

History of the Frio Canyon Estates Deed Restrictions

As of March 2026

In 2017 the Board of Directors retained Travis E. Kitchens, Jr. (a lawyer from the Livingston area) to review the current deed restrictions and make recommendations to modernize the deed restrictions. After conducting a review of the deed restrictions, Mr. Kitchens recommended that certain action be taken. The following italicized text is Mr. Kitchens' review of our deed restrictions and the right to amend them:

1. *On November 28, 1977 restrictions for Section 1, (“**1977 Restrictions**”), were filed at Vol. 214, pages 959, et seq.; there is a definition for “Association”, but the name is blank in the Section 1 restrictions. The 1977 Restrictions were executed on September 16, 1977, and reference a plat filed at Vol. 3, page 91 of the Deed and Plat Records of Uvalde County, Texas, consisting of real property described by an attached Exhibit “A” – being a field note description for 113.645 acres. The 1977 Restrictions provided under Article VIII (General Provisions) under the paragraph entitled “Amendments” the following language: “**The covenants and restrictions in this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years**”. Even though this paragraph is entitled “Amendments” there is no right to amend these deed restrictions.*

2. *On March 1, 1978 restrictions for Section 2, (“**1978 Restrictions**”), were filed at Vol. 216, page 679, et seq.,; there is a definition for “Association”, and in this set of restrictions the name is filled in as “Weed-Frio Homeowner’s Association.” The 1978 Restrictions were executed on September 16, 1977, and reference a plat filed at Vol. 3, page 91 of the Deed and Plat Records of Uvalde County, Texas, consisting of real property described by an attached Exhibit “A” – being a field note description for 113.645 acres. The 1977 Restrictions provided under Article VIII (General Provisions) under the paragraph entitled “Amendments” the following language: “**The covenants and restrictions in this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years**”. Even though this paragraph is entitled “Amendments” there is no right to amend these deed restrictions;*

3. On August 26, 1981 the Developer filed a set of Restrictions for Unit #1, ("**1981 Restrictions**"), at Vol. 237, pages 164, et seq. At the top of the first page of this document, the following is found: "The following restrictions shall supersede the previously recorded restrictions governing the use of and improvements in Frio Canyon Estates. These define Association as the "Frio Canyon Estates Association" (the actual name being "Frio Canyon Estates Association, Inc."). This set of restrictions provide for an amendment under Paragraph 14: "**All of the restrictions and covenants herein set forth shall continue and be binding**; provided, however, that the owners of the legal title to seventy-five percent (75) of the tracts...may release all of the tracts hereby restricted from any one or more of said restrictions and covenants, and may release any tract... ." Restriction No. 5 did give the Architectural Control Committee ("ACC") the right to "alter or vary the provisions hereof by an instrument duly executed and acknowledged by the members of the Committee" and provides for the owners of the subdivision to override the decision of the ACC by taking certain action. Like the restrictions for Sections 1 and 2, this set of restrictions has attached to it the same survey for a 113.645 acre tract, which survey reflects it was filed March 1, 1978, and this set of restrictions references the same plat, filed at Vol. 3, page 91 of the Deed and Plat Records of Uvalde County, Texas.

4. On June 15, 1982 the Developer, executed a document entitled "Modification of Restrictions," ("**1982 Amended Restrictions**"), which document was filed on December 8, 1982 at Vol. 244, page 761, et seq.; this document only referenced the restrictions filed in 1981 at Vol. 237, page 164 and the plat filed at Vol. 3, page 91.

5. On August 24, 1999 the Developer, executed a document entitled "Amendment to Restrictions", ("**1999 Amended Restrictions**"), which document was filed on August 24, 1999 at Vol. 421, pages 696, et seq.; this document referenced the restrictions filed in 1981 at Vol. 237, page 164 and the plat filed at Vol. 3, page 91.

6. On May 15, 2004 the "Frio Canyon Estates Association" through its Board of Directors executed "Amended and Restated Declaratory of Covenants, Conditions and Restrictions of Frio Canyon Estates Subdivision" ("**2004 Amended Restrictions**"). This document provided, under Article V, Section 5, entitled "Amendment" as follows: "**The covenants and restrictions of this Declaration shall run with and bind the Property, for a term of thirty-five (35) years from the date this Declaration become effective, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first thirty-five**

(35) year period by an instrument signed by the Owners of not less than Seventy five percent (75%) of the Lots. No person shall be charged with notice of or inquiry with respect to any amendment hereto until such amendment has been filed of record in Uvalde Property Records of Uvalde County, Texas.”

*From my review of these different documents, it is my conclusion that the 1981 Restrictions were intended by the Developer to replace the 1977 Restrictions and 1978 Restrictions. It would appear that at the time of the 1982 Amended Restrictions and the 1999 Amended Restrictions, that the Developer still maintained the right to make the changes in the 1982 and 1999 Amended Restrictions. The 1981 Restrictions did not allow for the amendment of the restrictions, except as may be accomplished by the Architectural Control Committee: “5....**The said Committee is also authorized when it deems it appropriate and for the best interest of the owners of such property to alter or vary the provisions hereof by an instrument duly executed and acknowledged by the members of the Committee, but should the owners of a majority of the property covered hereby, computed on a square foot basis, deem any such change not in the best interests of the owners of such property, they may nullify and veto such proposed change by an instrument executed and acknowledged by the owners of such a majority of such property an instrument filed in the Deed Records of Uvalde County, Texas within thirty (30) days of the time such instrument altering these restrictions is filed by said Committee.**”*

The 2004 Amended Restrictions do not appear to comply with the amendment procedure of the 1981 Restrictions, which essentially did not allow for amendment, only action to release tracts from the effect of the restrictions. The 2004 Amended Restrictions was essentially a rewrite of the 1981 Restrictions, and expanded on the provisions quite extensively. However, it appears that the POA has been operating under the 2004 Amended Restrictions.

*In order for an amendment to deed restrictions to be valid, the restrictions being amended must provide for an amendment procedure, and that procedure must be strictly followed. An excerpt from my book *The ABCs of POAs in the 21st Century* is enclosed that discuss amendment of deed restrictions. Arguably anyone who bought a tract in Frio Canyon Estates after 1981 would be bound by the 1981 Restrictions.*

The 1981 Restrictions did not appear to give a right to amend the restrictions (notwithstanding the authority given to the Architectural Control Committee in ¶ 5). Arguably the change to restrictions authorized by the ACC contemplated

“variances” for specific construction projects, not an amendment of the deed restrictions as a whole.

Further, the 2004 Amended Restrictions provided for a completely different amendment procedure than the 1981 Restrictions (which did not give a right to amend, only to release properties from the restrictions). Based on this, it would appear that Chapter 211 of the Texas Property Code would provide the election procedure to adopt amended restrictions.

More recently, in 2025 we had Melodee Gruber (a lawyer from the Hondo area) review the documents and she came to the same conclusion as Mr. Kitchens.

In establishing the Frio Canyon Estates subdivision, as referenced in Mr. Kitchens’ letter, the developer filed several documents that seem to conflict concerning the right to amend the restrictions in Frio Canyon Estates.

The Texas Legislature has provided a remedy to the problem Frio Canyon Estates has in amending the deed restrictions. This is found in Chapter 211 of the Texas Property Code. Chapter 211 provides for the Amendment of Deed Restrictions in Subdivisions that have Restrictions similar to those in Frio Canyon Estates. Chapter 211 requires a secret ballot vote.

In 2017 the then Board of Directors of Frio Canyon Estates submitted an amendment ballot to the property owners as required in Chapter 211. At that time the amendment proposal did not gain enough support to pass and as such the matter was tabled. Review of the outcome revealed that the membership was confused by the process and by the wording on the ballot. When the current membership (2025) requested the Board to again pursue an amendment ballot, one step the Board took was to draft a ballot and review that during the 2025 Annual Meeting. That discussion was fruitful and was supported by those present. Subsequent to that discussion, the Board has met several times to review and validate the wording. It is important to note that this more detailed discussion resulted in some wording changes to the proposed amendment that is on the ballot. While the wording is not identical to the 2025 Annual meeting discussion, the intent remains the same.