

Section 6

Covenant and Rule Enforcement

Policy

The Declarations are in place for the betterment of our community. To be effective, they must be obeyed by all record owners of lots within the Association, specifically including, without limitation, guests, tenants, or invitees of such owners as well as the record owners of commercial lots developed for or used to provide golf course and health club facilities, and such owners' guests, tenants, or invitees. All such owners may be referred to as "Members" throughout the Association's Policies, Procedures, Rules and Regulations without reference to any definition that term might otherwise carry in the Declarations. It is one of the Association's purposes to see to it that the provisions of the Declaration and any Policies, Procedures, Rules and Regulations are followed by everyone in the Association.

It is also the policy of the Association that all Board and members of committees having compliance and enforcement roles be thoroughly familiar with the appropriate sections of the Declarations (Covenants), By-Laws, and Association Policies, Procedures, Rules and Regulations pertinent to their area of compliance and enforcement.

Procedure

Definitions.

1. "**Committee**" in this section only refers to the architectural Control Committee (ARC) and the Covenants and Rules Committee which are committees of the Board appointed to oversee enforcement of the Covenants and Policies, Procedures, Rules, and Regulations of the Association as defined by the Board.
2. "**Compliance Officer**" refers to the Covenant and Rule enforcement officer appointed by the Board who may be an employee, consultant, or member of the Association. The Compliance Officer shall serve at the direction of the committees of the Board, as further set forth in Association Policies and Procedures and in committee charters.

Violations. Engaging in any activity prohibited by the Covenants or the Policies, Procedures, Rules and Regulations of the Association constitutes a violation. Every Member has the authority to request that another Member, or Member's guests, cease or correct any act or omission which appears to be a violation. Accordingly, Members are encouraged to self-govern and resolve problems between them in a neighborly fashion by making an informal request that the alleged violation cease.

The Association, acting through the Board of Directors or its Committees, may also take such informal action to seek a resolution. In addition, the Board or its Committees on their

own initiative may identify violations and take such action, informal or formal (or both), to seek to resolve alleged violations.

Written Report. If violations cannot be resolved through informal requests, violations may be reported to the Board of Directors or its appointed Committees by any Member in writing, or by using a form approved by the Board. Submitting a written report of violation will initiate formal action by the Association. The written report must state, with as much specificity as possible, alleged facts with regard to time, date, place, persons involved and circumstances, what acts or omissions constituting a violation the complaining Member believes have occurred. The written report should also reference the Covenant or other rule provision alleged to have been violated. If the written report fails to state the Covenant or other rule alleged to have been violated or sufficient factual specificity, the Committee (or Board) may request additional information. Any written reports of violation will be submitted to the Board or Committee by mail or hand delivery.

Review. Reports of violations received by the Association either through the Board or Compliance Officer shall be referred to the appropriate Committee, unless exigent circumstances, as determined by the Board, requires the Board to assume the role of enforcement Committee in the following Committee process. It is the responsibility of each Committee Member to make a determination as to whether he or she is able to function in a disinterested fashion when reviewing alleged violations and making decisions about how to secure compliance. If any Committee Member is unable to give any matter objective consideration, he or she will disclose that fact to the Committee, remove him or herself from the proceedings, and have their removal noted in the minutes of the Committee meeting.

Step 1: Initial Review and Courtesy Letter. The Committee (or the Board if the Board has assumed the Committee function) will review the written report and determine whether it has stated sufficient facts to indicate a violation has occurred. In making its threshold determination that a violation has occurred or may have occurred, the Committee (or Board) shall consider and apply all relevant interpretation criteria set forth in the applicable Policy and Procedure sections. Should the Committee (or Board) determine that a violation has or may have occurred, the Committee shall cause a courtesy letter to be mailed to the Member describing the alleged violation, identifying the relevant requirement of the Covenants or Rules, and asking for a timely reply. All communications to the Member shall be in writing and mailed to the last known address of the Member by certified or regular mail.

Step 2: Notice of Violation. If there is no response to the courtesy letter and/or the violation continues, the Committee (or Board) shall authorize the Compliance Officer to send a Notice of Violation to the Member, including appropriate documentation, citations to the Covenants and/or Rules, and setting a date certain to resolve the violation.

The Notice of Violation will require that the alleged violation cease within seven days or such period of time as the Committee (or Board) believes is reasonable; whichever is greater, based on the nature of the alleged violation. The allegedly violating Member must respond within seven days of receiving the Notice of Violation, which will be mailed to the last known address of the Member by certified or regular mail.

Step 3: Notice of Hearing. Should the alleged violation continue past the date set by the Notice of Violation, (Note that Article IV, Section 11, of the Covenants, in cases involving correction of defects of architectural control, the Member has sixty days from the date of the Notice of Violation to remedy the non-compliance), the Committee itself or through the Compliance Officer shall refer the violation to the Board for hearing. The Board will authorize a Notice of Violation to be sent to the Member giving that Member notice of the time, date and place when the Board will meet to hear the matter, and stating that the hearing will be conducted in open session unless the hearing has subject matter aspects somehow related to attorney advice and the attorney-client privilege or otherwise appropriate for a closed executive session of the Board as provided by Colorado law. An "open session" shall provide an opportunity for observation only, not participation for Members who are not part of the hearing process. The allegedly violating Member will have an opportunity to attend and be heard at the meeting. If it is determined that a violation has occurred, the Board has the authority to levy fines, approve referral of the matter to a lawyer, prescribe the sanctions described below, or take any other action authorized by the Declarations, Policies, Procedures, Rules and Regulations or by Colorado law necessary to secure compliance, in its discretion.

Hearing Details. The hearing provided for in Step 3 will not be conducted according to any technical rules relating to evidence or witnesses. Unless the violating Member requests the hearing be conducted in executive session, the hearing shall be conducted in open session.

At the hearing, a Committee member and/or the Compliance Officer shall present the facts of the violation, attempts at achieving compliance, and any other pertinent information. Generally, any relevant information may be admitted if it is the sort of information on which reasonable persons would rely in the conduct of serious personal matters, regardless of any common law or statutory rule which makes certain evidence improper in civil actions. The hearing will continue even if the complaining member, the allegedly violating member, or both, fails to attend. Decisions of the Board need not be made or reported immediately and may be made at any time not more than seven days after the conclusion of a hearing. All decisions of the Board are effective three days after written notification of the decision is sent to the violating member by certified or regular mail. The Notice of Results of Hearing will include the Board's determination of the appropriate sanction, a new time period for cure of the violation (if appropriate, in the Board's discretion, to the sanction chosen), and the due date for any levied fine.

Sanctions—All Properties. Sanctions for violations may include any or all of the following without limitation. Any fines or monetary sanctions will be collectable as Assessments.

1. Fines: First offenses, \$25; second offenses, \$50; third and subsequent offenses, \$75 and up except for those fines set forth in other Policies and Procedures, such as Sections 13 and 14. When the violation which caused the first offense fine has not been cured within the time period set by the Board, the Board may levy a second offense fine of \$50 or seek cure by other available sanctions. This process may continue with new time periods for Third and subsequent offense fines until cure is accomplished or the Board seeks cure of the violation by alternative sanctions.
2. Termination of member voting rights until the violation is cured.
3. Levying an assessment to repair or remedy any neglect, alteration or damage, physical, aesthetic or otherwise, caused by the violation. The assessment also may be levied after the Association undertakes repair or remedy, as authorized by the Declaration.
4. Seeking a remedy at law or in equity, including, but not limited to, an injunction prohibiting further violations, money damages, costs, and attorneys' fees expended as provided for by the Declarations and the Colorado Common Interest Ownership Act (CCIOA).
5. Recording a Certificate of Non-Compliance with the office of the Ouray County Clerk and Recorder regarding the subject property. Before a Certificate will be recorded, a Notice of Results of Hearing will be sent to the property owner informing him or her of the Association's decision to record a Certificate of Non-Compliance (and may include other sanctions as well) within forty-five days of the Notice of Results of Hearing and that during that time the Member shall cure the violation or make a written request to the Board for additional time. Such written request must include facts and circumstances that the Member believes would justify the additional time for cure. If such a request is received within the time specified, the Board shall consider the request and shall have the discretion to grant it, deny it, or seek additional information. If no such request is received, or if the Board proceeds with its decision, the Board may record a Certificate of Non-Compliance not less than forty-five (45) days from the date of the Notice of Results of Hearing and the property owner will be sent a notice when the Certificate of Non-Compliance has been recorded. The notice will inform the owner that he or she may at any time cure the violation and request in writing that the Board rescind the Certificate by recording a Rescission of Certificate of Non-Compliance with the County Clerk.

Special Sanctions—Commercial Properties. Certain properties in the Association, specifically including the golf course and athletic club properties, are used for commercial purposes. The owners of these properties receive dues from other owners, as provided in the Declarations or in a Court Order, in exchange for providing golf and health club amenities, respectively. Thus, in addition to the kinds of violations which may occur on any property in the Association, the owner(s) of commercial properties may violate the Declaration by failing or refusing to provide the amenities historically provided, or when

such amenities are not reasonably maintained, or are not reasonably available to Members. Any fines or monetary sanctions will be collectible as assessments.

Golf course. With respect to the golf course, golf club amenities must be provided as the Membership plan allows, including but not limited to an 18 hole course, open as the Membership plan allows, as determined by the golf course management entity, during the usual hours of operation for a golf course in Colorado and staffed with the usual golf course staff. However, because golf course dues are compulsory, neither the Membership plan, nor the management entity or its staff, may set forth and enforce such rules as would have the effect of violating the Declaration by failing or refusing to provide and maintain the amenities historically provided, or by failing to make such amenities reasonably available or accessible.

Athletic facility. With respect to the athletic facility, amenities include tennis courts, swimming pool, restaurant/bar, indoor and patio dining areas, aerobic and weight machines and equipment, men's and women's locker rooms with steam, sauna and spa facilities, meeting areas, handball/racquetball court, and a billiard room with pool table. The athletic facility should also be open and reasonably available for use by Members on a daily basis, including early morning and evening hours, and should be staffed by the usual staff found at an athletic club. Certain athletic club facilities, including the tennis courts and the restaurant/bar with its outside dining areas, may also be seasonal, as determined by the athletic club management entity, but should roughly correspond to the golf season.

Owners of commercial properties must provide advance notice to the Association and Association members if any amenity provided at the facility will be unavailable. The Board may consider the provision of such notice when evaluating the appropriate sanction. In cases where amenities have not been provided, are not reasonably maintained, or are not reasonably available to Members, sanctions may include any or all of the following, without limitation:

1. **Fines** as follows:

- (a) **Golf.** Up to \$450 per user property per quarter, in the discretion of the Board, after notice and hearing as provided in this policy and procedure document.
- (b) **Athletic facility.** Up to \$200 per user property per quarter, in the discretion of the Board, after notice and hearing as provided in this policy and procedure document.

2. **Termination of member voting rights** until the violation is cured.

3. **Levying an assessment** to repair or remedy any neglect, alteration, or damage, physical, aesthetic, or otherwise, caused by the violation. The assessment also may be levied after the Association undertakes repair or remedy, as authorized by the Declaration.

4. **Seeking a remedy at law** or in equity including but not limited to an injunction prohibiting further violations, money damages, costs, and attorneys' fees expended as provided for by the Declarations and the Colorado Common Interest Ownership Act (CCIOA).

Cure. In all cases where sanctions are imposed, the owner(s) sanctioned must notify the Board in writing when the cited violation(s) has or have been cured. The Board, or its designated representatives, may then inspect, within fifteen (15) days of receipt of written notification of cure. If no inspection is made within fifteen (15) days the violation shall be deemed cured. Alternatively, the Board, in its discretion, may independently determine a violation has been cured without receipt of any written notification of cure and without any inspection. If the inspection verifies cure of the violation, or the violation is otherwise determined or deemed to be cured, the sanction shall be lifted as of the date of the Board's receipt of notification of cure, or its determination a cure has occurred, whichever occurs first.

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Association Administrator