

KELVIN MILES
JUSTICE OF THE PEACE, PRECINCT ONE

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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. The Clerks Of The Court Cannot Advise You WHAT You Should Do. We Can Only Answer Procedural Questions. Please Read The Following Carefully Before Completing The Statement Of Claim. After The Petition Is Completed, Submit To The Clerk For Review Along With The Accompanying Forms. You Will Then Be Required To Pay Fees of \$154.00 for Filing the Petition and Service of Citation on One Defendant.

DEED RESTRICTIONS JURISDICTION; §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 practitioner 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 this 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, re-plat, 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 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 restriction, and that the court assesses a **civil penalty** not to exceed \$200.00 for each day's violation, together with reasonable attorney's fees, if applicable, and costs. A certified copy of the deed or other document establishing the restriction should be included with the petition on filing. You will be required to pay the fees for filing the petition and service of 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 defendant to mediate the dispute and arrive at possible resolutions to the problem. If the parties reach an agreement, the Justice of the Peace may abate the proceedings 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 proceedings 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

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

B. Construction of Deed Restrictions

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

C. Scope of Deed Restrictions

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

D. Jurisdiction

1. A justice court has jurisdiction over deed restrictions of a residential subdivision that do not involve structural changes to a dwelling.
2. A dwelling is not an external structure like a carport, fence, storage building or unattached garage.
3. Jurisdiction does exist when the restriction involves structural changes to things that are not dwellings.
4. A structure is anything from a fence to a radio tower.
5. A structural change is one that affects a vital and substantial portion of a thing.

E. Remedies and Presumptions

1. \$200 civil penalty for each day's violation.
2. No injunctions.
3. No jurisdictional limit on remedies.

F. Burden of Proof

1. Plaintiff must produce:
 - a. a certified copy of the deed restriction,
 - b. proof as to the application of the restriction to the property in question, and
 - c. proof as to a breach of the restriction (as well as proof of the length of breach)

G. Defenses

1. A defendant has the burden to prove the following affirmative defenses;
 - a. waiver or abatement or nonratification,
 - b. estoppels,
 - c. laches,
 - d. vagueness, and
 - e. the running of the statute of limitations (4 years).
2. Notice:
 - a. Two types:
 1. Actual
 2. Constructive
 - b. Purchase constitutes notice of a deed restriction.
 - c. The plaintiff should provide notice of violation to the defendant before filing suit.

Cause No. _____

YOUR NAME
Plaintiff

§

JUSTICE CIVIL COURT

VS

§

PRECINCT ONE

§

PARKER COUNTY, TEXAS

§

THE NAME OF THE PERSON YOU ARE SUING
Defendant

PLAINTIFF'S ORIGINAL PETITION

YOUR NAME, whose address is

YOUR ADDRESS phone number

YOUR PHONE NUMBER and: _____ If someone is joining you in the suit, their name _____, whose address is _____ their address _____ phone number

their phone number hereinafter called Plaintiff, on oath deposes and says that

THE NAME OF THE PERSON YOU WANT TO SUE, whose address is

THEIR ADDRESS phone number

their phone number and: _____ If you are suing more than one person, their name _____, whose address is _____ their address _____ phone number

their phone number hereinafter called Defendant. Plaintiff requests that the Court assess civil damages in an amount not to exceed \$200.00 for each day of the violation of deed restrictions for:

DESCRIBE THE NATURE OF THE VIOLATION, THE DATE ON WHICH THE VIOLATION FIRST OCCURRED, THE ACTION TAKEN BY THE

(State the nature of the claim in concise form without technicality, including all pertinent dates)

PLAINTIFF TO NOTIFY THE DEFENDANT OF THE VIOLATION, AND THE DEFENDANT'S REFUSAL TO CORRECT THE VIOLATION. YOU WOULD ALSO NEED TO REQUEST RECOVERY OF REASONABLE ATTORNEY'S FEES AND COURT COSTS IF YOU WISH TO HAVE THOSE INCLUDED IN ANY JUDGEMENT YOU MAY RECEIVE.

and that there are no counterclaims existing in favor of the Defendant and against the Plaintiff _____ except

Plaintiff's signature

Plaintiff's printed name

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20__.

Notary Public

Judge / Justice Court Clerk
Justice Civil Court
Precinct One, Parker County, Texas

Cause No. _____

§

Plaintiff

JUSTICE CIVIL COURT

VS

§

PRECINCT ONE

§

PARKER COUNTY, TEXAS

§

Defendant

PLAINTIFF'S ORIGINAL PETITION

_____, whose address is _____
_____ phone number _____ and: _____

_____, whose address is _____
_____ phone number _____ hereinafter called

Plaintiff, on oath deposes and says that _____, whose address
is _____ phone number _____

and: _____, whose address is _____
_____ phone number _____ hereinafter called

Defendant. Plaintiff requests that the Court assess civil damages in an amount not to exceed \$200.00 for each day of the violation of deed restrictions for:

(State the nature of the claim in concise form without technicality, including all pertinent dates)

and that there are no counterclaims existing in favor of the Defendant and against the Plaintiff _____ except

Plaintiffs or Attorney's Printed Name

Plaintiff's signature

Phone & Fax of Plaintiff or Attorney, if any

Address of Plaintiff or Attorney

E-Mail address

City State Zip

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20__.

Notary Public

Judge / Justice Court Clerk
Justice Civil Court
Precinct One, Parker County, Texas