



**ATTORNEY/CLIENT PRIVILEGED  
CONFIDENTIAL MEMORANDUM**

To: Range Rider Homeowners Association

Date: January 5, 2024

Re: Range Rider HOA Enforcement

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You asked us to review the governing documents for Range Rider Homeowners Association and applicable Texas law to answer certain enforcement questions.

To that end, we have reviewed the following governing documents: the Declaration of Covenants, Conditions and Restrictions for Redland Oaks, Unit 2A dated July 13, 1994 (the “CCRs”); the Bylaws of Range Rider Homeowners Association, Inc dated on or about October 10, 2018 pursuant to the footer on the document (the “Bylaws”); the Articles of Incorporation filed in the Office of the Secretary of State of Texas on July 18, 1994 (the “Articles”); the Certificate of Amendment filed in the Office of the Secretary of State of Texas on September 20, 2019; and the Replat and Subdivision Plat of Redland Oaks Unit 2A recorded in Volume 9529, Page 147 of the Deed and Plat Records of Bexar County, Texas and Chapter 209 of the Texas Property Code.

The CCRs and Bylaws offer similar enforcement methods. Depending on the nature of the violation that the HOA may wish to enforce, both documents allow for late fees and interest, suspension of membership, and filing of suits and liens.

**Late Fees and Interest – In Connection with Collections**

Section 2.4 of the CCRs allows the HOA to recover interest, at the highest rate allowed by law, for assessments which are not paid within 10 days after the due date. In addition, this section also allows the association to recover late charges as may be established “by duly adopted resolutions” and allows the association to bring an action at law against the owner personally obligated.

Section 12.9 of the Bylaws is the parallel provision, this section provides for interest and late fees for assessments which are not paid within 10 days after the due date and therefore become delinquent. The Bylaws further state that administrative fees and interest shall be \$3.00 per month and that the association may enforce them by bringing an action in law or equity or foreclosing on the liens against the property.

**Suspension of Membership Rights**

Section 3.2 of the Bylaws authorizes the Board to suspend a member’s right to use the common facilities until assessments are paid. This same section authorizes the Board to suspend a

member's right to use the common facilities for violations of rules and regulations established by the Board regarding the use of common area and facilities. However, the later suspension is to only occur after notice and hearing and provided that such suspension cannot exceed 60 days.

### **Powers and Duties of the Board**

Section 3.2 of the CCRs identifies the powers and duties of the board, subsection (i) specifically states that the Board has a duty "to collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

Moreover, Section 8.1 of the CCRs re-states that the Association has the right to establish and publish rules and regulations governing use of common areas, that association may suspend right to use common areas, and that voting rights may also be suspended. However, please note that prior legislative changes have voided any language allowing for the suspension of voting rights. Similarly, Section 8.1 of the Bylaws provides the Board with power to adopt and publish rules and regulations governing use of Common Area and facilities and personal conduct of the members and to establish penalties for the infraction thereof and to exercise all power, duties and authority vested or delegated to the Association.

Section 11.1 of the CCRs state that if an owner defaults under the governing documents, the CCRs, Bylaws or rules and regulations, then the Association is entitled to all rights and remedies provided in documents and those available by law or in equity (i.e., file suit, foreclosure of the association's lien, injunctive relief, specific performance, money damages, or any other relief to which the association may be entitled).

### **Enforcement Methods Available; Rules and Regulations; and Notice and Cure**

Based on the Sections referenced above from the CCRs and Bylaws, the HOA has various methods to enforce the covenants, although those may differ depending on whether it a collections or CCR enforcement matter. The HOA may charge late fees and interest for failure to pay assessments. The HOA may suspend membership rights to the common facilities in the HOA for failure to pay assessment or adhere to the HOA's rules and regulations. The HOA, through the Board, may enforce any liens and implement and enforce rules and regulations; and the HOA may establish penalties for infractions to said rules and regulations. However, the right to establish penalties appears to be limited to violations of rules for the common areas, rather than any violation of the CCRs or other dedicatory instruments.

We have seen some HOAs rely on their general authority to enforce the documents to create additional rules and establish a fining policy. However, we do not generally advise this practice. Instead, we tend to suggest that an HOA not levy fines unless there is express language in the governing documents authorizing the HOA to do so. In the case of Range Rider, we do not see express language authorizing fines for general violations of the CCRs (only for rules of the common areas). If the HOA wished to implement additional rules and regulations and create fines for infractions, it would have to do that in reliance on the HOA's general enforcement authority under Section 3.2(h) of the CCRs. However, as noted above, we do not generally advise this practice as it would be unlikely to stand up to judicial scrutiny if an owner were to challenge.

To the extent that the HOA is seeking to address CCR enforcement matters (as opposed to collection matters) the options are limited. If it is a violation related to the common areas, then the HOA can suspend access, fine, and/or file suit. However, for other violations of the governing documents (e.g., failing to adhere to maintenance requirements, failure to adhere to ACC requirements, etc.), based on the language we have seen, the HOA is limited to sending notice of a violation, sending the matter to the attorney for enforcement, and/or filing suit.

### **New Laws**

The recent constitutional amendment, regarding farming and ranching does not apply to the HOA, however please let us know if this is not what you were referring to.

### **Public Streets**

The restrictions in the CCRs do not apply to the public streets within the HOA boundaries. The Plat recorded in the Bexar County Plat Book 9529, Page 147 dedicated “all streets, alleys, parks, watercourses, drains, easements and public places thereon” to the public forever; therefore, such property may only be restricted by any city, state, or federal regulations. Range Rider may still choose to include certain restrictions in the CCRs that regulate the above referenced public property, however the HOA would not be able to enforce said restrictions. Enforcement would be limited to appropriate authorities and provide that there is an applicable city, state, or federal law. Any enforcement mechanism available would be limited to that which is provided by the city, state, or federal government, as applicable, and not the governing documents.

### **Amendments to CCR**

Any amendments to the CCRs must be in writing and recorded. An email would not be sufficient. Section 209.0058 of the Tex. Prop. Code states that “a vote cast by a member of a property owners' association must be in writing and signed by the member if the vote is cast: (1) outside of a meeting; (2) in an election to fill a position on the board; (3) on a proposed adoption or amendment of a dedicatory instrument; (4) on a proposed increase in the amount of a regular assessment or the proposed adoption of a special assessment; or (5) on the proposed removal of a board member.