

Collin County
Honorable Stacey Kemp
Collin County Clerk

Instrument Number: 2023000142791

eRecording - Real Property

HOMEOWNERS ASSOC DOCS

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Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
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STATE OF TEXAS
COUNTY OF COLLIN

**I hereby certify that this Instrument was FILED In the File Number sequence on the date/time
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Honorable Stacey Kemp
Collin County Clerk
Collin County, TX

WATERSTONE ESTATES PROPERTY OWNERS ASSOCIATION
AMENDED FINE AND ENFORCEMENT POLICY

1. **Background.** The Board of Directors (the “**Board**”) of Waterstone Estates Property Owners Association (the “**Association**”) has the powers and duties necessary for the administration of the affairs of the Association. Article 8.10 of the Declaration of Covenants, Conditions and Restrictions for Waterstone Estates (“**Declarations**”) provides that the Association may adopt, amend, repeal and enforce rules and regulations (“**Rules and Regulations**”), fines, levies and enforcement provisions as may be deemed necessary or desirable with respect to the interpretation and implementation of the Declaration, the operation of the Association, the use and enjoyment of the Common Areas, and the use of any other property, facilities or improvements owned or operated by the Association.

In accordance with the governing documents and the Texas Property Code, the Board of Directors of the Association held an open meeting, timely prior notice of such open meeting have been given to the Owners giving notice of the date, hour, place, and general subject of Board meeting, including a general description of any matter to be brought up for deliberation in executive session, and at such open meeting each Board member was given reasonable opportunity to express the Board member’s opinion to all other Board members and to vote and the Board members adopted this Amended Fine and Enforcement Policy.

Terms used in this policy, but not defined, shall have the meaning subscribed to such term in the governing documents.

2. **Policy.** The Association uses fines to discourage violations of the Governing Documents, and to encourage compliance when a violation occurs - not to punish violators or generate revenue for the Association. Although a fine may be an effective and efficient remedy for certain types of violations or violators, it is only one of several methods available to the Association for enforcing the Governing Documents. The Association’s use of fines does not interfere with its exercise of other rights and remedies for the same violation.
3. **General Categories of Restrictive Covenants for Which the Association May Assess Fines.** The Association may assess fines for the violation of enforce the covenants, conditions and restrictions contained in any of the Governing Documents (Declaration, Articles of Incorporation, Bylaws, Architectural Design Guidelines, and any Rules promulgated by the Association pursuant to the Declaration, as adopted and amended from time to time). Violations of the Governing Documents may be curable or incurable. 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. The nonrepetition of a one-time violation or other violation that is not ongoing is not considered an adequate remedy.

The following are examples of acts considered incurable for purposes of this Amended Fine and Enforcement Policy: (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.

The following are examples of acts considered curable for purposes of this Amended Fine and Enforcement Policy: (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.

4. Owner's Liability. An Owner is liable for fines levied by the Association for violations of the Governing Documents by the Owner and the relatives, guests, employees, and agents of the Owner and residents. Regardless of who commits the violation, the Association may direct all communications regarding the violation to the Owner.
5. Amount. The Association may set fine amounts on a case-by-case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation. The Association may establish a schedule of fines for certain types of violations. The amount and cumulative total of a fine must be reasonable in comparison to the violation, and should be uniform for similar violations of the same provision of the Governing Documents. If the Association allows fines to accumulate, the Association may establish a maximum amount for a particular fine, at which point the total fine will be capped.
6. Violation Notice. Except as set forth in Section 6(c) below, before levying a fine, the Association will give (i) a written violation notice via certified mail to the Owner (at the Owner's last known address as shown in the Association records) (the "Violation Notice") and (ii) an opportunity to be heard, if requested by the Owner. The Association's Violation Notice will contain the following items: (1) the date the Violation Notice is prepared or mailed; (2) a description of the violation or property damage that is the basis for the Individual Assessment, suspension action, or other charge; (3) a reference to the rule or provision that is being violated; (4) a description of the action required to cure the violation and a reasonable timeframe in which the violation is required to be cured to avoid the fine or suspension; (5) the amount of the possible fine; (6) a statement that no later than the thirtieth (30th) day after the date the notice was mailed, the Owner may request a hearing pursuant to Section 209.007 of the Texas Property Code; and (7) a statement 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 *et seq.*), if the Owner is serving on active military duty. The Violation Notice sent out pursuant to this paragraph is further subject to the following:
 - a. First Violation. If the Owner has not been given notice and a reasonable opportunity to cure the same or similar violation within the preceding six (6) months, the Violation Notice will state those items set out in (1) - (7) above, along with a reasonable timeframe by which the violation must be cured to avoid the fine. The Violation Notice must state that any future violation of the same rule may result in the levy of a fine. A fine pursuant to the Schedule of Fines may be levied if an Owner does not cure the violation within the timeframe set forth in the notice.

- b. Uncurable Violation/Violation of Public Health or Safety. If the violation is of an uncurable nature or poses a threat to public health or safety (as exemplified in Section 209.006 of the Texas Property Code), then the Violation Notice shall state those items set out in (1), (2), (3), (5), (6), and (7) above, and the Association shall have the right to exercise any enforcement remedy afforded to it under the Governing Documents, including but not limited to the right to levy a fine pursuant to the Schedule of Fines.
 - c. Repeat Violation without Attempt to Cure. If the Owner has been given a Violation Notice and a reasonable opportunity to cure the same or similar violation within the preceding six (6) months but commits the violation again, then the Owner shall not be entitled to an additional Violation Notice or a hearing pursuant to Section 209.007 of the Texas Property Code, and the Association shall have the right to exercise any enforcement remedy afforded to it under the Governing Documents, including but not limited to the right to levy a fine pursuant to the Schedule of Fines. After an Owner has been provided a Violation Notice as set forth herein and assessed fines in the amounts set forth in the Schedule of Fines, if the Owner has never cured the violation in response to any Violation Notices sent or any fines levied, then the Board, in its sole discretion, may determine that such a circumstance is a continuous violation which warrants a levy of a fine based upon a daily, monthly, or quarterly amount as determined by the Board.
 - d. Courtesy Notices. The Association may, but is not required to, send out any number of Courtesy Notices regarding a violation prior to sending out a Violation Notice.
- 7. Violation Hearing. If the Owner is entitled to an opportunity to cure the violation, then the Owner has the right to submit a written request to the Association for a hearing before the Board to discuss and verify the facts and resolve the matter. To request a hearing, the Owner must submit a written request (the "Request") to the Association's manager (or the Board if there is no manager) within thirty (30) days after receiving the Violation Notice. The Association must then hold the hearing requested no later than thirty (30) days after the Board receives the Request. The Board must notify the Owner of the date, time, and place of the hearing at least (10) days before the date of the hearing. The hearing will be scheduled to provide a reasonable opportunity for both the Board and the Owner to attend. The Board or the Owner may request a postponement, and if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. Notwithstanding the foregoing, the Association may exercise its other rights and remedies as set forth in Section 209.007(d) and (e) of the Texas Property Code. Any hearing before the Board will be held in a closed or executive session of the Board. At the hearing, the Board will consider the facts and circumstances surrounding the violation. The Owner shall attend the hearing in person, but may be represented by another person (i.e., attorney) during the hearing, upon advance written notice to the Board. If an Owner intends to make an audio recording of the hearing, such Owner's request for hearing shall include a statement noticing the Owner's intent to make an audio recording of the hearing, otherwise, no audio or video recording of the hearing may be made, unless otherwise approved by the Board. The minutes of the hearing must

contain a statement of the results of the hearing and the fine, if any, imposed. A copy of the Violation Notice and Request should be placed in the minutes of the hearing. If the Owner appears at the meeting, the notice requirements will be deemed satisfied. Unless otherwise agreed by the Board, each hearing shall be conducted in accordance with the agenda attached hereto as Exhibit A.

8. Due Date. Fine and/or damage charges are due immediately if the violation is incurable or poses a threat to public health or safety. If the violation is curable, the fine and/or damage charges are due immediately after the latest of: (1) the date that the cure period set out in the first Violation Notice ends and the Owner does not attempt to cure the violation or the attempted cure is unacceptable to Association, or (2) if a hearing is requested by the Owner, such fines or damage charges will be due immediately after the Board's final decision on the matter, assuming that a fine or damage charge of some amount is confirmed by the Board at such hearing.
9. Lien Created. The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest as provided in Section 8.4 of the Declaration and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to Article Three of the Declaration. The fine and/or damage charge will be considered an Assessment for the purpose of this Article and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to Article Three of the Declaration.
10. Levy of Fine. Any fine levied shall be reflected on the Owner's periodic statements of account or delinquency notices.
11. Foreclosure. The Association may not foreclose its assessment lien on a debt consisting solely of fines; attorney's fees incurred by the association solely associated with fines assessed by the association; or amounts added to the owner's account as an assessment under Section 209.005(i) (costs charged by the Association for copies of Association books and records) or 209.0057(b-4) (costs charged by the Association for the recount of the votes).
12. Corrective Action (Self-Help). Notwithstanding anything contained herein to the contrary, where a Violation of Declaration or duly promulgated rules and regulations or design/architectural guidelines is determined to exist pursuant to any provision of this Policy, Management, with the approval of the Board, may undertake to cause the Violation to be corrected, removed or otherwise abated by qualified contractors if the Association, in its reasonable judgment, determines that such Violation may be readily corrected, removed or abated without undue expense and without breach of the peace. Where Management is authorized by the Board to initiate any action by qualified contractors, the following shall apply:
 - a. The Association, through Management, must first provide the Owner with a Violation Notice as provided above. Should the Violation not have been remedied by the Owner, then the Association must give the Owner, and any

third party directly affected by the proposed action, prior written notice of the undertaking of the action ("Notice of Corrective Action"). The Notice of Corrective Action shall be sent to the Owner by certified mail, return receipt requested, and first-class U.S. mail, and include an opportunity for the Owner to cure the Violation prior to the undertaking of any corrective action.

- b. Any cost incurred in correcting or eliminating a Violation shall be charged to the Owner's account.
- c. The Association, the Board, and its agents and contractors shall not be liable to the Owner or any third party for any damages or costs alleged to arise by virtue of action taken under this Paragraph 4 where the Association, the Board, its agents and contractors have acted reasonably and in conformity with this Enforcement Policy.

13. Referral to Legal Counsel. Where a Violation is determined to exist by the Board pursuant to any of the provisions of this Policy and where the Board deems it to be in the best interests of the Association, the Board may, at any time and without prior notice to the Owner under the Policy, refer the Violation to legal counsel for purposes of seeking to correct or otherwise abate the Violation, including an action for injunctive relief and/or civil damages against the Owner, or any other legal or equitable remedy that may be available to the Association.

14. Notices. Any notice required by this Policy to be given, sent, delivered or received in writing will be deemed to have been given, sent, delivered or received, as the case may be, upon the earlier to occur of the following:

- (i) When the notice is delivered by facsimile, the notice is deemed delivered and received when the sender receives a facsimile acknowledgment acknowledging delivery of the notice.
- (ii) When the notice is placed into the care and custody of the United States Postal Service, the notice is deemed delivered and received as of the third day after the notice is deposited into a receptacle of the United States Postal Service with postage prepaid and addressed to the most recent address of the recipient according to the records of the Association. Any Notice of Violation or Notice of Corrective Action shall be sent certified mail, return receipt requested, and may also be sent by First-Class U.S. Mail.

15. Amendment of Policy. This policy may be revoked or amended from time to time by the Board. This policy will remain effective until the Association records an amendment to this policy in the county's official public records. This policy amends, replaces, and restates the previously filed Fine and Enforcement Policy.

Schedule of Fines

The Board has adopted the following general schedule of fines. The number of notices set forth below does not mean that the Board is required to provide each notice prior to exercising additional remedies as set forth in the Governing Documents. The Board may elect to pursue such additional remedies at any time in accordance with applicable law. The Board also reserves the right to set fine amounts on a case-by-case basis, provided the fine is reasonable in light of the nature, frequency, and effect of the violation:

FINES**:

| Curable and Uncurable Violations (other than during construction of a new home) | |
|--|----------------|
| First Violation | \$50 to \$500 |
| Failure to Cure Violation | \$100 to \$500 |

| Fines related to and during the construction period of a new home | |
|--|--|
| First Violation | \$100 accompanied by a Stop Work Order |
| Failure to Cure Violation | Daily assessed fine of \$100 |
| Failure to cure within 15 days | Additional fine of \$150 |
| Failure to cure within additional 15 days | Additional fine of \$200 |

| Fines related for forced mowing | |
|--|--|
| Violation | \$475.00, plus a \$25.00 administrative fee, plus the actual cost to mow the Owner's Lot |

** The Board reserves the right to adjust these fine amounts based on the severity and/or frequency of the violation(s).

EXHIBIT A - HEARING BEFORE THE BOARD

Note: An individual will act as the presiding hearing officer. The hearing officer will provide introductory remarks and administer the hearing agenda.

I. Introduction:

Hearing Officer. The Board has convened for the purpose of providing [Owner] an opportunity to be heard regarding a notice of violation of the Governing Documents sent by the Association. The hearing is being conducted as required by Section 209.007(a) of the Texas Property Code, and is an opportunity for [Owner] to discuss, verify facts, and attempt to resolve the matter at issue. The Board may be able to resolve the dispute at the hearing or the Board may elect to take the matter under advisement and conclude the hearing. If the matter is taken under advisement, a final decision will be communicated in writing within fifteen (15) days.

II. Presentation of Facts:

Hearing Officer. This portion of the hearing is to permit a representative of the Association the opportunity to describe the violation and to present photographs or other material relevant to the violation, fines or penalties. After the Association's representative has finished his presentation, the Owner or its representative will be given the opportunity to present photographs or other material relevant to the violation, fines or penalties. The Board may ask questions during either party's presentation. It is requested that questions by (Owner) be held until completion of the presentation by the Association's representative.

[Presentations]

III. Discussion:

Hearing Officer. This portion of the hearing is to permit the Board and [Owner] to discuss factual disputes relevant to the violation. Discussion regarding any fine or penalty is also appropriate. Discussion should be productive and designed to seek, if possible, a mutually agreed upon resolution of the dispute. The Hearing Officer retains the right to conclude this portion of the hearing at any time.

IV. Resolution:

Hearing Officer. This portion of the hearing is to permit discussion between the Board and [Owner] regarding the final terms of a mutually agreed upon resolution, if such resolution was agreed upon during the discussion phase of the hearing. If no mutually agreed upon resolution was reached, the Hearing Officer

may: (i) request that the Board enter into executive session to discuss the matter; (ii) request that the Board take the matter under advisement and adjourn the hearing; or (iii) adjourn the hearing.

EXHIBIT B – COMMON VIOLATIONS (Not an exhaustive list of violations)

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|---|
| Holiday Decorations (if not timely installed/removed)(each time the violation is observed) |
| Property used for storage (boats, vehicles, trailers, oversized work trucks and any other oversized vehicle, etc.) (each time the violation is observed) |
| Trash cans, trash bags and recycling left in public view on days other than designated city trash pick-up days (each time the violation is observed) |
| Debris or refuse on property (each time the violation is observed) |
| Unapproved signs in yards or on property (each time the violation is observed) |
| Home maintenance/repairs that do not conform with other homes in the subdivision (ex: rotting wood, replacing missing or dilapidated fences, sagging gutters, damaged garage door, replacing broken light fixtures, etc.) (each time the violation is observed) |
| Exterior painting needed (ex: house, front door, siding) (each time the violation is observed) |
| Improper landscape maintenance, including blowing or leaving grass clippings and/or yard waste on the streets, driveways, and sidewalks; malfunctioning irrigation equipment; removing weeds from flower beds and tree wells; trimming trees/bushes, etc. (each time the violation is observed) |
| Littering in common areas (each time the violation is observed) |
| Modification, and/or addition made to Property without prior approval from the Committee (each time the violation is observed) |
| Vehicle violations, include, but are not limited to, any vehicle without a current (or missing) license plates or inspection sticker, wrecked, dismantled in any way or discarded is considered inoperable (each time the violation is observed or as the Board deems necessary) |
| Vehicle parking violations (each time the violation is observed) |
| Unapproved roof |
| Recreational equipment (each time the violation is observed) |
| Failure to remove pet waste or not keeping pet on leash (each time the violation is observed) |
| Livestock or poultry kept on property (each time the violation is observed) |
| Violations of the leasing or occupancy related rules (each time the violation is observed) |

THE BOARD HEREBY RESOLVES that this Amended Fine and Enforcement Policy is hereby adopted.

THE BOARD HEREBY FURTHER RESOLVES that this Amended Fine and Enforcement Policy was adopted by the Board, by a majority vote of the Board held at a properly noticed and held Board meeting, and is effective upon adoption and recordation hereof, and amends and supersedes any prior Fine and Enforcement Policy, and will remain in force and effect until revoked, modified or amended.

DATE: 12/14/2023

Traci A. Curtis
President

STATE OF TEXAS §
 coll/14 §
COUNTY OF ~~DALLAS~~ §

This instrument was acknowledged before me on the 14th day of Dec, 2023 by Traci Lea
Curtis (name), the President (title) for Waterstone Estates Property Owners Association on
behalf of said entity.

[Signature]
Notary Public in and for the State of Texas

Notary stamp or seal:

