

2 December 2020

Regarding your email sent to all WPOA members 1 December 2020:

In Texas, restrictive covenants “run with the land” regardless of property ownership and regardless of the current board of directors. In Texas, POA “policy” can be used to add specificity, exactness, and clarity to restrictions. POA policy cannot, however, add exemptions to restrictions. Your proposed policy would precisely disagree with the clearly written words; *“No sign of any kind shall be displayed to the public view on any lot except...(these 3)”* of the deed restrictions of all three subdivisions.

The deed restriction will remain unchanged after your policy implementation. When challenged, the deed restriction (that to which every property owner agreed in writing) will have superiority over POA “policy”. Deed restrictions will have supremacy even if conflicting policy is *not* challenged.

For example, if a deed restriction says, “no poultry”, POA policy can specify “roosters” as a prohibited animal. However, when a deed restriction says, “no poultry,” the POA may not then create a conflicting policy that says roosters are still banned but, hens and hatchlings are now acceptable. If a restriction reads “no fireworks”, POA policy may not create a conflicting policy saying fireworks that explode on the ground are now OK but if they explode in the air, they are still prohibited. The POA could, however, clarify that ground-based fireworks are *included* in the ban.

All three of the relevant restrictions, in this case, clearly state *“no sign of any kind except (these 3).”* The board is now trying to add a list of *exceptions* to the rule, rather than defining the *prohibitions*; the latter being the purpose of policy. The board, in this case, is trying to play “legislator” rather than “enforcer”; the latter being its legitimate role. It is an obvious attempt to illicitly modify the restriction. How do you answer a homeowner who says; *“When I purchased my property, I agreed that no poultry/fireworks/signs would be permitted? Now, the board of directors is trying to circumvent the simple ban with its own list of ‘permissions’. Any new board can modify the policy, again. Soon, we all will be swimming in shifting policy with no regard for the originally written (still enforceable) restrictions.”*

If the board disagrees with any deed restriction as written, it can move to make a change to our deed restrictions or, the board can remove the restriction from our list of covenants or, the board can simply refuse to enforce it or, the board can attempt to add a deed restriction of its liking. But, trying to somehow supersede the clear language of our - all agreed upon - deed restrictions with a new, permissive board “policy” is a no-go.

The final paragraph of the secretary’s email says that the board of directors can post any size sign, anywhere it wishes, in any manner it decides, with any message it desires. Go figure.

Editor: Woodlake.net