

# STONE CREEK (FLOWER MOUND) HOMEOWNERS ASSOCIATION, INC.

## COVENANT ENFORCEMENT POLICY

**WHEREAS**, the Board of Directors (the "*Board*") of Stone Creek (Flower Mound) Homeowners Association, Inc. (the "*Association*") finds there is a need to establish orderly procedures for the enforcement of the restrictive covenants set forth in the Declaration of Covenants, Conditions and Restrictions for the Association as amended from time to time (the "*Declaration*"), as well as the Bylaws of the Association. (the "*Bylaws*"), for enforcement of any rules and regulations (the "*rules and regulations*") and for the levying of damage assessments against owners violating the Declaration, Bylaws and the rules and regulations (collectively, the "*Governing Documents*").

**NOW, THEREFORE, IT IS RESOLVED** that the following procedures and practices are established for the enforcement of the Governing Documents and for the elimination of violations of such provisions found to exist within the Association and the same are to be known as the "*Covenant Enforcement Policy*" (to be referred to herein as the "*Enforcement Policy*") of the Association in the discharge of its responsibilities for determination and enforcement of remedies for violations within the Association. With this adopted Policy, the Board hereby authorizes the Managing Agent and its Representatives to carry out the functions related to enforcement of this Policy in every aspect as contained herein:

**I. Violation Definition** - Any condition, use, activity or improvement which does not comply with the provisions of the Governing Documents of the Association or any damage to common area or improvements maintained by the Association, shall constitute a "*Violation*" under this policy for all purposes. For purposes of determining *enforcement action(s)* a violation of Article V of the Declaration shall be considered a "*Modification Violation*" (*meaning a violation related to modifications to the home which were not approved*) and a violation of any other provision of the Governing Documents related to property maintenance or damage to a common area or improvements maintained by the Association, will be considered a "*Use Restriction Violation*" as may be defined in the Declaration.

**II. Report of Violation** - The existence of a Violation will be verified through field observation(s) conducted either by a Board Member, Architectural Review Committee Member, or its delegate (Management Representative). For the purpose of this Enforcement Policy, the delegate of the Board may include Management, an officer or member of the Board, or a member of any committee established by the Board for this purpose. A timely written report shall be prepared as needed by the field observer for each Violation which will include the following information:

- A. Identification of the nature and description of the Violation(s).
- B. Identification by street, address or legal description, if available, of the Lot on which the Violation exists.
- C. Date of the verification observation and name of the person making such observation and time of day if relevant.

### **III. Notice(s) of Violation**

A. **Optional Courtesy Notice** - At the same time that the field observation is made, the Board or its Delegate may forward to the Owner of the Lot in question a Board Approved *Courtesy Postcard* (which is not considered an official notice of violation) but rather a discovery of a Violation(s) and advisory. The Owner will have up to ten (10) days from the date of the Courtesy Notice to correct, eliminate or otherwise remedy the Violation(s) noted to the satisfaction of the Board or its Delegate. The Board or its Delegate may, in lieu of this notice, proceed immediately to the *Notice of Violation(s)*, set forth below.

B. **First Notice of Violation(s)** - If the Violation is not corrected or eliminated within the time period specified in the optional Courtesy Notice, or if the Board or its Delegate deem it appropriate to proceed without sending a Courtesy Notice, the Association will forward to the Owner of the Lot in question a written *First Notice of Violation(s)* by regular first-class mail or personal delivery (at the sole option of the Board or its Delegate).

C. **Second Notice of Violation(s)** - The Owner will have up to ten (10) days from the date of the First Notice of Violation, eliminate or otherwise remedy the Violation(s) noted to the satisfaction of the Board or its Delegate. If the Violation is not corrected, eliminated or otherwise remedied within the time period specified, a *Second Notice of Violation(s)* will be sent by regular first-class mail or if requested and approved by the Board of Directors, by Certified, Return Receipt Requested mail delivery.

D. **Violation Notice Exemptions** - A Notice of Violation is not required if the alleged violator received any Notice of Violation relating to a similar Violation within six (6) months of the current Violation and was given a reasonable opportunity to cure the prior Violation. In such event, the Board may impose sanctions as authorized by the Declaration and/or this Enforcement Policy without notice to the Owner other than the Final Notice of Violation described below.

E. **Final Notice of Violation(s)** - If the Violation is not corrected, eliminated or otherwise remedied within the time period specified in the *Second Notice of Violation(s)* a *Final Notice of Violation(s)* will be sent by Certified, Return Receipt Requested mail delivery. This notice will specify that the Owner has the right to request a hearing, by submitting a request in writing, to be received by the Board or its Delegate, no later than thirty (30) days from the date of the Final Notice of Violation. The notice shall include the following:

1. The nature, description and location of the Violation, including any property damage caused by the Owner.
2. The authority for establishing the Violation, including the authority for recovering property damages caused by the Owner.
3. The proposed sanction to be imposed, including legal action(s) that may be taken for which the Association plans to recover legal costs.
4. That if the Violation is corrected, eliminated or remedied within a specified time after the Owner's receipt of the Notice of Violation, that legal action(s) will not be assessed and that no further action will be taken.
5. That the Owner is entitled to *request* a hearing with the Board, by requesting such in writing within thirty (30) days from the Owner's receipt of any Notice of Violation. Owner must request a hearing in writing using a Board approved "Hearing Request Form" as required by the Board of Directors.
6. That if the Violation is not corrected or eliminated within the time period specified in the Notice of

Violation, in addition to sanctions that may be levied (as authorized under the Declaration), any attorney's fees and/or costs for compliance will also be charged to the Owner.

#### **IV. Hearings**

##### **A. Requirements/Limitations**

1. If an Owner requests a Hearing with the Board of Directors as outlined herein (and as allowed by State Statute), the Board prior to taking such legal action(s) for non-compliance or damage assessment will grant such request for hearing. The Board will schedule such hearing on a date, time and at a location that is at their discretion, holding the hearing within thirty (30) days from the date the hearing request is received.
2. The Board will provide the Owner a minimum ten (10) days of the scheduled hearing, which outlines the date, time and location for the hearing.
3. Neither the Owner nor the Board is entitled to bring third parties to the hearing (other than Owner's of record for the property) including Legal Representation without the express agreement of both the Owner and the Board in advance of the meeting. If either the Owner or the Board brings Legal Representation without expressed agreement from the other party, then the hearing may be postponed without prejudice and rescheduled to such time as both parties agree to equal representation.
4. The hearing will be held before the Board of Directors in executive session. The hearing may take place and will be conducted even if the Owner fails to appear at the hearing. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction or action(s), if any, imposed by the Board or its delegate.
  5. The results of the hearing will be communicated to the Owner in writing within ten (10) days from the date the hearing was conducted.
6. Either the Owner or the Board may request a postponement of the initial scheduled hearing for a period not longer than ten (10) days.

**V. Violation(s) Corrected by Owner** - Where the Owner corrects or eliminates the Violation(s) prior to the imposition of any sanction, no further action will be taken (except for collection of any monies for which the Lot Owner may become liable under this Enforcement Policy and/or the Declaration). Upon verification by written report to the Board and sent, where appropriate, to the Board that the Violation has been corrected or eliminated; the Violation will be deemed no longer to exist. The Owner will remain liable for all costs and/or *legal fees* under this Enforcement Policy, which costs, *fees* or special charges, if not paid upon demand therefore by Management, will be referred to the Board of Directors of the Association for collection. Written notice of correction or elimination of the Violation may be obtained from the Board upon request for such notice by the owner and upon payment of any costs, fees or special charges for same, the amount of which is set by the Board.

**VI. Violation Abatement by Association** - Notwithstanding any other provision contained herein to the contrary, in the event an owner fails to correct or eliminate a Violation of Article 6.17 of the Declaration, entitled General Maintenance of Lots, within the time period specified in the Notice of Violation, the Association may proceed to enter upon the Lot to correct the Violation without further notice to the Owner other than a ten-day "*Notice of Maintenance*". The Association, and its agents and contractors, will not be liable to the Owner or any third party for trespass or any damages or costs alleged to arise by virtue of action taken under the Declaration. The Association may levy and collect the cost and expense incurred by the

Association to correct or eliminate the Violation.

**VII. Referral to Legal Counsel** - Where a Violation is determined or deemed determined to exist and where the Board deems it to be in the best interests of the Association to refer the Violation to legal counsel for appropriate action, the Board may do so at any time. Such legal action may include, without limitation, sending demand letters to the violating Owner and/or seeking injunctive relief against the Owner to correct or otherwise abate the Violation. Attorney's fees and all costs incurred by the Association in enforcing the Declaration and administering this Enforcement Policy shall become the personal obligation of the Owner.

**VIII. Enforcement** - Enforcement of any restriction may be done in accordance with Article 7.2, which provides the right of the Association, its Board of Directors Approval or Committee to enforce the Declaration by any proceeding at Law.

**IX. Notices** - Unless otherwise provided in the Enforcement Policy, all notices required by this Enforcement Policy shall be in writing and shall be deemed to have been duly given if delivered personally and/or if sent by United States Mail, first-class postage prepaid, to the Owner at the address which the Owner has designated in writing and filed with the Secretary of the Association or, if no such address has been designated, to the address of the Lot of the Owner.

Where the notice is directed by personal delivery, notice shall be deemed to have been given, sent, delivered or received upon actual receipt by any person accepting delivery thereof at the address of the recipient as set forth in such notice or if no person is there, by leaving the notice taped to the front door of the residence.

Where the notice is placed into the care and custody of the United States Postal Service, notice shall be presumed to have been given, sent, delivered or received, as of the third (3<sup>rd</sup>) calendar day following the date of postmark of such notice bearing postage prepaid and the appropriate name and address as required herein unless otherwise shown by the recipient to have been received at a later date.

Where a day required for an action to be taken or a notice to be given, sent, delivered or received, as the case may be, falls on a Saturday, Sunday or United States Postal Service holiday, the required date for the action or notice will be extended to the first day following which is neither a Saturday, Sunday or United States Postal Service holiday.

Where the Board has actual knowledge that an enforcement action would directly affect a third party (e.g. a tenant or a neighbor) or involves a Violation by a party other than the Owner, notices required under this Enforcement Policy may be given, if possible, to such third party in addition to the Owner. Notwithstanding any notice sent to a third party, the Owner remains the party responsible for compliance with the requirements of the Declaration. The Board shall accept a response from any such third party only upon the written direction of the Owner of the Lot upon which the Violation exists. Where the interest of an Owner in a Lot have been handled by a representative or agent of such Owner or where an Owner has otherwise acted so as to put the Association on notice that its interest in a lot has been and are being handled by a representative or agent, any notice or communication from the Association pursuant to this Enforcement Policy will be deemed full and effective for all purposes if given to such representative or agent.

Where an Owner transfers record title to a Lot at any time during the pendency of any procedure prescribed by this Enforcement Policy, such Owner shall remain personally liable for all costs and fines under this Enforcement Policy. As soon as practical after receipt by the Association of a notice of a change in the record title to a Lot which is the subject of enforcement proceedings under this Enforcement Policy, the Board may begin enforcement proceedings against the new Owner in accordance with this Enforcement Policy. The new Owner shall be personally liable for all costs and fines under this Enforcement Policy which are the result of the new Owner's failure and/or refusal to correct or eliminate the Violation in the time and manner specified under this Enforcement Policy.

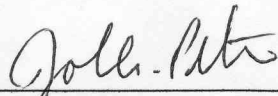


X. **Definitions** - The definitions contained in the Declaration and Bylaws are hereby incorporated herein by reference.

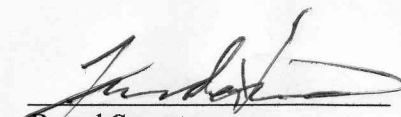
IT IS FURTHER RESOLVED that this Covenant Enforcement Policy is effective upon adoption hereof, to remain in force and effect until revoked, modified or amended by the Board of Directors, and shall be filed of record with the Office of the Denton County Clerk.

This is to certify that the foregoing resolution was adopted by a majority of the entire Board of Directors at a meeting of same held or by electronic means on DECEMBER 29, 2011, and has not been modified, rescinded or revoked.

DATE: 12/29/2011

  
Board President

DATE: 12/29/2011

  
Board Secretary