

RESOLUTION TO ESTABLISH A SIDEWALK MAINTENANCE AND REPAIR RULE FOR
THE LAKE OF THE WOODS OF JACARANDA HOMEOWNERS ASSOCIATION, INC.
AND ALL SUB-ASSOCIATIONS

WHEREAS, Section 7.22 of the Declaration of Covenants and Restrictions, titled Rules and Regulations, states that “reasonable rules and regulations concerning the maintenance and use of the SUBJECT PROPERTY may be made and amended from time to time by the ASSOCIATION in the manner provided by its ARTICLES and BYLAWS. Copies of such rules and regulations and amendments shall be furnished by the ASSOCIATION to any OWNER upon request.”

WHEREAS, the Board of Directors (“BOARD”) has determined that there is a need for clarification of the responsibilities for maintenance and repair of the sidewalks throughout the ASSOCIATION.

NOW, THEREFORE, LET IT BE RESOLVED that the BOARD desires to create a new Operating Rule that defines and establishes clear guidance and delineates the roles and responsibilities for all of the sidewalks within the ASSOCIATION. This rule is hereby adopted and replaces any existing Lake of the Woods of Jacaranda Homeowners Association, Inc. (“ASSOCIATION”) responsibilities and scope documents in their entirety. Notwithstanding the responsibilities established under the ASSOCIATION Declaration of Covenants (DECLARATION) and ByLaws (BYLAWS), this Rule shall apply universally to the ASSOCIATION and all sub-associations (LOW, LOJ, Park Estates, Grassy Oaks II and Grassy Oaks III) (“SUBASSOCIATIONS”).

This RESOLUTION is intended to clarify the responsibility for maintenance and repair of sidewalks throughout the ASSOCIATION.

According to the Declaration of Covenants and Restrictions for Lake of the Woods as recorded in the Official Records of Sarasota County on May 15, 1989 in Official Records Book 2145, page 1075 e7, seg.. Section 1.06, states, in part, "common areas mean any property, whether improved or unimproved, which is owned by the Association or which is otherwise declared to be a common area by this Declaration, and is to be used by all of the residents within the subject property, and their guests and invitees. Common areas may include, but are not limited to parks, open areas, Lakes, recreation areas, roads, entrance ways, parking areas and other similar properties."

The Covenants further state within section 3 “Common Areas’ that “All of the property within any recorded plat of any portion of the subject property shall be a common area except for platted lots, limited common areas, and any property which is dedicated to condominium ownership or to any governmental authority."

Section 7.04.03, requires that “Each OWNER is obligated to have a sidewalk on his lot, including vacant lots, within twelve (12) months of purchase or within thirty (30) days after issuance of a Certificate of Occupancy, whichever comes first. Sidewalks must conform to Sarasota County specifications.”

Section 7.21.02, states “All sidewalks, roads, streets, driveways, parking areas, and other paved or hard-surfaced areas intended for use by vehicular or pedestrian traffic shall be cleaned and kept free of

debris; cracks, damaged and/or eroding areas on same shall be repaired, replaced and/or resurfaced as necessary. All curbing and bumper stops shall be repaired or replaced if damaged. All stripping, including but not limited to, parking space, traffic lane and directional markings, within any road, street, or parking area, shall be repainted as necessary, so that same will be clearly visible at all times.”

Under Section 7.25, Responsibility for Maintenance and Compliance. sub-section 7.25.01, states “The owner of any property within the subject property shall be responsible for complying with all of the provisions of this article with respect to such property.” Subsection 7.25.02, further states “Each homeowners or condominium Association shall be responsible for complying with all provisions of this article with respect to all of the property which is subject to the jurisdiction of the homeowners or condominium Association, notwithstanding the fact that the owner of any portion of the property may also be responsible for such compliance with respect to the property owned by such owner.” This requires the Lakes of Jacaranda (a sub-association) to enforce owner maintenance requirements as to sidewalks or take on such responsibility itself. The Master Association (Lake of the Woods of Jacaranda Homeowners Association, Inc.) Declaration then states in Section 7.25.03, “the Association is responsible to maintain, repair, improve all common areas and also grants the Association the right to assume the obligation to maintain any property not owned by the Association if the board determines that said maintenance of being in the best interest of the residents of the subject property. The Association in doing so must notify the owners or other responsible party that it will assume said maintenance until it notifies said owner or responsible party of its intent to cease providing said maintenance. It specifically allows the Association to maintain sidewalks within 15 feet of any public road right of ways within the subject property.

The provisions of Sarasota County Code of Ordinances Chapter 98, Article I, Section 98-8 (“THE SARASOTA COUNTY CODE OF ORDINANCES”) with respect to the requirements for safety, maintenance and repair of all ASSOCIATION sidewalks, as amended from time to time, are hereby incorporated by reference.

In Sarasota County, Florida, the responsibility for sidewalk repair and maintenance within an HOA typically falls on the property owners of the abutting property. However, within the ASSOCIATION, this means that the owners of the sidewalks within the HOA bear responsibility for maintaining the sidewalks bordering their land, as outlined in THE SARASOTA COUNTY CODE OF ORDINANCES, Chapter 98, Article I, Section 98-8.

GENERAL REQUIREMENT

In accordance with ASSOCIATION and SUBASSOCIATION governing documents within the Lake of the Woods of Jacaranda Homeowners Association (and all sub-Associations thereto) ownership of sidewalks, and thereby the maintenance and repair responsibility for said sidewalks, shall be defined as follows:

Generally, unless a sidewalk lies within a platted lot, the responsibility for maintaining said sidewalk falls to Lake of the Woods of Jacaranda Homeowners Association, Inc. However, in the case of a

maintenance free SUBASSOCIATION, or in such case that a SUBASSOCIATION has more restrictively defined sidewalks as COMMON AREA, responsibility falls to the SUBASSOCIATION resident's association. While governing documents of the Lake of the Woods of Jacaranda Homeowners Association, Inc. provide the ASSOCIATION with the right to maintain sidewalks located within a platted lot, at its discretion in accordance with the governing documents, the following is hereby stipulated:

Based upon the foregoing provisions of the Declaration of Covenants and Restrictions for Lake of the Woods of Jacaranda Homeowners Association, Inc. THE SARASOTA COUNTY CODE OF ORDINANCES, the following shall generally apply to the ASSOCIATION and all SUBASSOCIATIONS, subject to the Exceptions defined below:

1) If a sidewalk is located within a COMMON AREA area within the Master Association (any area not within a platted lot per Section 3.01), then the maintenance and repair responsibility for said sidewalk shall fall to the Master Association (Lake of the Woods of Jacaranda Homeowners Association, Inc.) pursuant to 7.25.03.

2) If a portion of a sidewalk lies within a platted lot, then the homeowner of said lot shall be responsible for the maintenance and repair of the sidewalk pursuant to Section 7.25.01.

EXCEPTION 1: GRASSY OAKS II AND GRASSY OAKS III RESIDENTS ASSOCIATION, INC.

The following deviation from the general requirement, as indicated in the GENERAL REQUIREMENT, 1), and 2), above shall apply to the Grassy Oaks II and Grassy Oaks III SUBASSOCIATIONS.

1) Grassy Oaks II and Grassy Oaks III are maintenance free SUBASSOCIATIONS. In accordance with their Articles of Incorporation, Article II, Paragraph B and Article II, Paragraph D,

“B. To operate, manage, maintain and control the usage of all land and improvements intended for the common usage of all Lot owners in Grassy Oaks II including, without limitation, the common entranceway and signs, the landscape buffer and such private roads, sidewalks, pedestrian, bicycle and other pathways, lakes, ponds, water detention areas, wells and equipment, irrigation lines and other components of the irrigation system, landscaping, conservation areas, easement areas, and other similar common areas (and the improvements thereon) as may be set aside by the Declarant of Grassy Oaks II and transferred or assigned from time to time to the Association for the common use or benefits of the Lot owners in Grassy Oaks II, and/or for the purpose of operation and maintenance by the Association.”

“D. To provide, purchase, acquire, replace, improve, maintain and repair such improvements to the neighborhood common areas, including, without limitation, the common entranceway, signs, structures, streets, sidewalks, street lights, wells and equipment, irrigation

lines and other components of the irrigation system, landscaping, equipment, furniture and furnishings, both real and personal, as the Board of Directors of the Association, in its discretion, determines to be necessary or desirable for the promotion of the health, safety, and social welfare of the members of the Association.”

2) Based on the SUBASSOCIATIONS maintenance-free status, and the above-referenced responsibilities of the Association as delineated in the Grassy Oaks II and Grassy Oaks III Articles of Incorporation, it shall be the responsibility of the Grassy Oaks II and Grassy Oaks III maintenance free SUBASSOCIATION Residents Associations to maintain and repair any and all sidewalks within their respective SUBASSOCIATION boundaries, regardless of whether the sidewalk lies within the common area or within a platted lot.

EXCEPTION 2: PARK ESTATES HOMEOWNERS ASSOCIATION, INC.

The following deviation from the general requirement, as indicated in the GENERAL REQUIREMENT, 1), and 2), above shall apply to the Park Estates Homeowners Association, Inc. SUBASSOCIATION.

Based on the Declaration of Covenants and Restrictions, as amended, for the Lake of the Woods of Jacaranda Homeowners Association, Inc., and the Declaration of Covenants, as amended, for the Park Estates Homeowners Association, Inc, the following shall apply with regard to sidewalk repair and maintenance within the Park Estates SUBASSOCIATION.

Section 1.06 of the Park Estates Declaration of Covenants states that “COMMON AREAS means any property, whether improved or unimproved, which is owned by the ASSOCIATION or which is otherwise declared to be a COMMON AREA by this DECLARATION, and is to be used by all of the residents within the SUBJECT PROPERTY, and their guests and invitees. COMMON AREAS may include, but are not limited to, parks, open areas, lakes, recreational areas, road, the “Private Roadways” as defined on Sheet 1 of the PLAT (attached hereto as Exhibit “B”) for the Community including the sidewalks existing adjacent to or within the Private Roadways, entrance ways, parking areas and other similar properties.”

Section 7.22 of the Park Estates Declaration of Covenants states the following:

“Sidewalks exist adjacent to or within the PRIVATE ROADWAYS within the SUBJECT PROPERTY. The Association shall be responsible to maintain, repair, and replace the sidewalks located throughout the SUBJECT PROPERTY as a COMMON EXPENSE. Notwithstanding the foregoing, each OWNER shall be responsible for the routine cleaning of the sidewalk existing adjacent to the OWNER’S LOT. The cost of said routine cleaning will not be a COMMON EXPENSE and will be borne by the OWNER.

The Association is authorized to levy an individual special ASSESSMENT against an OWNER for any costs incurred by the Association associated with the repair or replacement of any

portion of sidewalk that was damaged by an OWNER, member, member's tenants, guests, and invitees.

The Association is authorized to levy an individual special ASSESSMENT against an OWNER for any costs incurred by the Association associated with the repair or replacement of any portion of sidewalk that was damaged by an OWNER'S failure to prevent any naturally growing foliage such as trees, or tree roots existing on the OWNER'S LOT from growing/encroaching into the PRIVATE ROADWAY thereby causing damage to the sidewalk adjacent to the OWNER'S LOT. As a condition present to the foregoing, the Association must provide the Owner a written notice that a "Condition" exists (as used herein the term "Condition" includes but is not limited to naturally growing foliage such as trees, or tree roots existing on the OWNER'S LOT growing/encroaching into the PRIVATE ROADWAY thereby causing damage to the sidewalk adjacent to the OWNER'S LOT. Said notice shall provide the OWNER 14 days in which to cure the "Condition" causing or potentially causing damage to the sidewalk. If the OWNER does not respond within 14 days the Association is authorized to proceed forward to cure the 'Condition', and may then levy an individual special Assessment as provided in this Article 7.22.

The individual special ASSESSMENT may become a lien against a LOT. The individual special ASSESSMENT will be considered an ASSESSMENT which if not paid may be foreclosed on as provided in this Declaration of Covenants and Restrictions and Section 720.3085, Florida Statutes, as amended from time to time."

Accordingly, the Park Estates Homeowners Association, Inc. is responsible for all sidewalks in the Park Estates community as defined in the Sarasota County Plat Book. Section 1.15 of the Park Estates Declaration of Covenants, as amended, states that "PLAT means the Plat for the Community recorded on April 21, 1992 in the Official Records of Sarasota County at Plat Book 35, Page 33." In accordance with the Park Estates governing documents, the Park Estates Homeowner Association has the right and liability for passing on sidewalk repair and replacement costs to individual owners in the form of special assessments.

ENFORCEMENT

Pursuant to Section 7.25.05, the Master Association (Lake of the Woods of Jacaranda Homeowners Association, Inc.) is provided an enforcement mechanism allowing it to perform any owner maintenance obligation and assess the costs and expenses back to the owner or SUBASSOCIATION.

"7.25.05 Enforcement. In the event any OWNER or homeowners or condominium association fails to comply with any provision of this Article, the ASSOCIATION shall have all rights of enforcement set forth in Paragraph 10, including, but not limited to, the right to perform any maintenance which any OWNER or homeowners or condominium association has failed to perform, and to assess the applicable OWNER or homeowners or condominium association for all costs and expenses incurred by the ASSOCIATION in connection therewith."

Each OWNER, MEMBER, and the OWNERS TENANT, MEMBER'S tenants guests, and invitees, and the ASSOCIATION, is governed by, and must comply with Chapter 720, Florida Statutes, the Governing Documents of the community (this Declaration of Covenants and Restrictions, Articles of Incorporation, and Bylaws), and the Rules of the Association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the Association or by any member as provided in Section 720.305, Florida Statutes, as amended from time to time. The ASSOCIATION and an OWNER are authorized to utilize Section 720.305, Florida Statutes, as amended from time to time, to address violations of the Governing Documents, and Rules of the Association.

Accordingly, the Master Association (Lake of the Woods of Jacaranda Homeowners Association, Inc.) shall use its established compliance procedures to ensure that proper repair and maintenance of all ASSOCIATION sidewalks and common areas is performed. In the event that a SUBASSOCIATION shall fail to maintain or repair sidewalks under their control and responsibility, as established above, the MASTER ASSOCIATION shall have the right to perform the repair and maintenance at their expense and to demand and receive remuneration from the affected SUBASSOCIATION. Furthermore, in accordance with established ASSOCIATION compliance policies, SUBASSOCIATIONS shall be treated in all respects the same as an individual homeowner for the purposes enforcing this operating rule.

NO WAIVER

The failure of the ASSOCIATION to enforce any right, provision, covenant or condition which may be granted by the ASSOCIATION's Declaration of Covenants and Restrictions, Articles of Incorporation, Bylaws or Operating Rules shall not constitute a waiver of the right of the ASSOCIATION to enforce such right, provision, covenant or condition in the future.

CONFLICT WITH DECLARATION, ARTICLES, OR BYLAWS

In the event of any conflict between this Operating RULE and the DECLARATION, Articles of Incorporation ("ARTICLES"), and Bylaws ("BYLAWS"), the DECLARATION, the ARTICLES, the BYLAWS, and the OPERATING RULES in that order, shall control.

PARTIAL INVALIDITY

The invalidation in whole or in part of any part of this RULE shall not affect the validity of the remaining portions which shall remain in full force and effect.