

# Blackburne Creek HOA

## FAQ

*Q: What is the Blackburne Creek HOA?*

A: The Blackburne Creek HOA is an association of homeowners within the Blackburne Creek subdivision of south Edmonton who are legally bound by the Restrictive Covenants placed on our land titles by the developer of Blackburne Creek. Architecturally controlled neighborhoods were designed with two major considerations — a certain level of quality and degree of consistency in the neighborhood, with that quality and consistency being a draw to those who are seeking homes that will retain (and hopefully exceed) their value as time goes on.

The Blackburne Creek subdivision was started in 1991 with the HOA starting in 1998. Essentially, the HOA took over the enforcement of the Restrictive Covenants from the Developer. The HOA was not provided with authority to approve changes to housing designs, although this was a moot point by 1998 since the subdivision was essentially completed by that time. The nature of Restrictive Covenants are such that changes are extremely difficult to implement (see below), with Court approval required for any changes that seek to modify the intent of the Restrictive Covenants. Although HOA's are common in the U.S., The Blackburne Creek HOA is one of the longer serving of such entities in the Province and has run continuously since inception.

You should be aware that the HOA is a corporation under Alberta corporate legislation. As a corporation, it falls to the Board of Directors to manage the corporation to the best of its abilities. Subsequently, the HOA is not a social club nor does it have powers conferred to it by its members. In essence, the primary duty of the HOA is enforcement of the Restrictive Covenants so one should not expect the HOA to be a party to efforts to alter those Covenants unless it can be shown that the large majority of members are interested in doing so.

*Q: What are my **responsibilities as a member** of the HOA?*

A: Membership is not onerous. You are required to maintain your properties according to certain design guidelines initiated by the developer of Blackburne Creek when the subdivision was originally designed in 1991. And you are required to pay your membership dues (fees) on an annual basis.

*Q: What are the **design guidelines** that I must follow?*

A: The term ‘design guidelines’ is used in our Restrictive Covenant to designate the stipulations that the Developer placed on our properties at the inception of the neighborhood. The term ‘guidelines’ is somewhat deceiving in that they are not actually ‘guidelines’ per se but are rather a set of building standards enforced by our Restrictive Covenant and Restrictive Covenant Caveat. As in most ‘architecturally controlled communities’, changes were not anticipated, nor allowed, in order to ensure the quality of the neighborhood. In theory, changes are possible, but not without a Court Order and approval of most, if not all (our legal opinions lean towards unanimous consent) of the members. If you are contemplating moving to Blackburne Creek, you should carefully consider whether you are suited to living under a Restrictive Covenant. If you are not, life will be much easier in an unencumbered neighborhood.

Fortunately, the Design Guidelines in Blackburne Creek are not onerous:

Your roof must be wood shakes or shingles. This was upheld by the Court of Queen’s Bench in a decision handed down in 2019 (the judgment is posted on this web site for your information).

Your fences must be kept in good repair and when replaced must be rebuilt according to the style and color specified in our Design Guidelines. The HOA has implemented a stain purchase program for your convenience at Kans of Any Colour on 99 Street and 38 Avenue. Details are forthcoming at our next AGM and on this web site.

Your driveways must be concrete.

Your front yards must be grass.

There is a stipulation in the Design Guidelines that you have two trees in most front yards, although it is unclear as to whether this was a requirement of refunding the initial landscaping deposit. Nonetheless, although certain trees can quickly outgrow their surroundings, the stipulation does exist in the Design Guidelines. Thus, when replacing your trees (an eventuality in many cases), you should select replacement trees that are appropriate for a city lot — a minimum three inch (7.5 cm.) caliper for deciduous trees and 10 feet (3 meters) for conifers is noted in The Guidelines.

*Q: Can I **repaint my house** in any color I desire?*

A: There are no restrictions on paint colors.

*Q: Can I change the **front profile** of my house?*

A: You must maintain a minimum height brick 'return' on the front of your house.

*Q: What about **siding**?*

A: Many forms of siding are allowed. Check with your HOA if you are considering a material not specifically listed in the Design Guidelines since there have been instances where a material not specifically mentioned in the Design Guidelines has turned out to be an acceptable material by virtue of its composition (Hardie board siding is an example).

*Q: Can I install **solar panels** on my roof?*

A: Installation of solar panels, while not prohibited in our Restrictive Covenant (they were in their infancy at the time of writing our Covenant as well as being prohibitively expensive) must nonetheless comply with the Covenant. In essence, they cannot replace a wood roof nor can a wood roof be replaced in order to accommodate such panels. We recommend that you work closely with a reputable supplier who is mindful of Restrictive Covenants (it should not be surprising that many are not). In conjunction with this, you should consult with the Provincial building code and City bylaws regarding solar panel installations. Although the HOA does not endorse any particular products, new products are being developed (e.g. <https://smartflower.com/>) that do not require roof installation.

*Q: Who **enforces** the Restrictive Covenants?*

A: Your HOA is tasked with enforcing the terms of the Restrictive and Operating Encumbrances.

You should be aware that the authority of the HOA was challenged in the Court of Queen's Bench and a decision was handed down by Justice M. Kraus of that Court in 2019. Essentially, the judgment reinforces the authority of the HOA in its duty to uphold the various Covenants registered on our land titles. The HOA does not take its duty lightly and maintains a contingency fund that is purposed to deal with challenges to that authority.

*Q. When are my fees due?*

A. Annual fees are due on 31 July of each year.

*Q: What if I **don't** pay my fees?*

A: Your HOA fees are, at \$90 per year for single family homes and \$60 per year for multi-family units, considered to be very reasonable, and have been maintained at the current rate since inception of the HOA in 1998. The HOA has a firm policy of not having members in good standing paying for those who refuse to pay their share. Consequently, failure to pay these fees comes at a high cost to those who think that they need not take these fees seriously (the low cost often lulling those people into thinking that they are frivolous). What they do not understand is that HOA fees are second in line (taxes being first) in default situations. Unfortunately for those in default, the HOA has only big hammers at its disposal in collecting these fees. We try to soften the blow by hiring a collection agency (which of course has ramifications of damaging one's credit rating) followed by action through the Courts. It is at this stage that costs can become horrendous with legal fees that can make a \$90 debt skyrocket into thousands of dollars. Eventually, property seizure, including foreclosure, can result. Not to mention the difficulties that can result when a mortgagor (such as a bank) find out that you have a judgment against your property. All in all, it just makes sense to be in good standing with your HOA.

*Q: Is the HOA **'watching'** me?*

A: The nature of our Restrictive Covenants is that the onus is on the homeowner to comply with the terms of the Covenants placed on their titles. Subsequently, the HOA does not 'police' the neighborhood although once the HOA is made aware of a problem (through appropriate details regarding the nature of the problem and the address of the alleged problem site) it has a duty to act on behalf of the membership as a whole. In essence, it is your responsibility to be aware of the terms of the Covenants. The HOA strongly recommends that you consult our web site and/or the HOA Board of Directors for guidance on issues arising from these Covenants.

*Q: What if I have **questions** or concerns?*

A: You can e-mail your HOA at [info@blackburnecreek.com](mailto:info@blackburnecreek.com) with your concerns or questions and a Board member will contact you. You should include a telephone number that you can be contacted at if you wish to be contacted in person.

*We are here to serve.*

*These FAQ's are based on a careful review of the Design Guidelines and were compiled by Brian Hawrelak (President at the time) in 2020 and updated in 2021.*