

**KERR & KENDALL COUNTIES**  
**FALLING WATER PROPERTY**  
**OWNERS ASSOCIATION, INC.**

TO

**THE PUBLIC**

**SUPPLEMENTAL DEDICATORY INSTRUMENTS**

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTIES OF KERR AND KENDALL

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Kerr & Kendall Counties Falling Water Property Owners Association, Inc., (the "Association", the "POA") a Texas non-profit corporation, by and through its duly appointed officer, files this instrument pursuant to the Texas Property Code in compliance with Sections 5, 202, 207 and 209. The following policies were adopted by the Board of Directors of the Association at a duly called meeting of the Board of Directors in compliance with the Articles of Formation, and Bylaws of the Corporation and the statutes of the State of Texas. The policies adopted by the Board of Directors of the Association are as follows:

**Policies of**  
**Kerr & Kendall Counties Falling Water Property Owners Association**  
**PO Box 582, Comfort, TX 78013**

The POA will adhere to all requirements of current Texas law. In the event that the published Texas Property Code conflicts with the policies below or with any other POA dedicatory instrument, the published Texas Property Code shall prevail. In the event that new Texas legislation conflicts with the published Texas Property Code, new Texas legislation shall prevail. The policies below shall become effective immediately and shall remain in effect unless and until they are amended, replaced, or deleted by the then current Board of Kerr & Kendall Counties Falling Water Property Owners Association, Inc.

***Contents***

- 1.0 Payment of Regular & Special POA Assessments** (2011 House Bill 1228 amendments to Property Code 209.003, 209.0062, 209.0063, 209.0064, 209.0091, 209.0092, 209.0093, 209.0094)
  - 2.0 Resale Certificates; Dedicatory Instruments** (2011 House Bill 1821 amendments to Property Code 5.012, 202.001, 202.006, 207.003, 209.003, 209.062)
  - 3.0 Records Availability & Retention; Open Meetings** (2011 House Bill 2761 amendments to Property Code 209.003, 209.005, 209.0051, 209.0056, 209.0057, 209.0058, 209.0059, 209.00591, 209.00592, 209.00593, 209.009, 209.014)
  - 4.0 Voting & Ballots; Amending CC&Rs; Board Elections** (2011 Senate Bill 472 amendments to Property Code 209.003, 209.0041, 209.0058, 209.0059, 209.00592, 209.00593, 209.00594)
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- 1.0 Payment of Regular & Special POA Assessments**

Whereas Texas HB 1228 changed requirements for Property Owner Association's, therefore be it resolved that the Falling Water Board of Directors adopt the following policy.

1. Invoices sent to property owners will have the following statement attached.

Section 10. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest legal rate permitted by law to be charged the non-paying Owner, and in addition thereto, for each thirty day period thereafter for which the assessment shall remain unpaid, there shall be charged a monthly fee of \$10.00 per month for owners of lots without a dwelling thereon and a fee of \$20.00 per month for owners of lots with a dwelling thereon.

2. Past-due invoices sent to property owners will have the following two statements attached.

Section 10. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest legal rate permitted by law to be charged the non-paying Owner, and in addition thereto, for each thirty day period thereafter for which the assessment shall remain unpaid, there shall be charged a monthly fee of \$10.00 per month for owners of lots without a dwelling thereon and a fee of \$20.00 per month for owners of lots with a dwelling thereon.

An alternative payment schedule is available for delinquent accounts. One third of the balance must be paid within thirty (30) days of the date the alternative payment plan is signed. Thirty days later, one half of the remaining balance will be paid. Thirty days later the remaining balance will be paid in full. Monthly interest and administrative fees continue to accrue during the alternative pay period. Requests for an alternative payment plan must be in writing, signed, dated and sent to the Association Treasurer.

3. The priority of payments received for delinquent accounts will be:
  - (1) any delinquent assessment;
  - (2) any current assessment;
  - (3) any attorney's fees or third party collection costs incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;
  - (4) any attorney's fees incurred by the association that are not subject to Subdivision (3);
  - (5) any fines assessed by the association; and
  - (6) any other amount owed to the association.
4. If an owner defaults on a payment agreement, the association is not required to enter another agreement within two years of the default.
5. If a collection agency is to be used, notice via certified return receipt will be given to the owner thirty days in advance. Contingency fee terms will not be part of the agreement with the collection agency.
6. Kerr and Kendall County POA will not transfer member accounts receivable.
11. If foreclosure is to be considered, provisions of House Bill 1228 will be followed.
12. The following plan will be filed with Kerr and Kendall County.

#### Alternative Payment Schedule

Qualified Owners of Kerr and Kendall Counties Falling Water Property Owners' Association may request an alternative payment schedule for delinquent regular or special assessments or any other amount owed to the association. An Owner is not a Qualified Owner if the Owner has failed to honor the terms of a previous payment plan during the two (2) years following the Owner's default under the previous payment plan. The request must be in writing, signed, dated and sent to the Association Treasurer. The plan will allow the owner to distribute payments over a 90-day period. One third of the current balance is due within thirty days of the date the alternative payment plan is signed. Thirty days later, one-half of the remaining balance is due. Thirty days later, the remaining balance is due in full. Maximum allowable interest and monthly administrative fees continue to accrue until the balance is paid in full.

## **2.0 Resale Certificates; Dedicatory Instruments**

Whereas Texas HB 1821 changed requirements for Property Owner Association's, therefore be it resolved that the Falling Water Board of Directors adopt the following policy.

- (1) The **Resale Certificate** is a standard realty form which, when completed by the POA, provides the Purchaser important information regarding the property and the POA. It lists required documents that must be attached to it. It must include...
- (1) statement of any right of first refusal
  - (2) frequency and amount of any regular assessments
  - (3) amount and purpose of any special assessment due after Resale Certificate is delivered
  - (4) total of all amounts due and unpaid to POA and attributable to owner's property
  - (5) capital expenditures, if any, approved by POA for current fiscal year
  - (6) amount of reserves, if any, for capital expenditures
  - (7) POA's current operating budget and balance sheet
  - (8) total of any unsatisfied judgments against POA
  - (9) style and cause number of any pending lawsuit in which POA is a party
  - (10) copy of certificate of insurance showing POA's property and liability insurance for common areas
  - (11) description of any conditions on owner's property that POA's board has actual knowledge are in violation of restrictions applying to subdivision or bylaws or rules of POA
  - (12) summary or copy of notices received by POA from any governmental authority regarding health or housing code violations existing on preparation date of certificate relating to owner's property or any common areas owned by POA
  - (13) amount of any administrative transfer fee charged by POA for change of ownership of property in subdivision
  - (14) name, mailing address, telephone number of POA's managing agent, if any
  - (15) statement indicating whether restrictions allow foreclosure of POA's lien on owner's property for failure to pay assessments
  - (16) statement of all fees associated with transfer of ownership, including description of each fee, to whom
    - (A) current copy of Restrictions (CC&R) applying to POA
    - (B) current copy of Bylaws and Rules applying to POA

(2) It is the Purchaser's sole responsibility to request a Resale Certificate if he/she chooses to do so. The request is normally made via a check box in the Sales Contract. If the Purchaser makes such a request, the POA must be notified in writing (typically by the Purchaser's agent or Seller's agent). The POA may require reasonable evidence that the Purchaser has contractual or other right to acquire the property before proceeding.

(3) The POA has no more than 10 business days from receipt of the request to provide the Resale Certificate (in either hardcopy or electronic format) to the requesting agent, who must then forward to Purchaser prior to closing. If the Purchaser makes no such request, or if the POA is not notified of such a request, no action is required by the POA.

(4) The POA will charge the Purchaser (or Seller, if mutually agreed) a fee of \$50 for preparing the Resale Certificate. The POA may request receipt of this fee prior to preparing the Resale Certificate but may not process the payment until the Resale Certificate is prepared and delivered. Alternately, the POA may request payment at closing via an Invoice sent to the applicable Title Company.

(5) **Dedictory Instrument** means each document governing establishment, maintenance, or operation of POA, including a declaration subjecting real property to restrictive covenants, bylaws, etc. and to properly adopted rules and regulations, and to all lawful amendments to same.

(6) POA shall file all Dedictory Instruments in the real property records of each relevant county. Dedictory Instruments have no effect until they are filed in accordance with the law.

(7) Dedictory Instruments will be made available on a website if POA has a publicly accessible website.

### **3.0 Records Availability & Retention; Open Meetings**

Whereas Texas HB 2761 changed requirements for Property Owner Association's, therefore be it resolved that the Falling Water Board of Directors adopt the following policy.

1. If a member requests to inspect records, the Board will make ready the records within ten business days.

2. If copies are requested, they will be provided within ten business days. Prepayment of \$.10 per page will be required. If another format is required, charges established by Title 1, Part 3, Chapter 70, rule 70.3 of the Texas Administrative Rule will be used.
3. If the Board is unable to produce records within 10 business days, the member will be notified that the date will be within 15 business days following the original 10 business days.
4. An inspection place will be mutually agreed by both parties and will be during normal business hours.
5. The Association may provide copies as hard copies, electronic, or another format.
6. A final invoice or refund will be provided to the member within 30 days of delivery. If the invoice is not paid within 30 days, the fee will be considered an assessment.
7. Personal information other than addresses of members will not be disclosed.
8. Certificates of formation, by-laws, restrictive covenants, and all amendments to the certificates of formation will be retained permanently.
9. Financial books and records shall be retained for seven years.
10. Account record for current owners shall be retained for five years.
11. Contracts with a term of one year or more shall be retained for four years after the expiration of the contract term.
12. Minutes of meetings of the owners and the board shall be retained for seven years.
13. Tax returns and audit records shall be retained for seven years.
14. **Regular and special Board meetings** will be open to the owners and held in either Kerr or Kendall County or a county adjacent to the counties.
15. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.
16. Notice of regular and special meetings will be posted on the Internet or at the call box at least 72 hours before the meeting. The notice will include an agenda.
17. It is the owner's responsibility to update email addresses.
18. Meetings may recess to the next day, however, if they are delayed longer, notice must be given 72 hours in advance before the meeting.
19. The Board may meet telephonically or electronically for items deemed necessary, but must be documented in the next meeting. Items that may not be considered include, fines, damage assessments, initiation of foreclosure, temporary restraining orders or violations involving a threat to health or safety; increase in assessments, levying of special assessments, appeals from ACC denial, or suspension of rights of a member.
20. Written notice of election or association vote shall be given no later than the 10<sup>th</sup> day or earlier than the 60<sup>th</sup> day before the date of the election or vote.
21. If a recount is requested, provisions of HB 2761 will be followed.
22. Board members can only be appointed by the Board to fill a vacancy caused by a resignation, death, or disability.

23. If an annual meeting is not called by the Board of Directors, a mandatory election of officers is required and provisions of HB 2761 are to be followed.

24. All other specified details of HB 2761 are to be complied with.

**4.0 Voting & Ballots; Amending CC&Rs; Board Elections**

Whereas Texas SB 472 changed requirements for Property Owner Association's, therefore be it resolved that the Falling Water Board of Directors adopt the following policy.

1. A 67% vote from POA members is required to amend CC&R's.
2. All ballots for elections will be required to be signed.
3. Uncontested races do not require written and signed ballots.
4. Board members may not have been convicted of a felony or crime involving moral turpitude.
5. All voting will be through written ballots.
6. Absentee ballots may not be counted if proposal is amended during the meeting.
7. Absentee ballots will include the following wording:

"By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail."

8. All other provisions of SB 472 are to be complied with.

**The undersigned is the keeper of the minutes and records of the Association and certifies the foregoing has been adopted by the Association.**

**SIGNED this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.**

**KERR & KENDALL COUNTIES  
FALLING WATER  
PROPERTY OWNERS' ASSOCIATION, INC.**

**By: \_\_\_\_\_  
Printed  
Name: MARK HEEREMA  
Title: Secretary**

**THE STATE OF TEXAS §  
COUNTY OF \_\_\_\_\_ §**

**This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, Secretary of KERR & KENDALL COUNTIES FALLING WATER PROPERTY OWNERS' ASSOCIATION, INC., a Texas corporation, on behalf of said corporation.**

\_\_\_\_\_  
**Notary Public, State of Texas**

Kerr & Kendall Counties Falling Water Property Owners' Association  
P.O. Box 582  
Comfort, Texas 78013