

DUSTY VINSON
JUSTICE OF THE PEACE, PRECINCT THREE

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THE FOLLOWING INFORMATION IS FURNISHED TO YOU AS A COURTESY OF THE JUSTICE OF THE PEACE OFFICE FOR THE FILING OF A SUIT TO ENFORCE DEED RESTRICTIONS. NEITHER I, NOR MY CLERKS CAN ADVISE YOU WHAT YOU SHOULD DO. WE CAN ONLY ANSWER PROCEDURAL QUESTIONS. PLEASE READ THE FOLLOWING CAREFULLY BEFORE COMPLETING THE STATEMENT OF CLAIM.

DEED RESTRICTION JURISDICTION: SECTION 27.034 GOVERNMENT CODE

- (a) A justice court has jurisdiction of suits relating to enforcement of a deed restriction of a residential subdivision that **does not concern a structural change to a dwelling.**
- (b) The petitioner in a dispute concerning a deed restriction shall present as evidence at the first hearing in the dispute"
 - 1. A certified copy of the deed or other document that establishes the restriction on the property; and
 - 2. Other documents necessary to demonstrate that the restriction applies to the property in dispute.
- (c) In a dispute concerning a deed restriction, a Justice of the Peace may order any alternative method of dispute resolution provided by Title 7, Civil Practice and Remedies Code.
- (d) The jurisdiction provided in the section is concurrent with the jurisdiction of the district court.
- (e) A justice court has jurisdiction of suits under this section **regardless of the amount in controversy**
- (f) In a dispute concerning a deed restriction, a Justice of the Peace may consolidate disputes relating to the same issues and parties.
- (g) An appeal under this section is by trial de novo.
- (h) In this section, "deed restriction" means one or more restrictive covenants contained or incorporated by reference in a properly recorded deed, map, plat, replat, declaration, or other instrument filed in the real property records, map records, or deed records of the county in which the property is located.
- (i) In this section, a "dwelling" **does not** include an external structure, such as a carport, fence, storage building or unattached garage.

SUGGESTED PROCEDURES:

- 1. **GATHER EVIDENCE** - Prepare a certified copy of the instrument specifying the restrictions. Compile any other information, such as a notice of the violation or photographs of the violation that will be helpful in presenting your case.
- 2. **IDENTIFY THE DEFENDANT** - The **exact legal name** of the defendant must be ascertained, and the defendant's legal nature if the defendant is not an individual owner of the property. An address for service of process **must be provided to the court.**

3. **FILING THE PETITION** – Prepare and file a petition (statement of claim) for enforcement of deed restrictions in the justice court in the **precinct in which the property is located**. The petition should request that the court find that the defendant is in violation of the deed restrictions, and that the court assess a **civil penalty** not to exceed \$200.00 for each day's violation, together with reasonable attorney's fees, if applicable, and costs of the court. A certified copy of the deed or other documents establishing the restriction should be included with the petition of filing. You will be required to pay the fees for filing the petition and service of the citation.
4. **SERVICE OF PROCESS** – The court will issue a citation directed to the defendant. The citation is the means by which the defendant is notified of the lawsuit.
5. **MEDIATION** – If both parties are agreeable, the Justice of the Peace may order the plaintiff and the defendant to mediate the dispute and arrive at a possible resolution to the problem. If the parties reach an agreement, the Justice of the Peace may abate the proceeding for some time to allow the defendant to comply with the terms of the agreement, if appropriate. And order the parties to appear at a date certain for trial on the merits. At this trial setting, the plaintiff would have the choice to non-suit or dismiss the proceeding because of the defendant's compliance, or to continue to trial to seek the civil penalty and attorney's fees if appropriate.
6. **TRIAL** – If the parties are unable to reach an agreement, the Justice of the Peace will set the case for trial on the merits. At this point, the plaintiff would have the option to proceed to trial, or to non-suit the proceeding and refile in the county civil court at law or the district court to pursue injunctive or declaratory relief.

A. DEED RESTRICTIONS

- a. One or more restrictive covenants contained or incorporated by reference in a properly recorded deed, map, plat, replat, declaration or other instrument filed in the real property records, map records or deed records of the county in which the property is located
- b. Two Types:
 - i. Real Covenants
 1. Run with the land
 2. Bind successive purchasers
 3. Privity of estate required
 - ii. Personal Covenants

B. CONSTRUCTION OF DEED RESTRICTIONS

- a. Construe liberally to give effect to their purpose as a whole and to the intent of the parties.
- b. Resolve ambiguities in favor of the grantee and in such a manner as to promote the free use of the land.
- c. Unambiguous deed restrictions will be enforced as a matter of law regardless of the parties' intent.
 - i. No parol evidence allowed
 - ii. Disfavor implied deed restrictions

C. SCOPE OF DEED RESTRICTIONS

- a. Parties are generally free to agree as to the nature of the restriction
- b. Cannot restrict the use of property as a family home
- c. Cannot discriminate on the basis of race, color, religion or national origin
- d. Only that portion that is violative is void, the rest is enforceable

D. JURISDICTION

- a. A justice court has jurisdiction over deed restrictions of a residential subdivision that do not involve structural changes to a dwelling
- b. A dwelling is not an external structure like a carport, fence, storage building or unattached garage

- c. Jurisdiction does exist when the restriction involves structural changes to things that are not dwellings
 - d. A structure is anything from a fence to a radio tower
 - e. A structural change is one that affects a vital and substantial portion of a thing
- E. **REMEDIES AND PRESUMPTIONS**
- a. \$200 civil penalty for each day's violation
 - b. No injunctions
 - c. No jurisdictional limit on remedies
- F. **BURDEN OF PROOF**
- a. Plaintiff must produce:
 - i. A certified copy of the deed restriction
 - ii. Proof as to the application of the restriction to the property in question, and
 - iii. Proof as to a breach of the restriction (as well as proof of the length of breach
- G. **DEFENSES**
- a. A defendant has the burden to prove the following affirmative defenses:
 - i. Waiver or abatement or nonratification
 - ii. Estoppel
 - iii. Laches
 - iv. Vagueness, and
 - v. The funning of the statute of limitations (4 years)
 - b. Notice
 - i. Two types:
 - 1. Actual
 - 2. Constructive
 - ii. Purchase constitutes notice of a deed restriction
 - iii. The plaintiff should provide notice of violation to the defendant **before** filing suit.

CAUSE NO. _____

PLAINTIFF

v.

DEFENDANT

§ IN THE JUSTICE COURT
§
§
§ PRECINCT NO. THREE
§
§
§ PARKER COUNTY, TEXAS

PETITION: TO ENFORCE DEED RESTRICTION

Plaintiff is ___an individual; ___ a sole proprietorship; ___ a partnership; ___ a corporation
Defendant is ___ an individual; ___ a sole proprietorship; ___ a partnership; ___ a corporation

SERVICE OF CITATION: Service is requested on defendants by personal service at home or work or by alternative service as allowed by the Texas Justice Court Rules of Court.

Defendant(s) address: _____

Other Addresses where Defendant(s) may be served: _____

RESTRICTIVE COVENANT: The property made the basis of the violation is: *(Describe the property owned by the defendant made the basis of the violation of the restrictive covenant.)* _____

Restrictive covenants govern the property as follows: *(Describe the instrument creating the restrictions on use of the property, including recording information, and attach a certified copy of the instrument and copies of any other documents necessary to demonstrate that the restriction applies to the property in dispute.)* _____

DEED RESTRICTION VIOLATIONS: The Defendant violated the Restrictive Covenants as follows:
(Describe the nature of the violation, the date on which the violation first occurred, the action taken by the plaintiff to notify the defendant of the violation, and the defendant's refusal to correct the violation. Violation may not concern a structural change to a dwelling. The term "dwelling" does not include an external structure, such as a carport, fence, storage building or unattached garage.)

RELIEF REQUESTED: Plaintiff requests that the Court find the defendant is in violation of a deed restriction, and assess civil damages for the violation in an amount not to exceed \$200.00 for each day the of the violation. Plaintiff requests recovery of its reasonable attorney's fees in the amount of \$_____, together with costs of court, and any other relief to which the plaintiff may be entitled.

I hereby request a jury trial. The fee is \$22 and must be paid at least 14 days before trial.

I hereby consent for the answer and any other motions or pleadings to be sent to my email address as follows: _____

Plaintiff's Printed Name

Signature of Plaintiff or Plaintiff's Attorney

Defendant's Information (if known):

Date of birth: _____

Last three digits of Driver License: _____

Last three digits of Soc. Sec. No.: _____

Phone No.: _____

Address of Plaintiff or Plaintiff's Attorney

City State Zip

Phone & Fax No. of Plaintiff
or Plaintiff's Attorney

Subscribed and sworn to before me this _____ day of _____, _____.

Justice Court Clerk or Notary Public

CAUSE NO. _____

Plaintiff

§ IN THE JUSTICE COURT

VS

§ PRECINCT ONE

Defendant

§ PARKER COUNTY, TEXAS

AFFIDAVIT OF MILITARY STATUS OF DEFENDANT

Before me, the undersigned clerk of the justice court or notary public, on this day personally appeared the undersigned affiant whose identity is known to me. After I administered an oath to such affiant, he or she upon oath and under penalty of perjury stated the following:

My name is *[please print]* _____; I am *[check one]* _____ the plaintiff or _____ and authorized agent or _____ attorney for the plaintiff in the above styled and numbered cause. I am over the age of 18 and am capable of making this affidavit. The facts stated in the affidavit are within my personal knowledge and are true and correct.

check below as applicable:

- The defendant is not in the military
- The defendant is not on active duty in the military and/or
- The defendant is not in a foreign country on military service
- The defendant is on active military duty and/or is subject to the Servicemembers Civil Relief Act of 2003.
- The defendant has waived his/her rights under the Servicemembers Civil Relief Act of 2003.
- The defendant's military status is unknown at this time.

Signature of Plaintiff Agent Attorney

Subscribed and sworn to before me by _____ on this the _____ day of _____, 20____.

Court Clerk Notary Public

PENALTY FOR MAKING OR USING FALSE AFFIDAVIT: A person who makes or uses an affidavit knowing it to be false, shall be fined as provided in Title 18 United States Code, or imprisoned for not more that one year, or both.