

Restrictive Covenant Review of Regulation Policy

I. Introduction

This Restrictive Covenant Review of Regulation Policy is designed to help Home Owners' Associations understand the new statutory changes to restrictive covenants.

The general statutory language for each of these topics is to make a blanket prohibition void. However, the statute then provides some limits to allows Associations to regulate each.

A reasonable course of action would be to ask the Architectural Committee to review this document and adopt some regulations that make sense in the context of their particular neighborhood. The adopted regulations could certainly be less restrictive than the allowed regulations listed below. Of course, any regulations that are adopted should be treated as dedicatory instruments: written, HOA approved, acknowledged, filed in the real property records, preserved forever, and produced upon request.

II. Solid-Waste Composting, Rainwater Harvesting Systems, and Efficient Irrigation Systems¹

Dedicatory instruments that prohibit or restrict a property owner from using these are void. Regulations are allowed that:

- a) Restrict the type of turf used by a property owner in the planting of new turf to encourage or require water-conserving turf.
- b) Regulate the requirements, including size, type, shielding, and materials, for or the location of a composting device if the restriction does not prohibit the economic installation of the device.
- c) Require a property owners' association to permit a device to be installed in or on property.
- d) Regulate the installation of efficient irrigation systems, including establishing visibility limitations for aesthetic purposes.
- e) Regulate the installation or use of gravel, rocks, or cacti.
- f) Regulate yard and landscape maintenance if the restrictions or requirements do not restrict or prohibit turf or landscaping design that promotes water conservation.
- g) Require a property owners' association to permit a rain barrel or rainwater harvesting system to be installed in or on property if the property is located between the front of the property owner's home and an adjoining or adjacent street.
- h) Require a property owners' association to permit a rain barrel or rainwater harvesting system to be installed in or on property if the barrel or system is of a color other than a color consistent with the color scheme of the property owner's home; or displays any language or other content that is not typically displayed by such a barrel or system as it is manufactured.

¹ Tex. Prop. Code § 202.007

- i) Regulate the size, type, and shielding of, and the materials used in the construction of, a rain barrel, rainwater harvesting device, or other appurtenance that is located on the side of a house or at any other location that is visible from a street, another lot, or a common area.

III. Solar Energy Devices²

Dedicatory instruments that prohibit or restrict a property owner from using these are void. Regulations are allowed for solar energy devices that:

- a) As adjudicated by a court to threatens the public health or safety or violates a law.
- b) Is located anywhere other than the roof, in a fenced yard, or patio.
- c) If mounted on the roof of the home:
 - i. extends higher than or beyond the roofline;
 - ii. does not conform to the slope of the roof and has a top edge that is not parallel to the roofline;
or
 - iii. has a frame, a support bracket, or visible piping or wiring that is not in a silver, bronze, or black tone commonly available in the marketplace;
- d) If located in a fenced yard or patio and is taller than the fence line.
- e) As installed, voids material warranties.
- f) Was installed without prior approval by the architectural review committee.
- g) If the architectural review committee determines in writing that placement of the device constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities.

IV. Special Roofing Materials³

Roofing materials that are designed primarily to be wind and hail resistant; provide heating and cooling efficiencies greater than those provided by customary composite shingles; or provide solar generation capabilities must be allowed provided that they meet all of the following criteria:

- a) Resemble the shingles used or otherwise authorized for use on property in the subdivision.
- b) Are more durable than and are of equal or superior quality to the shingles otherwise authorized.
- c) Match the aesthetics of the property surrounding the owner's property.

² Tex. Prop. Code § 202.010

³ Tex. Prop. Code § 202.011

V. US, Texas, and Military Flags⁴

Dedicatory instruments that prohibit or restrict a property owner from displaying these are void. Regulations that are still allowed may require:

- a) The flag:
 - i. Be displayed as required by Federal or State statute (4 U.S.C. Sections 5-10; Chapter 3100, Government Code).
 - ii. Be maintained in good condition.
- b) The Flagpole:
 - i. Be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling.
 - ii. Comply with applicable zoning ordinances, easements, and setbacks of record.
 - iii. Be maintained in good condition.
 - iv. Be limited to only one.
 - v. Be no higher than 20 feet.
- c) Reasonable restrictions of the size, location, and intensity of any lights used to illuminate a displayed flag.
- d) Reasonable restrictions to abate noise caused by an external halyard of a flagpole.

VI. Religious Displays⁵

Dedicatory instruments that prohibit or restrict a property owner from displaying these are void. Regulations are still allowed if the religious display:

- a) Threatens the public health or safety.
- b) Violates a law.
- c) Contains language, graphics, or any display that is patently offensive to a passerby.
- d) Is in a location other than the entry door or door frame or extends past the outer edge of the door frame of the owner's or resident's dwelling.
- e) Has a total size of greater than 25 square inches.
- f) Uses a material or color for an entry door or door frame that is not authorized by the restrictive covenants governing the dwelling.

⁴ Tex. Prop. Code § 202.011

⁵ Tex. Prop. Code § 202.018

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