

# OAK PLACE COURT COMMUNITY ASSOCIATION, INC.

## ASSOCIATION DOCUMENTS PRODUCTION, INSPECTION AND COPYING POLICY

### 1.0 Definitions.

1.1 Incorporation. In this policy the definitions set forth in Section 209.002 of the Texas Property Code control (whether or not capitalized), including "Board" which means the governing body of this Association, whether incorporated or unincorporated. To the extent not inconsistent with the foregoing, all definitions set forth in the declaration of Covenants, Conditions, Restrictions and Easements for Oak Place Court (whether or not capitalized), including Article II thereof, are also incorporated herein.

1.2 Additional Definitions. In this policy the following definitions also apply:

1.2.1 "Association Documents" means all books and records of the Association, including all financial records, all dedicatory instruments and all other governing documents.

1.2.2 "Inspection Officer" means a Board member, employee of the Association's managing agent or attorney, or any other person designated by the Board who will facilitate or supervise an inspection of Association Documents under this policy.

1.2.3 "Owner Representative" means an Owner's agent, attorney or certified public accountant so designated by the Owner in writing.

1.2.4 "Production Costs" means all reasonable costs for the compilation, production and reproduction of Association Documents incurred in response to a request under this policy, including but not limited to copies, postage, supplies, labor, overhead and third party fees (such as archive document retrieval fees from off-site storage locations), as more particularly described in Section 8.0 of this policy.

2.0 Right of Inspection. The Association shall make Association Documents open and reasonably available for examination by an Owner or Owner Representative in accordance with, and subject to the exceptions in, this policy.

3.0 Proper Request Required. An Owner or Owner Representative must submit a proper written request for inspection and/or production of Association Documents. A proper written request must:

3.1 be delivered by certified mail to the Association's attention at the Association's address as reflected on the Association's most recent management certificate filed in the Official Public Records of Real Property of Harris County, Texas; and

3.2 contain sufficient detail to identify the specific Association Documents being requested; and

3.3 state an election to either inspect the requested Association Documents or to have the Association forward the requested Association Documents; and

3.4 if the Association Documents are to be forwarded, the mailing address of the Owner or Owner Representative, and, subject to Section 6.0, a preferred delivery format and/or delivery method from among the following:

3.4.1 format - electronic file, compact disk or paper; and

3.4.2 delivery method - email (email address must be provided), certified mail or pick-up.

#### 4.0 Responses to Requests.

4.1 Within ten business days after receipt of a proper written request, the Association shall either (i) forward the requested Association Documents together with an invoice for final Production Cost, or (ii) send written notice to the Owner or Owner Representative who requested the Association Documents:

4.1.1 stating any deficiencies in the request which prevent the Association from making a proper response; or

4.1.2 stating the amount of estimated Production Costs and advising the Association Documents will be produced within ten business days after receipt of payment for estimated Production Cost; or

4.1.3 if an inspection is requested, stating available dates and times during normal business hours when the Association Documents are available for inspection, and in such case the Owner or Owner Representative must advise the Association in writing of the date and time the inspection will take place at least one full business day before the selected date; or

4.1.4 if the Association Documents cannot be produced within ten business days:

(a) advising the Association is unable to produce the Association Documents on or before the tenth business day after the date the Association received the request, and

(b) stating an alternative date by which the requested Association Documents will be available either for inspection or for forwarding and estimated Production Costs, and in such case the alternative date must be not later than fifteen business days after the date of the notice; or

4.1.5 advising that after a diligent search, some or all of the requested Association Documents cannot be located, or are not in the possession, custody or control of the Association; or

4.1.6 any combination of the foregoing as the circumstances may reasonably require.

#### 5.0 Inspections.

5.1 The Owner or Owner Representative who conducts an inspection of Association Documents may (i) at the time of the inspection designate specific Association Documents for the Association to copy and forward to the Owner or Owner Representative, or (ii) send a proper request to the Association after the inspection as provided in Section 3.0. If designated at the time of inspection (y) the designation must be in writing and signed by the Owner or Owner Representative, as applicable, and the Inspection Officer, and (z) the Association shall promptly thereafter send notice and produce the Association Documents as provided in Section 4.1.2.

5.2 At the discretion of the Board or the Association's managing agent, the Inspection Officer and/or a Board member may be present during all or any part of the inspection.

5.3 No Association Document may be removed by the Owner or Owner Representative from the inspection area without the express written consent of a Board member or the Association's managing agent. No original Association Document may be removed from the Association's office for any reason by an Owner or Owner Representative.

#### 6.0 Production of Association Documents.

6.1 Format. The Association may produce Association Documents in paper, electronic or other format reasonably available to the Association, in the discretion of the Board or the Association's managing agent.

6.2 Delivery. The Association may deliver requested Association Documents by certified mail, email or facsimile, in the discretion of the Board or the Association's managing agent. Upon written request by an Owner or Owner Representative, requested Association Documents may be made available for pick-up.

6.3 Conversion. The Association is not required to transfer any electronic records to paper format unless the Owner or Owner Representative requesting the transfer pays all costs thereof, in advance.

#### 7.0 Exclusions from Inspection or Production.

7.1 Excluded Association Documents. The following Association Documents are not available for inspection by, and the Association has no obligation to produce any of the same to, any Owner or Owner Representative:

7.1.1 financial records, including records of debit or credit entries as to amounts due on payable to the Association, associated with an individual current or former Owner; and

7.1.2 any Association Documents that identify any violation history of any current or former Owner regarding any dedicatory instrument or other Governing Documents of the Association;

7.1.3 any Owner contact information other than an Owner's mailing address; and

7.1.4 attorney files of a current or former Association attorney except as provided in Section 7.3.

7.2 Consent for Disclosure. The Association Documents described in Section 7.1.1, 7.1.2 or 7.1.3 shall be released or made available for inspection if:

7.2.1 the express written approval of the applicable Owner is provided to the Association stating the specific Association Documents covered by the approval; or

7.2.2 a court order releases the Association Documents or orders the Association Documents be made available for inspection.

#### 7.3 Attorney Files.

7.3.1 Attorney's files and records relating to the Association (excluding invoices requested by an Owner pursuant to Section 209.008(d) of the Texas Property Code) are not records of the Association and are not: (i) subject to inspection by the Owner; or (ii) subject to production in a legal proceedings.

8.4.2 If estimated Production Costs are lesser or greater than actual Production Costs, the Association shall submit a final invoice to the Owner or Owner Representative on or before the thirtieth business day after the date the Association Documents are delivered. Any additional amounts due must be paid to the Association, or any excess must be refunded to the Owner, not later than thirty business days after the date the final invoice is sent.

8.4.2 If estimated Production Costs are lesser or greater than actual Production Costs, the Association shall submit a final invoice to the Owner or Owner Representative on or before the thirtieth business day after the date the Association Documents are delivered. Any additional amounts due must be paid to the Association, or any excess must be refunded to the Owner, not later than thirty business days after the date the final invoice is sent.

7.4 Non-Owners. The Association has no obligation to make any Association Documents available for inspection by, or to produce any Association Documents to, any Person other than an Owner or Owner Representative. This exclusion includes any tenant of an Owner unless the tenant is designated as an Owner Representative.

#### 8.0 Production Costs.

8.1 Advance Payment. Advance payment of estimated Production Costs must be received by the Association prior to delivery of any Association Documents unless expressly waived by the Board or the Association's managing agent.

8.2 Invoicing. On a case-by-case basis, the Board or the Association's managing agent may agree to invoice estimated Production costs. In each such case, the Production Costs must be paid in full within thirty days after a statement for the same is mailed to the Owner or Owner Representative.

8.3 Refusal of Delivery. An Owner who, either directly or through an Owner Representative, makes a request for Association Documents and subsequently declines to accept delivery or otherwise renders delivery impracticable is liable for payment of all Production Costs.

#### 8.4 Estimates, Final Invoice.

8.4.1 Estimates for Production Costs shall be made by the Association in accordance with Section 8.6.

8.4.2 If estimated Production Costs are lesser or greater than actual Production Costs, the Association shall submit a final invoice to the Owner or Owner Representative on or before the thirtieth business day after the date the Association Documents are delivered. Any additional amounts due must be paid to the Association, or any excess must be refunded to the Owner, not later than thirty business days after the date the final invoice is sent.

8.5 Owner Responsible For Payment. An Owner who either directly or through an Owner Representative, makes a request under this policy is responsible for payment of all Production Costs due to the Association under this policy. The amount of any Production Costs not paid as required by this policy may be added to the applicable Owner's account as an assessment.

8.6 Allowable Charges. Estimated and actual Production Costs may not exceed the costs allowed pursuant to Texas Administrative Code, Section 70.3 (current copy as of the effective date of this policy attached), or as follows:

8.6.1 black and white 8½' x 11" single sided copies=\$0.10 each

- 8.6.2 black and white 8½' x 11" double sided copies=\$0.20 each
- 8.6.3 color 8½' x 11" single sided copies=\$0.50 each
- 8.6.4 color 8½' x 11" double sided copies=\$1.00 each
- 8.6.5 PDF images of documents=\$0.10 each
- 8.6.6 compact disk=\$1.00 each
- 8.6.7 labor and overhead=\$15.00 per hour (IF over 50 copies)
- 8.6.8 mailing supplies=\$1.00 per mailing
- 8.6.9 postage=at cost
- 8.6.10 other supplies=at cost
- 8.6.11 third party fees=at costs
- 8.6.12 other costs=as permitted by current Texas Administrative code, Section 70.3.

9.0 Effective Date; Amendment.

9.1 Effective Date. This policy is effective upon the later to occur of (i) January 1, 2012, or (ii) filing in the Official Public Records of Real Property of Harris County, Texas, subject to amendment as hereafter provided.

9.2 Amendment. This policy may be amended from time to time and at any time by the Board. Any such amendment shall be effective upon the date of filing in the Official Public Records of Real Property of Harris County, Texas, or such later date as expressed stated in the amendment.

10.0 Controlling Effect. This policy is adopted pursuant to and in accordance with the requirements of Section 209.005 of the Texas Property Code in lieu of any other provisions of the Association's governing documents regarding the express provisions set forth in this policy or which conflict with applicable Texas law. In all other respects, all provisions of the Association's governing documents shall continue in full force and effect.

**CERTIFICATE OF ADOPTION**

The undersigned Secretary of the Association hereby certifies that the foregoing Documents Retention Policy was duly adopted by unanimous written consent of the Board of Directors dated 12/31 2011.

EXECUTED this 31<sup>ST</sup> day of December, 2011.

**OAK PLACE COURT COMMUNITY  
ASSOCIATION, INC.,** a Texas non-profit corporation

By: Penny Morgan  
PENNY MORGAN, Secretary

**TEXAS ADMINISTRATIVE CODE**

**TITLE 1, PAGE 3, CHAPTER 70**

**RULE §70.3 - CHARGES FOR PROVIDING COPIES OF PUBLIC INFORMATION**

- (a) The charges in this section to recover costs associated with providing copies of public information are based on estimated average costs to governmental bodies across the state. When actual costs are 25% higher than those used in these rules, governmental bodies other than agencies of the state, may request an exemption in accordance with §70.4 of this title (relating to Requesting an Exemption).
- (b) Copy charge.
- (1) Standard paper copy. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has recorded information is considered a page.
  - (2) Nonstandard copy. The charges in this subsection are to cover the materials onto which information is copied and do not reflect any additional charges, including labor, that may be associated with a particular request. The charges for nonstandard copies are:
    - (A) Diskette--\$1.00;
    - (B) Magnetic tape--actual cost
    - (C) Data cartridge--actual cost;
    - (D) Tape cartridge--actual cost;
    - (E) Rewritable CD (CD-RW)--\$1.00;
    - (F) Non-rewritable CD (CD-R)--\$1.00;
    - (G) Digital video disc (DVD)--\$3.00;
    - (H) JAZ drive--actual cost;
    - (I) Other electronic media--actual cost;
    - (J) VHS video cassette--\$2.50;
    - (K) Audio cassette--\$1.00;
    - (L) Oversize paper copy (e.g.: 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper--See also §70.9 of this title)--\$.50;
    - (M) Specialty paper (e.g.: Mylar, blueprint, blueline, map, photographic--actual cost.
- (c) Labor charge for programming. If a particular request requires the services of a programmer in order to execute an existing program or to create a new program so that requested information may be accessed and copied, the governmental body may charge for the programmer's time.

- REF 000-46-1670
- (1) The hourly charge for a programmer is \$28.50 an hour. Only programming services shall be charged at this hourly rate.
  - (2) Governmental bodies that do not have in-house programming capabilities shall comply with requests in accordance with §552.231 of the Texas Government Code.
  - (3) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of §552.261(b) of the Texas Government Code.
- (d) Labor charge for locating, compiling, manipulating data, and reproducing public information.
- (1) The charge for labor costs incurred in processing a request for public information is \$15 an hour. The labor charge includes the actual time to locate, compile, manipulate data, and reproduce the requested information.
  - (2) A labor charge shall not be billed in connection with complying with requests that are for 50 or fewer pages of paper records, unless the documents to be copied are located in:
    - (A) Two or more separate buildings that are not physically connected with each other; or
    - (B) A remote storage facility.
  - (3) A labor charge shall not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:
    - (A) To determine whether the governmental body will raise any exceptions to disclosure of the requested information under the Texas Government Code, Subchapter C, Chapter 552; or
    - (B) To research or prepare a request for a ruling by the attorney general's office pursuant to §552.301 of the Texas Government Code.
  - (4) When confidential information pursuant to a mandatory exception of the Act is mixed with public information in the same page, a labor charge may be recovered for time spent to redact, blackout, or otherwise obscure confidential information in order to release the public information. A labor charge shall not be made for redacting confidential information for requests of 50 or fewer pages, unless the request also qualifies for a labor charge pursuant to Texas Government Code, §552.261(a)(1) or (2).
  - (5) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of Texas Government Code, Chapter 552, §552.261(b).
  - (6) For purposes of paragraph (2)(A) of this subsection, two buildings connected by a covered or open sidewalk, an elevated or underground passageway, or a similar facility, are not considered to be separate buildings.
- (e) Overhead charge.

- (1) Whenever any labor charge is applicable to a request, a governmental body may include in the charges direct and indirect costs, in addition to the specific labor charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead. If a governmental body chooses to recover such costs, a charge shall be made in accordance with the methodology described in paragraph (3) of this subsection. Although an exact calculation of costs will vary, the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide.
- (2) An overhead charge shall not be made for requests for copies of 50 or fewer pages of standard paper records unless the request also qualifies for a labor charge pursuant to Texas Government Code, §552.261(a)(1) or (2).
- (3) The overhead charge shall be computed at 20% of the charge made to cover any labor costs associated with a particular request. Example: if one hour of labor is used for a particular request, the formula would be as follows: Labor charge for locating, compiling, and reproducing,  $\$15.00 \times .20 = \$3.00$ ; or Programming labor charge,  $\$28.50 \times .20 = \$5.70$ . If a request requires one hour of labor charge for locating, compiling, and reproducing information ( $\$15.00$  per hour); and one hour of programming labor charge ( $\$28.50$  per hour), the combined overhead would be:  $\$15.00 + \$28.50 = \$43.50 \times .20 = \$8.70$ .
- (f) Microfiche and microfilm charge.
- (1) If a governmental body already has information that exists on microfiche or microfilm and has copies available for sale or distribution, the charge for a copy must not exceed the cost of its reproduction. If no copies of the requested microfiche or microfilm are available and the information on the microfiche or microfilm can be released in its entirety, the governmental body should make a copy of the microfiche or microfilm. The charge for a copy shall not exceed the cost of its reproduction. The Texas State Library and Archives Commission has the capacity to reproduce microfiche and microfilm for governmental bodies. Governmental bodies that do not have in-house capability to reproduce microfiche or microfilm are encouraged to contact the Texas State Library before having the reproduction made commercially.
- (2) If only a master copy of information in microfilm is maintained, the charge is \$.10 per page for standard size paper copies, plus any applicable labor and overhead charge for more than 50 copies.
- (g) Remote document retrieval charge.
- (1) Due to limited on-site capacity of storage documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort should be made by governmental bodies to store current records on-site. State agencies are encouraged to store inactive or non-current records with the Texas State Library and Archives Commission. To the extent that the retrieval of documents results in a charge to comply with a request, it is permissible to recover costs of such services for requests that qualify for labor charges under current law.
- (2) If a governmental body has a contract with a commercial records storage company, whereby the private company charges a fee to locate, retrieve, deliver, and return to storage the needed record(s), no additional labor charge shall be factored in for time spent locating documents at the storage location by the private company's personnel. If



after delivery to the governmental body, the boxes must still be searched for records that are responsive to the request, a labor charge is allowed according to subsection (d)(1) of this section.

(h) Computer resource charge.

- (1) The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities.
  - (2) These computer resource charges are not intended to substitute for cost recovery methodologies or charges made for purposes other than responding to public information requests.
  - (3) The charges in this subsection are averages based on a survey of governmental bodies with a broad range of computer capabilities. Each governmental body using this cost recovery charge shall determine which category(ies) of computer system(s) used to fulfill the public information request most closely fits its existing system(s), and set its charge accordingly. Type of System--Rate: mainframe--\$10 per CPU minute; Midsize--\$1.50 per CPU minute; Client/Server--\$2.20 per clock hour; PC or LAN--\$1.00 per clock hour.
  - (4) The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. The CPU charge is not meant to apply to programming or printing time; rather it is solely to recover costs associated with the actual time required by the computer to execute a program. This time, called CPU time, can be read directly from the CPU clock, and most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming time is set forth in subsection (d) of this section. No charge should be made for computer print-out time. Example: If a mainframe computer is used, and the processing time is 20 seconds, the charges would be as follows:  $\$10 / 3 = \$3.33$ ; or  $\$10 / 60 \times 20 = \$3.33$ .
  - (5) A governmental body that does not have in-house computer capabilities shall comply with requests in accordance with the §552.231 of the Texas Government Code.
- (i) Miscellaneous supplies. The actual cost of miscellaneous supplies, such as labels, boxes, and other supplies used to produce the requested information, may be added to the total charge for public information.
  - (j) Postal and shipping charges. Governmental bodies may add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party.
  - (k) Sales tax. Pursuant to Office of the Comptroller of Public Accounts' rules sales tax shall not be added on charges for public information (34 TAC, Part 1, Chapter 3, Subchapter O, §3.341 and §3.342).
  - (l) Miscellaneous charges: A governmental body that accepts payment by credit card for copies of public information and that is charged a "transaction fee" by the credit card company may recover that fee.
  - (m) These charges are subject to periodic reevaluation and update.

PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.  
THE STATE OF TEXAS  
COUNTY OF HARRIS  
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas

JAN - 3 2012



Stan Stewart  
COUNTY CLERK  
HARRIS COUNTY, TEXAS