

**Palisair Home Owners Association**

A NON-PROFIT CORPORATION

P.O. Box 901

Pacific Palisades, CA 90272

[www.palisair.org](http://www.palisair.org)

[palisair@gmail.com](mailto:palisair@gmail.com)

~~The association itself is a "Tract Committee" under the Declaration of Restrictions covering Tracts 15944, 15948 and 19890, and operates as such through its Board of directors and its Officers~~

March 22, 2017

Dr. Cappi and Beth Rothman

1261 Las Lomas

Pacific Palisades, CA 90272

Re: 1261 Las Lomas – Cease & Desist and Notification of CC&R Violations

The Palisair Home Owners Association ("Association") is governed by its recorded CC&Rs<sup>1</sup>, which are enforceable equitable servitudes binding on each owner. The CC&Rs are enforced by the Association's Board of Directors, which is referenced as the "Tract Committee" in the CC&Rs.<sup>2</sup>

Article IV of the CC&Rs state the following:

Section 2. Approval of Plans: Fees

(a) Work Subject to Prior Approval

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<sup>1</sup> Those restrictions and modifications as referenced and included in the Third Modification of Restrictions for Tracts 15944, 15948 and 19890 recorded on January 11, 2012 as Document No. 20120045091 in the Official Records of Los Angeles County, and any amendments thereto.

<sup>2</sup> CC&Rs, Article IV, Section 1.

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No residence, garage, out-building, fence, wall, mast, aerial, clothes line pole, sidewalk, steps, or other structures, and no improvement, utility, swimming pool, parking area or driveway shall be erected, constructed, laid down, altered, installed, located, relocated or maintained and no cutting down, filling up or grading (except "fine grading" for landscaping) shall be done on, under or about any land of said tract unless complete grading and/or building plans (including elevations, and, if requested by the Tract Committee, a rendering) and specifications thereof showing the nature, kind, shape, height, type, material and color scheme thereof, together with the plot plan indicating the location on the lot or building site, shall have been submitted to and approved in writing by the Tract Committee and a copy of such plans, specifications and plot plan, as finally approved, permanently deposited with the Committee. <sup>(1)</sup>

<sup>(1)</sup> Such approvals are valid only if signed by one of the officers of this Association. Oral statements by any officer or director of this Association do not constitute an approval.

You have begun a kitchen remodel on your lot. Per Article IV, Section 2 of the CC&Rs, this remodel work requires the prior written approval of the Tract Committee. You have not received the prior written approval of the Tract Committee and are therefore in violation of the CC&Rs. In fact, you verbally admitted to Kim Bantle in a conversation with her. Regarding your plans application for a remodel, this letter confirms the statement made to you in a conversation with Kim Bantle on February 24 2017 that you do not yet have approval from the Association ~~PHOA~~ for your new kitchen renovation construction project.

You must immediately cease and desist any and all unapproved construction and alteration work on your lot. You must immediately submit to the Tract Committee an application and plans for the alterations to your lot. Upon receipt, the Tract Committee will review and respond back to you.

If you do not immediately cease and desist such unapproved construction and alteration work, the Association may proceed with any action at law or in equity to enforce the CC&Rs against you.<sup>3</sup> The prevailing party in any such action is entitled to its reasonable attorneys' fees and costs.<sup>4</sup>

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<sup>3</sup> Civil Code, § 5975, subd. (a); CC&Rs, Article IV, Section 1.

<sup>4</sup> Civil Code, § 5975, subd. (c).

By continuing without Tract Committee approval, you risk that any unapproved construction and alteration work may not be approved and you will be required to remove or modify it to be compliant with the Association's governing documents.

~~, and you need to stop construction, until you do receive approval of your plans, as you are in violation of the CC&Rs.~~

~~If this project does not receive PHOA approval, it will have to be torn down.~~

~~In particular, in Article IV of the Palisair Homeowners CC&Rs, the following appears:~~

~~Section 2. Approval of Plans: Fees~~

~~(a) Work Subject to Prior Approval~~

~~No residence, garage, out-building, fence, wall, mast, aerial, clothes line pole, sidewalk, steps, or other structures, and no improvement, utility, swimming pool, parking area or driveway shall be erected, constructed, laid down, altered, installed, located, relocated or maintained and no cutting down, filling up or grading (except "fine grading" for landscaping) shall be done on, under or about any land of said tract unless complete grading and/or building plans (including elevations, and, if requested by the Tract Committee, a rendering) and specifications thereof showing the nature, kind, shape, height, type, material and color scheme thereof, together with the plot plan indicating the location on the lot or building site, shall have been submitted to and approved in writing by the Tract Committee and a copy of such plans, specifications and plot plan, as finally approved, permanently deposited with the Committee. <sup>(+)</sup>~~

~~(+) — Such approvals are valid only if signed by one of the officers of this Association. Oral statements by any officer or director of this Association do not constitute an approval.~~

The Association requested you "thin" your trees to allow the Tract Committee to evaluate the current construction and alterations you are completing on your lot. The trees are in violation of the CC&Rs for obstructing your neighbors' views.<sup>5</sup> The request to "thin" the trees and any future approval of your kitchen alterations do

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<sup>5</sup> CC&Rs, Article III, Section 9; Article V, Section 8.

not waive any right of enforcement the Association or a member has against you for violations of the CC&R view restrictions. The Association will address such violations in a separate notice.

~~I am writing to make it clear that our request that you thin out your trees to help us in approving or rejecting your construction request, does not mean that we are in any way approving the trees as they are now. The view diminution that those trees present to your neighbors still stands. Just thinning to allow the Tract Committee to make a fair ruling is not to be taken as a form of compliance removing the violation. And it does not in any way confer an immunity to the restrictions when the trees need more trimming.~~

~~Nor does any approval we may give of your kitchen project mean that we also approve your trees. Several neighbors have told us that their ocean view is obstructed by your trees, and that is a violation of the CC&RS. That is a separate issue.~~

~~Please note that under Davis-Stirling §5975, if the PHOA and/or an affected neighbor brings legal action to enforce the CC&Rs, the prevailing party or parties can recover reasonable attorney's fees and costs.~~

Sincerely,

Francine Kirkpatrick  
President  
Palisair Home Owner's Association

Copy to: Gael Buzyn