12004473, Vol. 4285 Page 118, and Vol. 4421 Page 715, document no. 12024064 of the Official Public Records of Hays County, Texas (together with all amendments and supplements, whether pre-dating these filings or otherwise, the "Rules").

As a result of this filing, the following provisions of the Rules are **REPEALED**:

From Vol. 4285, Page 118	Elections Policy and Procedures
From Vol. 4285, Page 118	Payment Plan Guideline Policy

WHEREAS the Declaration provides that owners of lots subject to the Declaration are automatically made members of Waterleaf Falls (Kyle) Homeowners' Association, Inc. (the "**Association**");

WHEREAS the Association, acting through its board of directors (the "**Board**"), is authorized to adopt and amend rules and regulations (see Declaration §3.4) and has previously adopted the Rules;

WHEREAS the Board has voted to REPEAL the previously adopted "Elections Policy and Procedures" and the "Payment Plan Guideline Policies" attached as a portion of the Rules filed in Vol. 4285, Page 118 of the Official Public Records of Hays County; and

WHEREAS the Board has voted to adopt the Enforcement Policy and Payment Plan Policy attached as Exhibit "A";

THEREFORE the "Elections Policy and Procedures" and "Payment Plan Guideline Policy" are hereby REPEALED, and the additional rules attached as Exhibit "A" have been, and by these presents are, ADOPTED and APPROVED, to supplement the previously-adopted Rules. To the extent the attached conflicts with prior Rules, the attached shall control.

Subject solely to the amendments contained above and in Exhibit "A", all of the rules of the Association remain in full force and effect.

WATERLEAF FALLS (KYLE) HOMEOWNERS' ASSOCIATION, INC.

Acting by and through its Board of Directors

Signature: _____

Printed Name: _____

Title: _____

Lacy Goldberg

Lacy Goldberg

President

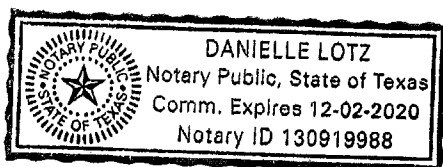
Exhibit "A": Enforcement Policy; Payment Plan Policy; architectural pre-approval for door color

Acknowledgement

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was executed and acknowledged before me on the 3rd day of May, 2018, by Lacy Goldberg in the capacity stated above.



Danielle Lotz
Notary Public, State of Texas

EXHIBIT "A"

Enforcement Policy

Summary of Enforcement Policy

1. Send Courtesy Warning Letter (optional)
2. Send 209 Violation Notice (In accordance with Texas Property Code Ch. 209)
3. Levy fines and/or damage assessments as appropriate (see Declaration §7.2)
4. Subsequent Violation Notices (optional)

The Board may vary from this policy on a case-by-case basis so long as the enforcement process meets state law requirements. Variances may include sending no Courtesy Warning Letter, sending more than one, and/or setting fines at levels other than as indicated on the Standard Fine Schedule.

1. **Types of Violations and Acts Covered.** The Board has adopted this policy to address situations where an owner has committed or is responsible for a violation of the deed restrictions other than by failing to pay assessments or other sums due to the Association. Delinquency violations are handled by an alternate process. This policy also covers situations where an owner or someone the owner is responsible for has damaged Association property.
2. **Violation Notices.**
 - i. Courtesy Warning Letter (curable violations only). Upon becoming aware of a deed restriction violation that is curable and at the sole option of the Board or management professional, the Association may send a Courtesy Warning Letter requesting that the owner cure that violation by a date certain to avoid fines or other enforcement action.
 - ii. 209 Violation Notice. If a violation is not cured in response to any Courtesy Warning Letter or if a Courtesy Warning Letter is not sent, the Board, in addition to all other available remedies, may:
 - A. Levy a fine;
 - B. Suspend the owner's right to use common area, if allowed under the governing documents; and/or
 - C. Charge the owner for damage to common area.

Any such action shall be initiated by sending a 209 Violation Notice to the owner in accordance with Texas Property Code Ch. 209 and Declaration §7.2. The 209 Violation Notice shall:

- A. Be in writing and sent certified mail to the most current owner address shown on the Association's records;
- B. Describe the violation or property damage at issue;
- C. State the amount of any property damage charge or fine that may be levied against the owner;
- D. State a reasonable, specific date by which the owner may cure the violation and avoid any fine levied in the 209 Violation Notice;
- E. Inform the owner that he has a right to request a Board hearing to discuss the enforcement action on or before the 30th day after the notice was mailed to the owner;
- F. Inform the owner that he will be responsible for attorney fees and costs incurred in relation to the violation if the violation continues after a specific date; such fees and costs may be assessed to the owner's account after a hearing is held or, if a hearing is not requested, after the deadline for requesting a hearing has passed;
- G. Inform the owner that he may have special rights or relief related to enforcement under federal law, including the Servicemembers Civil Relief Act; and

H. Otherwise comply with Section 209 of the Texas Property Code and state law.

- iii. Subsequent Violation Notices for continuing or repeat violations. If an owner has been sent a 209 Violation Notice for a particular violation and the same violation continues or a similar violation is committed within six months of the 209 Violation Notice, the Association may levy additional fines either with or without notice to the owner. If it desires to send notice of additional fines, the Association shall do so by means of a Subsequent Violation Notice. A Subsequent Violation Notice may be of any form and sent in any manner, as by law such notices are not required to comply with Section 209 of the Texas Property Code, including the requirements set forth in Section 2(ii) above.

3. 209 Violation Notices -- When a fine or damage assessment may be levied; Board hearings.

- i. Violations – Initial Fine. If an owner is sent a 209 Violation Notice for a curable violation and cures that violation by the deadline in such notice, any fine noted in the 209 Violation Notice shall not be levied. If the owner fails to cure the violation by the deadline, any fine noted in the 209 Violation Notice shall be levied after the time has lapsed for the owner to request a Board hearing, or, if a hearing is timely requested, after the date the hearing is held and a decision is made to uphold the fine.
- ii. Subsequent Fines. This Section 3 does not apply to fines levied after the initial fine. (See Section 2(iii) – Subsequent Violations, above.)

4. Standard Fine Schedule. Below is the Standard Fine Schedule for deed restriction violations. *The Board may vary from this schedule on a case-by-case basis (i.e., set lower than indicated below, provide additional courtesy notices, etc.), so long as that decision is based upon the circumstances surrounding that particular violation. Each day of a violation is considered a separate violation, and all fines levied constitute a lien on the lot (see Declaration §7.2).*

- i. Curable Violations (such as lawn maintenance; action may be taken to remedy the violation).
- A. Courtesy Warning Notice: No fine.
- B. 209 Violation Notice: \$25.00 fine (daily or one-time); and/or
Suspension of common area usage rights, if allowed
under the governing documents.
- C. Subsequent Violation Notices: \$50.00 fine (daily or one-time);
- ii. Uncurable Violations (such as noise violations; the violation is not able to be cured).
- A. 209 Violation Notice: \$50.00 fine (daily or one-time); or
Property damage assessment.
- B. Subsequent Violation Notices: \$50.00 (daily or one-time).

5. Hearings. If an owner receives a 209 Violation Notice and requests a hearing in a timely manner, that hearing shall be held in accordance with Section 209.007 of the Texas Property Code. The Board may impose rules of conduct for the hearing and limit the amount of time allotted to an owner to present his information to the Board. The Board may either make its decision at the hearing or take the matter under advisement and communicate its decision to the owner at a later date.

6. Authority of agents. The management company, Association attorney, and other authorized agents of the Association are granted authority to send violation notices, levy initial or subsequent fines

according to the Standard Fine Schedule, and levy property damage assessments, all in accordance with this Enforcement Policy. Such parties may act without any explicit direction from the Board and without further vote or action of the Board. The enforcing party shall communicate with the Board and/or certain designated officers or agents on a routine basis with regard to enforcement actions. The foregoing notwithstanding, the Board reserves the right to make decisions about particular enforcement actions on a case-by-case basis at a properly noticed meeting if and when it deems appropriate.

7. **Force mows and other self-help enforcement action.** Notwithstanding other language herein, the management company, Association attorney, and other authorized agents of the Association are granted authority to carry out force mows or other self-help remedies on behalf of the Association, in accordance with the procedure described in Sections 6.17 and 7.2 of the Declaration or other governing documents.
8. **Future changes in state law.** This Deed Restriction Enforcement Policy is intended to reflect current state law requirements, including those established under Section 209 of the Texas Property Code. If such laws are changed in the future, this policy shall be deemed amended to reflect such changes.
9. **Owners as Responsible Party.** If a family member, guest, tenant or invitee of an owner damages Association property or commits a violation of the Association's governing documents, the related enforcement action shall be taken against the owner, with all related damage assessments, fines, legal fees, and other charges levied against that owner and the related lot.

Payment Plan Policy

1. Conflict with Other Provisions. Per state law, this Section controls over any provision in any other Association governing document to the contrary.
2. Eligibility for Payment Plan.

Standard payment plans. An Owner is eligible for a Standard Payment Plan (*see* Rule 4 below) only if:

- a. The Owner has not defaulted under a prior payment plan with the Association in the prior 24-month period;
- b. The Owner requests a payment plan no later than 30 days after the Association sends notice to the Owner via certified mail, return receipt requested under Property Code §209.0064 (notifying the owner of the amount due, providing 30 days for payment, and describing the options for curing the delinquency). Owner is responsible for confirming that the Association has received the Owner's request for a payment plan within this 30-day period. It is recommended that requests be in writing; and
- c. The Association receives the executed Standard Payment Plan and the first payment within 15 days of the Standard Payment Plan being sent via email, fax, mail, or hand delivered to the Owner.

Other payment plans. An Owner who is not eligible for a Standard Payment Plan may still request that the Association's Board grant the Owner an alternate payment plan. Any such request must be directed to the person or entity currently handling the collection of the debt (i.e., the Association's manager or Association's attorney). The decision to grant or deny an alternate payment plan, and the terms and conditions for any such plan, will be at the sole discretion of the Association's Board.

3. Standard Payment Plans. The terms and conditions for a Standard Payment Plan are:
 - a. Term. Standard Payment Plans are for a term of 6 months. (See also paragraph 6 for Board discretion involving term lengths.)
 - b. Payments. Payments will be made at least monthly and will be roughly equal in amount or have a larger initial payment (small initial payments with a large balloon payment at the end of the term are not allowed). Payments must be received by the Association at the designated address by the required dates and may not be rejected, returned or denied by the Owner's bank for any reason (i.e., check returned NSF).
 - c. Assessments and other amounts coming due during plan. The Owner will keep current on all additional assessments and other charges posted to the Owner's account during the term of the payment plan, which amounts may but need not be included in calculating the payments due under the plan.
 - d. Additional charges. The Owner is responsible for reasonable charges related to negotiating, preparing and administering the payment plan, and for interest at the highest rate allowed by applicable law then in effect, all of which shall be included in calculating the total amount due under the plan and the amount of the related payments. The Owner will not be charged late fees or other charges related to the delinquency during the time the owner is complying with all terms of a payment plan.
 - e. Contact information. The Owner will provide relevant contact information and keep same updated.

- f. Additional conditions. The Owner will comply with such additional conditions under the plan as the Board may establish.
 - g. Default. The Owner will be in default under the plan if the Owner fails to comply with any requirements of these rules or the payment plan agreement.
4. Account Sent to an Attorney/Agent for Formal Collections. An Owner does not have the right to a Standard Payment Plan after the 30-day timeframe referenced in paragraph 2(b). Once an account is sent to an attorney or agent for collection, the delinquent Owner must communicate with that attorney or agent to arrange for payment of the debt. The decision to grant or deny the Owner an alternate payment plan, and the terms and conditions of any such plan, is solely at the discretion of the Board.
5. Default. If the Owner defaults under any payment plan, the Association may proceed with any collection activity authorized under the governing documents or state law without further notice. If the Association elects to provide notice of default, the Owner will be responsible for all fees and costs associated with the drafting and sending of such notice. All late fees and other charges that otherwise would have been posted to the Owner's account may also be assessed to the Owner's account in the event of a default.
- Any payments received during a time an Owner is in default under any payment plan may be applied to any out-of-pocket costs (including attorneys fees for administering the plan), administrative and late fees, assessments, and fines (if any), in any order determined by the Association, except that fines will not be given priority over any other amount owed but may be satisfied proportionately (e.g. a \$100 payment may be applied proportionately to all amounts owed, in proportion to the amount owed relative to other amounts owed).
6. Board Discretion. The Association's Board may vary the obligations imposed on Owners under these rules on a case-by-case basis, including curtailing or lengthening the payment plan terms (so long as the plan is between 3 and 18 months), as it may deem appropriate and reasonable. The term length set forth in paragraph 3 shall be the default term length absent Board action setting a different term length. No such action shall be construed as a general abandonment or waiver of these rules, nor vest rights in any other Owner to receive a payment plan at variance with the requirements set forth in these rules.
7. Legal Compliance. These payment plan rules are intended to comply with the relevant requirements established under Texas Property Code §209. In case of ambiguity, uncertainty, or conflict, these rules shall be interpreted in a manner consistent with all such legal requirements.

Front Door Color

Article V of the Declaration requires prior approval by the Architectural Control Committee of any alterations an owner wishes to make to his lot or home, including changes of exterior color. For the sake of convenience, the association wishes pre-approve (no architectural submittal is required) homeowners painting their front door (the dwelling's main entry door) any solid color the homeowner desires.

This pre-approval applies only to the door itself and the framing/trim immediately adjacent to the door, and the pre-approval is only applicable to doors/trim painted one solid color. A change involving multiple colors on the front door or door trim, or a change in color of any other area, requires prior approval.

After recording, please return to:

Niemann & Heyer, L.L.P.
Attorneys at Law
Westgate Building, Suite 313
1122 Colorado Street
Austin, Texas 78701

File Server: CLIENTS: Waterleaf: Rule Enforcement Payment Plan Door Color 5-18.doc

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Liz Q. Gonzalez, Hays County Clerk, Texas Rec \$54.00 Deputy Clerk: MCASTRO