

## Enforcement of the HOA Covenants

Every member of the HOA (i.e., every owner of a lot that is part of the HOA) is subject to the Covenants of the HOA. Those Covenants exist to ensure that the value of property in the HOA and the quality of life in the HOA are maintained. The Covenants require, among other things, that each member obtain the approval of the HOA before beginning any new construction, land clearing, and/or tree cutting. The Covenants require each member to maintain their property to prevent it from becoming unsightly and, among other things, to control invasive plants on their property. The Covenants establish restrictions regarding commercial use, erection of fences, building setbacks, signage, burning, control of erosion, and a variety of other items.

In the past, the HOA has used a relatively informal approach to seek member compliance with the Covenants, relying mostly on the good will and a spirit of neighborly cooperation on the part of each member. Recently, however, several members have ignored the Covenants and requests by the HOA to comply with the Covenants – these members have intentionally violated the Covenants. These violations have not been insignificant; they include unapproved extensive tree cutting and land clearing, unapproved constructions of dwellings, and failure to control extensive infestations of invasives such as kudzu. Further, it seems likely that, as more and more property in the HOA changes hands, and as new construction accelerates, such violations will increase.

The HOA, and specifically the Board of Directors of the HOA, are responsible for enforcing the Covenants. Under North Carolina law the individuals on the board have a fiduciary responsibility to enforce the Covenants. After seeking legal advice and after an informal poll of the membership in 2020, the board does not believe that it has the option to simply ignore violations. That would not be in the interest of the HOA and the membership, and it would not be consistent with the fiduciary obligations of the board members.

Hence, the board has determined that it will enforce the Covenants. The board will use informal measures where possible but will escalate to formal measures when an informal approach does not work. The board will take a measured approach to such enforcement, with efforts being proportional to the potential impact of violations on property value and quality of life within the HOA.

There are two formal mechanisms available, at least in theory, to compel compliance with Covenants: lawsuits filed by the HOA against members who are in violation of the Covenants, and the enforcement process provided within the North Carolina Planned Community Act.

The HOA does not have the financial means to use lawsuits generally to compel compliance. The Covenants themselves limit the amount of money available to the HOA to that which can be raised through annual dues of no more than \$30 per year per lot. Short of changes to the Covenants, there are no provisions for increases to the amounts that can be raised through dues, and there are no provisions for special assessments to augment the funds raised through dues. (Note: the HOA maintains insurance that will allow the HOA to defend itself against lawsuits brought against the HOA.)

The North Carolina Planned Community Act (Chapter 47F of the North Carolina General Statutes – the “PCA”) provides a process that is specifically designed to allow HOAs to enforce their Covenants without incurring the expenses associated with lawsuits. This process involves an official notice of violation, a hearing at which the member may discuss the violation, fines (which are assessments secured by lien

under North Carolina law) of up to \$100 per day for each day the violation is not remedied, and ultimately foreclosure. The PCA provides the directions needed for the HOA to accomplish each step of this process within the protections afforded by the PCA – with little or no legal expense.

In summary, the Covenants are in place for a purpose – to maintain our property value and quality of life in our neighborhood. The board is responsible, under the Covenants and North Carolina law, for acting on behalf of the HOA to enforce the Covenants. The board has determined that the informal methods used in the past are no longer, by themselves, sufficient to do so. When an informal method fails, the board will employ the formal process provided by the PCA – notice, hearing, fines, lien, and foreclosure – as appropriate and to the extent necessary to remedy violations of the Covenants.

Copies of the Covenants can be found here: <https://www.laurelridgecountryclubhoa.org/legal-documents/>

The North Carolina Planned Community Act can be found here:  
<https://www.ncleg.gov/Laws/GeneralStatuteSections/Chapter47F>