

General Considerations with Respect to Covenant Enforcement

Origins and Current Purpose:

All covenants applicable to any areas within North Fort were originated by the now-deceased developer. The language of all covenants and any omissions in same, along with the timing of their filing on the public record were all from and by the original developer and his representatives. Because of difficulties with the timing of those filings, it is now all but impossible to obtain the affirmative numbers required to make revisions to those covenants. As a result, the only practical option for the current Association Directors is to utilize and enforce the existing covenants in the most appropriate manner given the current circumstances and available resources.

It is the Board's belief that the proper purposes of restrictive covenants are to protect to the extent feasible the property values of those owning property within the affected area and to enhance the quality of life of those who reside there. At the same time, the Association has no desire to involve itself in or impede the affairs of residents unnecessarily. Toward those ends, the following sets forth the general policies concerning covenant enforcement by the North Fort Homeowners Association.

A. What Cannot Be Enforced

There are various provisions within the existing covenants which are simply contrary to law and, as a result, will not be considered for any enforcement action without regard to the apparent prohibition in the covenants.

Among these provisions is the absolute prohibition on satellite receivers visible from the road. Federal communications laws do not permit enforcement of this requirement as drafted.

Similarly, the blanket prohibition of any sign other than "real estate signs" is contrary to state law.

B. What the Board Will Generally Decline to Enforce

(1) Matters for which governmental enforcement options exist

Some matters referenced in the covenants are also situations addressed in state law or county ordinance. In all such cases, the language of the governmental regulation is more comprehensive and the enforcement options more effective than those available to the Association. As a result and given the limited resources available for enforcement, the Board will generally decline enforcement of any covenant which addresses a circumstance or activity also prohibited and enforceable by federal, state or county authorities.

Two examples of matters which would generally fall under this category are the operation of motor vehicles on public streets and dogs which may become a nuisance due to excessive barking.

(2) Circumstances which no longer pertain or which were instituted solely for the economic benefit of the Developer

Various matters in the covenants simply no longer pertain or have no continuing enforcement option. These matters include but are not limited to the “restricted building team” established by the developer in 2003 and the time limit for completion of construction following transfer of a lot which provided for enforcement only by the payment of a “penalty” to the now-deceased developer.

C. Considerations Governing Matters Properly Subject to Enforcement Action

The following is a representative list of the elements which will inform a decision to take enforcement action and the extent of that action. This list is meant to be illustrative only. It is not intended to be complete and should not be considered as either mandating or prohibiting covenant enforcement in any individual case.

(1) Is the apparent covenant violation clear and substantial?

A purely technical or a minimal apparent violation may not be brought forward for enforcement action. For example, the Board may properly decline enforcement action for an otherwise unobtrusive trailer as to which only one corner is ever visible from any street (at any time of year) and only if observed from a particular vantage point.

(2) Is the apparent violation of general application?

Even if the violation is clear and substantial, limited resources may dictate prioritizing enforcement actions in part by virtue of the number of affected residents or the effect on overall appearance standards. For example, even a relatively minor appearance matter on North Fort Drive may require immediate attention where the same circumstance at the end of the furthest cul-de-sac may properly be deferred for some period.

(3) Is the apparent violation reasonably believed to be a temporary circumstance?

Again, limited resources together with the desire not to intrude unnecessarily may indicate that enforcement action against a situation which is in fact a violation be deferred. A possible example of this would be the presence of a trailer during a limited period moving into or out of or during renovation of the premises.

(4) Does the apparent violation appear to impact reasonable appearance standards or the quality of life of residents?

If the Board determines that an apparent violation does not in fact implicate marketability or the value of premises and does not impinge on the quality of life of residents, enforcement action may properly be declined.

(5) Is the proposed enforcement action the best use of the limited available resources?

Because of errors made with the original documents governing the subdivision some enforcement actions can be undertaken in a relatively efficient and cost-effective manner and others cannot. It is entirely appropriate for the Board to take these circumstances into consideration in deciding whether and what enforcement actions to pursue.

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