

DEERFIELD VILLAGE COMMUNITY ASSOCIATION, INC.

4045 Deerfield Village Drive

Houston, Texas 77084 (281) 463-2624

The following contains two parts of additional information, apart from the Guidelines themselves, to aid in the understanding and formulation of the Guidelines. Part I addresses the background information on how we came about to promulgate the Guidelines, and Part II addresses legal authority vested in the Board of the Deerfield Village Community Association Inc. (DVCA).

Part I - Background Information

The Architectural Authority is vested in the Board of the DVCA. The DVCA was incorporated in August 1975, and Friendswood Development Company, the developer of the Deerfield subdivision, filed a restrictive covenant (or sometimes called a protective covenant) with the county. The protective covenant is a rule governing the appearance and permissive use of a residential property. When lots or houses are sold, they automatically become subject to those covenants. The purpose of these covenants is usually to protect the value of all of the homes in the subdivision.

Since the filing of the restrictive covenants, over the nearly fifty years, with the different Deeds Committees involving different residents, folks have tried to be fair and consistent with regard to enforcement of the restrictions in the covenants. However, in a number of situations, it became evident that different folks in different Deeds Committees over the period have resulted in different rulings with regard to same or similar situations in the enforcement of the covenants. As a result, some members of the Deeds Committee requested the Board to formulate a set of Guidelines that can be workable consistently and fairly to the members of DVCA going forward.

More than two years ago, the Architectural Guidelines Committee (AGC) was established by the Board. The AGC's mission was to draft consistent and fair rules that can be applied uniformly for the residents. This would ensure that going forward, decisions made by the Deeds Committee would be fair and consistent over time as volunteers come and go. These Guidelines are to be applied prospectively, not retroactively.

Over the course of more than the past two years, both the AGC and the Deeds Committee have reviewed many drafts of the Guidelines. The various and revised drafts were painstakingly reviewed over and over by each word, sentence, and paragraphs, debating each part of the Guidelines for proper form, grammar, continuity, and substance. In submitting the Guidelines to the Board, the Deeds Committee, and the members of the DVCA, it is fair to say that the Guidelines are a result of consensus and compromise archived from many contrasting opinions voiced. The Guidelines are also a work product of many participants over many hours of meetings at the AGC and the Deeds Committee. The overall goal of the Guidelines was to do what is in the best interests of the community, to improve the appearance of the community, and to protect property values at Deerfield.

Part II -The Board's Authority to Issue the Guidelines

As mentioned, the Architectural Authority is vested in the Board to interpret and enforce the protective covenant by and through the protective covenants in the affairs of the rules governing

the appearance and permissive use of a residential property. In addition, the Texas Property Code recognizes that protective covenant may not be a frozen-in-time governing instrument but rather a living document that governs the appearance and permissive use of a residential property as the needs of the subdivision change. In that regard, to keep with the times, the law authorizes the Board to modify and augment the protective covenant as necessary and proper for the governance and operations of the property owner's association in interaction with the time to time exercise of powers vested in the Board under the authority of DVCA's Bylaws and the Certificates of Incorporation.

Set forth below is an outline of the specific authority vested in the Board of DVCA:

The Board's authority to adopt and implement the Guidelines Policy stems from various sources, *i.e.*, the governing documents and the Texas Property Code. The primary governing documents include the protective covenants, the certificate of incorporation, and the Bylaws. All these governing documents and the Texas Property Code operate together to authorize the Board of the DVCA to promulgate, adopt, and enforce the Guidelines. To avoid complexity, in an outline form, the following support of authorities is provided for adopting and implementing the DVCA's Guidelines:

I. Governing Documents

A. Articles of Incorporation

1. Article V-"The direction and management of the affairs of the corporation and the control and disposition of its properties and funds shall be vested in a Board of Trustees."
2. Article VI-"The Board of Trustees shall have the authority to adopt bylaws of the corporation... of Trustees of the Deerfield Village Community Association Inc."
3. Article VII-"The corporation [DVCA] is a non-profit corporation."

B. Bylaws

1. Article 7.1-"The direction and management of the affairs of the association...shall be vested in the Board."
2. Article 7.2.B-"The Board is required to act in following areas: 1. Establishment of Policy and procedure..."
3. Article 7.2.C.4-"Additionally, the Board shall have the power to...exercise for the Association all powers, duties, and authority vested in or delegated by the Association and not reserved to the Members by other provisions of these bylaws, the Articles of Incorporation or Restrictions [Protective covenants]."

II. Protective Covenants

- A. Part I, paragraph 19-"Friendswood hereby retains the right to assign its rights to approve or disapprove plans and specifications, location of structures, construction contracts and all other necessary documents or approvals required to be submitted to it to an architectural control committee, which may be annually approved by the Board." [Comment-Here, the protective covenants provide that the Board of DVCA has the authority to delegate, and/or is the authority, concerning the matters of Architectural Control Committee].

III. Texas Property Code

- A. Section 204.009, Texas Nonprofit Corporations-“(a) If the property owner’s association is referenced in the existing, extended, added to, or modified restrictions as a Texas nonprofit corporation, the instrument contemplates the interaction of a nonprofit corporation, its articles of incorporation, and its bylaws. (b) The property owner’s association has the powers and shall promote the purposes enumerated in the articles of incorporation and bylaws. **These powers and purposes necessarily modify the express provisions of the restrictions [protective covenants] to include the necessary powers and purposes.**” (Emphasis supplied). [Comment-This provision basically means that when we have a nonprofit corporation applicable to an HOA, the law recognizes that even though the protective covenants run with the land, the restrictions or covenants are living documents that can change with the times in concert with the powers and authority exercised by the Board under the Articles of Incorporation, the Bylaws, and the Property Code. Thus, in practical terms, the statute provides that any changes made by the Board’s actions that “modified” the protective covenants is permitted by law, but not “contradictions” to the protective covenant.]
1. “Community Services Charge Deerfield Village” (p.2)-“Such charge and lien are hereby assigned by Grantor to Deerfield Village Community Association, Inc., a Texas non-profit corporation...”
- B. Section 204.010(a)-“Unless otherwise provided by the restrictions or the associations’ articles of incorporation or bylaws, **the property owner’s association, acting through its board of directors or trustees may:** *** (18) if the restrictions [protective covenants] vests the architectural control authority in the property owner’s association..., (A) **implement written architectural control guidelines** for its own use or record the guidelines in the real property records of the applicable county; and (B) **modify the guidelines as the needs of the subdivision change; exercise other powers conferred by the restrictions, its articles of incorporation, and its bylaws.** (Emphasis supplied).
- C. Section 204.010(a)(21)-“The Board may...exercise other powers necessary and proper for governance and operation of the property owner’s association.” [Comment-There are also other provisions in the Property Code that similarly authorizes the Board to exercise other powers. Property Code, Section (a) (20), (21), and (b).]
- D. Section 202.004, Enforcement of Restrictive Covenants-“**An exercise of discretionary authority** by a property owner’s association or other representative designated by an owner of real property concerning a restrictive covenant **is presumed reasonable unless the court determines by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory.**” (Emphasis supplied). [Comment-In practical terms, given the scrutiny and process the Guidelines went through, it will be likely difficult to satisfy the burden that the Guidelines are arbitrary, capricious, and discriminatory].