

Questions and Answers—2022 Emerald Forest CC&Rs

Disclaimer:

These Questions and Answers have been written to explain the need for updating the outdated documentation used in the past and to assist with understanding and clarifying the formal legal text in the new proposed documentation. These Q&A's are the results of five formal meetings by the Board with the HOA lawyer in the past year and multiple informal conversations with many homeowners since 2019. The purpose is to assist all homeowners in gaining a better understanding of the proposed document (CC&R) as they consider approving that document. This narrative has been reviewed by the Emerald Forest Board and by its legal representatives. But, this discussion **DOES NOT SUBSTITUTE** for the Document (CC&R) itself, and the content of the proposed document is controlling over this summary.

I. General Questions

Why does Emerald Forest HOA need a new document (CC&R)?

HOA law has evolved since all the current phase documents were approved. Each legislative session makes additions to HOA-related law, and many cases are decided by judges and juries each year that create legal precedent. The change to a new document (CC&R) addresses all known contingencies and allow for ways to address future contingencies. The specific reasons for a new document are addressed throughout these Q&A's.

Didn't EFHOA try to change the documents before? What were the results of the vote in 2019?

In 2019, there were not enough votes to approve or reject the new document. Only 30% of all homeowners voted. As a result, the EFHOA Board could not move forward with the proposed new document.

Despite nearly 60% of the homeowners voting positively to adopt this original offering, the EFHOA Board in March 2020 decided to create an entirely new CC&R document that would represent the desires of EFHOA members, while still providing an updated and necessary legal document.

The current EFHOA Board was elected in 2020 based on a promise to bring a new CC&R forward because most homeowners realize that maintaining the current 11 Phase model is not tenable and puts our community at risk. The EFHOA Board is committed to doing a better job of informing homeowners about the important purposes of the new document. These are: 1) to update old documents and become compliant with new HOA state laws, 2) to clarify and

accurately state definitions in the old documents that are important to homeowners and preventing costly legal actions, and 3) to unify all of the Emerald Forest community under one document to strengthen our position in order to protect our property values.

Why has it taken so long to get to a new vote?

There are two reasons why the vote has been delayed to 2022:

- 1) The Board decided that homeowner interaction in the development of the new document was critical to its acceptance. However in 2020-2021, COVID protocols impacted how the Board could plan to meet with homeowners and inform them about the importance of approving the new document.
- 2) At the same time, the Board decided that it would be important to wait until the next legislative session was completed and to include in the new document any new HOA law that would be approved. (There were indeed new laws.) In the fall of 2021, the Board was able to move forward with a final draft of the new document.

Why is the new document (CC&R) so long: over 20 pages?

The document is long because it reflects the "ironclad" boilerplate and level of detail recommended by the HOA lawyer based on what is now standard for new HOA's. Any legal document is long and complex with good reason. So is this document, especially as HOA law has changed over the past 30 years when online rentals did not exist. Simplifications and brevity can leave loopholes through which enterprising individuals like lawyers, entrepreneurs, real estate agents, or even city council ordinances can maneuver around "implied" intentions of the homeowners.

Have you ever had to deal with other long legal documents?

Consider an analogy. We all purchased a home. We used a lawyer, a mortgage company, a title insurance company, and a homeowner's insurance company. Was that "simple" transaction --- a purchase with a buyer and a seller--- documented on one or two pages? How many times did we have to sign your name? Emerald Forest is now dealing with a document that is no less complex or important than the documentation of our home purchase. As a result, the new document must address all known contingencies and allow for ways to address future contingencies.

How is Emerald Forest HOA best described?

Emerald Forest HOA is presently composed of 11 legally recognized Phases, and 434 homes- some originating in the late 70's, and homeowners who individually own property, and have interest in maintaining "common areas" in Emerald Forest. Homeowners also share the common goals of preserving their property values and the single family identity of the community.

What has been the legal cost of the CC&R project?

The total cost of the CC&R project from 2018-2022(April 30th) is \$52,388 or approximately \$12,100 per year. This is an average total cost for each homeowner of approximately \$120.71 or \$27.88 per homeowner per year. This was a necessary cost for updating and clarifying the 11 out of date deed restriction documents of the 11 Phases. The new CC&R strengthens our position against legal challenges and for preserving our property values and quality of life.

Why do Phases need to be combined into one? Can't any one Phase be administered by its own document?

Emerald Forest was always intended to be a single neighborhood, just built in phases. Simply put, there is strength in numbers. 434 homeowners represented by a single document is a more formidable force than say 13 or 21 or even 58 (the largest phase) homeowners when challenged by someone trying to buy homes and rent them out. And overcoming a challenge would be even worse if our document is the old original one because the wording or omissions lead to ambiguity. Ambiguities can lead to legal proceedings that cost money that could be better spent.

We share a common interest in our pool, clubhouse, tennis courts, etc. We also share a common interest in being as strong as possible to preserve our property values? Coming together under a common document supports these common interests.

What are the threats to our property values?

Emerald Forest is vulnerable. Look around College Station and see what is happening in many neighborhoods. It has been determined that 60% of "single family" homes in College Station are now rental properties. Do you think Emerald Forest is immune from this trend? Currently (through April 21, 2022), there are 27 properties in Emerald Forest whose owners list a mailing address outside of Emerald Forest.

And the neighborhood's vulnerability is not just from investors or absentee owners who treat homes as long or short term rental properties. It can start simply with allowing property owners to ignore (for whatever reason) ordinary maintenance tasks. In some College Station neighborhoods the next step is "multi-family housing."

Does my vote really matter?

The short answer is "YES". Based upon what has happened in many College Station HOAs, the single biggest threat to our community and our cumulative property values is apathy. By reading the new document (CC&R), attending the meetings scheduled with the Board, and reading these Q&A's, the Board feels

that you will see the necessity of approving the new document (CC&R). Take 5 minutes and get involved in protecting your home. If you fail to vote, that is the same as a "NO" vote.

II. Table of Contents for the New Document (CC&R)

What are the changes in the new document and where are they included in the document?

There are few changes in the new document, and these account for updates as opposed to "new" requirements. The EFHOA Board worked with the HOA lawyer to produce a new document that incorporated where ever possible the best practices of new HOA's, which are much more restrictive, but does not take away any existing rights. However, some situations will be treated as legacies and allowed to continue until the property is sold. The changes included in the new document are presented with the Article to which they relate.

Recitals (pp 1-3)

Why are Recitals (pp 1-3) needed?

Recitals (pp 1-3) relate to the change that consolidates the 11 old deed restrictions into a single document and removes inconsistencies across the 11 Phases.

Article I Definitions (pp 3-5)

Why are there so many definitions? Don't we all know the meaning of these words?

HOA law recognizes that it is imperative to clearly state definitions so that we are all talking and thinking about the same thing. And "we" means: homeowners, Board members, and regrettably, maybe lawyers, judges, real estate agents, renters, and enterprising AirBnB entrepreneurs, etc. Clearly stating definitions clarifies as exactly as possible what the document addresses, based on years of HOA litigation.

Article II Restrictions (pp 5-12)

Why do we need these restrictions?

In summary, the restrictions, especially those related to "single family", in the new document (CC&R) are there to: maintain property values, retain our family

neighborhood identity, serve to define the responsibilities and limits of an elected Board, and establish "good neighbor" boundaries for each of us.

Why is the Board adding so many restrictions?

In fact, there are no more restrictions in the new document (CC&R) than there were in the old documents-- with the exception that the Texas Legislature has updated Texas law dealing with HOAs over the last 40 years. As a result changes were required to incorporate these updates in the new document. The new document is in compliance with Texas Property Code Chapter 209 – Texas Residential Property Owners Protection Act.

Did we have to update the terms used in the 11 old documents to reflect the interpretations of the current laws?

Yes, we had to add and change language to clarify terms to eliminate ambiguity or "loopholes" that would be potential barriers to preserving our property values.

Are there now any new issues that the 11 old documents did not address or even foresee?

Yes, consider, for example, currently 60% of all so called "single family" homes in College Station are "rentals". Forty years ago, there were not investors who, may or may not reside at a location, but engage in "short term rentals" or "multi-tenant" rentals.

What are now commonly called "short term rentals" were always prohibited in Emerald Forest. But now entrepreneurs have been motivated to find loopholes or ambiguous wording to establish their commercial enterprises in our residential neighborhoods. The new CC&Rs (Section 2.02 - LEASING) clearly define in unambiguous terms exactly what constitutes an authorized lease in Emerald Forest.

Article III Emerald Forest Community Improvement Association (pp 12-14)

What does this Article add to the document?

The purposes of this Article are: 1) to describe how the homeowner's association is organized, 2) to establish the rules whereby the association is to be managed by a Board, and 3) to address the maintenance of the quality of the common property we share like the pool, clubhouse, tennis courts, landscaping etc. This

Article also clarifies that a simple majority vote of the membership is required to amend the new deed restrictions.

Article IV Architectural Review Committee (pp 14-17)

Why is an Architectural Review Committee (ARC) necessary?

An ARC is standard for an HOA. The original document had an ARC (to “control” builders) that was to be replaced at the end of 10 years of the last filing of an ARC. This was not done and thus has to be addressed in the new document (CC&R).

This ARC's charge is to watch over the maintenance of property values. The issue is not enforcing conformity or the Board having power to infringe on homeowner's property rights. Rather the issue is protecting and preserving everyone's property values. The sensible and best way to do this is to be consistent and fair with guidelines and rules approved by homeowners, administered by an elected Board, and carried out by the ARC.

Does an ARC limit or restricts our property rights?

No, it should not limit or restrict property rights beyond what was already in place if administered properly with oversight by all homeowners through an elected Board.

How is this to be accomplished?

In compliance with the new change in state laws, the ARC will consist of a committee appointed by the Board. But Board members cannot serve on the committee. This diffuses any concentration of power in a few people (and any personality conflicts) and increases more homeowner participation. This Article outlines the guidelines that direct the ARC, establishes the rules and procedures that direct this oversight, and assists homeowners with proposals

Article V Property Rights in the Common Properties (pp 17-18)

Why is this Article necessary?

Simply put, we all share the benefits and responsibilities of maintaining the common amenities in Emerald Forest: pool, clubhouse, tennis courts, estate fences, and landscaping, even if we do not regularly use them. These amenities are significant and compare favorably to those in other HOA's and contribute to all of our property values.

Article VI Covenant for Maintenance Assessments (pp 18-21)

Do all homeowners have to pay the annual dues?

Yes, it costs money to manage Emerald Forest and to maintain the amenities in the common areas. Homeowners receive the resulting benefits to the overall neighborhood and thus must cover the costs.

Article VII Miscellaneous (pp 21-23)

Why are fines necessary?

One would like to rely on the community attitude of homeowners to honor deed restrictions, but that is not always the case. HOA best practices strongly encourage fines as an effective mechanism, but also structure fines so that they are not punitive or absolute, and that when levied, the negligent homeowner has ample opportunity to appeal and to make adjustments that would remove the fine

Is the new document (CC&R) fixed or can it adapt to changes?

Any legal document has a term and must describe how it can be amended and/or dissolved. The new document is clear about how provisions will be enforced and how the document itself is constructed. (Section 7.03 – AMENDMENT)

Certification

Why is this necessary?

Any legal document must confirm how it will be certified. In this case, it will be certified by a vote of the homeowners and signed by the President as the duly elected representative for EFHOA.