

2024 Legal Symposium Recap

Recap from Symposium:

Corporate Transparency Act: If your HOA is not a 501c3, it would be advisable to change. You will not have time to do it before January 1, 2025, which is the deadline to comply, but getting that changed is still advisable. In the meantime, with the new law you would have to have the directors file and submit passports and /or driver's license to get an FinCEN number. Then the organization will need to file the FinCEN numbers according to the new legislation, The organization will be charged large fines if not completed properly or timely. This legislation is actively being challenged and we have been advised to wait until the fall as more information is available we will provide updates.

Make sure all secondary HOA's are aware they should obtain a Directors & Officers insurance policy.

- Ted Allen and Associations HOA Insurance
Denise Allen (281) 378-7500 or (281) 378-7472 - broker that can assist with Directors & Officers insurance policy.

Chickens – No new legislation; refer to unit restrictions to see if allowed in unit.

(There have been no changes to legislation that would affect Restrictions at this time)

Questions clarified from Suzy:

- Please clarify who has the final decision on a complaint, project, or appeal, the Architectural Review Committee (ARC) or Architectural Control Committee (ACC), Secondary HOA, FORHA Restriction Advisory Committee or FORHA Board.
 - Comments: FORHA Board, however, if there is a secondary HOA with a Board (that has this authority pursuant to its governing documents) then they can appeal the decision of the ARC/ACC to the Board.
- Do variances and 30-day default approvals factor into the 8% rule where a particular restrictions is no longer enforceable?
 - No

- Any violation not addressed within a four-year period is essentially given a variance and cannot be addressed unless something changes or is added creating a new cause of action giving the ARC/ACC the opportunity to address the issue.
 - Yes
- Can an ARC/ACC have 2 members from one household and does this change if it is under 40 units?
 - Comments: The ARC/ACC cannot have 2 members from the same household UNLESS the unit has fewer than 40 lots.
- Upon completion of the vote for amended restrictions, how do the results have to be delivered? If restrictions are approved how do the amended restrictions need to be made available to the effected unit? (mail, email, website, etc.)
 - Comments: Amendment need to be filed in the Real Property Records and a file stamped copy placed on the website and ballots need to be kept on file at the FORHA office.
- If amended restrictions are approved, is there a waiting period for the change to be effective?
 - Comments: They are effective as soon as they are filed in the Real Property Records.
- If Articles of Incorporation, Bylaws or Restrictions are written with an approval amount other than 67% approval, would Texas Property code 209 requirement of a 67% approval vote trump the other documents?
 - Comments: Section 209.0041(h) only applies to the Restrictions and does not apply to the Bylaws and Articles of Incorporation.

P.S. FORHA would like to clarify we do not process any business permits, that would be provided by the City of Fair Oaks Ranch. The only item we are able to enforce is the restrictions that are attached to the property in question.

P.P.S. As of today, we have 116 different units with their own sets of restrictions. It has been brought up trying to merge all restrictions into one universal set of restrictions for Fair Oaks Ranch, however, with so many different property styles and sizes here on the ranch, it is better

suited to have unit specific restrictions that address particular property styles. FOHRA currently has 4271 properties we manage. Having one ARC/ACC trying to oversee that large of an area would not be possible. We are very fortunate to have 52 unit ARC/ACCs that are composed of dedicated volunteers that live in the unit they oversee. This allows the Committee to be familiar with the restrictions they are enforcing as well as a vested interest in the unit they oversee.

We would like to give a huge shout out to all of you who give so much to your community.

Thank you!

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Purpose

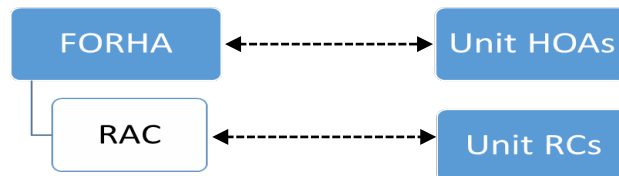
To provide clarity on the relationship between Fair Oaks Ranch Homeowners' Association, the FORHA Restrictions Advisory Committee, Unit Homeowners' Associations and Unit Restrictions Committees. To explain the responsibilities of the Unit Restrictions Committees.

Overview

- Fair and Equitable Interpretation:** Thank you for your willingness to serve as a member of your Restrictions Committee (RC). The restrictions implementation process only works because of volunteer spirit and dedication. With fifty RCs on The Ranch, it is important to understand that unit RCs are the official restrictions authority for each area. Except in rare cases, the RC does not work for FORHA or their community HOA but are responsible to the community as a whole for fair and equitable restrictions implementation (within their specific restrictions). It has been that way since the beginning. It is very important that all RC members clearly understand their specific restrictions language and stay within those restrictions in all actions/decisions.
- Restrictions Committee (RC):** Once a working Texas ranch, our 5,000-acre community has developed in phases over the past four decades. As each individual area has developed, unit covenants/restrictions were written (by the developer) specifically for that area. RCs were chartered and formally filed in the appropriate county records. The RCs are the official restrictions authority for each specific area. Fifty, all-volunteer, restrictions committees are in place as of this writing.
- Responsibilities:** Responsibilities include all aspects of a unit's restrictions/covenants (structural, behavioral, and maintenance/upkeep). Take time to study and learn your restrictions. Do not allow personal likes/dislikes/opinions to enter your approval/disapproval decisions. All property owners deserve fair, equitable, and consistent RC actions in accordance with legally filed deed restrictions for your community.
- Fair Oaks Ranch Homeowners Association (FORHA):** FORHA was in place before Fair Oaks Ranch became a City and remains in place today with an all-volunteer board of directors. As the organization chart shows, the relationship to the fifty RCs is advisory in nature. To execute this responsibility, FORHA established a Restrictions Advisory Committee (RAC) to interface directly with the unit RCs. It is important to note that all properly selected unit RC volunteers are considered FORHA volunteers, therefore, RC

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- members are covered by FORHA's umbrella liability insurance protection in performance of their duties (as long as unit restrictions are followed). In the event a homeowner appeals an RC denial, FORHA works with both RCs and homeowners to assist in resolving issues. Texas Property Code 209.00505 (i) gives FORHA the authority to “affirm, modify, or reverse, in whole or in part, any decision of the architectural review authority (RC) as consistent with the subdivision’s declaration”. In other words, FORHA can reverse or modify a denial IF it’s not in compliance with the Unit Restrictions. FORHA also helps on other issues such as receiving/processing project applications, restrictions amendments, legal advice, committee declarations, filing documents in county records, restrictions workshops, mediation, etc.
- Community Homeowners Associations (HOA's):** There are multiple community HOAs on Fair Oaks Ranch including over one half of the Ranch. These HOA's are separately chartered and not subordinate organizations to FORHA. FORHA provides advice/assistance (to include dues collection) to them as requested. Unlike the RC volunteers, the community HOA volunteers are not considered FORHA volunteers. Therefore, they are not provided umbrella insurance protection from FORHA. Please note that except for a few areas, the RC's for these distinct areas are separate organizations to their community HOAs and not subordinate to these HOAs.
- The City:** The City of Fair Oaks Ranch is truly a great place to live. The Mayor and City Council are all volunteers who work diligently for the overall good. City building codes are in place with a building inspector providing building code enforcement. However, the City is not the restrictions’ authority, that falls to the unit RC’s already discussed above. It is important to understand the difference between building code enforcement (City) and restrictions for a specific neighborhood (RC). The city enforces building codes and city ordinances while the RC's are the official authority for restrictions/ covenants.
- Organization:** This chart shows the relationship between the various organizations on Fair Oaks Ranch. Please note the "dotted line" represents an advisory relationship, not a subordinate organization.



FORHA Fair Oaks Ranch Homeowners Association (Singular)

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Unit HOAs Unit Homeowners Associations (Multiples). Independent of FORHA but have working relationships.

RAC Restrictions Advisory Committee made up of 3 FORHA board members, one of whom acts as chair, who serves in advisory capacity to all Restrictions Committees.

Unit RCs Restrictions Committees for individual units. Made up of various numbers of members from individual communities. Independent of both Unit HOA and FORHA. May not have members also serving on Unit HOA or FORHA Board.
Composition set by unit restrictions. There are many of these. In one small unit, the Unit HOA also acts as the unit RC.

Project Approval Process

1. Applications are submitted through the FORHA website, by emailing applications to asstcm@forha.org, or by handing them in at the FORHA office. FORHA personnel are available to assist homeowners with the application process if needed. Once the required paperwork is received, the 30-day time period starts, and the staff forwards the application and supporting documentation to the appropriate Unit Restrictions Committee (RC).
1. The RC will review the application to ensure compliance with the unit restrictions. If they do not approve or deny within the 30-day time period, then it is an automatic approval. (The 30-day count starts when the application is received at the FORHA office NOT when the RC receives the paperwork). In most units, variances are not approved automatically but require written approval. (Check covenants to verify.)
2. The FORHA office staff will let the homeowner/agent know when the paperwork has been returned. FORHA encourages the RC (as a Good Neighbor) to call the homeowner/agent and let them know of the approval or denial.
3. If the RC issues a denial, please contact the property owner/agent directly to discuss the problem and what they must do to obtain approval. Be sure to return the denial, complete with actions needed to become compliant with the unit restrictions (as per Texas Property Code 209), to the FORHA office for the property lot file. Although FORHA will email the property owner a copy of their approval/denial for their records, it is not FORHA's responsibility to contact the property owner/agent to report the disapproval

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and the problem.

4. After approval or denial is given on a project, it is up to the RC to make sure the property owner complies with the project regarding setback requirements, size, location, etc. The City does not enforce restrictions.
5. As a courtesy, the FORHA office staff will provide the City with a copy of all approved/denied requests as they come in, and in return, the City notifies the FORHA office when a permit has been issued. An RC approval does not have any bearing on whether a permit will be issued, just as a city permit does not influence whether an RC must approve/deny a project.
6. It is the homeowner/agent's responsibility to make sure they have received approval from their RC as well as any permit required by the City.

Procedures

FAIR OAKS RANCH HOMEOWNERS' ASSOCIATION, INC.

7286 Dietz Elkhorn

Fair Oaks Ranch, TX 78015

(210) 698-2225

asstcm@forha.org

For All Applicants:

Approvals must be obtained from the appropriate Unit Restrictions Committee/Architectural Control Committee prior to the start of a project. Approvals are required for building a new home and/or any construction project (pool, fence, storage building, deck, etc.) Copies of each unit's restrictions can be found on the FORHA website, forha.org, or can be obtained at the FORHA office. Unit committees have thirty (30) days to review the request. After the committee reviews the project, they will complete and sign an approval/denial form. The original is filed in the FORHA office, a copy forwarded to the City, and a copy is emailed to the homeowner/builder.

Submit a copy of the following information:

1. Completed ARC application form describing the proposed project.
2. A site diagram showing proposed construction in relationship to property setbacks and easements.

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3. A detailed description of construction materials and a sketch, manufacturer's brochure or photo to show proposed project for pools, fences, storage buildings, decks, etc.
4. \$75 Architectural Fee (required for select units building/structure and fences)
For new home construction (or any project adding additional livable space) include:
5. Set of plans for new home or additional construction
6. Separate site diagram no larger than 11 x 17
7. Completed ARC Questionnaire for new home construction.
8. A \$75 Architectural Fee (required for new home applications). A building permit must ordinarily be issued per City ordinance before any work may lawfully begin. Please note that contractors and sub-contractors must be registered with the City of Fair Oaks Ranch before a permit is issued.

Applications for building permits are available at the City offices. Depending on the permit required, it will take a minimum of 24 hours to prepare. The cost of the permit is based on total construction costs. Required documentation for each job may differ.

For questions concerning city building permits, call (210) 698-0900.

Legal Guidance for Single Signature Approvals

Required number of signatures for RC approvals and/or disapprovals -Legal opinion provided by FORHA counsel 6/19/2001:

“In a lawsuit involving a challenge to Committee action, it is unlikely that a court will require formal minutes or formal record-keeping with respect to recording each individual committee member's votes on a particular matter. Although the Court will not require specific formalities with respect to recording the deliberative process and Committee votes, with respect to a specific challenged Restriction Committee action the Court will likely require that there was some minimum deliberative process undertaken by a quorum of the Committee on the matter.

Unless otherwise indicated in the Restrictions, a quorum would be one more than half the number of members called for in the restrictions. Therefore, if the Restrictions call for 5 members to comprise a particular Restrictions Committee, 3 represents a quorum and 2 of those 3 can represent a majority of the Committee meeting for purpose of Committee action.

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It need not be a fancy meeting. A meeting over a committee member's kitchen table will do. A teleconference among the members is sufficient. Even a polling of each member separately

by say, the Committee Chairperson, to cumulatively obtain enough votes to pass or reject a measure will probably suffice. However, if a Restriction Committee takes unilateral action by a single member or chairperson without such a minimum deliberative process and vote accounting and it is challenged by a property owner, it is my legal opinion that the risks are uncomfortably high that a legal challenge by an offended lot owner or homeowner against the Committee would be successful."

Addressing Restrictions Violations

Facts in each case may require different approach, but the following steps are ordinarily recommended when addressing a violation in your Unit:

1. Notifications to *FORHA* from a member referencing a "violation", concern or question will be forwarded to the Unit Restriction Committee.
2. Committee discussion regarding non-compliance and agreement by at least a majority (unanimity better) that violation exists.
3. Informal "neighborly" approach to violator –is preferred approach. (i.e. telephone call or personal visit is recommended.) If the neighborly approach is unsuccessful, consider the next step.
4. 1st letter to violator (sample letter #1 attached) member has 30 days to address.
5. 2nd letter (certified mail and regular mail) to violator (sample letter #2 attached) member has 10 days to address.
6. If all steps above do not succeed in resolving violation, your Unit's Restriction Committee may consider approaching *FORHA* for request that it support and finance legal review of the matter. *FORHA's* Restriction Advisory Committee may authorize *FORHA's* counsel to review the matter and perhaps authorize sending a demand letter on behalf of the Unit Restriction Committee (sample letter #3 attached).
7. If attorney's demand letter does not obtain substantial compliance, the Unit Restriction Committee may consider asking *FORHA's* Restriction Advisory Committee to ask for *FORHA's* Board of Directors to support legal action to force compliance or prevent non-compliance. However, because of the expense of litigation, *FORHA's* Board may consider

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8. these and other factors in its decision; whether there are any difficult "standing" problems by the particular Restriction Committee, and whether the violating property owner is in material violation of a non-waived Restriction that is important to the preservation and integrity of the Restrictions
9. in the affected Unit, and the extent to which the particular Unit has acted reasonably in addressing the matter (see attached provisions of Texas Property Code regarding enforcement of restrictions). Pre-litigation mediation may be recommended, since litigation is usually the last option.

Amending Restrictions – Process for Restriction Change

1. The Restrictions Committee informs FORHA of their desire to make a change. (Any changes should be thought through carefully. The residents purchased their property with the existing restrictions in place. Changes should consider the input of the unit property owners and not just be a committee decision.). FORHA recommends a 30-day time for owners' comments. The proposed restriction changes are mailed/emailed to all residents in the affected unit for review. If there are comments and concerns from residents, the RC reviews and addresses the input from residents.
2. If the Unit Restriction Committee (RC) requests help in making changes, a FORHA director will provide assistance. A FORHA director only serves as a source of information and provides advice to the RC wanting to change their Restrictions.
3. Once the RC has decided on all the changes that they would like to make in their Restrictions, the FORHA director reads the desired changes over and makes suggestions if necessary.
4. If there are major changes, FORHA will provide a legal review of the proposed Restriction changes to be sure they are legal and enforceable before the proposed changes are sent to the residents for a vote.
5. If the amendment process in the Restrictions requires less than sixty-seven percent (67%) to approve the amendment then you can use that lower percentage for approval of the amendment, however, if it does not state a percentage or if it requires more than sixty-seven percent (67%) of otherwise for the owners to approve an amendment sixty-seven percent (67%) must approve it as per Section 209.0041(h) of the Texas Property Code.
6. After the amendment is approved then it is filed in the Real Property Records of the appropriate county.

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Texas Property Code

Chapter 202 – Use Restrictions Rain Barrel or Rainwater Harvesting

This section does not require an Association to permit a rain barrel or rainwater harvesting system to be installed in or on property if the property is:

- Owned by the Association
- Owned in common by the members of the Association.
- Located between the front of the owner's home and an adjoining or adjacent street; or
- The barrel or system is not of a color that is 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; or

An Association is not restricted from regulating the size, type and shielding of, and the materials used in the construction of the rain barrel, rain harvesting device, or other appurtenance that is located on the side of the house or at any other location visible from the street, another lot, or common area if:

- The restriction does not prohibit the economic installation of the device or appurtenance on the owner's property; and
- There is a reasonably sufficient area on the owner's property where they can install the device or appurtenance.

Regulation of Solar Energy Devices

TPC – Section 202.010, Effective 9/1/11 – HOA and Condos

- The Association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts an owner from installing a solar energy device.
- A provision that violates this is void.
- Subsection (d) provides that the Association may include or enforce a provision in a dedicatory instrument that prohibits a solar energy device that:
 - As adjudicated by a Court: Threatens the public health and safety; or violates a law;
 - Is located on property owned or maintained by the Association;
 - Is located on property owned in common by the members of the Association;
 - Is located in an area on the property other than on the roof of the home, another structure allowed by the dedicatory instrument, in a fenced yard, or patio owned and maintained by the property owner.
 - If mounted on the roof of the home, extends higher than or beyond the roofline;
 - Is located in an area that has not been designated by the Association, unless its location increases the annual energy production of the device by more than 10%

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above the energy production of the device if it is located in an area designated by the Association.

- Does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; or
- 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.
- If located in a fenced yard or patio is taller than the fence; or
- Was installed without prior approval by the Association or ACC.
- The Association or ACC may not withhold approval of a solar energy device if the provisions of the dedicatory instruments to the extent authorized in subsection (d) are met or exceeded, unless it determines in writing that the placement of the device as proposed by the owner substantially interferes with the use and enjoyment of land causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The written approval of the proposed placement of the device by the owners of adjoining property constitutes prima facie evidence that such a condition does not exist.
- During the development period, a Declarant can prohibit or restrict an owner from installing a solar energy device.

Regulation of Certain Roofing Materials

TPC-Section202.011, Effective 9/1/11-HOAandCondos

- An Association may not prohibit or restrict an owner who is otherwise authorized to install shingles on their roof from installing shingles 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; and
- When installed:
 - Resemble shingles used or otherwise authorized for use on property in the subdivision;
 - Are more durable than and are of equal or superior quality to the other shingles used or approved to be used on other property;
 - Match the aesthetics of the property surrounding the owner's property.

Flag Display

TPC-Section202.011, Effective 9/1/11-HOAandCondos

- The Association may not, except as provided in the Section, adopt or enforce any provision that prohibits, restricts, or has the effect of prohibiting or restricting an owner from the display of:

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- The flag of the United States;
- The flag of the State of Texas; or
- An official replica flag of any branch of the United States armed forces.
- The Association may adopt or enforce reasonable dedicatory instrument provisions:
 - That require:
 - The flag of the United States be displayed in accordance with 4 U.S.C. Sections 5-10;
 - The flag of the State of Texas be displayed as per Chapter 3100 Government Code;
 - A flagpole attached to a dwelling or a free standing one, be constructed of permanent long- lasting materials, with a finish appropriate with the materials used in the construction of the flagpole, and harmonious with the dwelling;
 - The display of a flag, or the location and construction of the flagpole, to comply with the applicable zoning ordinances, easements, and setbacks of record; and
 - A displayed flag and flagpole be maintained in good condition and a deteriorated flag or flagpole be replaced, repaired, or removed.
 - That regulate the size, number, and location of flagpoles on which flags are displayed, except you cannot prevent the erection of at least one flagpole on each lot that is not more than 20 feet in height;
 - That govern the size of a displayed flag;
 - That regulate the size, location, and intensity of any lights used to illuminate it;
 - That impose reasonable restrictions to abate noise caused by an external halyard of a flagpole; or
 - That prohibits an owner from locating a displayed flag or flagpole on property that.
 - Is:
 - Owned or maintained by the Association; or
 - Owned in common by the members of the Association.