

FINES FOR NONCOMPLIANCE
Association Policy
BEVERLY OAKS TOWNHOUSES

DECLARATION made this 1st day of July 2019 by the Beverly Oaks Homeowner's Association, Inc.,

Witnesseth:

WHEREAS, the Beverly Oaks Homeowners' Association, Inc., ("Association"), is a domestic corporation organized in 1982 by the developer New Mac, Inc., as recorded with the Secretary of State of the State of Texas on May 24, 1982, (filing number 60888401) formed for the purpose of maintenance, preservation and architectural control of the residence lots and common areas within the Beverly Oaks subdivision.

WHEREAS, Beverly Oaks is a subdivision of 95 townhouses located in Irving, Texas also known as the Freeman Irving Heights Addition Block A /Lots 1 -22, Block B /Lots 1-48, and Lot C /Blocks 1-25 of the City of Irving, Dallas County, Texas according to the map recorded in Volume 811197, Page 1973, Map Records, Dallas County, Texas.

WHEREAS, the Beverly Oaks subdivision has common areas owned by the Association which includes the 2023 Wilshire building lots and fences, Brentwood and Wilshire roadways, water mains and valves under the street and fire hydrants, entryway gates and gardens, treadle and warning lights at the community exit, concrete screening fence separating the subdivision from the multifamily property to the west, storm drains running under the subdivision, concrete screening fences on either side of the exit alley, sewer mains, cul-de-sac gardens, and the community mailboxes collectively known as The Freeman Irving Heights Addition Block A /Lot 23 and Split A ACS 2.0804, as conveyed in Volume 83030, Page 2277, Dallas County Records.

WHEREAS, the Beverly Oaks Homeowners' Association, Inc., ("Association"), has declared that the real property described herein as the Beverly Oaks subdivision shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, assessments, charges and liens (hereinafter called collectively "Declaration of Covenants and Restrictions" or "Declaration") set forth in a Declaration of Covenants and Restrictions ("Original Declaration") recorded on June 16, 1982 (Volume 82117, Pages 1451) with amendments recorded on February 10, 1983 (Volume 83030, Page 2277) and January 1991 (not recorded).

NOW THEREFORE, this Declaration further defines the powers and limitations of the board of directors as outlined in Article XVI of the Beverly Oaks Townhouses Declaration of Covenants and Restrictions with respect to the levying, assessing, and collection of fines.

SECTION 1: POWERS AND DUTIES OF THE BOARD OF DIRECTORS

The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association. The Board of Directors shall do all such acts and things except those that may not be delegated to the Board of Directors by law, by the Beverly Oaks Townhouses Declaration of Covenants and Restrictions or by the Bylaws of the Beverly Oaks Homeowners' Association. Such powers and duties of the Board of Directors shall be done for and on behalf of the Owners.

SECTION 2: AUTHORITY TO LEVY, ASSESS, AND COLLECT FINES FOR NONCOMPLIANCE

Authority is established herein for the Association to levy, assess, and collect monthly fines from individual owners for failure to comply with the standards, requirements, and rule contained in the Building Standards, Design Requirements, and for violations of Community Rules.

Building Standards Design Requirements, and Community Rules are defined in articles VIII and IX of the Beverly Oaks Townhouses Declaration of Covenants and Restrictions

SECTION 3: OBLIGATION TO PAY FINES FOR NONCOMPLIANCE

The obligation of Owners to pay monthly fines for failure to comply with the standards, requirements, and rules contained in the Building Standards (Article VIII), Design Requirements, and Community Rules (Article IX) is established herein.

SECTION 4: NOTICE REQUIRED

All Notices of Noncompliance shall be made in writing and delivered by:

- (1) certified mail to the Living Unit owner
- (2) general mail to the Living Unit owner, with a
- (3) notice posted on the primary entrance of the Living Unit.

The notice shall specify:

- (1) the noncompliance or violation,
- (2) the time allowed to cure (30 days) before the monthly fines begin,
- (3) the start date and amount of the fine,
- (4) instructions on how to request a time extension to cure,
- (5) an explanation of the right to appeal, and
- (6) an address for correspondence.

Failure to receive a notice of noncompliance or violation for any period of time is not a de facto waiver of Building Standards, Design Requirements, or Community Rules.

SECTION 5: LEVYING FINES FOR NONCOMPLIANCE

Fines for noncompliance or violations shall be levied for 12 consecutive months or until the noncompliance is cured or corrected. If the noncompliance or violation is not cured or corrected in 12 months, the process may be started over with a new Notice of Noncompliance and additional fines may be levied.

SECTION 6: ASSESSMENT (CALCULATION) OF FINES FOR NONCOMPLIANCE

Fines shall be assessed as 12 equal monthly payments.

Each fine for noncompliance shall be approximately 200% of the reasonable construction costs to correct the noncompliance, as estimated by the Board of Directors; or a sum equal to 1/2 of the Annual Assessment for the current year, whichever is greater.

EXAMPLE: If the reasonable cost to replace a nonconforming garage door is \$1,300, and the annual assessment is \$1,100, then the fine would be \$216.67 per month for a maximum of 12 months
 $(\$1,300 \times 2) / 12 = \216.67

EXAMPLE: If the reasonable cost to replace a nonconforming lamp post is \$300, and the annual assessment is \$1,100, then the fine would be \$45.83 per month for a maximum of 12 months
 $(\$1,100 / 2) / 12 = \45.83

The fine for noncompliance or violations where “construction costs to correct” are not applicable, a sum equal to 1/2 of the Annual Assessment for the current year shall be assessed.

EXAMPLE: If the annual assessment is \$1,100, then the fine would be \$45.83 per month for a maximum of 12 months
 $(\$1,100 / 2) / 12 = \45.83

SECTION 7: COLLECTION OF FINES FOR NONCOMPLIANCE

Fine payments are due on the first day of each month starting on the first day of the month following the expiration of the cure period. Late payments are subject to the same interest, fees, and payment plans as provided for in the Declaration of Covenants and Restrictions and State Law for late Annual Assessments and Special Assessments.

SECTION 8: RELEASE OF FINES

No monthly fine payments shall be due after the noncompliance or violation has been:

- (1) cured by the Owner,
- (2) the Association notified in writing, and
- (3) the cure has been inspected and approved by the Board of Directors.

Any monthly fine payment due prior to the cure and approval shall remain payable to the Association.

SECTION 9: REOCCURANCE OF NONCOMPLIANCE OR VIOLATION

If the same failure to comply with the standards, requirements, and rules contained in the Building Standards, Design Requirements, and Community Rules (Article IX) reoccurs within 120 days of a release, the release shall automatically be void and the fines as originally levied shall remain payable to the Association.

SECTION 10: REQUEST A CHANGE OR DISPUTE A NOTICE OF NONCOMPLIANCE

Any Owner may dispute a claim of noncompliance, the period of time allowed to cure, or the fine amount.

The dispute must be delivered by certified mail and general mail to the address listed on the Notice of Noncompliance within 15 business days. Upon receipt of a dispute, the first payment shall be delayed until the first day of the month starting after a response from the Board of Directors.

Notwithstanding the above, any noncompliance shall be reported by the Board of Directors as part of any TREC Resale Certificate prepared on behalf of the Association

SECTION 11: APPEAL A NOTICE OF NONCOMPLIANCE

An Owner may appeal a Notice of Noncompliance and subsequent Fines as follows:

- (1) TOTAL POTENTIAL AMOUNT OF FINE TO BE LESS THAN \$8,000. Owner may file a claim in small claims court for noncompliance fines up to \$8,000. The findings of the court are final and not appealable.
- (2) TOTAL POTENTIAL AMOUNT OF FINE TO BE MORE THAN \$8,000. Owners may request arbitration for noncompliance fines over \$8,000. An Owner shall recommend 3 qualified, independent arbitrators from which the Association will select 1, or reject all for material reasons, and request additional options.

The Owner and Association shall each pay an equal share of the arbitration fees in advance to the arbitration. The arbitration hearing shall be informal, attorneys are not required for any party, and hearings are not to exceed 3 hours in length. The arbiter will rule on the noncompliance, fine amount and what share of the arbitration fees should be paid by the Owner and the Association.

SECTION 12: ENFORCEMENT

Enforcement of this policy shall be by any proceeding at law or in equity by the Association or any Owner against any person or persons violating or attempting to violate any decision of the Association which are made pursuant thereto, either to restrain violation or to recover damages, and against the land to enforce any lien created by these

covenants; and failure by the Association contained shall in no event be deemed a waiver of the right to do so thereafter. Likewise, Owners shall have similar rights of action against the Association.

SECTION 13: CONFLICT

To the extent that any conflict arises between this document and the Beverly Oaks Townhouses Declaration of Covenants and Restrictions, the Beverly Oaks Townhouses Declaration of Covenants and Restrictions document shall control and govern.

SECTION 14: SEVERABILITY

Invalidation of any section of this policy by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

SECTION 15: AMENDMENTS TO THIS POLICY

This policy can be modified by a majority vote representing fifty-one percent (51%) of all Living Units. "Representing" is defined as tendering a ballot.

Amendments to this policy do not go into effect until they are filed with the Dallas County, county clerk or the records custodian for Dallas County, Texas.

Irrevocably approved and executed by written vote of Owners on April 10, 2017 (45 approved (67%), 22 disapproved) and on April 16, 2019 (35 approved (70%), 15 disapproved), collectively 74% of owners. To be effective the 1st day of July 2019.

Executed by:

Brenda Madison

Brenda Madison, President 2019
Beverly Oaks Homeowners' Association, Inc.

ACKNOWLEDGEMENT

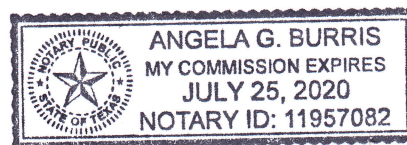
State of Texas, County of Dallas

Before me the undersigned, a notary in and for said County and State personally appeared Brenda Madison known to me to be the same person whose name is subscribed to the foregoing instrument and acknowledge to me that he executed the same for the purposes therein expressed.

Given under me had and seal of office. This 7th day of June, 2019

Angela G. Burris
Notary Public

Notary Seal



Executed by:



Ron Olson, Secretary 2019
Beverly Oaks Homeowners' Association, Inc.

ACKNOWLEDGEMENT

State of Texas, County of Dallas

Before me the undersigned, a notary in and for said County and State personally appeared Ron Olson known to me to be the same person whose name is subscribed to the foregoing instrument and acknowledge to me that he executed the same for the purposes therein expressed.

Given under me had and seal of office. This 1 day of June, 2019

Notary Public


mSantiago

Notary Seal

