AGENDA

IFCIA BOARD OF DIRECTORS MEETING

August 12, 1992

Call to Order
~~Introduction - Rick Vance 7/15/92~~
Review and Approval of ~~6/10/92~~ Meeting Minutes - Joanne Ferguson

Treasurer's Report

Committee Reports

- Deed Restrictions - Dorothy Miller
- Esplanades and Park - Rita Rogers
- Newsletter - Joanne Ferguson
- PIP - Joanne Ferguson
- Pool - Rick Vance
- New Residents - Ken Miller
- Civic Awareness - Michelle Adams

Other Business — MAINT. FEE BILLINGS - RITA
SECURITY W. COMP - RICK
STREET LIGHTS - RICK
STREET SIGNS - RICK

Adjournment

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MINUTES OF REGULAR MEETING

OF THE BOARD OF DIRECTORS OF

INWOOD FOREST COMMUNITY IMPROVEMENT ASSOCIATION

August 12, 1992

A Regular Meeting of the Board of Directors of INWOOD FOREST COMMUNITY IMPROVEMENT ASSOCIATION (a Texas non-profit corporation) was held at 7:12 p.m. on Wednesday, August 12, 1992 at the home of Joanne Ferguson, 5603 Bent Bough Lane, Houston, Texas.

Rick Vance acted as Chairman and called the Meeting to order. Joanne Ferguson acted as Secretary of the Mecting.

The following Directors were present:

Rick Vance
Joanne Ferguson
Robert Davenport
Ken Miller
Rita Rogers

The following persons were also present:

Michelle Adams
Dorothy Miller

The Chairman declared that all of the Directors were present and that the Meeting would therefore proceed with the transaction of business.

Approval of Minutes

The Chairman distributed copies of the minutes of the Regular Meeting of the Board of Directors held on July 15, 1992. The minutes were read and, upon motion duly made, seconded and unanimously carried, the following resolution was adopted:

> RESOLVED, that the minutes of the Regular Meeting of the Board of Directors of Inwood Forest Community Improvement Association dated July 15, 1992 be and they hereby are approved as read.

Treasurer's Report

Ken Miller distributed his Pool Report, a copy of which is attached to these Minutes. He then distributed the Financial Report from Mike Dwyer, a copy of which is attached to these Minutes for reference, and made the general observation that the Association's funds continue to slowly deplete. He reported a

$974.67 petty cash balance and noted that the gate guards were paid and franchise fees of $25 were sent to the State Comptroller. No unusual expenses were noted. Michelle asked how much money the IFCIA has. Rick stated that the Association currently has about $96,000 in its account, $4,000 of which is attributable to the Security Program. Robert mentioned that he would mow and clean up the Griffin vacant lot and the Association would send the owner a bill for $500. Rita said she had obtained a competitive bid for comparison and that a lawn maintenance company would charge $531.21 to mow and clean up and $35/trip to maintain the vacant lot.

Rick asked if there had been any progress collecting past-due maintenance fees. Dorothy reported that, accompanied by Robert or Ken, she had visited ten houses and had ten turn-downs. She has reviewed the names and correlated them with deed restriction violators. The usual procedure is that Dwyer will advise IFCIA of any collections and the Board will decide whether to release the lien. Rick and Robert advised not releasing liens unless legal fees, as well as maintenance fees, are collected. It was pointed out that title companies require a total release at closings. Dorothy sent 14 letters to the worst "deadbeats" who are also deed restrictions violators. Seven of them are absentee landlords. She has heard from St. Clair on Bent Bough who will pay 3 years due. If Dorothy has no responses on this set of letters by August 25, she will turn over to the attorney (Hartnett) the entire list of past due owners furnished by Dwyer. At present, there are 116 owners past due, and $5,568 is owed IFCIA. Robert pointed out that the door-to-door campaign was the last resort before turning the matter over to the attorney. Rick advised that a letter from the attorney is the next step. Dorothy said that the attorney can file liens if the maintenance fees are not paid in full within 10 working days after he sends the letters. The Board agreed that Hartnett should be instructed to file as soon as possible after the 10-day period has elapsed.

Deed Restrictions Committee

Dorothy Miller distributed a copy of a letter she had written Susan Debien Realty, a copy of which is attached to these Minutes. She talked by phone with Ms. Debien who was very receptive to our concerns. She will come out with a new format for her newsletter soon, probably to be called "Debien Realty Inwood News".

Dorothy reported on Hot Line calls. She advised Mr. Sontag that he can't put in a 5-car garage at his house on the corner of Black Maple and Gum Grove.

Attached to these Minutes are copies of the Deed Restrictions Committee Report. Robert has taken pictures of the Yepez house. Dorothy will send a third letter, move Yepez' problem to Phase III, and send to the attorney if Yepez does not comply. Rick asked

Dorothy to let the Board know before the final decision is made to sue Yepez.

Rita observed that Section 1 is overrun with kids and vehicles.

Dorothy received a zoning packet from the Houston Homeowners' Association ("HHA") which she distributed at the last Deed Restrictions Committee Meeting. She correlated the answers of those who responded and submitted it to the HHA. Dorothy explained that HHA is spearheading a drive to further define "residential zone". It is a non-binding survey, and she felt that our neighborhood should have input. HHA has also asked the IFCIA Board to pass a prepared resolution regarding the composition of the City's Zoning Committee. Dorothy reported that Mayor Lanier wants a 60-70% representation by homeowners and a 30-40% representation by developers. Copies of the prepared resolution were distributed to the Board members for study. It was agreed that we should take a position and that we would adopt a resolution at the next Meeting.

Dorothy reported that she had received materials from the Association's former attorney, Mr. Jim York. The files contained a "gold mine" of easy-to-read certified copies of deed restrictions. She also received a notebook containing pertinent deed restrictions organized by Section. It was agreed that 3 copies of this valuable information should be made and maintained by Hartnett, the Board, and the Deed Restrictions Committee.

<u>Esplanade/Park Committee</u>

Rick commented on the great-looking esplanades. Rita thanked him and noted that the recent rains have helped.

Rita met with Troy regarding the Long Creek/Antoine turn lane recently put in by the City and the two esplanades at Arncliffe/Antoine which are currently bare. They discussed putting plants in after the cooler weather begins. Troy estimated $150 per bed to prepare with topsoil and mulch. Dorothy asked if the Garden Club will be planting the other two Long Creek/Antoine beds again. Rita reported that we have heard nothing from the Garden Club for quite some time. Robert asked how the beds would look. Rita said they would be rounded and extend on the approaching-traffic side. The plantings at the Arncliffe/Antoine beds would be horseshoe-shaped. Rita noted that this expense was not in the budget. After brief discussion, and upon motion made by Rick and seconded by Robert, the following resolution was adopted:

> RESOLVED, that the expenditure of $600.00 to prepare and plant esplanades at Long Creek/Antoine and Arncliffe/Antoine is hereby approved.

As discussed earlier in the meeting, Rita received an estimate of $531.25 for the initial cleanup of the Griffin vacant lot at Arncliffe/Antoine, plus $35 per trip for regular maintenance - mowing, edging, and cleanup. Robert will do the initial cleanup and the Association will send a statement for $500 to Griffin. Then we could continue to maintain it along with the adjacent esplanade. Rita said we may be able to work it into next year's esplanade maintenance contract.

Rita reported that Troy expects the dollar amounts on next year's contract. She again brought up to the Board that Troy would like to have a 2-year contract. Rita noted that this did not seem risky, since the contract includes a 30-day cancellation notice. Robert said that Troy is doing a super job. Rita asked if we want competitive bids. Ken thought this would be a good idea. Rita pointed out that Troy's price has not changed in the two years that he has had one-year contracts with IFCIA. She has made attempts at obtaining bids for other types of work and reports that the task is not easy--contractors do not seem to respond well. Rick and Dorothy questioned if $35 is too high for mowing the Griffin lot. Robert asked if there is any possibility of having the Metro bus stop removed from that corner. Dorothy advises that the bus stop was placed there by Metro because they had had 18 requests from Eisenhower H.S. students to do so and Dorothy does not think our chances are good for having it removed.

Rita reported that the tree planing project on Victory/Vogel is on hold because contractors are currently installing new sewer pipes. She said that we may qualify for a "1% program" under which the City will plant and maintain the esplanade when the work is complete. Mr. Baccus is also working on this possibility. Rita noted that if we want sprinklers in the esplanades for the flower beds we have to make application to the City's Irrigation Department.

Newsletter Committee

Joanne said Patsy Gillham had contacted her about an insert in the September newsletter regarding the City's recent approval of aerosol cans in the recycling bins. She reported that a resident had contacted her with the suggestion that our entrance signs be re-done in brickwork. The resident knows a reliable bricklayer. It was agreed that we are not now in a position to take on this project.

Robert suggested a re-run of last year's IF News article covering the truancy program at Hoffmann Middle School. He will confirm the names and phone numbers of the contacts at the School.

Positive Interaction Program

Joanne read highlights from the minutes of the last City-wide PIP meeting and comments by Police Chief Nuchia.

Pool Committee

Rick reported that pool program is experiencing "summer doldrums" and has been further slowed by the construction on Victory. He noted that there had been one or two complaints about the swimming lessons that were offered this summer. During the first session everyone was enthusiastic and those completing the course received diplomas. During the second session, interest lagged, a couple of classes were cancelled, and instructors' vacations disrupted the schedule. Rick talked with the instructors and let them know that what they do at the pool reflects on the Board members. Tom Flynn explained that people in the second session were notified that the instructors would be available for individual instruction for a whole week after the session closed. No one took advantage of the "make-up" session. Rick agreed that the instructors had done nothing unsafe.

Rick asked for a received a rental agreement from Hartnett. He explained that if we could utilize the pool in the off-season, i.e. offering scuba lessons, water aerobics, etc. it would greatly help out our finances. He noted other concerns such as adequate lighting in the pool area. A brief discussion followed concerning lights in the pool below the water level which do not work. It has been estimated that it would cost between $4,000 and $10,000 to repair these lights. It was agreed that we don't need to repair these lights, but that we do need additional lighting around the pool.

Rick talked to Bill Garner at Toucan Pool Service about the diving board which was broken. It was reported to Toucan every day for a week. Garner finally called and advised that we needed a new board. A price was negotiated. Rick then went to the pool, looked at the board, determined the problem, and fixed it for $48. It is his opinion that Toucan is unaware of the problems at the pool and they are not paying attention when we report problems. Dorothy reminded the Board that this is the third time Toucan has failed to give us proper service on minor problems and that they had wanted one-year's payment up front on their contract. It was agreed that the Board will solicit competitive bids when the pool contract comes up for renewal. Rita knows of 12 contracts Toucan has dropped in the last year. The nature of their business has changed. The owners are out of touch with the contracts being serviced, and the supervisors are not responding to reported problems in a timely fashion.

Joanne reported that she was unable to obtain a commitment from the representative at Benjamin Moore Paint Company to supply all or a portion of the estimated 40 gallons of paint needed for the pool buildings. Michelle suggested that the project needs to be postponed anyway because of the heavy construction going on on Victory.

Rita announced that we have selected the painter for the job when and if we proceed. She explained that we need to ascertain what electrical work needs to be done to make the area safe, up to code, and attractive. She has received estimates of $2250 and $3900 to do what is necessary. Rita and Joanne had selected new light fixtures totalling $500. We are having trouble getting bids. Robert suggested that he could do most of the work with some assistance. The topic was tabled until the next Board meeting.

Rick will contact Toucan and request that they cover the capped wires under the diving board.

It was suggested that we put out a call for an electrical contractor in our next IF News.

Robert persuaded the contractors working on Victory to donate some dirt to fill in the volleyball court. There is some clay in the dirt, but this will provide a good base once it is tamped down.

New Resident Committee

Ken Miller reported that Al Danto promised to provide him an estimate for producing the brochure. Rita said Helen Hough, Realtor, is really interested in the project.

Ken had nothing new to report concerning the City's Dangerous Buildings Program.

Civic Awareness Committee

Michelle met with Tony Docherty regarding the Northwest Coalition. Rick briefly reviewed the first report from Docherty and noted that Carl Whitmarsh is the new Secretary of Northwest Coalition. Docherty is working on a listing of all business addresses on Antoine for the Antoine Beautification Project. Other topics covered at Northwest Coalition were the White Oak Bayou flood control project, the Antoine/Major Thoroughfare question soon to be brought before City Council, and progress on zoning. Councilwoman Helen Huey's office is investigating abandoned apartments in the area. She was instrumental in stopping the opening of The White Horse Massage Parlor on Alabonson. They were denied a liquor license.

Michelle said that Docherty has a list of approximately 800 businesses on Antoine and he needs a typist. It was suggested that we place a call for help in the IF News.

Dorothy reminded the Directors that City Council was to vote on the Antoine/Major Thoroughfare issue on August 11. She will notify the Board members when a decision is reached.

Rick suggested that Michelle come up with a CAC concern for the next meeting. Dorothy understands that Harris County Flood Control and the Corps of Engineers has reached agreement about the wetlands protection issue and work will proceed on the detention ponds planned for the area.

Michelle reported that Charlee Peddicord contacted her with the observation that every time we link Inwood Forest and the flooding issue in the IF newsletter or in The Leader we are undermining ourselves.

Dorothy suggested an IF tour of homes as a CAC project.

Other Business

Rita distributed comments from herself and Mike Dwyer concerning the proposed voluntary assessment to supplement our $48/year maintenance fees. Attached are their notes and a sample letter used by the Cypresswood subdivision. Rita likes this letter and, particularly, the back-up that the Cypresswood Board presented to the homeowners letting them know specific reasons why the additional funds were needed. Dwyer needs to know by mid-November to allow time for printing. Rita suggested that we carefully consider our timing, the exact wording, provide sufficient back-up, and mention that homeowners are "not obligated." Dywer says we need to consider that approximately 400 homeowners are already paying extra for the Security Program. We need to determine how much to ask for and put the letter together. Joanne volunteered to type the letter. Ken, Rick, Rita, Joanne, and Michelle will meet before the next Board meeting to discuss.

Security

Rick distributed letters from Hartnett covering workers' compensation. Copies of the correspondence are attached to these Minutes for reference. He talked with Al Danto about Hartnett's recommendation that we continue to pay and explained that the IRS views the situation differently from the statute and that the statute overrides. Our security officers receive 1099's at year-end.

Rick distributed a copy of a recent news article about additional neighborhood lighting available through H,L&P. It was suggested that we include this information in the September IF News.

Rick raised a concern about old, rusted, vandalized street signs which ruin the appearance of the neighborhood. He will drive the neighborhood and write down locations of these signs. He asked the other Board members to do the same. Robert will then present the compiled list to the appropriate City authority and ask for replacement signs.

Dorothy brought up the subject of records management. All of the materials obtained from Mr. York, the Deed Restrictions Committee reports, the Security Program literature, and other pertinent IFCIA documents need to be maintained in a businesslike manner, perhaps in a central location for easy retrieval. She asked that a short-term committee be formed to decide how and where to store the files. Rick, Dorothy, and Joanne volunteered for this committee.

Joanne reported that a Form 9.01 was recently filed with the Secretary of State of Texas reinstating the corporate status and naming Jim Kilpatrick as registered agent and listing 5740 W. Little York, #349, 77091 as the registered office. Rick said we should probably change the registered agent/registered office to the Association's attorney, Everett Hartnett at his law office. Some discussion followed. Joanne will obtain Change of Registered Agent/Office forms for this purpose.

Joanne reported that approximately nine blocks in IF celebrated National Night Out. She and Dave Ferguson had constructed the National Night Out sign that was placed at the Antoine/Victory subdivision entrance. She suggested that a similar sign be placed at the entrance announcing the annual homeowners' meeting in January and requested the Board to set the date of the meeting early enough to allow for construction of the sign.

Dorothy mentioned that we will be able to hold the annual meeting in the large dining room at the Golf Club.

Rick suggested that the Board renew the Association's membership in the Northwest Coalition. Upon motion duly made, seconded and unanimously carried, it was

> RESOLVED, that the Inwood Forest Community Improvement Association renew its membership in the Northwest Coalition by paying the $25 membership dues.

The Directors discussed a proposed awards presentation in honor of Jim Kilpatrick to recognize his years of service to the Association. Since it is too late to plan the event for the close of the pool season, Dorothy suggested an awards dinner at the golf club. Tickets could be sold. Joanne showed pictures of some golf putters hand-crafted from mesquite wood and suggested that this would be a nice award for the honoree. Dorothy will contact Carole Kilpatrick for her opinion on holding the dinner. Joanne, Rick, Dorothy, Rita, and Michelle will form a short-term committee to plan the event. Upon motion duly made, seconded and unanimously carried, it was

> RESOLVED, that a budget of $150 is hereby approved for the purchase of an award to be given to the honoree at the proposed awards dinner, such award to be selected by the short-term committee appointed for this purpose.

Ken received a letter from Nelda McQuary thanking us for our thank-you letter to her for her efforts in promoting the neighborhood.

The next meeting will be held at Rita Rogers' house.

There being no further business to come before the Meeting, upon motion duly made, seconded and unanimously carried, the Meeting was adjourned at 9:30 p.m.

Joanne Ferguson,
Secretary of the Meeting

APPROVED:

Rick Vance,
Chairman of the Meeting

POOL REPORT FOR BOARD MEETING

AUGUST 12, 1992

MONIES RECEIVED:		EXPENSES FROM CASH BOX:
W/E 7-20-92	98.00	9.06
7-26-92	110.00	18.78
8-02-92	0.00	0.00
8-09-92	95.00	83.98
TOTAL:	303.00	111.82

DEPOSITS:		
	7-26-92	98.00
	8-10-92	205.00
TOTAL:		303.00

EXPENSES FROM CHECKING ACCOUNT:

CK 768	INMAN	226.46
769	FLYNN	146.81
771	INMAN	177.19
772	FLYNN	168.75
774	INMAN	243.00
775	FLYNN	131.63
776	INMAN	243.00
777	FLYNN	121.50

#1458.34

Note: Ck 770 Houston General Ins. 36.00
773 Sec of State of Texas 25.00

MICHAEL E. DWYER, P.C.
CERTIFIED PUBLIC ACCOUNTANT
5600 Northwest Central Drive, Suite 105
Houston, Texas 77092

Board of Directors
Inwood Forest Community
Improvement Association

I have compiled the accompanying balance sheet-modified cash basis of Inwood Forest Community Improvement Association as of July 31, 1992 and the related statement of revenue and expenses-modified cash basis for the seven months then ended in accordance with standards established by the American Institute of Certified Public Accountants. The financial statements have been prepared on the modified cash receipts and disbursements basis of accounting which is a comprehensive basis of accounting other than generally accepted accounting principles.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. I have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

The accompanying budget of Inwood Forest Community Improvement Association has not been compiled or examined by me and, accordingly, I do not express an opinion or any other form of assurance on it.

Management has elected to omit substantially all of the information ordinarily included in financial statements. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Association's financial status. Accordingly, these financial statements are not designed for those who are not informed about such matters.

The Association prepares its financial statements on the basis of modified cash receipts and disbursements; consequently, certain revenues are recognized when received rather than when earned, and certain expenses and purchases of assets are recognized when cash is disbursed rather than when the obligation is incurred. Accordingly, the accompanying financial statements are not intended to present financial position and results of operations in conformity with generally accepted accounting principles.

Michael E. Dwyer, P.C.

August 12, 1992

INWOOD FOREST COMMUNITY IMPROVEMENT ASSN
BALANCE SHEET
AS OF 7/31/92

ASSETS

CURRENT ASSETS			
CASH-T.C.B.-CHECKING	2,059		
PETTY CASH-T.C.B.-CKG	1,720		
CASH-SECURITY	4,337		
MONEY MKT-SAVINGS T.C.B.	83,965		
MONEY MKT-SPECIAL T.C.B.	4,388		
TOTAL CURRENT ASSETS		96,471	
PROPERTY AND EQUIPMENT			
LAND	5,259		
LAND IMPROVEMENT	6,724		
SWIMMING POOL	16,748		
POOL FENCE	1,400		
BUILDING	17,104		
PLAYGROUND EQUIPMENT	23,562		
MACHINERY AND EQUIPMENT	2,789		
SECURITY VEHICLE	13,733		
ACCUMULATED DEPRECIATION	45,275-		
ACCUM.DEPRN-SECURITY	10,454-		
TOTAL PROPERTY AND EQUIPMENT		31,589	
TOTAL ASSETS			128,059

LIABILITIES AND FUND BAL.

UNEARNED SECURITY REVENUE	15,450		
FUND BALANCE			
DEPRECIATION	5,048-		
CONTRIBUTIONS	125,977		
CURRENT YEAR INC (LOSS)	13,213		
BEGINNING FUND BALANCE	21,533-		
TOTAL FUND BALANCE		112,609	
TOTAL LIABILITIES AND FUND BAL.			128,059

SEE ACCOUNTANT'S COMPILATION REPORT

INWOOD FOREST COMMUNITY IMPROVEMENT ASSN
STATEMENT OF INCOME
FOR THE 7 MONTHS ENDING 7/31/92

	CURRENT ACTUAL	CURRENT PERCENT	YEAR TO DATE ACTUAL	YEAR TO DATE PERCENT
REVENUES				
MAINTENANCE-HOMEOWNERS	48	0.6	55,973	49.5
MAINTENANCE-TOWNHOMES			3,456	3.1
TRANSFER FEES	522	6.7	2,483	2.2
POOL RECEIPTS	611	7.8	4,887	4.3
ESPLANADE BEAUTIFICATION			705	0.6
SECURITY REVENUE	6,610	84.8	45,186	40.0
RECOVERY OF LEGAL FEES			387	0.3
* TOTAL REVENUES	7,791	100.0	113,077	100.0
POOL EXPENSES				
POOL CONTRACT	2,945	37.8	15,567	13.8
ELECTRICITY	240	3.1	1,855	1.6
TELEPHONE	30	0.4	238	0.2
WATER	543	7.0	1,808	1.6
GATE GUARD	1,425	18.3	3,379	3.0
REPAIR & MAINTENANCE			1,832	1.6
* TOTAL POOL EXPENSES	5,182	66.5	24,680	21.8
OPERATING & ADMIN				
ESPLANADE MAINTENANCE	2,220	28.5	15,984	14.1
MOSQUITO CONTROL	280	3.6	1,190	1.1
LEGAL			860	0.8
ACCOUNTING	750	9.6	5,250	4.6
INSURANCE	1,786	22.9	6,324	5.6
STATIONARY-POSTAGE-ADMIN.	175	2.3	1,797	1.6
SECURITY-ADMINISTRATIVE	871	11.2	3,627	3.2
SECURITY OFFICERS	4,590	58.9	33,593	29.7
SECURITY VEHICLE	279	3.6	3,633	3.2
SECURITY INSURANCE	331-	4.2-	3,727	3.3
DEPRECIATION-VEHICLE	150	1.9	1,050	0.9
* TOTAL OPERATING & ADMIN	10,771	138.2	77,036	68.1
OTHER INCOME				
INTEREST INCOME	216	2.8	1,852	1.6
* TOTAL OTHER INCOME	216	2.8	1,852	1.6
* NET INCOME (LOSS)	7,946-	102.0-	13,213	11.7

SEE ACCOUNTANT'S COMPILATION REPORT

INWOOD FOREST COMMUNITY IMPROVEMENT ASSN
STATEMENT OF INCOME
IFCIA EXCLUDING SECURITY
FOR THE 7 MONTHS ENDING 7/31/92

	CURRENT ACTUAL	CURRENT PERCENT	YEAR TO DATE ACTUAL	YEAR TO DATE PERCENT
REVENUES				
MAINTENANCE-HOMEOWNERS	48	4.1	55,973	82.4
MAINTENANCE-TOWNHOMES			3,456	5.1
TRANSFER FEES	522	44.2	2,483	3.7
POOL RECEIPTS	611	51.7	4,887	7.2
ESPLANADE BEAUTIFICATION			705	1.0
RECOVERY OF LEGAL FEES			387	0.6
* TOTAL REVENUES	1,181	100.0	67,891	100.0
POOL EXPENSES				
POOL CONTRACT	2,945	249.4	15,567	22.9
ELECTRICITY	240	20.3	1,855	2.7
TELEPHONE	30	2.5	238	0.4
WATER	543	46.0	1,808	2.7
GATE GUARD	1,425	120.6	3,379	5.0
REPAIR & MAINTENANCE			1,832	2.7
* TOTAL POOL EXPENSES	5,182	438.8	24,680	36.4
OPERATING & ADMIN				
ESPLANADE MAINTENANCE	2,220	188.0	15,984	23.5
MOSQUITO CONTROL	280	23.7	1,190	1.8
LEGAL			860	1.3
ACCOUNTING	750	63.5	5,250	7.7
INSURANCE	1,786	151.2	6,324	9.3
STATIONARY-POSTAGE-ADMIN.	175	14.9	1,797	2.6
* TOTAL OPERATING & ADMIN	5,212	441.3	31,406	46.3
OTHER INCOME				
INTEREST INCOME	216	18.3	1,852	2.7
* TOTAL OTHER INCOME	216	18.3	1,852	2.7
* NET INCOME (LOSS)	8,997-	761.8-	13,657	20.1

SEE ACCOUNTANT'S COMPILATION REPORT

INWOOD FOREST COMMUNITY IMPROVEMENT ASSN
STATEMENT OF INCOME
IFCIA SECURITY PATROL
FOR THE 7 MONTHS ENDING 7/31/92

	CURRENT ACTUAL	CURRENT PERCENT	YEAR TO DATE ACTUAL	YEAR TO DATE PERCENT
REVENUES				
SECURITY REVENUE	6,610	100.0	45,186	100.0
* TOTAL REVENUES	6,610	100.0	45,186	100.0
OPERATING & ADMIN				
SECURITY-ADMINISTRATIVE	871	13.2	3,627	8.0
SECURITY OFFICERS	4,590	69.4	33,593	74.3
SECURITY VEHICLE	279	4.2	3,633	8.0
SECURITY INSURANCE	331-	5.0-	3,727	8.2
DEPRECIATION-VEHICLE	150	2.3	1,050	2.3
* TOTAL OPERATING & ADMIN	5,559	84.1	45,630	101.0
* NET INCOME (LOSS)	1,051	15.9	444-	1.0-

SEE ACCOUNTANT'S COMPILATION REPORT

INWOOD FOREST COMMUNITY IMPROVEMENT ASSN
STATEMENT OF INCOME
FOR THE 7 MONTHS ENDING 7/31/92

	CURRENT			YEAR TO DATE		
	ACTUAL	BUDGET	BUDG-VAR	ACTUAL	BUDGET	BUDG-VAR
REVENUES						
MAINTENANCE-HOMEOWNERS	48	4,913	4,865-	55,973	34,435	21,538
MAINTENANCE-TOWNHOMES				3,456	3,350	106
TRANSFER FEES	522	166	356	2,483	1,170	1,313
POOL RECEIPTS	611	333	278	4,887	2,331	2,556
ESPLANADE BEAUTIFICATION		83	83-	705	585	120
SECURITY REVENUE	6,610		6,610	45,186		45,186
RECOVERY OF LEGAL FEES		208	208-	387	1,460	1,073-
* TOTAL REVENUES	7,791	5,703	2,088	113,077	43,331	69,746
POOL EXPENSES						
POOL CONTRACT	2,945	1,500	1,445-	15,567	10,500	5,067-
ELECTRICITY	240	292	52	1,855	2,044	189
TELEPHONE	30	29	1-	238	203	35-
WATER	543	267	276-	1,808	1,865	57
GATE GUARD	1,425	1,333	92-	3,379	2,667	712-
REPAIR & MAINTENANCE		417	417	1,832	2,915	1,083
SOFT DRINKS-POOL		300	300		600	600
* TOTAL POOL EXPENSES	5,182	4,138	1,044-	24,680	20,794	3,886-
OPERATING & ADMIN						
ESPLANADE MAINTENANCE	2,220	1,667	553-	15,984	11,665	4,319-
MOSQUITO CONTROL	280	167	113-	1,190	1,165	25-
LEGAL		1,000	1,000	860	7,000	6,140
ACCOUNTING	750	750		5,250	5,250	
INSURANCE	1,786	750	1,036-	6,324	5,250	1,074-
STATIONARY-POSTAGE-ADMIN.	175	142	33-	1,797	990	807-
SECURITY-ADMINISTRATIVE	871		871-	3,627		3,627-
SECURITY OFFICERS	4,590		4,590-	33,593		33,593-
SECURITY VEHICLE	279		279-	3,633		3,633-
SECURITY INSURANCE	331-		331	3,727		3,727-
DEPRECIATION-VEHICLE	150		150-	1,050		1,050-
* TOTAL OPERATING & ADMIN	10,771	4,476	6,295-	77,036	31,320	45,716-
OTHER INCOME						
INTEREST INCOME	216	542	326-	1,852	3,790	1,938-
* TOTAL OTHER INCOME	216	542	326-	1,852	3,790	1,938-
* NET INCOME (LOSS)	7,946-	2,369-	5,577-	13,213	4,993-	18,206

SEE ACCOUNTANT'S COMPILATION REPORT

CASH DISBURSEMENTS

H	REF	DATE	EMPL	DESCRIPTION	ACCOUNT	AMOUNT
2- 0	1	7/31/92	0	DEPRECIATION	86902	150.00
2- 0	1	7/31/92	0	DEPRECIATION	60702	150.00-
2- 0	1	7/31/92	0	DEPRECIATION	510	221.00
2- 0	1	7/31/92	0	DEPRECIATION	290	221.00-
						0.00 *
2- 0	2	7/31/92	0	SECURITY REVENUE	402	3,127.00
2- 0	2	7/31/92	0	SECURITY REVENUE	60702	3,127.00-
						0.00 *
2- 0	3	7/31/92	0	DEPOSIT-POOL	60501	98.00-
2- 0	3	7/31/92	0	DEPOSIT-POOL	60501	207.00-
2- 0	3	7/31/92	0	DEPOSIT-POOL	60501	105.00-
2- 0	3	7/31/92	0	DEPOSIT-POOL	60501	201.08-
						611.08-*
2- 0	4	7/31/92	0	PETTY CASH NET TRANS JUL	102	975.06-
2- 0	5	7/31/92	0	DEPOSIR-MNY MKT JUL	60101	48.00
2- 0	5	7/31/92	0	DEPOSIR-MNY MKT JUL	60301	522.00
2- 0	5	7/31/92	0	DEPOSIR-MNY MKT JUL	60301	522.00-
2- 0	5	7/31/92	0	DEPOSIR-MNY MKT JUL	60301	522.00-
2- 0	5	7/31/92	0	DEPOSIR-MNY MKT JUL	60101	96.00-
						570.00-*
2- 0	6	7/31/92	0	C/M INT INC MNY MKT JUL	91101	215.98-
2- 0	7	7/31/92	0	CASH TRANS JUL MNY MKT	111	8,022.01-
2- 0	7	7/31/92	0	INSURANCE PROCEEDS	85402	1,628.20-
						9,650.21-*
2- 0	8	7/31/92	0	DEPOSIT SECTY REV JUL	60702	3,333.00-
2- 0	8	7/31/92	0	CASH TRANS SECURITY	109	2,076.23-
						5,409.23-*
2- 0	9	7/31/92	0	SERVICS CHARGE	83501	49.87
2- 0	10	7/31/92	0	OPERATING CASH TRANS JUL	101	7,057.77-
2- 0	761	7/31/92	0	R INMAN	73101	182.25
2- 0	762	7/31/92	0	T FLYNN	73101	168.75
2- 0	763	7/31/92	0	R ROGERS	73101	58.60
2- 0	763	7/31/92	0	R ROGERS	73101	58.60-
2- 0	763	7/31/92	0	R ROGERS	83501	58.60
						58.60 *
	764	7/31/92	0	J FERGUSON	83501	57.20

CASH DISBURSEMENTS

CH	REF	DATE	EMPL	DESCRIPTION	ACCOUNT	AMOUNT
2- 0	765	7/31/92	0	R INMAN	73101	243.00
2- 0	766	7/31/92	0	T FLYNN	73101	111.38
2- 0	767	7/31/92	0	SW PAINT	83501	9.75
2- 0	768	7/31/92	0	R INMAN	73101	226.46
2- 0	769	7/31/92	0	T FLYNN	73101	146.81
2- 0	770	7/31/92	0	HOU GNL INSURANCE	82501	36.00
2- 0	771	7/31/92	0	R INMAN	73101	177.19
2- 0	772	7/31/92	0	T FLYNN	73101	168.75
2- 0	1406	7/31/92	0	NW COLLISION INC	85402	1,297.30
2- 0	1406	7/31/92	0	MICHAEL E DWYER, PC	82001	750.00
						2,047.30 *
2- 0	1407	7/31/92	0	VOID	85402	0.00
2- 0	1407	7/31/92	0	TOUCAN POOL MGT INC.	70101	2,945.13
						2,945.13 *
2- 0	1408	7/31/92	2013	FRANCIS ROSS	85102	278.11
2- 0	1408	7/31/92	2013	FRANCIS ROSS	85202	600.00
2- 0	1408	7/31/92	0	HOUSTON WATER	72601	542.88
						1,420.99 *
2- 0	1409	7/31/92	2014	KARRY D VAN HUIS	85202	375.00
2- 0	1409	7/31/92	0	TROY'S LANDSCAPE	80501	2,220.00
						2,595.00 *
2- 0	1410	7/31/92	2002	JOHNNIE C HAMILTON, JR.	85202	975.00
2- 0	1410	7/31/92	0	SW BELL	71101	29.65
						1,004.65 *
2- 0	1411	7/31/92	2003	RUSSELL F LILLEY	85202	795.00
2- 0	1411	7/31/92	0	H. L. & P.	70601	240.24
						1,035.24 *
2- 0	1412	7/31/92	2022	BRUCE EVANS	85202	405.00
2- 0	1412	7/31/92	0	EXCALIBUR PEST CONTROL	81001	280.00
						685.00 *
2- 0	1413	7/31/92	2016	JAMES WHEELER	85202	225.00
2- 0	1414	7/31/92	2029	RANDY BARTON	85202	375.00
[redacted]	1415	7/31/92	2030	JAMES PAVLU	85202	600.00

CASH DISBURSEMENTS

CH	REF	DATE	EMPL	DESCRIPTION	ACCOUNT	AMOUNT
2- 0	1416	7/31/92	2031	HENRY LARGE	85202	0.75
2- 0	1416	7/31/92	2031	HENRY LARGE	85202	0.75-
2- 0	1416	7/31/92	2031	HENRY LARGE	85202	75.00
						75.00 *
2- 0	1417	7/31/92	0	DONALD WARNER	85202	90.00
2- 0	1418	7/31/92	2027	JOHN NICHOLS	85202	75.00
2- 0	1419	7/31/92	0	ALDINE TAX COLLECTOR	85302	95.37
2- 0	1420	7/31/92	0	GTE	85302	183.81
2- 0	1421	7/31/92	0	MICHAEL E. DWYER, P.C.	85102	99.84
2- 0	1422	7/31/92	0	HOUSTON GENERAL INSURANCE	85102	493.00
2- 0	5007	7/31/92	0	TCB FOR W.COMP.	82501	1,750.23
2- 0	5008	7/31/92	0	XFER TO OPERATING	101	7,057.76

47 DEBIT TRANSACTIONS 28,616.68 *
19 CREDIT TRANSACTIONS 28,616.68-*

66 TOTAL TRANSACTIONS: IN BALANCE

REPORT ON PAST DUE MAINTENANCE FEES

TO DATE HAVE VISITED 10 HOMES.

HAVE COLLECTED NO MONIES.

EXCUSES ABOUND.

HAVE WRITTEN TO THOSE PEOPLE THAT ALSO HAVE BEEN DEED RESTRICTION PROBLEMS NOTIFYING THEM THAT THEY ALSO HAVE A PROBLEM WITH THEIR FEES.

MIKE DWYER STATED TO ME IN A PHONE CONVERSATION ON 8-10-92 THAT ANY MONIES THAT HE RECEIVED TO PAY ANY CURRENT OR PAST DUE FEES HE DEPOSITED THE MONIES BUT WOULD NOT PASS ANY RELEASE OF LIEN RECOMMENDATIONS UNLESS LEGAL WAS PAID FOR. WHAT DO YOU THINK?
TITLE COMPANIES WOULD STILL SHOW LIENS AS IN FORCE UNTIL WE COLLECTED LEGAL FEES ALSO.

JULY 24, 1992

SUZANNE DEBIEN REALTORS
1235 NORTH LOOP
HOUSTON TEXAS 77022

RE: NEWSLETTER

DEAR MS. DEBIEN:

The Board of Directors for Inwood Forest Community Improvement Association has expressed some concerns about the recent Debien Realty newsletter that was distributed in Inwood Forest and titled "Inwood News". This most recent issue apparently has caused some confusion among some of the residents of Inwood Forest. Several hotline phone calls were received that required a clarification on our part as to the distinction between your newsletter and ours.

To our knowledge, this is the first time that this has happened. Apparently, the new format does not distinguish itself enough to be readily identified as an advertisement.

We would appreciate it if the header for the "Inwood Forest" section was clarified more boldly to identify itself as from Suzanne Debien Realty. Maybe something along the lines of: Suzanne Debien Realty-Inwood Forest Edition.

Thank you for your help in this matter. Your support and interest in the neighborhood is appreciated.

Very truly yours,

Dorothy A. Miller
Deed Restrictions

INWOOD FOREST HOTLINE

7-15-92	SONTAG	869-3284 SEC 1 WANTS TO KNOW ABOUT 5 CAR GARAGE
	PAT ROMANO	447-6717 BLACK MAPLE WANTS INFO ON BURNED HOUSE, 18 WHEELER, & SELLING HER HOME
	BEARDON	999-4838 ON BLACK JACK WANTS TO KNOW IF THERE IS A ROOF COLOR RESTRICTION-SEC 15
7-16-92	QUAY	820-0298 WANTS COPY OF DEED RESTRICTIONS FOR THE PEOPLE WHO BOUGHT HIS HOUSE.
	WOOD	448-1980 ON TALL PINES WANTS INFO ABOUT WHITE FENCE
7-25-92	ECHARD AND BATEMAN	931-7515 CALLED ABOUT WEED PROBLEM ON ARNCLIFFE AND ANTOINE
8-1-92	TYSON	448-8859 5651 BENT BOUGH WANTS TO KNOW ABOUT PAINT COLOR FOR HOUSE
8-5-92	FERRIS	7511 BRUSHY CT HAS PLANS READY TO MAIL ON THEIR STORAGE BUILDING 447-5767
	ANONYMOUS	CALL ABOUT RENTERS AT 6018 VICTORY-GRASS TOO HIGH

REPORT TO BOARD OF DIRECTORS

DATE: AUGUST 12, 1992
FROM: DOROTHY A. MILLER
DEED RESTRICITONS

PHASE I:

NONE AT THIS TIME THAT HAVE THE POTENTIAL TO GO FURTHER.

PHASE II:

YEPPEZ 5930 GUM GROVE 2ND NOTICE HAS GONE OUT-PICTURES PROVIDED BY DAVENPORT
PROBLEMS WITH HOUSE:

1. ROOF FALLING IN
2. GARAGE DOOR IN NEED OF REPAIR
3. YARD NEEDS MAINTENANCE
4. FRONT DOOR DAMAGED
5. WINDOW AIR COND. IN VIEW FROM STREET
6. OVERGROWN BACKYARD
7. NUSIANCE TO NEIGHBORS-CHILDREN NOT BEING SUPERVISED
8. FLAT BED TRUCK PARKED IN STREET AT NIGHT AND ON WEEKENDS
9. FAILURE TO PAY MAINTENANCE FEES

RECOMMEND THAT THIS BE USED AS A TEST CASE FOR OUR NEW ATTORNEY.

To: Board of Directors August 12, 1992

From: Lita Logue

Re: Maintenance Fee Increase

Suggestions from Mike Dwyer regarding procedures and timing for supplemental maintenance fee increase:

1. Approximately 200 properties are billed directly to mortgage companies.

2. Fee should be shown in two amounts with total to be paid. Mike feels most will pay the total without question.

3. If anyone objects to mortgage company's payment, we will issue refund for supplemental amount directly to homeowner. Mike is agreeable to handle any questions or complaints from mortgage or property owner.

4. Letter should accompany billing notice explaining reasons for and nature of increase. Mike suggest we [redacted] vote but not overall stress that explanatory fee is optional.

5. Maintenance fee notices are sent out around December 8th. Therefore, all things would have to be in order by mid-November.

6. In determining fee and explanation for increase, we be sensitive to the fact that certain residents are already contributing to other area such as Security Patrol.

7. Any increase, letters or other action should be examined by our legal [redacted] counselor.

Ruth

CYPRESSDALE COMMUNITY IMPROVEMENT ASSOCIATION
c/o C.I.A. Services, Inc.
5616 FM 1960 East, Suite 190
Humble, Texas 77346

(713)852-1700

November, 1991

Dear Neighbor:

I am pleased to announce that the financial condition of the Cypressdale Community Improvement Association is improving and the 1992 Maintenance Fee has been set at $180.00 for all homeowners. A statement of your account is enclosed. Please return your payment by January 1st in the enclosed envelope.

The increase of $15.00 over 1991 is due to increases in Streetlight Operation , Utilities, and Security. We have been able to offset a portion of those increases through higher collections and reduced expenditures.

For your reference, a copy of our 1992 budget is shown on the back of this letter. To put the budget in perspective, your $180.00 goes toward the following services:

$	44.47	- Streetlights
	41.93	- Security
	33.10	- Amenities Operation
	14.48	- Association Management
	8.45	- Insurance & Taxes
	8.20	- Grounds Maintenance
	7.56	- Utilities
	6.99	- Professional Fees & Services
	6.10	- D/R Management
	4.46	- Reserves
	4.26	- All Other Expense Areas
$	180.00	- 1992 Maintenance Fee

Finally, your Board of Trustees are volunteers elected by you to maintain the quality and integrity of our community. We regularly meet at 7:00 p.m. the 1st Wednesday of the month at the Cypressdale Clubhouse. Your input and concerns are important to all of us. Please try to attend these meetings so we can hear your ideas, complaints, or praises. See you there!

Sincerely,
John Payne, President
Cypressdale C.I.A.

B:F92.MF

Cypressdale C.I.A.

1992 Expenditure Budget
Adopted October 2, 1991

DESCRIPTION	BUDGET
PROFESSIONAL FEES	
Management	$ 11,400
D/R/ Management	4,800
Invoicing Fee	400
Legal Services	5,000
Title Search	100
Security	33,000
Sub-Total	$ 54,700
COMMITTEES	
Newsletter	$ 0
Recreation	0
Beautification	0
Crime Watch	0
Sub-Total	$ 0
RECREATION AREAS	
Pool Management	$ 19,700
Pool Supplies	2,500
Pool Maintenance	2,000
Pool Tags	350
Playground	0
Building Maint.	1,500
Sub-Total	$ 26,050

DESCRIPTION	BUDGET
UTILITIES	
Streetlights	$ 35,000
Electricity	5,000
Water/Sewer	450
Telephone	500
Sub-Total	$ 40,950
GROUNDS MAINTENANCE	
Landscape Maint.	$ 6,000
D/R Mowing	450
General Maint.	0
Sub-Total	$ 6,450
MISCELLANEOUS	
Insurance	$ 5,500
Property Tax	400
IRS Tax	750
Postage	1,650
Office Expenses	750
Annual Meeting	250
Miscellaneous	700
Sub-Total	$ 10,000
CAPITAL EXPENSES	
Reserve Fund	$ 3,514
Sub-Total	$ 3,514
GRAND TOTAL	$ 141,664

INWOOD FOREST COMMUNITY IMPROVEMENT ASSOCIATION

5740 W. LITTLE YORK / SUITE #349 / HOUSTON, TEXAS 77091

July 28, 1992

Mr. Everett E. Hartnett
Attorney at Law
Two Chasewood Park
20405 State Highway 249, Suite 225
Houston, Texas
77070

Re: Inwood Forest Security Patrol
Worker's Compensation Insurance

Dear Everett:

In the late spring and early summer of 1989 some Inwood Forest residents came to the IFCIA board to discuss the possibility of providing a security patrol for the neighborhood. The board's reaction was supportive. However, based on the existing maintenance fee schedule, it could not be provided by the Association. Since the residents had identified 450-500 interested homeowners along with the Inwood Forest Townhomes and the Inwood Forest Golf Club, the IFCIA board agreed to facilitate the implementation of the security program by agreeing to contract with the HPD officers. Additionally, the board voted to pay for workers' compensation insurance on the officers.

Our patrol officers have advised that, to their knowledge, no one else who hires off duty officers carries workers' compensation on them. Thus, we have reviewed the necessity of carrying this insurance with our insurance broker, Gallagher/Braniff. They feel the officers do not qualify as independent contractors according to the workers' compensation law and, for that purpose, could be considered our employees. However, as an alternative we could elect to non-subscribe to the workers' compensation act.

Everett, we would like your comments on the workers' compensation issue as the situation currently exists and we would be willing to consider alternative methods of approaching the security program organization and maintenance. As you ponder this, please note:

- There are pool "gate attendants" we hire each year and have carried workers' compensation on them and would continue to do so.

- The security program is not funded by the annual maintenance fees. Approximately 450 out of 1250 residents pay monthly fees for the service.

- The security program is run by a security program committee partially comprised of IFCIA board members. All committee members are program subscribers.

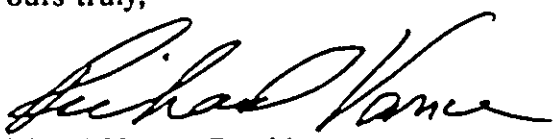
- The IFCIA board continues to carry workers' compensation on the patrol officers in order to protect the IFCIA from potential claims generated from a program which is not funded nor administered by the IFCIA--yet the IFCIA contracts with the officers.

Enclosed for your reference and review are copies of the following:

- Senate Bill 1 - The current Texas Workers' Compensation Act.
- The contracts with the HPD officers and the HPD officer patrol administrator.
- Correspondence from the insurance broker.

I suspect you will have some questions and require further clarification. Please feel free to call.

Yours truly,



Richard Vance, President
Inwood Forest Community Improvement Association

RV:dfn

Enclosure

Phone: 966-5491 (W)
847-5699 (H)

cc: IFCIA Board of Directors

INWOOD FOREST COMMUNITY IMPROVEMENT ASSOCIATION

5740 W. LITTLE YORK / SUITE #349 / HOUSTON, TEXAS 77091

August 4, 1992

Mr. Everett Hartnett
Attorney at Law
Two Chasewood Park
20405 State Highway 249, Suite 225
Houston, Texas
77070

Re: IFCIA Matters

Dear Everett:

Further to our telephone conversation, please note the following:

- Enclosed are copies of the Association's By-Laws and Articles of Incorporation. It is my understanding you have been in touch with Dorothy Miller and she will be providing copies of the deed restrictions.

- I have also sent copies of letters provided by our former attorney, James M. York, concerning the security patrol and insurance matters. This is not provided for your analysis of his comments, rather as an indication of the basis of the decision made at the time to carry workers' compensation insurance. Since the workers' compensation law has changed since his letter, we would like your review and comment on that basis as outlined in my July 29, 1992, letter to you. (By the way, contrary to my earlier indication, I have come to find that the Tanglewood subdivision carries workers' compensation insurance under similar circumstances.)

  Another enclosure addresses the 1989 amendment to the Civil Practice and Remedies Code to provide homeowners associations and their officers certain exemptions and immunities from civil liabilities. Does this apply to directors also and how does this relate to the liability issues raised in Mr. York's September 21, 1989, letter.

Please advise what these requests will entail in terms of your research and preparation time. As we discussed, we would like your response by our next meeting on August 12.

- The IFCIA board continues to carry workers' compensation on the patrol officers in order to protect the IFCIA from potential claims generated from a program which is not funded nor administered by the IFCIA--yet the IFCIA contracts with the officers.

Enclosed for your reference and review are copies of the following:

- Senate Bill 1 - The current Texas Workers' Compensation Act.
- The contracts with the HPD officers and the HPD officer patrol administrator.
- Correspondence from the insurance broker.

I suspect you will have some questions and require further clarification. Please feel free to call.

Yours truly,

Richard Vance, President
Inwood Forest Community Improvement Association

RV:dfn

Enclosure

Phone: 966-5491 (W)
847-5699 (H)

cc: IFCIA Board of Directors

James M. York
Attorney and Counselor at Law

10120 Northwest Freeway
Suite 200
290 at Dacoma
Houston, Texas 77092

Board Certified
Texas Board of Legal Specialization
Civil Trial Law and Family Law

Telephone
(713) 957-4177

September 19, 1989

James Kilpatrick
5218 Moss Glen
Houston, Texas 77088

Paul Meeting
7430 Deep Forest
Houston, Texas 77088

Rick Vance
7202 Deep Forest
Houston, Texas 77088

Susie Loxterman
5215 Moss Glen
Houston, Texas 77088

Tom Hawkins
7407 Oak Arbor
Houston, Texas 77088

Re: Security Officers Contract

Dear IFCIA Directors:

After several telephone calls between Sgt. Hightower and this office resulting in our telephone conference today, I am now in a position to inform you of the status of the IFCIA agreement with Michael Corley. I have also discussed this matter generally with Mike Dwyer relating to the tax withholding problems and have discussed this entire matter with Rick Vance.

Each of you were given a marked copy of the Security Agreement at the Directors Meeting and I will assume that you will refer to it for clarification of my recommendations.

In summary, my recommendations are as follows:

(1) That Workers Compensation insurance coverage immediately be acquired and extended to specifically cover Michael Corley and any and all off-duty HPD officers who act as security in Inwood Forest. Competent insurance advice should be obtained as to necessary policies and coverage.

(2) That withholding of income taxes and social security taxes be immediately instituted as to each HPD officer for services to IFCIA as employees.

(3) That the security automobile have full coverage including PIP, Uninsured Motorist Coverage and Underinsured Motorist Coverage.

I am informed by Sgt. Hightower that HPD and/or the City of Houston will exercise discretion as to whether or not to undertake payment for any injuries to its officers and may well seek subrogation and remibursement against IFCIA. This is the reason for the striking of the "employer-employee provisions" and the "workers compensation provision". It is my view that the off duty HPD officer will be covered by HPD and/or the City of Houston since under state law and city ordinances a police officer is "on duty" twenty-four hours a day; however, an action may be instituted against IFCIA either by HPD, the City of Houston or the officer to seek subrogation and reimbursement for sums necessarily paid under the primary coverage.

As you may know, if IFCIA is required by law to carry Workers Compensation Insurance due to its number of employees then it will be liable under the Workers Compensation Law to provide the medical and wage benefits regardless of its insurance coverage. This is serious financial exposure and could literally bankrupt the IFCIA.

The tax withholding requirement will be much less dollar exposure to IFCIA and the liability amount may be calculable by Mr. Dwyer.

Additionally, I call your attention to the stricken provision which sought to protect the officers and directors of IFCIA from individual liability for payment to the security officers. While it is my view that the corporate veil will protect you from this exposure, it is a clause which Sgt. Hightower says must be sticken since HPD does not want its officers to waive any rights for himself or for HPD. This same theory is the reason for their striking the "hold harmless" clause.

The good news is that IFCIA is aware of the problems due to the stricken provisions in this agreement; this is far better than a verbal or silent agreement in which IFCIA would be aware of the problems and its exposure only after the fact or occurrence subjected it to the liability. After my recommendations stated herein are instituted and followed, then the Agreement with Mike Corley and the Agreement with the individual officers may be signed without further changes.

If you have questions please feel free to contact me.

Sincerely,

James M. York

JMY/dw
cc: Mike Dwyer

James M. York
Attorney and Counselor at Law

10120 Northwest Freeway
Suite 200
290 at Dacoma
Houston, Texas 77092

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September 21, 1989

James Kilpatrick
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Tom Hawkins
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Houston, Texas 77088

Re: IFCIA Security Patrol
Insurance Issues

Dear IFCIA Directors:

As you know, I have stated in my letter to each of you dated September 19, 1989 certain recommendations relating to the insurance coverage relating to Michael Corley and the other off-duty officers. This makes it relevant to inform each of you of the effect of a Board Member voting on this or any other issue before the Board.

For this purpose, assume that the worker's compensation or other insurance recommendation is voted down by the IFCIA Board by vote of 3 to 2 and that later a court determines that IFCIA is liable for worker's compensation benefits to an injured or deceased off-duty HPD officer or for damages to a third person or property as a result of the acts or omissions of the officer. This could result in Director liability if the resolution, against legal advice, should be

voted in the affirmative and then the substantial loss occurs. Or stated another way, a Director is not liable for any claims or damages that may result from his, or her, acts if in the exercise of ordinary care he, or she, acted in good faith and in reliance upon the written opinion of an attorney for the corporation.

A Director who is present and dissenting from a resolution will be deemed to have voted in favor of the resolution unless his, or her, dissent is entered in the minutes of the meeting or shall file written dissent with the Secretary before adjournment or by registered mail immediately after the adjournment.

My purpose in writing this letter is to inform you as an IFCIA Director of my understanding of relevant and applicable rules of law. It is my understanding that there is Directors Liability Insurance in force to cover you but there may be exceptions to coverage when advice from legal counsel is rejected by vote of a Director or Directors.

IFCIA has at least two areas of possible real liability under the security officer situation:

(1) For the injury and/or death of an officer during his scheduled hours for IFCIA;

(2) For the injury or death to a third person or damage to property of a third person as a result of the acts or omissions of the officer during his scheduled hours for IFCIA.

These areas of liability can be covered by insurance and should be covered by insurance. Otherwise, even if IFCIA is successfully defended, the defense costs of a lawsuit can be substantial and should be covered by insurance. Even a "nuisance lawsuit" can be overwhelmingly expensive to defend against and could seriously impair or deplete IFCIA financial resources; this could then result in a lawsuit by an Inwood Forest owner against the individual Directors under the Director's Liability Policy to recoup IFCIA losses.

While my impressions are unimportant to this issue, I am of the opinion that some members of the Board have disagreed with my concerns and are willing to "damn the torpedoes, full speed ahead". I urge caution on the possible liability issues and urge you to be aware that these issues are decided by juries as to whether or not the officer was acting within the scope of his duties for IFCIA when he, or she, is injured or killed, or, when he, or she, causes injury or death to a third person or damage to property. I urge you to obtain the appropriate insurance coverage immediately and to realize that it may not be the IFCIA security officer who sues IFCIA for his death or injury but it may be his wife or his children represented by a well-prepared Plaintiff's lawyer or it may be the insurance carrier for HPD or the City of Houston seeking subrogation and reimbursement for insurance amounts paid in behalf of the injured or deceased officer.

Mike Dwyer is dealing capably with the withholding issue and I now defer to his expertise in that sphere.

I have now covered the insurance questions in this and my prior letter to each of you dated September 19, 1989 but I will be pleased to discuss the matter further upon inquiry from any, or all, of you.

Sincerely,

James M. York

JMY/dw

DEED RESTRICTIONS AND HOMEOWNER ASSOCIATIONS

There were a number of significant changes made in deed restrictions and homeowners associations in the 1989 legislature. You may recall that deed restrictions are enforced merely by contract and are one of the more detailed methods of land use control utilized in Texas, particularly in communities where there is no zoning. There has been a major concern that volunteers working for homeowners associations who enforce these deed restrictions may have personal liability as a result of being sued while working in their capacity as a volunteer for the homeowners association. The 1989 legislature, however, amended the Civil Practice and Remedies Code to include homeowners associations and their officers as exempt or immune from civil liabilities as a result of their functions as an officer in homeowners associations. This should relieve an awful lot of volunteers from a very serious concern that existed up until the passage of this new statute. (*See*, VTCA, Civil Practice and Remedies Code, § 83.004.)

There was another revision made to the Local Government Code providing that in a city or municipality that does not have zoning, any person who sells or conveys restrictive property within that municipality must give the purchaser notice of the restrictions and notice of the municipality's right to enforce compliance with those restrictions.

Each municipality must pass its own respective ordinance which will set out the details of these requirements. There is specific information which must be provided to the purchaser as set out in § 230.005(v) of the Local Government Code. The notice must be given to the purchaser at or before the final closing of the sale. Both the seller and purchaser must sign and acknowledge the notice and it must be recorded in the real property records of the county in which the property is located following the closing of the sale. The municipality must file in the real property records a form of the notice with its effective date that is prescribed for the use by any person who sells or conveys that restrictive property located inside the boundaries of the municipality.

If the seller fails to do it, it does not affect the validity or enforceability of the sale or conveyance of the restrictive property, nor the validity or enforceability of the restrictions, and the "sale" consists of any transfer of title and includes even an executory of contract of purchase and sale having a performance period of more than six months.

LANDLORD AND TENANT RELATIONSHIPS

There were a number of significant landlord and tenant relationship changes coming out of the 1989 legislature. The changes deal with a landlord's duty to repair, a landlord's remedy to lockout a tenant, a tenant's remedy for a writ of re-entry in the event of an illegal lockout and some additional requirements before filing an eviction.

LANDLORD'S DUTY TO REPAIR

A new provision provides that the landlord and tenant may agree that the tenant may repair any condition covered by Subchapter B of the statute at the landlord's expense; or in the alternative, the landlord and tenant may agree that the tenant will repair at tenant's expense. The latter agreement however, can only be made under specific conditions, basically requiring that the dwelling be in good condition prior to tenant occupancy and that the landlord own only one rental dwelling.

One of the other major changes was the addition of a new provision (*See*, VTCA Property Code, § 92.0561), which allows a tenant to repair the premises if the landlord is liable to the tenant for repair.

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August 10, 1992

Mr. Richard Vance
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Re: Inwood Forest Community Improvement Association; Legal Analysis of the Provisions of the Texas Workers' Compensation Act Relating to Security Personnel

Dear Mr. Vance:

In reference to your July 28th and August 4th letters, the following legal opinion and analysis is being provided as to the provisions of the Texas Workers' Compensation Act as that Act relates to security personnel. In rendering this opinion, I have reviewed the provisions of the Texas Workers' Compensation Act and the letter opinions dated September 19 and September 21, 1989 from James M. York and have discussed this matter with Mark Conner of North American Insurance Company. It is my opinion that the Association should continue to maintain worker's compensation insurance on its off-duty police officers.

The Texas Workers' Compensation Act provides that an employer shall be liable for any compensable injury that arises out of the employee's performance of his duties and work while working within the usual course and scope of employment. Compensation for which the employer is liable would include payment of medical benefits and expenses, income benefits, death benefits and burial expenses. Section 1.03 (18) of the Act defines employee as "each person in the service of another under any contract of hire, whether express or implied, or oral or written. The term includes an employee employed in the usual course and scope of the employer's business who is directed by the employer temporarily to perform services outside the usual course and scope of the employer's business..."

Although I have not yet been provided with copies of the Inwood Forest deed restrictions, most deed restrictions contain references that one of the powers and duties of the Association is to provide security for the homeowners. Therefore, security could be regarded as "the usual course and scope of the employer's (Association's) business." Even in the absence of such provision in the deed restrictions, the Courts would probably regard the providing of security as a "usual course and scope of the employer's business." The off-duty security personnel would be regarded as persons "in the service of another under any contract of hire" and, in fact, a written contract exists with the off-duty security personnel. The definition contained in Section 1.03 (19) further buttresses that position by stating, in part, that "employer" means "a person that makes a contract of hire, that employs one or more employees ..." Section 1.03 (38) defines a "person" as "... a corporation, ... association, or other legal entity." Therefore, the Inwood Forest Community Improvement Association would be an entity covered by the Texas Workers' Compensation Act and would be an employer of the off-duty police officers (the employees), unless such persons are regarded as independent contractors.

Per your request, I have examined the provisions of Section 3.05 of the Act relating to independent contractors. Subsection (a) of that Section provides the definitions and requirements for independent contractor status. I have attached that Subsection hereto. In particular, I direct your attention to Section 3.05 (a) (1) (A) and (B). Under the provisions of (A), the independent contractor must act as the "employer of any employee of the contractor". The provisions of that Subsection would seem to exclude an individual who does not act as an employer of any employees. Therefore, an off-duty police officer would probably not be an independent contractor by virtue of that definition.

As I had indicated to you, this is contrary to the commonly accepted definition of an independent contractor. However, the definition contained in the Texas Workers' Compensation Act would be controlling since that is a specific statutory definition. Even if the more commonly accepted definition were to be adopted by the Courts, the provisions of Section 3.05 (a) (1) (B) might also be interpreted to exclude off-duty police officers as independent contractors. The Court might determine that the Association has significant input into determining the manner in which the work or services is performed and certainly controls the "hours of labor [and] method of payment to any employee." Therefore, the off-duty police officers would not be regarded as "independent contractors" under the Texas Workers' Compensation Act and the Association would be required to provide worker's compensation insurance to those off-duty police officers.

There is some possibility that Lt. Frank J. Ross could be regarded as the "contractor" and the other off-duty police

officers could be regarded as his "subcontractors" under the definitions contained in Section 3.05 (a) (2) and (5) and the provisions of Section 3.05 (c). I was not provided with sufficient information to make that determination. I have reviewed the "Agreement for Services of Off-Duty Police Officers" between Lt. Ross and the Association and the letter agreement to be signed by each off-duty police officer (referencing Michael Corley as the supervisor in the 1989 letter agreement). The Agreement and letter agreement state that Lt. Ross is the independent contractor (probably meaning general contractor) and that each off-duty police officer is an independent contractor (presumably the subcontractor of Lt. Ross).

However, in spite of the contractual agreement, it is my opinion that Lt. Ross would be the employee of the Association and not legally capable of acting as a "contractor" under the provisions of Section 3.05. The Contract would probably be interpreted as having designated Lt. Ross as the facilitator for the obtaining of the off-duty police officers and possibly as the supervisor of the off-duty police officers. Control of the hours and manner of performance would still remain with the Association and, therefore, Lt. Ross would be regarded as an employee and not a general contractor. Even if Lt. Ross were regarded as a general contractor, it would still be necessary that he maintain worker's compensation insurance coverage on the off-duty police officers. The Association would have to increase the contract amount to cover the cost of that insurance and, under that circumstance, it would be more prudent for the Association to maintain the insurance policy in its name to ensure that the premiums are properly and timely paid so that the coverage remains in full force.

I have discussed this matter with Mark Conner of North American Insurance Agency. Mr. Conner concurs that the Association should maintain worker's compensation insurance on its off-duty police officers. Mr. Conner related two experiences his company has had involving off-duty police officers hired as security personnel - one involving the Harris County Sheriff's Department and the other involving the City of Houston Police Department. In both instances, the worker's compensation insurance companies for the governmental entities denied worker's compensation coverage for injuries sustained by the off-duty police officers. In both instances, the Association's worker's compensation carriers paid for the medical benefits and the lost wages sustained by the employee (off-duty police officer). It is the policy of the City of Houston and the City of Houston Police Department, according to Mr. Conner, that off-duty police officers are not in the employ of the City of Houston Police Department while performing outside jobs and will not be covered by the City's worker's compensation insurance policy. It is also my interpretation of the Statutes that the City's carrier would not be responsible for payment of such benefits.

Association would lose much of its current control over the security program and would have to consult with other persons and entities. If the Association, as a corporate entity, was the major participant in the new corporation, then the Court might regard the new corporation as a mere sham and still permit an action directly against the Association. These are merely some preliminary ideas regarding establishment of a separate corporate entity solely for the security program. Should further legal analysis or research be required, then please advise me.

I believe that this letter addresses the concerns expressed in your July 28th and August 4th letters. However, should that not be the case or should you desire to discuss these matters further, please feel free to contact me. Thank you very much.

Sincerely,

Everett E. Hartnett

EEH/sja
Enclosures

(2) the injury arises out of and in the course and scope of employment.

(b) If an injury is an occupational disease, the employer in whose employ the employee was last injuriously exposed to the hazards of the disease is considered to be the employer of the employee under this Act.

SECTION 3.02. EXCEPTIONS. An insurance carrier is not liable for compensation if:

(1) the injury occurred while the employee was in a state of intoxication;

(2) the injury was caused by the employee's wilful intention and attempt to injure himself or to unlawfully injure another person;

(3) the employee's horseplay was a producing cause of the injury;

(4) the injury arose out of an act of a third person intended to injure the employee because of personal reasons and not directed at the employee as an employee or because of the employment;

(5) the injury arose out of voluntary participation in an off-duty recreational, social, or athletic activity not constituting part of the employee's work-related duties, except where these activities are a reasonable expectancy of or are expressly or impliedly required by the employment; or

(6) the injury arose out of an act of God, unless the employment exposes the employee to a greater risk of injury

from an act of God than ordinarily applies to the general public.

SECTION 3.03. COMMON-LAW DEFENSES. (a) In an action against an employer who does not have workers' compensation insurance coverage to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment, it is not a defense that:

(1) the employee was guilty of contributory negligence;

(2) the employee assumed the risk of injury or death; or

(3) the injury or death was caused by the negligence of a fellow employee.

(b) This section does not reinstate or otherwise affect the availability of these or other defenses at common law.

(c) The employer may defend the action on the ground that the injury was caused by an intentional act of the employee to bring about the injury or while the employee was in a state of intoxication.

SECTION 3.04. BURDEN OF PROOF. In all such actions against an employer who does not have workers' compensation insurance coverage, it is necessary to a recovery for the plaintiff to prove negligence of the employer or some agent or servant of the employer acting within the general scope of his employment.

SECTION 3.05. APPLICATION TO INDEPENDENT CONTRACTORS. (a) In this section:

(1) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who ordinarily:

(A) acts as the employer of any employee of the contractor by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(B) is free to determine the manner in which the work or service is performed, including the hours of labor of or method of payment to any employee;

(C) is required to furnish or have his employees, if any, furnish necessary tools, supplies, or materials to perform the work or service; and

(D) possesses the skills required for the specific work or service.

(2) "General contractor" means a person who has undertaken to procure the performance of work or services, either separately or through the use of subcontractors. The term includes a "principal contractor," "original contractor," "prime contractor," or an analogous term. The term does not include motor carriers that make use of owner operators in providing transportation service.

(3) "Motor carrier" means a person operating a motor vehicle over any public highway in this state for the purpose of providing transportation services or contracting to provide those services.

(4) "Owner operator" means a person who provides transportation service for a motor carrier under contract An owner operator is an independent contractor.

(5) "Subcontractor" means a person who has contracted with a general contractor to perform all or any part of the work or services that a general contractor has undertaken to perform

(6) "Transportation service" means providing a motor vehicle with a driver under contract used in transporting passengers or property.

(b) For the purposes of workers' compensation insurance coverage, a person who performs work or provides a service for a general contractor or motor carrier who is an employer under this Act is an employee of that general contractor or motor carrier, unless the person is operating as an independent contractor or is hired to perform the work or provide the service as an employee of a person operating as an independent contractor.

(c) A subcontractor and the subcontractor's employees are not employees of the general contractor for purposes of this Act if the subcontractor:

(1) is operating as an independent contractor; and

(2) has entered into a written agreement with the general contractor that evidences a relationship in which the subcontractor assumes the responsibilities of an employer for the performance of work.

(d) An owner operator and the owner operator's employees are not employees of a motor carrier for the purposes of this Act if

the owner operator has entered into a written agreement with the motor carrier that evidences a relationship in which the owner operator assumes the responsibilities of an employer for the performance of work.

(e) A general contractor and a subcontractor may enter into a written agreement under which the general contractor provides workers' compensation insurance coverage to the subcontractor and the employees of the subcontractor. If a general contractor elects to provide that coverage, then, notwithstanding Section 10.02 of this Act, the actual premiums, based on payroll, that are paid or incurred by the general contractor for the coverage may be deducted from the contract price or any other amount owed to the subcontractor by the general contractor. In any agreement under this subsection, the subcontractor and his employees shall be considered employees of the general contractor only for the purposes of workers' compensation laws of this state and for no other purposes.

(f) A copy of any agreement made pursuant to Subsection (e) of this section must be filed with the general contractor's workers' compensation insurance carrier within 10 days of execution. If the general contractor is a certified self-insurer, a copy of the agreement must be filed with the division of self-insurance regulation. Failure to file this agreement constitutes a Class B administrative violation.

(g) A motor carrier and an owner operator may enter into a written agreement under which the motor carrier provides workers'

compensation insurance coverage to the owner operator and the employees of the owner operator. If a motor carrier elects to provide that coverage, then, notwithstanding Section 10.02 of this Act, the actual premiums, based on payroll, that are paid or incurred by the motor carrier for the coverage may be deducted from the contract price or any other amount owed to the owner operator by the motor carrier.

(h) If a person who has workers' compensation insurance coverage subcontracts all or part of the work to be performed by the person to a subcontractor with the purpose and intent to avoid liability as an employer under this Act, an employee of the subcontractor who sustains a compensable injury in the course and scope of the employment shall be treated as an employee of the person for purposes of workers' compensation and shall also have a separate right of action against the subcontractor, which right of action does not affect the employee's right to compensation under this Act.

(i) This section does not prevent a general contractor from directing a subcontractor or the employees of a subcontractor to cease or change unsafe work practices.

(j) An insurance company may not demand insurance premiums from an employer for coverage of an independent contractor or employees of an independent contractor if the independent contractor is under a contract of hire with the employer.

(k) This section does not apply to farm or ranch employees.

(l) If a general contractor has workers' compensation

insurance to protect the general contractor's employees and if in the course and scope of the general contractor's business the general contractor enters into a contract with a subcontractor who does not have employees, the general contractor shall be treated as the employer of the subcontractor for the purposes of this Act and may enter into an agreement for the deduction of premiums paid in accordance with Subsection (e) of this section.

SECTION 3.06. APPLICATION TO CERTAIN BUILDING AND CONSTRUCTION WORKERS. (a) This section applies only to contractors and workers preparing to construct, constructing, altering, repairing, extending, or demolishing residential structures, or commercial structures not exceeding three stories or 20,000 square feet, or an appurtenance to such a structure.

(b) In this section:

(1) "Hiring contractor" means a general contractor or subcontractor who, in the course of his regular business, subcontracts part or all of the work to others.

(2) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who:

(A) is paid by the job, not by the hour or some other time-measured basis;

(B) is free to hire as many helpers as he desires and to determine what each helper will be paid; and

(C) is free to work for other contractors, or to send helpers to work for other contractors, while under contract to

the hiring employer.

(c) A hiring contractor has no obligation to provide workers' compensation insurance for an independent contractor or to an independent contractor's employee, helper, or subcontractor. Absent an agreement as described in Subsection (d) of this section, an independent contractor shall be responsible for any workers' compensation insurance coverage provided to the employees of that independent contractor.

(d) An independent contractor and the hiring contractor may voluntarily enter into a written agreement whereby the independent contractor agrees that the hiring contractor may withhold the cost of workers' compensation insurance from the contract price and that, for the purpose of providing workers' compensation insurance, the hiring contractor will be the employer of the independent contractor and the independent contractor's employees. The hiring contractor and independent contractor may enter into such an agreement even if the independent contractor has no employees Absent an agreement as provided for by this subsection, the hiring contractor is not responsible for providing workers' compensation to any independent contractor or to any independent contractor's employee, helper, or subcontractor. The agreement shall be filed with the commission by personal delivery or registered or certified mail. The agreement is deemed filed upon receipt by the commission. The hiring contractor shall send a copy of the joint agreement to the insurer of the hiring contractor when the agreement is filed with the commission. The agreement makes the

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August 10, 1992

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Re: Inwood Forest Community Improvement Association; Charitable Immunity and Liability Act

Dear Mr. Vance:

In reference to your letter dated August 4th, the provisions of Section 84.003 of the Texas Civil Practice and Remedies Code, commonly known as the "Charitable Immunity and Liability Act of 1987", is applicable to the Directors of the Association. The Act defines a volunteer as "a person rendering services for or on behalf of a charitable organization who does not receive compensation in excess of reimbursement for expenses incurred, and such term includes a person serving as a director, officer, trustee, or direct service volunteer."

As we discussed today, the protection granted under that Act would extend to committee members, such as Dorothy Miller as chairperson of the Deed Restriction Committee, because such persons would be regarded as "volunteers" under the definitions contained in the Act. Therefore, it would not be necessary that such individuals be elevated to a Board position.

As to the issues raised in the various legal opinions by James M. York, the immunity granted under the Statute would apply to the Officers and Directors of the Association; however, it would not apply to the liability of the Association as an entity, except to the extent that Section 84.006 limits the liability of the Association to money damages in a maximum amount of $500,000.00 for each person and $1,000,000.00 for each single occurrence of bodily injury or death and $100,000.00 for each single occurrence for injury or destruction of property.

The provisions of Section 84.005 (relating to liability of employees) and Section 84.006 (relating to liability of the Association itself) apply only if the Association has liability insurance coverage in effect for the act or omission of the Association and its employees and volunteers with policy limits of at least $500,000.00 for each person and $1,000,000.00 for each single occurrence of bodily injury or death and $100,000.00 for each single occurrence for injury or destruction of property. I understand from our telephone conversation of last week that the Association does have a liability policy in at least these policy limits.

The Statute may not be applicable to the security personnel. Under the provisions of the Statute, independent contractors are not covered. Such persons would include the garbage collectors, maintenance people, management companies, and security personnel.

Although the new Texas Workers' Compensation Act is somewhat ambiguous as to whether the security personnel would be regarded as independent contractors, the common law theory regarding independent contractors would be that for the security personnel to be construed as independent contractors, the Association must not exercise significant control over the actions of the individual in the performance of his work and duties. The security personnel are part-time and the Association does not appear to have total control of the performance of the off-duty police officers' work and duties. The performance of the work and duties is governed by Statutes, Traffic Laws and Penal Codes.

On the other hand, it could be argued that the Association has significant input into determining the manner in which the work or services is performed and the area to which the off-duty police officers are assigned and certainly controls the hours of labor and method of payment to the off-duty police officers. Therefore, we could argue in any proceeding in which protection is sought from liability under the Charitable Immunity and Liability Act that since the off-duty police officers are regarded as "employees" under the Texas Workers' Compensation Act and because the Association exercises significant control, the off-duty police officers would be covered as "employees" under the provisions of the Charitable Immunity and Liability Act.

In any event, the off-duty police officers should be covered under the Association's liability policies. I understand that the Association has a rider to its liability policy that insures the security personnel and that the vehicles being driven by the security personnel are included on the Association's automobile insurance policy. If this is not the case, please advise me so that we may discuss those insurance problems in greater detail.

As to the worker's compensation issue, the Statute would not be applicable. The Statutes governing worker's compensation would be controlling.

I have included an article, entitled "Officer, Directors and Volunteer Immunity - A Legal Prospective", which was prepared shortly after the "Charitable Immunity and Liability Act" was amended in the summer of 1989. This article analyzes the implications of that amendment and explains many of the legal issues involved. Also enclosed herein is an article written by Mark Conner of North American Insurance Agency, which article discusses some of the implications and pitfalls from an insurance point of view. After reading these articles, please call me if you have any questions.

I am also enclosing herein a copy of an article, entitled "Enforcement of Deed Restrictions", which I had written in 1990. This is provided for information purposes. Of course, there is no charge for the providing of any of these articles.

Thank you very much.

Sincerely,

Everett E. Hartnett

EEH/sja
Enclosures

OFFICER, DIRECTORS AND VOLUNTEER IMMUNITY - A LEGAL PROSPECTIVE

by

Everett E. Hartnett

A Bill passed in the last legislative Session which amends Chapter 84 of the Texas Civil Practice and Remedies Code. That chapter, entitled the "Charitable Immunity and Liability Act of 1987", was originally enacted during the 1987 legislative Session. It was in response to the increasing number of volunteers who were withdrawing from services to charitable organization because of their perception of personal liability arising out of services rendered to those organizations and because of the problems that such organizations were experiencing in obtaining and affording liability insurance for the organizations and its employees and volunteers. However, the 1987 statute failed to include homeowners associations as one of the charity organizations that was included in the statute. This article discusses some of the legal implications and pitfalls of the statute. In an article elsewhere in this issue, Mark Conner of North American Insurance Agency discusses some of the implications and pitfalls from an insurance point of view.

The new statute amends Section 84.003 of the Act by providing immunity from liability of homeowners association as defined by Section 528(c) of the Internal Revenue Code of 1986. The bill would extend protection to the directors, employees and volunteers of the association. The Act creates three tiers of immunity: volunteers who are serving as an officer, director or trustee of the organization; volunteers who are serving as direct service volunteers of the organization; and employees of the organization. Whether an individual is a volunteer or an employee is governed by the definitions contained in the statute. A volunteer is "a person rendering services for or on behalf of a charitable organization who does not receive compensation in excess of reimbursement for expenses incurred, and such term includes a person serving as a director, officer, trustee, or direct service volunteer." An employee is "any person, including an officer or director, who is in the paid service of a charitable organization, but does not include an independent contractor." The immunity provided depends upon in which tier that the person is included.

An officer, director or trustee, who is a volunteer, is immune from civil liability for any act or omission resulting in death, damage or injury if the volunteer was acting in the course and scope of his duties or functions as an officer, director or

trustee of the organization. A volunteer, who is not an officer, director or trustee, is immune from civil liability for any act or omission resulting in death, damage or injury if the volunteer was acting in good faith and in the course and scope of his duties or functions as a volunteer of the organization. The term "good faith" is defined as "the honest, conscientious pursuit of activities and purposes that the organization is organized and operates to provide."

Both types of volunteers are liable for injuries to persons or property caused by negligence in the operation of a motor-driven equipment (cars, airplanes, etc) to the extent of any existing insurance coverage required under the Texas Motor Vehicle Safety Responsibility Act. This provision would mean that if a volunteer had an automobile accident, the extent of his liability would be the amount of insurance coverage which the volunteer or the organization carries on the vehicle so long as the policy limits are in at least the minimum amount required by the Texas Motor Vehicle Safety Responsibility Act. The volunteer would not be liable for damages in excess of the policy limits.

The Act specifically provides that the provisions of the statute apply only to the liability of volunteers and do not apply to the liability of the organization for acts or omissions of volunteers. That means that the homeowners association can still be sued for any negligence of its volunteers or employees who are acting within the course and scope of their duties. For example, if a volunteer has an automobile accident and the damages are more than $20,000.00, the volunteer would not be liable for the excess amount, but the Association would be liable.

The third tier are employees. Pursuant to Section 84.005, such employees are liable for damages based on an act or omission by the person, acting in the course and scope of his employment. However, the liability of the employee is limited to money damages in a maximum amount of $500,000.00 for each person and $1,000,000.00 for each single occurrence of bodily injury or death and $100,000.00 for each single occurrence for injury or destruction of property. All homeowners associations should consider having insurance coverage and indemnification agreements to cover their employees.

The Act does not cover independent contractors. Such persons would include the garbage collectors, maintenance people, management companies, and security personnel.

Section 84.006 of the statute provides that in any civil action brought against the homeowners association for damages based on acts or omissions of its volunteers or employees, the liability of the association is limited to money damages in a maximum amount of $500,000.00 for each person and $1,000,000.00

for each single occurrence of bodily injury or death and $100,000.00 for each single occurrence for injury or destruction of property. This provision necessitates that the Association have an insurance policy in at least these policy limits. The volunteers and certainly the employees should be insured under that policy to at least the extent of those limits.

The provisions of Section 84.005 (relating to liability of employees) and Section 84.006 (relating to liability of the Association itself) apply only if the Association has liability insurance coverage in effect for the act or omission of the Association and its employees and volunteers with policy limits of at least $500,000.00 for each person and $1,000,000.00 for each single occurrence of bodily injury or death and $100,000.00 for each single occurrence for injury or destruction of property. Should the Association fail to maintain such insurance policy, then the employees and the Association would lose the protection granted under the statute. The volunteers would appear to still be protected, although this is not totally clear from the statute.

Two provisions of the Act raise further concerns. The first is Section 84.007 (a), which provides that the Act "does not apply to an act or omission that is intentional, wilfully or wantonly negligent, or done with conscious indifference or reckless disregard for the safety of others." If the volunteer or employee did the act intentionally, his conduct would not be covered by the Act. An example of this would be an assault on another person. Gross negligence would also not be covered. These provisions will be the most fertile for litigation and is the primary reason that insurance companies have not yet lowered rates for directors and officers liability policies. An attorney bringing an action against the Association and/or its officers, directors or volunteers would always plead gross negligence as a means of taking the action outside of the Act. Until the Texas Courts have rendered sufficient cases interpreting the provisions of Section 84.007, it would appear that the Act would have minimum effect on insurance rates.

The second provision is contained in Section 84.007 (b) which provides that the Act "does not limit or modify the duties or liabilities of a member of the board of directors or officers to the organization or its members and shareholders." The former provision would cover situations in which a director or officer acts against the best interests of the Association, i.e., embezzlement or accepting a bribe. It is the latter provision, i.e., that the Act does limit liability to the members and shareholders of the Association, that causes the most concern. All deed restrictions provide that the homeowners are members or shareholders of the Association. Therefore, the volunteers would not be protected against actions by a homeowner in the subdivision for negligence or other acts of the volunteer. For

example, a volunteer has an automobile accident, while acting in the course and scope of his duties, with a homeowner being injured. It would appear that such negligence would not be covered by the statute. A more significant scenario is the board filing an action against a homeowner for a deed restriction violation. The homeowner counter sues for malicious prosecution, slander, defamation of character or similar action. Since the homeowner is a member of the Association, liability for such actions may not be covered by the statute. Such actions are also regarded as intentional torts and limits on liability may also be excluded by the provisions of Section 84.007 (a). Unfortunately, these are the most common types of actions against officers and directors of Associations. This is an area which the legislature might further address in the next session.

It is also important to note that the statute appears only to cover torts (negligence, intentional acts) and not contract actions. If an Association is sued for breach of contract, the limits of liability would not apply. An officer or director might also be sued, along with the Association, for such breach or other contract action and the provisions of the statute would not apply. The statute would also appear to exclude "ultra vires" acts in which it can be shown that the officer or directors was not acting in course and scope of his duties or exceeded those duties.

The new statute becomes effective on September 1, 1989. It would apply only to causes of action which accrued after that date. Any legal actions which accrued prior to that date would be governed by current law, which does not provide for any immunity from liability.

The new statute does specifically provide that the Association must be qualified under the provisions of Section 528(c) of the Internal Revenue Code of 1986. If your Association has not yet filed to become a nonprofit homeowners associations under the provisions of Section 528(c), it should do so prior to September 1, 1989. Your management company or CPA can inform your Association whether it qualifies under that Section.

In summary, all of the problems mentioned in this Article and in the article by Mark Conner necessitate that the Association continue to carry directors and officers liability insurance, general liability insurance, worker's compensation insurance, motor vehicle insurance and other insurance coverage necessary to protect the Association's assets and its officers, directors and volunteers. All Associations should also avail themselves of the indemnification provisions of Article 1396-2.22A of the Texas Non-Profit Corporation Act. That Article provides that the By-laws of a non-profit corporation may provide for indemnification of the directors concerning their activities on behalf of the association. The Articles of Incorporation,

Bylaws or a Resolution by the Shareholders or Directors may make the indemnification of the directors mandatory so long as such documents contains the requirements of Article 1396-2.22A. The indemnification provisions will also apply to officers of the Association, its employees and any committees of the Association (such as Architectural Control Committee).

Each officer, director and volunteer of the Association might also wish to add a rider on his or her individual homeowners' policy for torts that injure feelings or damage reputations. This is "Homeowners Personal Injury Coverage Form No. HO-362".

CCUCA CLARION

Volume 10, No. 7 CYPRESS CREEK UNITED CIVIC ASSOCIATIONS, INC. JULY 1989

CCUCA CALENDAR

THERE WILL BE NO GENERAL MEETINGS IN JULY OR AUGUST. THERE WILL ALSO NOT BE A BOARD MEETING IN JULY.

August 8 : "NATIONAL NIGHT OUT"

August 23 : BOARD OF DIRECTORS MEETING
HUNTWICK CLUB FACILITIES

September 21: CCUCA GENERAL MEETING - 7:30 pm
SPEAKER: TBA
LOCATION: CYPRESSWOOD
COURTHOUSE ANNEX

September 27: BOARD OF DIRECTORS MEETING
HUNTWICK CLUB FACILITIES

October 19: CCUCA GENERAL MEETING - 7:30 pm
SPEAKER: COUNTY JUDGE JON LINDSAY
LOCATION: CYPRESSWOOD
COURTHOUSE ANNEX

February 10: CCUCA SEMINAR AND TRADE SHOW
LOCATION: SHERATON CROWN HOTEL

1988-1989 CCUCA BOARD

Everett Hartnett, President	370-7799 370-1506
Susan Hill, Vice President	440-4735
Eugene Maier, Secretary & V. P. - Transportation	444-6839
Helen Eichblatt, Vice President	376-7798
Suzie Lane, V. P.- Security	376-4257
John Moulds, V. P.- Membership	353-5809
Anna Ellis, V. P. - Gov't Affairs	373-1126
Tom O'Brien, Treasurer	251-1662

FROM THE PRESIDENT Everett E. Hartnett

Cypress Creek Flood Control. The recent second flooding in the Northwest and Northeast areas again demonstrates the need for improved flood control in this area. On June 16th, the Subcommittee on Energy and Water Development of the Congressional Committee on Appropriations approved $250,000 in federal funds for preconstruction, engineering and design work for the Cypress Creek flood control project. Congressmen Fields and Archer had proposed that $500,000 in federal funds be included in the fiscal 1990 federal budget for that project. Eventual funding will be $89.6 million for the flood control project. In a News Release from Congressman Archer's Office, it was noted that flooding occurs along portions of Cypress Creek every two or three years. In 1984, flooding of Cypress Creek forced the evacuation of more than 500 residents and the 1987 flooding forced the evacuation of more than 150 persons. The final figures for the recent flooding have not been established, but the total should substantially exceed the prior flooding. The Army Corps of Engineers has estimated that annual property losses along Cypress Creek are about $8.8 million with the estimated losses to rise to $9.3 million by 1990.

We have received many requests from subdivisions and residents for our organization to become involved in the flood control project. We will be cosponsoring with residents and organizations from Ponderosa Forest and Westador a meeting to be held on July 18th at Northwoods Presbyterian Church. That meeting will be attended by representatives of Congressmen Archer and Fields offices, Commissioner Lyons, a representative from Jon Lindsay's Office, representatives from the Corp of Engineers, Harris County Flood Control District and Federal Emergency Management Agency and other interested parties.

(Continued Page 2

PRESIDENT (Continued from Page 1)

flood levee project has been approved for verness Forest, at a cost of 2.6 million dollars. However, there is some concern among other subdivisions along Cypress Creek that the levee project may cause flooding upstream of the project. It is also becoming apparent that there is an interaction between highway and building construction and increased flooding. The need may exist for impact studies to be performed prior to any construction to determine the effect of construction on potential increased risks of flooding. The July 18th meeting hopes to address some of these concerns and issues. If there is sufficient interest among subdivisions and residents, we will establish a permanent committee on flood control to study the causes and possible solutions to the flooding problems.

Annexation. Mayor Kathy Whitmire spoke at a meeting in Clear Lake on June 29th. Despite the fact that Clear Lake was annexed several years ago, the area is still not being provided with City services, including fire protection. residents of Clear Lake were understandably et. May this be a omen of things to come? Incidentally, the Mayor would not comment on what areas of Northwest Harris County will be annexed next and when that annexation might occur. It would appear that there will not be any proposed annexation until after the City election and my best guess would be that annexation would not occur until sometime next summer.

Contract Deputy and Constable Program. The revised contracts have been prepared by the County Attorney's Office and approved by County Commissioner's Court. The revised contracts remove the provision that the subdivisions must pay a substantial cost for time-and-a-half for overtime when the subdivision is utilizing deputies for extra security. The Bill, introduced at this Session of the legislature that would have required subdivisions to pay 100 percent of any contract deputy or constable program that they have with Harris County, has been defeated.

ional Night Out. On August 8th, "National t Out" will be observed throughout Harris nty. Included in this issue are an excerpt from a news release by Sheriff Johnny Klevenhagen and an article by Susan Hill. This year's theme is "Crime Prevention Begins at Home". Some of the activities which the Sheriff's Department recommends for the August 8th date are turning on your vehicle headlights while driving anytime between the hours of 8:00 a.m. and 6:00 p.m.; turning on your outside lights at your home between 8:00 a.m. and 10:00 p.m.; contacting at least one neighbor to ask him or her to do the same; and urging your civic organization to hold a special meeting to discuss crime in your area and what the organization and residents can do about it with the meeting to occur on August 8th, if possible, but no later than the week of August 12th. For more information, please contact Steve Pierson of the Crime Prevention Unit of the Harris County Sheriff's Department at 221-7347.

Legislation. The regular session of the State Legislature has ended and the State Legislature is now in special session. A final update is presented in this issue as to which Bills passed and which did not pass in the regular session.

Mega Water District. SB 1032, which dissolves the Harris County Regional District No. 2, has now been signed by the Governor.

Officer's and Director's Liability. In last month's issue of the Clarion, we indicated that Senate Bill 1419 would probably not pass in this Session. Senator Henderson was able to tag that Bill onto another Bill that did pass and the new statute becomes effective on September 1, 1989. That Bill amends Chapter 84 of the Texas Civil Practice and Remedies Code by providing immunity from liability for directors, officers and volunteers of homeowners associations. This Bill is discussed in two separate articles in this issue of the Clarion.

Neighborhood Revitalization Program. We are still in need of volunteers to assist neighborhoods in North Harris County that are attempting to get back on their feet or attempting to establish a homeowners associations. We have received many requests from subdivisions and associations that need assistance. Please contact Susan Hill if you are interested in volunteering to assist in that worthwhile program.

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OFFICER, DIRECTORS AND VOLUNTEER IMMUNITY - A LEGAL PROSPECTIVE

By
Everett E. Hartnett

A Bill passed in the last legislative Session amends Chapter 84 of the Texas Civil Practice and Remedies Code. That chapter, entitled the "Charitable Immunity and Liability Act of 1987", was originally enacted during the 1987 legislative Session. It was in response to the increasing number of volunteers who were withdrawing from services to charitable organization because of their perception of personal liability arising out of services rendered to those organizations and because of the problems that such organizations were experiencing in obtaining and affording liability insurance for the organizations and its employees and volunteers. However, the 1987 statute failed to include homeowners associations as one of the charitable organizations that was included in the statute. This article discusses some of the legal implications and pitfalls of the statute. In an article elsewhere in this issue, Mark Conner of North American Insurance Agency discusses some of the implications and pitfalls from an insurance point of view.

The new statute amends Section 84.003 of the Act by providing immunity from liability of homeowners association as defined by Section 528(c) of the Internal Revenue Code of 1986. The bill would extend protection to the directors, employees and volunteers of the association. The Act creates three tiers of immunity: volunteers who are serving as an officer, director or trustee of the organization; volunteers who are serving as direct service volunteers of the organization; and employees of the organization. Whether an individual is a volunteer or an employee is governed by the definitions contained in the statute. A volunteer is "a person rendering services for or on behalf of a charitable organization who does not receive compensation in excess of reimbursement for expenses incurred, and such term includes a person serving as a director, officer, trustee, or direct service volunteer." An employee is "any person, including an officer or director, who is in the paid service of a charitable organization, but does not include an independent contractor." The immunity provided depends upon in which tier that the person is included.

An officer, director or trustee, who is a volunteer, is immune from civil liability for any act or omission resulting in death, damage or injury if the volunteer was acting in the course and scope of his duties or functions as an officer, director or trustee of the organization. A volunteer, who is not an officer, director or trustee, is immune from civil liability for any act or omission resulting in death, damage or injury if the volunteer was acting <u>in good faith</u> and in the course and scope of his duties or functions as a volunteer of the organization. The term "good faith" is defined as "the honest, conscientious pursuit of activities and purposes that the organization is organized and operates to provide."

Both types of volunteers are liable for injuries to persons or property caused by negligence in the operation of a motor-driven equipment (cars, airplanes, etc) to the extent of any existing insurance coverage required under the Texas Motor Vehicle Safety Responsibility Act. This provision would mean that if a volunteer had an automobile accident, the extent of his liability would be the amount of insurance coverage which the volunteer or the organization carries on the vehicle so long as the policy limits are in at least the minimum amount required by the Texas Motor Vehicle Safety Responsibility Act. The volunteer would not be liable for damages in excess of the policy limits.

The Act specifically provides that the provisions of the statute apply only to the liability of volunteers and do not apply to the liability of the organization for acts or omissions of volunteers. That means that the homeowners association can still be sued for any negligence of its volunteers or employees who are acting within the course and scope of their duties. For example, if a volunteer has an automobile accident and the damages are more than $20,000.00, the volunteer would not be liable for the excess amount, but the Association would be liable.

The third tier are employees. Pursuant to Section 84.005, such employees are liable for

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PROSPECTIVE (Continued)

[redacted]mages based on an act or omission by the [redacted]son, acting in the course and scope of [redacted]employment. However, the liability of the employee is limited to money damages in a maximum amount of $500,000.00 for each person and $1,000,000.00 for each single occurrence of bodily injury or death and $100,000.00 for each single occurrence for injury or destruction of property. All homeowners associations should consider having insurance coverage and indemnification agreements to cover their employees.

The Act does not cover independent contractors. Such persons would include the garbage collectors, maintenance people, management companies, and security personnel.

Section 84.006 of the statute provides that in any civil action brought against the homeowners association for damages based on acts or omissions of its volunteers or employees, the liability of the association is limited to money damages in a maximum amount of $500,000.00 for each person and $1,000,000.00 [redacted] each single occurrence of bodily injury or [redacted]th and $100,000.00 for each single occurrence for injury or destruction of property. This provision necessitates that the Association have an insurance policy in at least these policy limits. The volunteers and certainly the employees should be insured under that policy to at least the extent of those limits.

The provisions of Section 84.005 (relating to liability of employees) and Section 84.006 (relating to liability of the Association itself) apply only if the Association has liability insurance coverage in effect for the act or omission of the Association and its employees and volunteers with policy limits of at least $500,000.00 for each person and $1,000,000.00 for each single occurrence of bodily injury or death and $100,000.00 for each single occurrence for injury or destruction of property. Should the Association fail to maintain such insurance policy, then the employees and the Association would lose the protection granted under the statute. The [redacted]olunteers would appear to still be protected, [redacted]hough this is not totally clear from the [redacted]tute.

Two provisions of the Act raise further concerns. The first is Section 84.007 (a), which provides that the Act "does not apply to an act or omission that is intentional, wilfully or wantonly negligent, or done with conscious indifference or reckless disregard for the safety of others." If the volunteer or employee did the act intentionally, his conduct would not be covered by the Act. An example of this would be an assault on another person. Gross negligence would also not be covered. These provisions will be the most fertile for litigation and is the primary reason that insurance companies have not yet lowered rates for directors and officers liability policies. An attorney bringing an action against the Association and/or its officers, directors or volunteers would always plead gross negligence as a means of taking the action outside of the Act. Until the Texas Courts have rendered sufficient cases interpreting the provisions of Section 84.007, it would appear that the Act would have minimum effect on insurance rates.

The second provision is contained in Section 84.007 (b) which provides that the Act "does not limit or modify the duties or liabilities of a member of the board of directors or officers to the organization or its members and shareholders." The former provision would cover situations in which a director or officer acts against the best interests of the Association, i.e., embezzlement or accepting a bribe. It is the latter provision, i.e., that the Act does not limit liability to the members and shareholders of the Association, that causes the most concern. All deed restrictions provide that the homeowners are members or shareholders of the Association. Therefore, the volunteers would not be protected against actions by a homeowner in the subdivision for negligence or other acts of the volunteer. For example, a volunteer has an automobile accident, while acting in the course and scope of his duties, with a homeowner being injured. It would appear that such negligence would not be covered by the statute. A more significant scenario is the board filing an action against a homeowner for a deed restriction violation. The homeowner counter sues for malicious prosecution, slander, defamation of character or similar action. Since the homeowner is a member of the Association, liability for such actions may not be covered by the statute.

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PROSPECTIVE (Continued)

Such actions are also regarded as intentional torts and limits on liability may also be excluded by the provisions of Section 84.007 (a). Unfortunately, these are the most common types of actions against officers and directors of Associations. This is an area which the legislature might further address in the next session.

It is also important to note that the statute appears only to cover torts (negligence, intentional acts) and not contract actions. If an Association is sued for breach of contract, the limits of liability would not apply. An officer or director might also be sued, along with the Association, for such breach or other contract action and the provisions of the statute would not apply. The statute would also appear to exclude "ultra vires" acts in which it can be shown that the officer or directors was not acting in course and scope of his duties or exceeded those duties.

The new statute becomes effective on September 1, 1989. It would apply only to causes of action which accrued after that date. Any actions which accrued prior to that date would be governed by current law, which does not provide for any immunity from liability.

The new statute does specifically provide that the Association must be qualified under the provisions of Section 528(c) of the Internal Revenue Code of 1986. If your Association has not yet filed to become a nonprofit homeowners associations under the provisions of Section 528(c), it should do so prior to September 1, 1989. Your management company or CPA can inform your Association whether it qualifies under that Section.

In summary, all of the problems mentioned in this Article and in the article by Mark Conner necessitate that the Association continue to carry directors and officers liability insurance, general liability insurance, worker's compensation insurance, motor vehicle insurance and other insurance coverage necessary to protect the Association's assets and its officers, directors and volunteers. All Associations should also avail themselves the indemnification provisions of Article 2.22A of the Texas Non-Profit Corporation Act. That Article provides that the By-laws of a non-profit corporation may provide for indemnification of the directors concerning their activities on behalf of the association. The Articles of Incorporation, Bylaws or a Resolution by the Shareholders or Directors may make the indemnification of the directors mandatory so long as such documents contains the requirements of Article 1396-2.22A. The indemnification provisions will also apply to officers of the Association, its employees and any committees of the Association (such as Architectural Control Committee).

Each officer, director and volunteer of the Association might also wish to add a rider on his or her individual homeowners' policy for torts that injure feelings or damage reputations. This is "Homeowners Personal Injury Coverage Form No. HO-362".

Future articles of the Clarion will update readers on how the Texas Courts are interpreting this statute.

OFFICERS, DIRECTORS AND VOLUNTEERS LIABILITY: AN INSURANCE PROSPECTIVE

By

Mark A. Conner
North American Insurance Agency

Are your officers and directors protected in the event of a claim alleging a wrongful act or misfeasance? Many other individuals such as employees, volunteers, and committee members act at the direction of the Board and have an exposure as well as the Board.

Every association should have Directors and Officers Liability coverage. This coverage provides protection against negligence and other wrongful acts while an officer, director or volunteer is acting within the course and scope of his duties. Any officer, director or volunteer could potentially be held legally responsible for his or her actions while performing duties for the association. The association by-laws, resolutions and covenants give the legal authority and responsibility to

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INSURANCE PROSPECTIVE (Continued)

he Board. Potential lawsuits may arise from the exercise of that authority and from the performance of those responsibilities.

Your association's legal documents may indemnify officers, directors and volunteers for any claims and legal expenses incurred while acting within the scope of their duties. The association may not have the funds to protect officers, directors and volunteers in the event of a lawsuit. The cost of defense alone may be reason enough for the association to consider Directors and Officers Liability. Even the cost of defending a frivolous suit could be substantial. A Directors and Officers Liability policy can assume those costs and damages for the directors, officers and volunteers.

Directors and Officers Liability policies are not standard and one must read the policy carefully to be certain that adequate coverage exists. Each insurance company has different types of coverage and exclusions. The ssociation's insurance agent can review the ssociation policy with the Board and recommend he right coverage.

Let us examine some of the more common features of a Directors and Officers Liability policy. Most Directors and Officers Liability policies are written on a claims-made basis. Conversely, most other types of insurance policies are written on an occurrence basis. On a claims-made basis, the policy would cover only claims made during the policy term regardless of when the "event" took place. An occurrence policy insures for "events" occurring during the policy period even though the claim is not made until after the policy expires.

For example, should an association have a Directors and Officers Liability policy written on a claims-made basis with an effective date from February 1, 1989 to March 31, 1990 and an Officer were sued for an "event" which took place on April 1, 1987, coverage would apply under the current policy. If coverage were ritten on an occurrence basis, then the fficer would look for protection under the licy in force on April 1, 1987. The above is, of course, a generalization and is only intended to illustrate the differences between the two (2) policy forms. It is imperative that the association discuss with their agent coverage under the two types of policies, especially when a change in type of coverage is considered. If the association where to change to a "occurrence basis" policy after having a "claims-made" policy for several years, an event giving rise to potential liability which occurred during the prior policy period would not be covered.

Pending and Prior Litigation is, generally, excluded to prevent a Board from purchasing Directors and Officers Liability coverage today to cover a lawsuit received yesterday. Extended Reporting Period coverage is available should coverage not be continued on an annual basis and can be purchased at the Board's discretion. However, should coverage be continued on an annual basis, an Extended Reporting Period coverage generally does not need to be purchased.

Remember, the actual policy language is not standard among different insurance companies. Be sure the association's policy contains coverage for legal defense costs as well as coverage for money damages, contains no discrimination exclusion and contains coverage for personal injury and publishers liability. Also remember there may be some overlapping coverage with your General Liability coverage and it is best to have one agent provide both policies for the association to avoid a problem with a claim. The agent should examine both policies to make certain that there are no conflicts in coverage.

The Directors and Officers Liability policy should cover losses for which the director or officer becomes legally obligated to pay as a result of error, omission, neglect, or breach of duty. Many Directors, Officers, and other volunteers continue to express a desire to protect their personal assets while serving on the associations Board. Directors and Officers Liability will accomplish this task.

The State Legislature has recently granted some immunity to homeowners associations by redefining "charitable organization" to include homeowner associations in the definition of "charitable organizations". The new statute

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INSURANCE PROSPECTIVE (Continued)

comes effective on September 1, 1989. The gal aspects of that statute are discussed elsewhere.

Many other states such as Arizona, California, Rhode Island, South Carolina, and West Virginia have passed similar legislation in prior years reducing or eliminating the legal liability of non-compensated Directors and Officers of some nonprofit organizations. Most of this legislation was enacted in response to significant reductions in the scope and availability of Directors and Officers Liability insurance coverage. The reduction in availability of such insurance coverage was the response of many insurance companies to sharply rising frequency and severity of litigation involving not only non-compensated Directors and Officers but also compensated employees and the nonprofit organization itself.

As a result of the recent legislative changes, many associations may believe they are entitled to immediate reductions in the premiums paid Directors and Officers Liability insurance. rettably, this is not the immediate result or three (3) very basic reasons.

First, most Directors and Officers Liability policies provide coverage to compensated employees, volunteers, and the association itself in addition to the non-compensated Directors and Officers who were granted some relief. Most policies pay the cost of defending insured persons and the association against lawsuits even if the allegations are false or groundless and further provides for the payment of any monetary damages in the event that liability is established.

Secondly, the legislative changes have not reduced or eliminated the liability of the association itself. Generally, most lawsuits name only the association as a defendant so the legislative changes do not reduce or eliminate the insurance companies obligation to defend the association. The principal cost of coverage is for claims expense. Since neither the frequency nor severity of the claims has lessened, the cost of providing coverage, rding to insurance companies, remains tantial.

Finally, the legislative changes reducing or eliminating liability do not generally apply to allegations of intentional acts, gross negligence or to violations of federal law. Specifically, the legislation adopted in Texas states "this chapter does not apply to an act or omission that is intentional, willfully or wantonly negligent, or done with conscious indifference or reckless disregard for the safety of others." The insurance companies simply believe lawsuits will allege the above and they will still have to defend under most policies.

There are positive impacts from these legislative changes. The new statute should reduce the long-term litigation expenses as insurance companies develop the ability to deal effectively with the kind of litigation most often brought against associations. This ability, together with a heightened awareness of the vulnerability of management and employees to lawsuits, plus continued attention to the competent management of the association's affairs, will undoubtedly result in the long-term reduction of litigation expenses.

With the expected reduction of litigation expenses comes a lower cost for providing coverage and, therefore, a lower premium for your association. One could also anticipate that the legislative changes will help stabilize the availability, scope of coverage, and cost of Directors and Officers Liability insurance over time. The full impact of the new statute, however, may not be felt for many years.

"NATIONAL NIGHT OUT"

Johnny Klevenhagen
Sheriff of Harris County

Once again we have prepared ourselves for the annual observance of our continuing commitment to Crime Prevention. I am talking, of course, about "National Night Out". This will be our third year of participation. We plan to do some things differently this time and we hope

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ENFORCEMENT OF DEED RESTRICTIONS

An Overview

Deed restrictions, or restrictive covenants, are basically described as a general scheme for a subdivision. They are in the nature of ordinances; however, the major difference between deed restrictions and ordinances is that subdivisions do not have any legislative- or ordinance-making abilities. Subdivisions are, therefore, quite limited in the legal remedies which they possess to enforce deed restrictions. The Courts have been willing to enforce restrictions because such covenants enhance the value of subdivisions and form an inducement to purchasers to buy homes within the subdivision.

Until recently, restrictions on the use of land were not favored by the Courts and such restrictions were strictly construed in favor of the owner of the land and against the person or association seeking to enforce them. Any ambiguity was resolved in favor of the free-use-of-the-land. However, the Courts have held that restrictive covenants are enforceable if their language is clear, the restrictions are confined to a lawful purpose and the purposes are within reasonable bounds. Courts have also held that the covenants must not be against public policy. Examples of restrictions that might be against public policy are wood shingle roofs or any discriminatory language against minorities. Another example is the Senate Bill 940 "family home" situations, whereby the legislature stated that "family homes" could not be prohibited regardless of when the deed restrictions were enacted.

Finally, the Courts have determined that the covenants must have a contractual basis arising out of an agreement between the parties imposing on the subdivision and the lot owners the legal obligation to observe the restrictions. This agreement is usually found from the acceptance of the deed by the home owner since restrictions are filed for record in the deed records and covenants run with the land.

Impact of Chapter 202 of Property Code

Chapter 202 of Title XI of the Texas Property Code was enacted in 1987. This statute has significant overtones for homeowner's associations. Section 202.003 completely changes the

fundamental law that deed restrictions shall be strictly construed against the person seeking to enforce them and reverses approximately eighty years of case law. That Section provides: "A restrictive covenant shall be liberally construed to give effect to its purposes and intent." That law should make it easier to enforce deed restrictions.

Section 202.004 relates to enforcement of restrictive covenants and provides that: "An exercise of discretionary authority by a property owners' association or other representative designated by an owner of real property concerning a restrictive covenant is presumed reasonable unless the Court determines by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory." This section overrules a hundred years of case law by shifting the burden of proof from the association to the violator of the restriction. Subsection (b) explicitly gives homeowner's associations standing to bring a lawsuit and thus eliminates some of the thorny problems of who should bring the lawsuit to enforce the deed restrictions.

The recent Candlelight Hills ruling is the first Texas case to explicitly deal with Sections 202.003 and 202.004 of Title XI of the Texas Property Code. The Court held that the legislature has now mandated that restrictive covenants be liberally construed to give effect to their purposes and intent and that an exercise of discretionary authority by a homeowners association concerning a restrictive covenant will be presumed reasonable unless the Court determines by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory.

Another significant provision of the Title XI Code is contained in Section 202.004, Subsection (c) which provides: "A court may assess civil damages for the violation of a restrictive covenant in an amount not to exceed $200.00 for each day of the violation." The problem subdivisions face in enforcing deed restrictions is that they have no ordinance making ability and thus cannot levy fines. This section now gives subdivisions some leverage in enforcing deed restrictions. Although the penalties are not fines and must be imposed by a Court in the form of a judgment, the penalty should act as a deterrent to deed restrictions violations.

Residential and Single Family Uses

Most deed restrictions contain language intended to limit the use of property in the Subdivision to "residential purposes only." Many restrictions contain further language limiting that use to "single family use." On the other hand, some deed restrictions contain language stating merely that "no structure shall be erected, altered, placed or permitted to remain on any

residential lot other than one detached single family dwelling." The Courts have interpreted this language to limit only the type of structure that may be constructed on a lot and not the type of use which may be made of the structure. The Courts have consistently held that such language does not require occupancy of property by a single family and that multiple family or unrelated persons may be permitted to reside in the dwelling.

The cases further hold that restrictive covenants on realty which merely limit the use of the property to "residential" or "dwelling" purposes do not have the effect of forbidding the construction or use of multiple family dwellings, in view of the fact that such terms are directed only at the type of use to be made of the property and not the number of families which might make such use. Cuiper v. Wolf, 242 S.W.2d 830 (Tex. Civ. App. 1951). Duplexes, apartments, other multiple family uses and even commercial uses of the property may be permitted, unless other language can be found in the restrictions to prohibit such uses. These cases follow the general rule that the term "residential purposes" merely requires use of the property for living purposes.

On the other hand, Texas Courts have held that a restriction which provided that all lots shall be used for residential purposes only and further defined residential to mean single family dwellings was to restrict the use of the property to a single family residence. Consequently, the Court held that occupancy of the house by unrelated single women constituted a violation of the single family use provision. In distinguishing a "single family" from a "multiple family" use, the Courts have generally defined multiple use to mean more than one household. Thus, a "multiple family" dwelling is a structure designed or used for living quarters for two or more family housekeeping units. The Courts have consistently held that the phrase "single family dwelling", when added to the residential use restriction, would be effective to exclude duplex apartments, condominiums and other structures which would accommodate more than one family unit.

It is clear from the Texas cases that the residential use restriction should combine all of the following elements:

(1) limit the use of dwellings to residential purposes only;
(2) provide that such residential use shall be limited to single family residential purposes;
(3) limit construction of structures to single family dwellings; and
(4) provide a category of prohibited uses, such as duplexes, apartments, condominiums, boarding house and the renting of rooms in the dwelling or related structures.

Business and Commercial Uses of Property

Most deed restrictions contain language prohibiting businesses and commercial ventures. Such restrictions are intended to maintain the quality of life in Subdivisions. The Courts have generally enforced these restrictions. Various types of businesses, such as stores, hotels, boarding houses, industrial facilities, day care centers, car washes, etc., have consistently been enjoined as violations. Texas courts have extended these prohibitions to non-profit organizations, fraternal organizations and churches.

The major problems in enforcing the business-use prohibitions are two fold: (1) how do you delineate what commercial activities should be prohibited and (2) which activities constitute improper usage of the home for business purposes? Most deed restrictions do not address the issue of "the office in the home." Prime examples of this problem are salespersons, accountants, physicians, lawyers and other persons using their home for incidental business purposes.

The court have developed certain tests to determine whether the activity constitutes an improper infringement of the rights of other property owners. The test which is mostly applied is to determine whether the activity is notorious and constitutes a nuisance to other property owners. The courts consider such factors as: Do customers frequent the residency on a regular basis? Are there signs, banners, advertisements, etc. on the premises alerting people to the business? Are there employees or independent contractors (other than family members) employed to work at the premises? Is there any manufacturing or production of goods on the premises? Are goods or services sold or exchanged at the premises, other than by mail or telephone? Would a reasonable person regard the business usage as a nuisance or annoyance and if so, would the activity constitute an infringement of adjoining property owner's enjoyment of their property? The Courts have generally enjoined the business use if it meets one or more of the above factors and is found to constitute a nuisance and annoyance to other property owners.

Structures

The essence of all deed restriction is the regulation of the structures that may be permitted in the subdivision. We have discussed the concept of structures as it relates to residential and commercial uses. The term structures has even broader significance. It would appear that restrictions relating to structures would not be difficult to enforce. However, the leading cases show that the term is more elusive than might be imagined. For example, all deed restriction have provisions for an Architectural Control Committee. That committee is vested with the power to determine the type of structures that may be

built within the subdivision and the location of those structures in relation to other properties. All deed restrictions provide for setback lines and minimum distances. Most deed restrictions attempt to regulate, in some manner, antennas, gazebos, swimming pools, fences, recreational equipment and other "structures."

Generally, all of these should require approval by the Architectural Control Committee as to type of building material, height of the structure, the location, etc. However, the term "structures" is rarely defined in the deed restrictions. Should it include antennas, tennis courts, driveways, paved surfaces, decking, gazebos, swimming pools, etc. or should it be restricted to buildings, such as the dwelling and garage. Most of the litigation in the areas of structures has arisen over the first category of structures. The Courts have uniformly held that setback lines and minimum building requirements will be enforced.

The Courts have also enforced the requirement of approval of the Architectural Control Committee when such is required by the deed restrictions. However, there are differing decisions as to what constitutes a "structure" when it involves tennis courts, paved surfaces, swimming pools, decking, etc. The controversy usually arises when a lot owner does not obtain approval or seeks approval and it is denied and the lot owner brings litigation on the basis that the "structure" is not covered in the deed restrictions. There is one case where the Courts held that a paved surface used as a tennis court would not be covered by the restrictions. Therefore, even though the paved surface was in violation of the setback lines, the Courts did not require its removal.

Such decisions raise a important concern. It is impossible to define all types of structures that might be placed on a lot. An example is satellite dishes which were not even in existence when many deed restrictions were written. Deed restrictions would become too voluminous and cumbersome if ever possible type of "structure" were defined in the document. As stated earlier, deed restrictions are contracts and in interpreting the contract, the Court must examine the agreement from its four corners which means the contract will be interpreted according to its stated terms. The Courts have generally held that the restrictive covenants will be considered and enforced as written and not enlarged by judicial construction. Perhaps, better use of definitions might strike a balance between the requirements of precise language and the need to have a concise, understandable set of restrictions.

Architectural Control Committee

Besides a good set of deed restrictions, the most important tool that the subdivision has in maintaining the quality of the subdivision is the Architectural Control Committee. For the

Architectural Control Committee to function properly, its members, the lot owners and the Courts must have a clear understanding over which structures the committee will be permitted to exercise control. The deed restrictions must also provide a workable means whereby the Committee can exercise that function. Unfortunately, the provisions of most deed restrictions are inadequate on the operation of the committee. Although the language may differ to some degree, the most common language establishing the Architectural Control Committee is as follows: (1) No structure or other improvement shall be built, placed or altered on a lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to use, quality of workmanship and materials, harmony of external design with existing structures and as to location with respect to topography and finish grade elevation; (2) The members of the Committee are actually named in the instrument and the members of the Architectural Control Committee, named in the instrument, have full power to name successors to the exclusion of the homeowners association; (3) The Committee's approval or disapproval must be in writing; and (4) The Architectural Control Committee, in its sole discretion, is permitted to approve deviations in building area and location in instances where, in their judgments, such deviations will result in a more commonly beneficial use. The most troublesome provision and one which routinely appears in deed restrictions is:

> "If the Committee, or its designated representatives, fails to give written approval or disapproval within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion of the improvements, approval will not be required and the related covenants shall be deemed to have been fully satisfied."

This language has several inherent problems. A practical concern is that the developer has usually appointed himself or his cohorts as members of the Committee. When the subdivision is finally built out, the members tend to disappear and the Committee may cease to function. Many deed restrictions do not have a provision whereby the homeowners association may require the prior members to resign. Many times the restrictions will state that the Committee shall function until a certain date. It has been held that when the Committee's powers expire due to such termination date, an amendment of the deed restrictions will be required to reinstate the Committee. Most deed restrictions contain vague references that the Committee can grant variances as to set back lines, minimum sizes and types of material. However, the deed restrictions may not provide a means whereby the variances are granted.

The most commonly used language "in the discretion of the

Architectural Control Committee" can create a problem when a lot owner asserts the defense of arbitrary and capricious enforcement. The Committee may not have any guidelines contained in the deed restrictions or adopted by the homeowners association to show why a variance was granted in one case, but not in another. The quoted language presents even more significant problems. If the Architectural Control Committee is dilatory in acting, then the approval required may be waived. It also permits a lot owner to do clandestine improvements and if completed prior to the actual filing of injunctive relief, the approval of the Committee is not required.

This is one area in which Title XI of the Texas Property Code may be particularly useful. Section 202.003 provides: "A restrictive covenant shall be liberally construed to give effect to its purposes and intent." This language, combined with that of Section 202.004, providing that "an exercise of discretionary authority" by the Committee would be "presumed reasonable unless the Court determines by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory," would make the decisions of the Committee binding unless the Court determines that the actions were arbitrary, capricious, or discriminatory. The burden of proof would be on the homeowner and not the Committee. Associations would be advised to provide guidelines for architectural control approval and have those guidelines filed in the County Clerk's Office. Although there is authority that such guidelines may not be enforceable due to the fact that they constitute an ex facto amendment of the deed restrictions, the new Title XI provisions may be beneficial in providing that authority.

Another procedure which would be beneficial is to have all approved variances, such as set back lines and minimum size requirements, filed with the County Clerk's Office so that it will be of public record and, therefore, not subject to dispute as to whether a variance was or was not granted. This would be done by having the written approval acknowledged so as to be in recordable form. However, it should be pointed out that this is an area that all associations neglect.

It is also vitally important to maintain all records, files, drawing, exhibits and other documents in connection with matters before the Architectural Control Committee. The association would want to maintain records of all denied applications and the documents in connection therewith in the event that the person attempts to build a structure without approval so that injunctive relief may be obtained. The association would also want to maintain records of all approved applications, especially when variances are obtained. Memories tend to be short and some records will have to be maintained to assure that proper action was taken. In the case of variances, many title companies will require a statement from the association that the variance was

approved, especially when it relates to set back line and minimum distances between structures. Homeowners associations have been derelict in maintaining these records.

Enforcing Deed Restrictions Through Legal Actions

As a first step to enforcement, the homeowner's association should send a letter to the violator requesting compliance. This often resolves the situation. If that is unsuccessful, a formal demand letter from the association's attorney should quickly follow. The demand letters should advise the violator of the provisions of Title XI, Section 202.004 (c) which provides for the assessment of a civil penalty of $200.00 "for each day of the violation." Sample language for that letter is:

> "You are further advised that the Court may assess civil damages in an amount not to exceed $200.00 for each day of the violation of a deed restriction. Subsection (c) of Section 202.004 of the Texas Property Code provides: "A court may assess civil damages for the violation of a restrictive covenant in an amount not to exceed $200.00 for each day of the violation." The Association may request that said civil damages should be assessed after the date that you receive notification to remove the structure until the date that said structure is actually removed."

Most violations of restrictions are unintentional and might be quickly resolved by a conference between the home owners association and the violator. Many times this can be done without the involvement of attorneys. The initial conference should be without legal counsel and if unsuccessful, the next conference might include the attorneys for both sides so that the legal issues can be sorted out before legal action is commenced. In the initial conference, the home owners association should be prepared to point out the particular restriction which the individual has violated and clearly explain to the individual the necessity of enforcing the restriction.

Should a personal conference be unsuccessful, the homeowners association should then consider litigation. The legal action to enforce the restriction would be by way of injunctive relief. In all cases, this will require an attorney since an Association is a corporation and can only be represented by an attorney in Court.

In preparation for the litigation, the association or its attorney should send a letter to the violator demanding that the violation cease. This letter must be sent by certified mail. It is better practice to send a copy of the letter by regular mail. Copies of the letters and the original of the return receipt (green card) must be kept for Court. The letter should state the particular restriction which is being violated and the manner in

which the individual is violating the restriction. The letter should make demand upon the individual to cease the activity within a certain period of time (i.e., ten days) or that an action for injunctive relief and damages will be brought against the individual. The letter must also state that the association will seek to recover its attorney fees and court costs in the legal proceedings. The letter might also include the penalty language stated above.

If the individual does not respond or does not cease the activity within the specified period, the association can then seek a temporary restraining order (TRO) or a temporary injunction. The TRO is ex parte in that it is granted without notice or hearing to the violator and becomes effective immediately. A representative of the association will have to sign an affidavit which establishes that the activities of the violator are causing immediate and irreparable harm, injury and loss to the other homeowners and the Subdivision. The Court will set a hearing date on the temporary injunction at the time of the signing of the TRO. The TRO will restrain the individual from further violation immediately upon service of the TRO on the violator. It is good practice to obtain a certified copy of the TRO immediately after the hearing and have it personally delivered to the individual the same day. This will avoid delay since it may take several days for the constable to serve the individual.

The association can avoid the expense of the TRO by requesting only a temporary injunction. However, it may take months to obtain a court date. During that time, the violation will continue and the possibility of the individual establishing a waiver of the restriction may be greater.

The law suit may request a personal judgment for damages, injunctive relief or both damages and an injunction. It is better practice to plead for both a personal judgment for damages and injunctive relief. The Court will require the association to plead and prove irreparable harm, injury or loss and to establish that it has no adequate remedy at law.

For the trial, a certified copy of the subdivision's deed restrictions should be obtained from the County Clerk's Office. The association should also be prepared to present witnesses who can establish that the violation constitutes a nuisance to the other homeowners or is in some manner adversely affecting property values or the quality of life in the subdivision. These witnesses should be homeowners residing near the activity made the basis of the litigation. Much of the unsuccessful litigation over deed restriction violations fail due to the inability of the association to prove that the activity is a nuisance or harmful to other lot owners or the Subdivision as a whole.

Defenses to Enforcement

The chief defenses are waiver and change of conditions. Each of these defenses have in common that the homeowner's association has failed to enforce the restriction in a timely, consistent manner in the past.

The main consideration on the waiver issue is, should the homeowners association overlook a minor violation or should they strictly enforce against all violations? The cases imply that in order to support a waiver, the use must not be substantially different in its effect on the neighborhood from any prior violations. The person asserting the waiver has the burden of proving that the other violations were so great as to lead the "average man" to reasonably conclude that enforcement of the restriction has been waived. The factors to be considered are the number, nature and severity of the prior violations; prior acts of enforcement of the restriction; and whether it is still possible to realize to a substantial degree the benefits intended by the restriction. Basically, the courts look to whether it would be equitable to enforce a particular restriction when other violations have not been enjoined or whether such selective enforcement might be discriminatory. It is clear that the failure of the association to object to trivial violations of a restrictive covenant does not result in a waiver of the restrictions.

The test applied in determining whether there has been a change in condition affecting the property is whether it is no longer possible to secure, in substantial degree, the benefits for which the restrictive covenants were originally intended. The person seeking to establish the commercial venture has the burden to prove by legally sufficient evidence that, because of changed conditions, the deed restrictions no longer secure the benefits for which they were intended. Establishing change of condition is very difficult and certainly the factor that the lot might be worth more as commercial property is not even relevant. See Independent American Real Estate, Inc. v. Davis (Tex. Civ. App. May, 1987).

Other issues involved in the enforcement of deed restrictions are statutes of limitations and standing to bring a law suit. Generally, the enforcement of deed restrictions is governed by the 4 year statute of limitations since the restrictions were contractual in nature and are contained within a written instrument. Subdivisions must be very careful in enforcing deed restrictions so as not to allow violations to go beyond 4 years or to become so numerous as to constitute a waiver. The issue of standing is which party should be the Plaintiff in an action for injunctive relief. Some recent decisions would suggest that it might be advantageous to have both the Homeowners' Association and at least one lot owner as

Plaintiff to avoid any problems with standing. Generally though any affected lot owner in the subdivision would have standing to bring a legal action to enforce a right conferred by the deed restrictions. From a legal point of view, it would be advisable to join the Homeowners' Association in the law suit as the Court may determine that the Association is a necessary party. It must be noted that this requirement may have been changed by Chapter 202 of the Property Code.